

Karnataka Local Authorities (Prohibition of Defection) Act, 1987

KARNATAKA

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Act 20 of 1987

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Karnataka Local Authorities (Prohibition of Defection) Act, 1987(Karnataka Act No. 20 of 1987)Last Updated 28th November, 2019Statement of Objects and Reasons - (Act 20 of 1987). - It has been considered necessary to provide for prohibition of defection by Members of Zilla Parishads Mandal Panchayats and Councillors of Municipal Corporations and the City and Town Municipal Councils from the political parties by which they were set up as candidates. In order to provide healthy politics in the local bodies it is considered necessary to disqualify such councillors subject to certain conditions in the case of merger or split.Opportunity is taken to amend the Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayat and Nyaya panchayat Act, (Karnataka Act 20 of 1985). The Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) and the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964).As the Karnataka Legislative Assembly was not in Session and since the matter was very urgent the Karnataka Local Authorities (Prohibition of Defection) Ordinance, 1986 (Karnataka Ordinance No. 18 of 1986) was promulgated.The Bill seeks to replace the said Ordinance.Hence the Bill.(Obtained from L.A. Bill No. 3 of 1987)Statement of Objects and Reasons - (Amending Act 13 of 1995). - It is considered necessary to amend the Karnataka Local Authorities (Prohibition of Defection) Act, 1987,-(i) to provide for disqualification for intentionally remaining absent from the meeting;(ii) to enable a person elected as a Councilor or a Member otherwise than as a candidate set up by a political party to join any political party within the stipulated time;(iii) to provide the disqualification on the ground of defection not to apply in case of split and merger ; Repeal and savings.(iv) to make the Secretary, Rural Development and panchayat Raj Department as a Competent Authority to hear complaint in the case of Zilla Panchayat instead of Chief Secretary to Government ;(v) to enhance the outer limit of seven days for deciding the complaint to thirty daysOpportunity is also taken to make certain consequential amendments.Hence the Bill(Obtained from L.A. Bill No 9 of 1995. File No. LAW 53 LGN 1191)Statement of Objects and Reasons - (Amending Act 19 of 1995). - It is considered necessary to amend the Karnataka Local Authorities (Prohibition of Defection) Act, 1987. to provide for the State Election Commission to decide the question of disqualification on the ground of defection in the case of a member of Zilla panchayat and Taluk Panchayat.As the matter

was urgent and both the Houses of Karnataka Legislature were not in session, the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Ordinance, 1995 was promulgated. Hence the Bill (Obtained from L.A. Bill No. 30 of 1995. File No. LAW. 27 LG N. 1995.) Statement of Objects and Reasons - (Amending Act 17 of 2010). - The post of Divisional Commissioner is now designated as Regional Commissioner. Therefore, it is considered necessary to make amendment to the Karnataka Local Authorities (Prohibition of Defection) Act, 1987, in order to empower the Regional Commissioner to dispose off the complaints referred to him regarding defection of the members of the Municipal Corporations under this Act. Hence the Bill. [L.A. Bill No. 11 of 2010, File No. DPAL 7 Shasana 2010] [Entry 5 of List II of the Seventh schedule to the constitution of India.] Statement of Objects and Reasons - (Amending Act 5 of 2013). - It is considered necessary to amend the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 to provide for extension of the time limit for decision on the question of disqualification, on the ground of defection, where a complaint is referred by the Chief Executive Officer under sub-section (2) of section 4 of the said Act. Hence the Bill. [L.A. Bill No. 41 of 2012, File No. Samvyashae 46 Shasana 2012] [Entry 5 of List II of the Seventh Schedule to the Constitution of India.] (Received the assent of the Governor on the Second day of May, 1987) An Act to prohibit defection by the Councillors of Municipal Corporations, [Municipal Councils, Town Panchayats and members of Zilla Panchayats and Taluk Panchayats] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] from the political parties by which they were set up as candidates and matters connected therewith. Whereas it is expedient to prohibit defection by the Councillors of Municipal Corporations [Municipal Councils and Town Panchayats and members of Zilla Panchayats and Taluk Panchayats] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] from the political parties by which they were set up as candidates and matters connected therewith; Be it enacted by the Karnataka State Legislature in the Thirty-eighth Year of the Republic of India as follows : -

1. Short title and commencement.

(1) This Act may be called the Karnataka Local Authorities (Prohibition of Defection) Act, 1987. (2) It shall be deemed to have come into force on the Twenty-ninth day of December, 1986.

