

ANNEXURE - I**THE CONSTITUTION (SEVENTY- FOURTH AMENDMENT)
Act, 1992¹**

[20th April, 1993]

An Act further to amend the Constitution of India

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:

NOTES**Short title and commencement****Insertion of new Part IX-A****NOTES**

The only distinction between a law amending the Constitution and an ordinary law in a rigid constitution is that an amendment of the Constitution has always to be made in the manner and form specially prescribed by the Constitution. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, paras 1345 and 1579.

1. Short title and commencement :

(1) This Act may be called the Constitution (seventy-fourth Amendment) Act, 1992.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Part IX-A :

After Part IX of the Constitution, the following Part shall be inserted, namely :-

PART IX.A**The Municipalities****Definitions**

243-P. Definitions : In this Part, unless the context otherwise requires,-

- (a) "Committee" means a Committee constituted under Article 243-S;
- (b) "district" means a district in a State;
- (c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;
- (d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;
- (e) "Municipality" means an institution of self-government constituted under Article 243-Q;
- (f) "Panchayat" means a Panchayat constituted under Article 243-B;
- (g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Constitution of Municipalities

243-Q. Constitution of Municipalities : (1) There shall be constituted in every State,-

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and

¹ Received the assent of the President on April 20, 1993 and published in the Gazette of India, Extra. Part II, Section I, dated 20th April, 1993, pp. 1-10. SL No. 70

(c) a Municipal Corporation for a larger urban area.

in accordance with the provisions of this Part :

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Composition of Municipalities

243-R. Composition of Municipalities : (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide -

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of Article 243-S :Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

Constitution and composition of Wards Communities, etc

243-S. Constitution and composition of Wards Communities, etc:

(1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee Consists of-

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in

the Municipality elected by the members of the Wards Committee. shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

Reservation of seats

243-T. Reservation of seats : (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause(1) shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State May, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243-T. There is no indication or suggestion in Article 243-T that in case office of President of municipality is required to be filled by a member who is a SC/ST/BC or a woman, then only a member who has been elected from a reserved seat can stand for election. Kasambhai F. Ghanchi V. Chandubhai D. Rajput AIR 1998 Sc 815 : 1998 (1) SCC 285; 1997 (9) JT 89; 1998 (1) SLT-174

Duration of Municipalities, etc

243-U. Duration of Municipalities, etc. : (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the reminder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

Disqualifications for membership

243-V. Disqualifications for membership : (1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Powers, authority and responsibilities of Municipalities etc

243-W. Powers, authority and responsibilities of Municipalities etc : Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow :-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans (or economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243-X. Power to impose taxes by, and Funds of, the Municipalities : The Legislature of a State may, by law, -

Power to impose taxes by, and Funds of, the Municipalities

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied

and collected by the State Government for such purposes and subject to such conditions and limits:

(c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

**Finance
Commission**

243-Y. Finance Commission :(1) The Finance Commission constituted under Article 243-1 shall also review the financial position of the Municipalities and make recommendations to the Governor as to -

(a) the principles which should govern -

(i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may lie divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

(iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the Municipalities;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

(2) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

**Audit of
accounts of
Municipalities**

243-Z. Audit of accounts of Municipalities: The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

**Elections to the
Municipalities**

243-ZA. Elections to the Municipalities : (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243-K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

**Application to
Union
territories**

243-ZB. Application to Union territories : The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under Article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly: Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

Part not to apply to certain areas

243-ZC. Part not to apply to certain areas ; (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law. and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

Committee for district planning

243-ZD. Committee for district planning : (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to -

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled :
Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district:

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan. -

(a) have regard to-

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

Committee for Metropolitan planning

243-ZE. Committee for Metropolitan planning : (1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with

respect to-

- (a) the composition of the Metropolitan Planning Committees;
- (b) the manner in which the seats in such Committees shall be filled :
Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;
- (c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;
- (d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;
- (e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan, -

- (a) have regard to-
 - (i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
 - (ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
 - (iii) the overall objectives and priorities set by the Government of India and the Government of the State;
 - (iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;
- (b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243-ZF. Continuance of existing laws and Municipalities:

