



# Rajya Sabha Elections

**For Prelims:** Cross-voting, Article 80 of the Constitution, [Legislative Assembly](#), [Representation of the People Act, 1951](#).

**For Mains:** Rajya Sabha Elections, Government policies and interventions for development in various sectors and issues arising out of their design and implementation

[Source: TH](#)

## Why in News?

The [Rajya Sabha elections](#) in the States of Uttar Pradesh, Himachal Pradesh and Karnataka witnessed cross-voting by MLAs (Member of Legislative Assembly) belonging to different parties. This has once again raised concerns about the sanctity of the election process.

## How are Rajya Sabha Elections Held?

- **Background:**
  - As per **Article 80** of the Constitution, representatives of each State to the [Rajya Sabha](#) are elected indirectly by the **elected members of their [Legislative Assembly](#)**.
  - The polls for Rajya Sabha will be required **only if the number of candidates exceed the number of vacancies**.
  - Till 1998, the outcome of Rajya Sabha elections was usually a foregone conclusion, the parties with a majority in the state assembly **often had their candidates win unopposed** due to a lack of competition.
    - However, the June 1998 Rajya Sabha elections in Maharashtra witnessed **cross-voting that resulted in the loss of a Congress party candidate**.
- **Amendment to the Representation of the People Act, 1951:**
  - In order to rein in the MLAs from such cross-voting, an amendment to the [Representation of the People Act, 1951](#) was carried out in 2003.
    - **Section 59 of the Act** was amended to **provide that the voting in elections to Rajya Sabha** shall be through an open ballot.
  - The MLAs of political parties are required to show their ballot paper to the authorised agent of their Party.
  - Not showing the ballot paper to the authorised agent or showing it to anyone else will **disqualify the vote**.
  - Independent MLAs are barred from showing their ballots to anyone.
- **Process of Election in Rajya Sabha:**
  - **Seat Allocation:** The Rajya Sabha has a strength of **250 members representing States and Union Territories** including Delhi and Puducherry.
    - Out of the total, **12 are directly nominated by the President** from the fields of art, literature, science, Social Service.
    - Rajya Sabha seats are distributed among states based on their population. For

example, Uttar Pradesh has a quota of 31 Rajya Sabha seats while Goa has just one.

- **Indirect Election System:** The Members of the state legislative assemblies choose **Rajya Sabha members through an indirect election** system of proportional representation by means of a **Single Transferable Vote (STV)**.
  - In this system, the voting power of each **MLA is determined by the population of their respective constituencies**.
- **Quotas:** To be elected, a candidate must secure a **specific number of votes known as quotas**. The quota is determined by dividing the total valid votes by the **number of seats available plus one**.
  - In states with multiple seats, the initial quota is calculated by multiplying the number of MLAs by 100, as each MLA's vote is valued at 100.
- **Preferences and Surplus:** When filling out the ballot paper with names of candidates from various parties, MLAs **rank their preferences against each candidate** — with 1 indicating the top preference (the first preferential vote), 2 for the next, and so forth.
  - If a candidate receives enough first preferential votes to meet or exceed the quota, they are elected.
  - If a winning candidate has surplus votes, those votes are transferred to their second choice (marked as number 2). If multiple candidates have surpluses, the **largest surplus is transferred first**.
- **Elimination of Fewer Votes:** To prevent wasted votes, if the required number of candidates are not elected after surplus transfers, the candidate with the **fewest votes is eliminated**, and their unexhausted ballot papers are redistributed among the remaining candidates.
  - An "exhausted paper" refers to a ballot paper with no further preferences recorded for continuing candidates.
  - This process of surplus vote transfers and eliminations continues until enough candidates reach the quota to fill all available seats.

## Note

### Shailesh Manubhai Parmar v Election Commission of India Case, 2018:

- SC denied the **None Of The Above (NOTA)** option to the electors in the Rajya Sabha election.
- The SC stated that making NOTA applicable in Rajya Sabha elections is contrary to **Article 80(4) of the constitution**.
  - Article 80(4) states that the representatives of each state in the Council of States shall be elected by the elected members of the legislative assembly of the state in accordance **with the system of proportional representation** by means of the single transferable vote.

### JMM bribery case, 1998:

- The SC had to interpret the provisions of **Article 105(2) of the Constitution**, which provides immunity to lawmakers for their speech and votes in Parliament or any committee thereof.
  - The Supreme Court, laid down in the **JMM bribery case judgment of 1998**, that **lawmakers who took bribes were immune from prosecution** for corruption if they go ahead and vote or speak in the House as agreed.
- **In March 2024, a Seven-judge Bench overruled the judgment by a five-judge Bench in a 25-year-old JMM bribery case**, declaring that **parliamentary privilege or immunity** will **not protect legislators who take bribes to vote or speak in Parliament** or State Legislative Assemblies from criminal prosecution.
  - Privileges and immunities are not gateways to claim exemptions from the general law of the land.

## Does Anti-Defection Law Apply to Rajya Sabha Elections?

- **Tenth Schedule and "Anti-Defection" Law:**
  - The **Tenth Schedule** of the Constitution, introduced by the **52<sup>nd</sup> Constitutional Amendment Act in 1985**, contains provisions related to the **"anti-defection" law**.
  - It states that a member of Parliament or a state legislature who voluntarily gives up the membership of their political party or votes against the instructions of their party is **liable for disqualification from the House**.
  - This instruction regarding voting is **usually issued by the party whip**.
- **Applicability of Tenth Schedule:**
  - However, the Election Commission clarified in July 2017 that the provisions of the Tenth Schedule, including the **anti-defection law, are not applicable to Rajya Sabha elections**.
  - Therefore, political parties cannot issue any whip to their members for Rajya Sabha elections, and members are not **bound by party instructions in these elections**.