2. Definitions.

- In this Act unless the context otherwise requires, - (i) "councillors" means a councillor of a Municipal Corporation or a Municipal Council [or a Town Panchayat elected] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] under the Karnataka Municipal Corporations Act, 1976 or the Karnataka Municipalities Act, 1964 as the case may be ; (ii) ["Taluk "Panchayat" and "Zilla Panchayat" respectively means "Taluk Panchayat" and "Zilla Panchayat" established under the Karnataka Panchayat Raj Act, 1993; [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] (iii) "member" means a member of a Zilla Panchayat or a Taluk panchayat elected under the Karnataka Panchayat Raj Act, 1993.] (iv) "Municipal Corporation" means a Municipal Corporation established under the Karnataka Municipal Corporations Act, 1976 ; (v) "Municipal Council" means a City or Town Municipal Council established under the Karnataka Municipalities Act, 1964 ; (vi) "political party" in relation to a councilor or member means a political party recognised by the Election Commission of India as a National party or a State party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968, and to which he belongs for the purpose of sub-section (1) of section

3.(vii) [" Town Panchayat" means a Town Panchayat established under the Karnataka Municipalities Act, 1964.] [Inserted by Act 13 of 1995 w.e.f. 3.5.1995.]

3. Disqualification on the ground of defection.

(1) Subject to the [provisions of sections 3A, 3B and 4] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.], a councillor or a member, belonging to any political party, shall be disqualified for being such councillor or member, -(a) if he has voluntarily given up his membership of such political party ; or (b) [if he votes or abstains from voting in, or intentionally remains absent from any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat, 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 the prior permission of such party, person or authority and such voting, 4 abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence;] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] Explanation. - For the purposes of this sub-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) [a person elected as a councillor or as the case may be, a member, otherwise than as a candidate set up by a political party shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office, or in the case of a councillor or member whose term of office has commenced on or before the date of commencement of the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995 within six months from such date.] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] (2) An elected councillor, or as the case may be, a member, who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a councillor or, as the case may be a member if he joins a political party [after expiry of six months from the date of commencement of his term of office, or in the case of a councillor or member whose term of office has commenced on or before the date of commencement of the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995, after expiry of six months from such date] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.] (3) [x x x] [Omitted by Act 13 of 1995 w.e.f. 3.5.1995.] (4) Notwithstanding anything contained in the foregoing provisions of this section, a person who on the commencement of this Act, is a councillor shall, -(a) where he was a member of a political party immediately before such commencement, be deemed for purposes of sub-section (1) to have been elected as a councillor as a candidate set up by such political party ; (b) in any other case, be deemed to be an elected councillor who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section (2).

3A. [Disqualification on the ground of defection not to apply in case of split. [Sections 3A and 3B inserted by Act 13 of 1995 w.e.f. 3.5.1995.]

- Where a councillor or a member makes a claim that he and any other members of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party, -(a) he shall not be disqualified under sub-section (1) of section 3 on the ground, -(i) that he has

voluntarily given up his membership of his political party ; or(ii)that he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat 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 any case, the prior permission of such political party, person or authority and such voting or abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence ; and(b)from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 3 and to be his political party for the purpose of this section.

3B. Disqualification on the 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 political party merges with another political party and he claims that he and any other members of his political Party,-(a)have become members of such other political party, or as the case may be, of a new political party formed by 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) of section 3 and to be his political party for the purposes of this section.(2)for the purposes of sub-section (1) of this section, -(a)the merger of the political party of a councillor or a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the political party concerned have agreed to such merger :(b)the expression "such other political party" and "new political party" shall include a political party whether such political party has been recognised or not by the Election Commission of India as a National party or a State party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968.]