**Continuance of
existing laws
and
Municipalities**

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:
Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

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| Bar to interference by courts in electoral matters | <p>243-ZG. Bar to interference by courts in electoral matters : Notwithstanding anything in this Constitution,-</p> <p>(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any court;</p> <p>(b) no election to any Municipality shall be called in question except by an election presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."</p> |
| Amendment of Article 280 | <p>3. Amendment of Article 280 : In clause (3) of Article 280 of the Constitution, sub-clause (c) shall be relettered as sub-clause (d) and before sub-clause (d) as so relettered, the following sub-clause shall be inserted, namely :-</p> <p><i>“(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State.”</i></p> |
| Addition of Twelfth Schedule | <p>4. Addition of Twelfth Schedule : After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-</p> |

TWELFTH SCHEDULE
(Article 243-W)

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| TWELFTH SCHEDULE | <ol style="list-style-type: none"> 1. Urban planning including town planning. 2. Regulation of land-use and construction of buildings. 3. Planning for economic and social development. 4. Roads and bridges. 5. Water supply for domestic, industrial and commercial purposes. 6. Public health, sanitation conservancy and solid waste management. 7. Fire services. 8. Urban forestry, protection of the environment and promotion of ecological aspects. 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded. 10. Slum improvement and upgradation. 11. Urban poverty alleviation. 12. Provision of urban amenities and facilities such as parks, gardens, play-grounds. 13. Promotion of cultural, educational and aesthetic aspects. 14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums. 15. Cattle ponds; prevention of cruelty to animals. 16. Vital statistics including registration of births and deaths. 17. Public amenities including street lighting, parking lots, bus stops and public conveniences. 18. Regulation of slaughter houses and tanneries. |
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ANNEXURE – II**GUJARAT PROVISION FOR DISQUALIFICATION OF MEMBERS OF LOCAL AUTHORITIES FOR DEFECTION ACT, 1986****CONTENTS****CONTENTS**

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11. Amendment of section 11 of Guj. 34 of 1964

The following Act of the Gujarat Legislature having been assented to by the Governor on the 10th September, 1986 is hereby published for general information.

GUJARAT**ACT NO. 23 OF 1986****GUJARAT ACT NO. 23 OF 1986**

(First published, after having received the assent of the Governor in the "Gujarat Government Gazette" on the 11th September, 1986.)
An Act to provide for disqualification of members of certain local authorities on ground of defection and for matters connected therewith. It is hereby enacted in the Thirty-seventh Year of the Republic ..of India, as follows :-

1. Short title and commencement :**Short title and commencement**

- (1) This Act may be called the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986.
- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

2. Definitions:**Definitions**

In this Act, unless the context otherwise requires, -

- (a) "Councillor" means a councillor of a Municipal Corporation or, as the case may be. a municipality;
- (b) "Member" means a member of a panchayat;
- (c) "Municipal Corporation" means a municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949; (Bom. LIX of 1949.)
- (d) "'municipal party" in relation to a councillor belonging to any political party in accordance with the Explanation to section 3 means,-
 - (i) in the case of a councillor of a municipal corporation, the group consisting of all the councillors of the municipal corporation for the time being belonging to that political party in accordance with the said Explanation:
 - (ii) in the case of a councillor of a municipality the group consisting of all the councillors of the municipality for the time being belonging to

that political party in accordance with the said Explanation:

(e) "Municipality" means a municipality constituted or deemed to be constituted under the Gujarat Municipalities Act, 1963: (Guj. 34 of 1964).

(f) "original political party" in relation to a councillor or a member means the political party to which he belongs for the purposes of subsection (1) of section 3:

(g) "panchayst" means a district panchayat or, as the case may be, a talluka panchayat constituted under the Gujarat Panchayats Act, 1961; (Guj. VI of 1962.)

(h) "panchayat party" in relation to a member belonging to any political party in accordance with the Explanation to section 3 means the group consisting of all the members of the panchayat for the time being belonging to that political party in accordance with the said Explanation.