## What is Cross Voting?

- **Background:**
  - Rajendra Prasad Jain won a seat in Bihar through **cross-voting by Congress MLAs (in exchange for bribes) later, Jain's election was declared void by the Supreme Court in 1967**.
- **About Cross Voting:**
  - Cross voting refers to a situation in which **a member of a legislative body**, such as a Member of Parliament or a Member of a Legislative Assembly, belonging to one political party, **votes for a candidate or a party other than their own** during an election or any other voting process.
  - In the context of Rajya Sabha elections in India, cross voting can occur when members of a political party vote for candidates from other parties instead of the candidates nominated by their own party.
  - This can **happen due to various reasons**, including disagreement with the party's candidate selection, inducements or pressures from other parties, personal relationships with candidates from other parties, or ideological differences.

## What are the Implications of Cross Voting?

- **Negative Implications:**
  - **Undermining Representation:** Cross-voting can undermine the **representation of the electorate**.
    - MLAs are expected to vote in alignment with the **party's interests or the will of their constituents**. When they deviate from this, it can lead to the election of candidates who may not have the support of the majority.
  - **Corruption:** Cross-voting often occurs due to **bribery or other corrupt practices**, as illustrated in the example of **Rajendra Prasad Jain's election**. This undermines the integrity of the electoral process and erodes public trust in democracy.
    - Jain won a seat in Bihar through cross-voting by Congress MLAs (in exchange for bribes) later Jain's election was declared void by the Supreme Court in 1967.
  - **Party Discipline:** Cross-voting reflects a **lack of party discipline**, indicating internal divisions within political parties. It **weakens party cohesion** and stability, making it difficult for parties to pursue coherent policy agendas.
  - **Democratic Values:** Cross-voting goes against the democratic principle of accountability, where representatives are expected to **uphold the interests of their constituents** and the broader public good. It prioritizes personal gain or party politics over democratic principles.
- **Potential Positive Implications:**
  - **Independence:** Cross-voting can signal a **degree of independence among elected representatives**, allowing them to vote according to their conscience or the interests of their constituents rather than strict party lines.
    - This can lead to more nuanced decision-making and representation.
  - **Checks and Balances:** Cross-voting, if driven by genuine differences in opinion or ideology, can serve as a **check on the dominance of a single party or faction within**

**the legislative body.**

- It can prevent the concentration of power and promote greater balance and diversity of viewpoints.
- **Accountability:** In some cases, cross-voting may reflect dissatisfaction with party leadership or policies, forcing parties to **introspect and address internal grievances**. This can ultimately lead to greater accountability and responsiveness to the electorate.

## What are SC's Ruling Related to the Tenth Schedule and Rajya Sabha Election?

▪ **Kuldip Nayar vs. Union of India, 2006:**

- The [Supreme Court \(SC\)](#) upheld the system of open ballot for Rajya Sabha elections.
- It reasoned that if secrecy becomes a source for corruption, then transparency **has the capacity to remove it**.
- However, in the same case the court held that an elected MLA of a political party would not face disqualification under the **Tenth Schedule for voting against their party candidate**.
- He/she may at the most attract disciplinary action from their political party.

▪ **Ravi S. Naik and Sanjay Bandekar vs. Union of India, 1994:**

- The SC held that **voluntarily giving up membership** under the Tenth Schedule is **not synonymous with only formally resigning** from the party to which the member belongs.
- The conduct of a member both inside and outside the house can be looked into to infer if it qualifies as voluntarily giving up membership.

## Way Forward

- Implementing stricter laws and regulations to combat electoral malpractices, including bribery and corruption.
- This could involve increasing penalties for offenders, enhancing transparency in campaign financing, and empowering independent electoral bodies to enforce compliance.
- Encouraging political parties to adopt internal **mechanisms for promoting discipline and accountability among** their members.
  - This could include strengthening party leadership, promoting intra-party democracy, and fostering a culture of ethical conduct.
- Raising awareness among voters and stakeholders about the importance of electoral integrity and the consequences of cross-voting. This could involve public education campaigns, media coverage of electoral issues, and civic engagement initiatives to empower citizens to hold their representatives accountable.

## Previous Year's Questions (PYQs)

**Q. Rajya Sabha has equal powers with Lok Sabha in: (2020)**

- A.** the matter of creating new All India Services
- B.** amending the Constitution
- C.** the removal of the government
- D.** making cut motion

**Ans: (B)**

**Q. Which of the following statements is/are correct? (2016)**

1. A Bill pending in the Lok Sabha lapses on its prorogation.
2. A Bill pending in the Rajya Sabha, which has not been passed by the Lok Sabha shall not lapse on dissolution of the Lok Sabha.

**Select the correct answer using the code given below:**

- A.** 1 only
- B.** 2 only
- C.** Both 1 and 2
- D.** Neither 1 nor 2

**Ans: (B)**

**Q. Consider the following statements: (2015)**

1. The Rajya Sabha has no power either to reject or to amend a Money Bill.
2. The Rajya Sabha cannot vote on the Demands for Grants.
3. The Rajya Sabha cannot discuss the Annual Financial Statement.

**Which of the statements given above is/ are correct?**

- A.** 1 only
- B.** 1 and 2 only
- C.** 2 and 3 only
- D.** 1, 2 and 3

**Ans: (B)**

PDF Reference URL: <https://www.drishtias.com/printpdf/rajya-sabha-elections-1>