4. Decision on the question as to disqualification on the ground of defection.

(1)A complaint that a member or a councillor has become subject to the disqualification under section 3 may be made by a member, councillor or a political party to the Chief Executive Officer of the concerned local authority, -(a)in a case falling under clause (a) of sub-section (1) after the member or the councillor gives up the membership of the political party ;(b)in a case falling under clause (b) of sub-section (1), after the expiry of fifteen days specified therein ;(c)in a case falling under sub-section (2), after he joins the political party ; and(d)[x x x] [Omitted by Act 13 of 1995 w.e.f. 3.5.1995.](2)Where a complaint under sub-section (1) is received by the Chief Executive Officer of the concerned local authority, he shall, within twenty-four hours from the receipt of such complaint, refer the same for decision to,-(i)[in the case of Zilla Panchayat, to the State Election Commissioner";] [Substituted by Act 19 of 1995 w.e.f. 5.6.1995.](ii)in the case of Municipal Corporation, [to the Regional Commissioner] [Substituted by Act 17 of 2010 w.e.f. 16.04.2010.](iii)in the case of a City or Town Municipal Council, [or Town Panchayat] [Inserted by Act 13 of 1995 w.e.f. 3.5.1995.] to the Deputy Commissioner ;(iv)[in the case of a Taluk Panchayat,

to the State Election Commissioner.]; [Substituted by Act 19 of 1995 w.e.f. 5.6.1995.] who shall decide the question within [[Sixty days] [Substituted by Act 5 of 2013 w.e.f. 11.01.2013.]] after the receipt by him of the reference and his decision shall be final.[Proviso x x x] [Proviso omitted by Act 19 of 1995 w.e.f. 5.6.1995.]Explanation. - In this section, -(1)"Chief Executive Officer" means, -(a)[in the case of Zilla Panchayat, the Chief Executive Officer of the Zilla Panchayat ; [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.](b)in the case of a Taluk Panchayat, the Executive Officer of the Taluk Panchayat ;](c)in the case of a Municipal Corporation, the Commissioner ;(d)in the case of a City Municipal Council, the Municipal Commissioner,(e)in the case of a Town Municipal Council, the Chief Officer;(f)[in the case of a Town Panchayat, the Chief Officer ;] [Inserted by Act 13 of 1995 w.e.f. 3.5.1995.](2)[" Local Authority" means the Zilla Panchayat, Taluk Panchayat, Municipal Corporation, City or Town Municipal Council or Town Panchayat.] [Substituted by Act 13 of 1995 w.e.f. 3.5.1995.](3)["State Election Commissioner" means the State Election Commissioner appointed under Section 308 of the Karnataka Panchayat Raj Act, 1993.] [Inserted by Act 19 of 1995 w.e.f. 5.6.1995.]

5. Amendment of Karnataka Act 22 of 1964.

- In the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964), after sub-section (1) of section 16, the following sub-section shall be inserted, namely :-(1A) A person shall be disqualified for being a Councillor if he is so disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987".

6. Amendment of Karnataka Act 14 of 1977.

- In the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977), after sub-section (1) of section 26, the following sub-section shall be inserted, namely :-(1A) A person shall be disqualified for being a Councilor if he is so disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987".

7. Amendment of Karnataka Act 20 of 1985.

- In the Karnataka Zilla Parishads, Taluk Panchayat Samithies, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985), -(i)after sub-section (1) of section 11, the following sub-section shall be inserted, namely :-(1A) A Person shall be disqualified for being a member of the Mandal Panchayat if he is so disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987";(ii)in clause (i) of sub-section (1) of section 12, for the words and figures, " in section 11", the words, brackets and figures " in sub-section (1) of section 11", shall be substituted. ;(iii)after sub-section (1) of section 154, the following sub-section shall be inserted, namely :-(1A) A person shall be disqualified for being a member of the Zilla Parishad if he is so disqualified under the Karnataka Local Authorities (Prohibition of Defection) Act, 1987"(iv)in clause (a) of sub-section (1) of section 155, for the words and figures " in section 154", the words, brackets and figures " in sub-section (1) of section 154", shall be substituted.

8. Bar on Jurisdiction of Courts.

- Notwithstanding anything contained in any law, no court shall have any jurisdiction in respect of any matter connected with disqualification of a councillor or a member under this Act.

9. Power to make rules.

(1)The State Government may, by notification and after previous publication, make rules for carrying out the purposes of this Act.(2)Every rule made under this Act shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or both Houses agree that the rule should not be made, the rule shall, from the date on which the modification or annulment is notified have effect only in such modified form or be of no effect, as the case may be, so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Repeal and savings.

(1)The Karnataka Local Authorities (Prohibition of Defection) Ordinance, 1986 (Karnataka Ordinance 18 of 1986) is hereby repealed.(2)Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.