**Disqualification
on ground of
defection**

3. Disqualification on ground of defection :

(1) Subject to the provisions of section 4 and 5, a councillor or a member belonging to any political party shall be disqualified for being a councillor or a member, -

(a) if he has voluntarily given up his membership of such political party: or

(b) if he votes or abstains from voting in any meeting of a municipal corporation, panchayat or as the case may be. Municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation : (1) For the purposes of this section :

(a) a person elected as a councillor or, as the case may be, a member shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such councillor or member,

(b) an appointed councillor or member shall, -

(i) where he is a member of any political party on the date of his appointment as such councillor, or as the case may be, member be deemed to belong to such political party;

(ii) in any other case be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member of such party before the expiry of six months from the date on which he is appointed as such councillor, or as the case may be, a member.

(2) An elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a councillor or, as the case may be, a member if he joins any political party after such election.

(3) An appointed councillor or, as the case may be, member shall be disqualified for being a councillor or, as the case may be, a member if he joins any political party after the expiry of six months from the date on which he is appointed as such councillor, as the case may be, a member

(a) (4) Notwithstanding anything contained in the foregoing provisions

of this section, a person who on the commencement of this Act, is a councillor, or, as the case may be, a member (whether elected or appointed as such councillor or member) shall. –

- (a) where he was a member of a political party immediately before such commencement, be, deemed, for the purposes of sub-section (1) to have been elected as a councillor or, as the case may be, a member as a candidate set up by such political party;
- (b) in any other case, be deemed to be an elected councillor or, as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section (2) of, as the case may be, deemed to be an appointed councillor or, as the case may be, a member for the purposes of sub-section (3).

4. Disqualification on ground of defection not to apply in case, of Split :

Disqualification on ground of defection not to apply in case, of Split

(1) Where a councillor or, as the case may be, a member makes a claim that he and any other members of the municipal party or, as the case may be, the panchayat party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the councillors of such municipal party or, as the case may be, members of such panchayat party,-

- (a) he shall not be disqualified under sub-section (I) of section 3 on the ground,-
 - (i) that he has voluntarily given up membership of his original political party; or
 - (ii) that he has voted or abstained from voting in the meeting of such municipal corporation, panchayat or, as the case may be, municipality contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person, authority and such voting or abstention has not been condoned by such, party, person or authority within fifteen days from the date of such voting or abstention; and
- (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of section 3 and to be his original political party for the purposes of this section.

Disqualification on ground of defection not to apply in case of merger

5. Disqualification on ground of defection not to apply in case of merger :

(1) A councillor or a member shall not be disqualified under sub-section (1) of section 3 where his original political party merges with another political party and he claims that he and any other members of his original political party, -

- (a) have become members of such other political party or, as the case may be of a new political party formed such merger; or
- (b) have not accepted the merger and opted to function as a separate group, and from the time of such merger such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-section (1)

one of section 3 and to be his original political party for the purpose of this sub-section.

(2) For the purposes of sub-section (1) the merger of the original political party of a councillor, or as the case may be, a member shall be deemed to have taken place if, and only, not less than two-thirds of the members of municipal party concerned, or, as the case may be, panchayat party concerned, have agreed to such merger.

Decision on question as to disqualification on ground of defection

6. Decision on question as to disqualification on ground of defection :

If any question arises as to whether,-

- (1) a councillor of municipal corporation;
- (2) a member of a panchayat; or
- (3) a councillor of a municipality has become subject to

disqualifications under this Act, the question shall be referred to the Chief Secretary to the State Government or to such officer not below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final.

Bar of jurisdiction of civil courts

7. Bar of jurisdiction of civil courts :

No civil court and no other authority or officer under the Bombay Provincial

Municipal Corporations Act, 1949, (Bom. LIX of 1949) or the Gujarat Panchayats Act, 1961 (Guj. VI of 1962) or the Gujarat Municipalities Act, 1963, (Guj. 34 of 1964). shall have any jurisdiction to deal with or decide any question as to disqualification of a councillor or a member on the ground of defection or as to any matter connected therewith, which the Chief Secretary to the State Government or an Officer not below the rank of a Secretary of any Department of the State Government designated by the State Government in this behalf is empowered to deal with or decide under section 6 and no injunction shall be granted by any civil court or any authority or officer in respect of any action taken or to be taken by the Chief Secretary or the designated officer in pursuance of any power conferred on him by or under this Act.

Rules

8. Rules:

- (1) The State Government may by notification in the Official Gazette make rules carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all of any of the following matters, namely :-
 - (a) the maintenance of registers or other records as to the political parties, if any, to which different councillors or, as the case may be, members belong;
 - (b) the report which the leader of a municipal party in relation to a councillor and the leader of a panchayat party in relation to a member shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-section (1) of section 3 in respect of such councillor or, as the case may be, member, the time within which and authority to whom such report shall be furnished;
 - (c) the reports which a political party shall furnish with regard to admission to such political party of any councillors or members and the officer of the municipal corporation, panchayat or, as the case may be,

municipality to whom such reports shall be furnished;

(d) the procedure for deciding any question referred to in section 6 including the procedure of any inquiry which will be made for the purpose of deciding such question; and

(e) any other matter which is required to be or may be prescribed.

(3) In making rules under this section, the State Government may provide that for any breach thereof, the offender shall on conviction be punished with fine which may extend to one thousand rupees and in the case of continuing breach with fine which may extend to fifty rupees for every day during which the breach continues after conviction for the first breach.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette & shall thereupon, take effect.

Amendment of section 10 of Bom. LIX of 1949

9. Amendment of section 10 of Bom. LIX of 1949 :

In the Bombay Provincial Municipal Corporations Act, 1949, (Bom. LIX of 1949.) in section 10, after sub-section (2), the following sub-section shall be added, namely :-

“(3) A person who at any time during the term of his office is disqualified under the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 (Guj.23 of 1986) for being a councilor shall cease to hold office as such councillor.”

10. Amendment of section 23 of Cuj. 6 of 1962 :

Amendment of section 23 of Cuj. 6 of 1962

In the Gujarat Panchayats Act, 1961, (Guj. 6 of 1962) in section 23, after sub-section (1), the following sub-section shall be added, namely:-

“(2) A person who at any time during the term of his office is disqualified under the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 (Guj.23. of 1986.) For being a member.”

of a taluka panchayat or, as the case may be, a district panchayat shall cease to hold office as such member. "

11. Amendment of section II of Guj. 34 of 1964 :

Amendment of section II of Guj. 34 of 1964

In the Gujarat Municipalities Act, 1963, (Guj. 34 of 1964), in section 11, after sub-section (3), the following sub-section shall be added, namely :-

“(4) A person who at any time during the term of his office is disqualified under the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (Guj.23 of 1986) for being a councilor shall cease to hold office as such councillor”.

[Published in Gujarat Govt. Gaz. Ord. Pt. IV dt. 16-10-86 pp. 250-55]

Note: also refer "Tenth Schedule" [Articles 102(2) and 191(2)] added by the Constitution (52nd Amendment) Act, 1985 regarding "Provisions as to Disqualification on the ground of Defection"

Refer the following case Law :

1. Mahatab v State A.I.R 1993 Patna -96 (Paras 25,31)
2. Kanhiya v Trivedi A.I.R 1996 S.C III
3. Kihota v Zachilhu -A.I.R 1993 SC 1558 (Para -3,18,21) '
4. Ravi v Union of India A.I.R 1994 SC 1558 (Para 11)
5. Luis v Union of India A.I.R 1992 SC 1558 (Para -3,7-8)
6. Kihota v Union of India A.I.R 1993 SC 412 (Para 5,41,85,86 94)
7. Makhan Singh v State of Punjab A.I.R 1964 SC 381
8. State of Rajasthan v Union of India A.I.R 1977 SC 1361
9. Union of India v Jyoti Prakash A.I.R 1971 SC 1093 (Para -31)
10. Durgashankar v Raghuraj A.I.R 1954 SC 520 (Para -4)
[Case Law no.6 to10 regarding "Judicial review of speaker's decision]
11. Kashinath v The Speaker A.I.R 1993 SC 1873
[regarding speaker's power to Review]

ANNEXURE - III**THE GUJARAT PROVISION FOR DISQUALIFICATION OF MEMBERS OF LOCAL AUTHORITIES FOR DEFECTION RULES, 1987****CONTENTS****CONTENTS**

1. Short title and commencement
2. Definitions
3. Information to be furnished by leader of municipal party or panchayat party
4. Information to be furnished by Councillors and Members
5. Register of information as to members
6. Reference to be by petitions
7. Procedure
8. Decision on petition
9. Direction as to detailed working of these rules

FORMS

In exercise of the powers conferred by section 8 of the Gujarat Provision for Dis-qualification of Members of Local Authorities for Defection Act, 1986, (Gujarat 23 of 1986) the Government of Gujarat hereby makes the following rules, namely :-

1. Short title and commencement :**Short title and commencement**

- (1) These rules may be called the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987.
- (2) They shall come into force on 7th February, 1987.

2. Definitions:**Definitions**

In these rules, unless the context otherwise requires,-

- (a) "designated officer" means an officer designated by the State Government under section 6;
- (b) "Form" means a form appended to these rules :
- (c) "leader" in relation to a municipal party or, as the case may be, a panchayat party means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader as, or discharge, the functions of, the leader of the party for the purposes of these rules;
- (d) "specified officer" in relation to-
 - (i) a municipal corporation, means the Municipal Secretary of the Corporation;
 - (ii) a panchayat, means the Secretary of the Panchayat;
 - (iii) the municipality, means the Chief officer of the Municipality.

3. Information to be furnished by leader of municipal party or panchayt party:**Information to be furnished by leader of municipal party or panchayt party**

- (1) The leader of each municipal party or, as the case may be, Panchyat party (other than a municipapal party consisting of only one member or a panchayat party consisting of only one member) shall, before the first meeting of the Municipal Corporation, the Panchayat, or the municipality or where such municipal party or panchayat party is formed after the first such meeting, within thirty days after its information or, in either case within such further period as the designated officer may for sufficient cause allow, furnish the following

informatin to the designated officer, namely :-

(a) a statement (in writing) containing the names of members of such municipal party or, as the case may be, panchayat party together with other particulars regarding such members in Form I and the names and designations of the members of such party who have been authorised by it for communicating with the designated officer for the purposes of these rules;

(b) a copy of the rules and regulations (whether known as such or as constitution or by any other name) of the political party concerned, and

(c) whether such municipal party or panchayat party has any separate set of rules and regulations (whether known as such or as constitutin or by any other name), also a copy of such rules and regulations.

(2) Where a municipal party or panchayt party consists of only one member, such member shall furnish a copy of the rules and "regulations mentioned in clause (b) of sub-rule (1) to the designated officer, before the first meeting of the municipal corporation, panchayat or, as the case may be, municipality or, where he has become a councillor of such corpoaration, or municipality or a member of a panchayat after the first meeting, within thirty days after the meeting of the municipal corporation, panchayat or municipality which he first attends or, in either case within such further period as the designated officer may for sufficient cause allow.

(3) In the event of any increase in the strength of a municipal party consisting of only one councillor or member or, as the case may be, panchayat party consisting of only one member, the provisons of sub-rule (1) shall apply in relation to such municipal party or, as the case may be, panchayat party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a municipal party or, as the case may be, panchayat party under sub-rule (1) or by a member under sub-rule (2), he shall, within thirty days thereafter, or, withiin such further period as the designated officer may for sufficient cause allow, furnish in writing information to the designate officer with respect to such change.

(5) In the case of the municipal corporation, panchayat or municipality in existence on the date of commencement of these rules, the rules, the reference in sub-rule (1) and (2) to the first meeting of the municipal corporation, panchayat or municipality shall be construed as a reference to the meeting held immediately after the commencement of these rules.

(6) Where a member belonging to any political party votes or abstains from voting in any meeting of a municipal corporation, panchayat or municipality contrary to any directin issued by such political party or by any person or authority, authorised by it in this behalf, without obtaining in either case, the prior permission of such political party, person or authority, the leader of the municipal party or panchayat party concerned or where such member is the leader, or as the case may be, the sole member of such municipal party, or panchayat party, such member, shall as soon as may be after the expiry of fifteen days from the date of such voting or abstention, and in any case within thirty days

from the date of such voting or abstention inform the designated officer in Form II whether such voting or abstention has or has not been condoned by such political party, person or authority.

Explanation ; A member may be regarded as having abstained from voting only when he, being entitled to vote, refrains from voting.

Information to be furnished by Councillors and Members

4. Information to be furnished by Councillors and Members :

(1) Every person who has before the date of commencement of these rules become a Councillor of the Municipal Corporation or Municipality or a Member of a Panchayat shall furnish to the specified officer within thirty days from such date or within such further period as the designated officer may for sufficient cause allow, a statement of particulars and declaration in Form III.

(2) Every person who on the constitution of municipal corporation, panchayat or municipality after the date of commencement of these rules, becomes a Councillor of the municipal corporation or the municipality or a member of the Panchayat shall, before attending the first meeting of the Municipal Corporation, Panchayat or municipality so constituted deposit with the specified officer, a specified certificate certifying his election and also furnish to the specified officer a statement of particulars and declaration in Form III.

Explanation : For the purposes of this sub-rule the expression "specified certificate" means.-

(a) in relation to a Councillor of a Municipal Corporation a certificate from the Municipal Commissioner.

(b) in relation to a panchayat, a certificate from the Chief Electoral officer of the State of Gujarat and;

(c) in relation to Councillor, of the municipality, a certificate from the Collector of the district in which the municipal borough of the municipality is situate.

(3) (a) A summary of the information furnished under this rule shall be published by affixing it on the notice board-

(i) of the office of the Municipal Corporation or as the case may be, municipality if it relates to the councillors,

(ii) of the office of the panchayat, if it relates to the members;

(b) If any discrepancy in the summary of information published under clause (a) is pointed out to the satisfaction of the specified officer, necessary corrigendum shall be published in the manner specified in the said clause (a).

Register of information as to members

5. Register of information as to members :

(1) The specified officer shall maintain, in Form IV, a register based on the information furnished under rules 3 and 4 in relation to the councillors or, as the case may be, members.

(2) The Information in relation to each councillor or member shall be recorded on a separate page in the Register.

References to be by petitions

6. References to be by petitions :

(1) No reference of any question as to whether a councillor or member has become subject to disqualification under the Act shall be made except by a petition in relation to such councillor or member made in accordance with the provisions of this rule.

(2) A petition in relation to a councillor or member may be made in

writing to the Chief Secretary to the Government of Gujarat or designated officer by any other councillor or, as the case may be, member.

(3) Before making any petition in relation to any councillor or member the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such councillor or member has become subject to disqualification under the Act.

(4) Every petition, -

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

(5) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

(6) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

7. Procedure:

Procedure

(1) On receipt of a petition under rule 6 the Chief Secretary to the State Government or the designated officer shall consider whether the petition complies with the requirement of rule.

(2) If the petition does not comply with the requirements of rule 6, the Chief Secretary or as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Chief Secretary or, as the case may be, the designated officer shall cause copies of the petition and of the annexures thereto to be forwarded.-

(a) to the councillor or member in relation to whom the petition has been made; and

(b) where such councillor or member belongs to any municipal party or a panchayat party and or such petition has not been made by the leader thereof also to such leader, and such councillor or member or leader shall, within seven days of the receipt of such copies, or within such further period as the designated officer may for sufficient cause allow, forward his comments in writing thereon to the Chief Secretary or the designated officer.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule) the Chief Secretary or designated officer may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to such officer as he deems fit for making a preliminary inquiry and submitting a report to him.

(5) The Chief Secretary or the designated officer shall, as soon as may be after referring a petition to the officer under sub-rule (4), intimate the petitioner accordingly and cause an announcement to be made with

respect to such reference in a meeting of the municipal corporation, panchayat or municipality or if such meeting is not likely to be held soon, cause the information as to the reference to be published in the manner specified in clause (b) of sub-rule (3) of rule 4.

(6) Where the Chief Secretary or designated officer makes a reference under sub-rule (4) to the officer he shall proceed to determine the question as soon as may be after receipt of the report from the officer.

(7) The procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure which shall be followed by the officer for the purpose of making a preliminary inquiry under sub-rule (4) shall be consistent with the rule of natural justice and neither the Chief Secretary or designated officer shall come to any findings that a councillor or member has become subject to disqualification under the Act without affording a reasonable opportunity to such councillor or member to represent his case and to be heard in person.

**Decision on
petition**

8. Decision on petition :

A petition rising the question as to whether a councillor or member has become subject to disqualification under the Act shall be determined as expeditiously as possible and an endeavour shall be made to determine the question within six months from the date on which the petition is made under rule 6.

(1) At the conclusion of the consideration of the petition, the Chief Secretary or designated officer shall by order in writing, -

(a) dismiss the petition, or

(b) declare that the councillor or member in relation to whom the petition has been made has become subject to disqualification under the Act, and cause copies of the order to be delivered or forwarded to the petitioner, the councillor or member in relation to whom the petition has been made and to the leader of the municipal party or panchayat party if any concerned.

(2) Every decision declaring a councillor or member to have become subject to disqualification under the Act shall be reported to the municipal corporation, the panchayat or, as the case may be the Municipality.

(3) Every decision referred to in sub-rule (1) shall be published by affixing a copy thereof on the notice board of the office of the municipal corporation, Panchayat or, as the case may be, municipality, and notified in the Official gazette.

**Direction as to
detailed
working of
these rules**

9. Direction as to detailed working of these rules :

The Chief Secretary or designated officer, may, from time to time, issue such directions (not inconsistent with the Act and these Rules) as he may consider necessary for the purpose of carrying out these rules.

FORM I

[See rule 3 (i) (a)]

Name of the Municipal or Panchayat Party: _____

Name of the corresponding political party : _____

| Sr. No. 1 | Name of the councilor or member (in block letters) 2 | Father's or Husband's name 3 | Permanent address 4 | Name of the municipal corporation, panchayat or municipality to which selected 5 | Name of the ward or electoral division from which elected. 6 |
|--------------|---|---------------------------------|------------------------|---|---|
| | | | | | |

Date

Signature of the leader of the municipal or panchayat party

FORM II

[See rule 3(6)]

To
The Designated Officer,

Sir,

At the meeting of the municipal corporation/panchayat/municipality held on..... (date) during voting on..... (subject matter) @ Shri.....@ I..... (Name(ward/electoral division of the member).....(ward/electoral No.....) member of..... division No.....) member of..... and member of.....(name of leader of/ sole member of municipal/panchayat party had (name of municipal/panchayat voted/ voted/obtained from voting abstained from voting contrary to the direction issued by*@ Person/authority/party) without obtaining the prior permission of the said *person/authority/party.

2. On (date).....the aforesaid matter was considered by *@person/authority/party) and the said @ voting / abstention was @ condoned/was not condoned by # him/it.

Date:

Yours faithfully
(Signature)@ *Strike out utappropriate words/protions.** *(here mention the name of the person/authority/ party, as the case may be, who has issued the direction)*

FORM III

(See rule 4)

1. Name of the member (in Block letters) :
2. Father's/husband's name:
3. Permanent Address:
4. Date of election/nomination :
5. .Party affiliatin as on-
 - (i) Date of election/nomination :
 - (ii) The ** 19th January, 1987 :
 - (iii) Date of signing this form :

DECLARATION

Ihereby declare that the information given above is true and correct.

In the event of any change in the information above, I undertake to intimate the Designated officer immediately.

Signature/thumb impression of member

Date

..

*** (To befiled in only by member elected or nominated before the 19th January, 1987, being the date of commencement of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986.*

FORM IV

(See rule 5(i))

| Name of the member (in the block letters) 1 | Father's/Husband's name 2 | Permanent address 3 | Name of the municipal corporation/panchayat/municipality 4 |
|--|--|--|---|
| | | | |
| Date of election/nomination 5 | Name of political party to which he belongs 6 | Name of municipal/panchayat party to which he belongs 7 | Remarks 8 |

[Noti. No. KP/5 of 1987/EL-C-1086-2170/G dt. 7-2-1987-Guj. Govt. Gaz., Exty. Pt. EA dt. 7-2-1987, P.18.]