

Bill No. 110 of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

By

SHRI HIBI EDEN, M.P.

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further to amend the Constitution of India.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2022.

Short title and commencement.

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

2. In article 72 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment of article 72.

10 “(1A) Nothing in this article shall apply to the punishment or sentence of any person convicted of any offence under the Protection of Children from Sexual offences Act, 2012 (Act No. 32 of 2012).”

STATEMENT OF OBJECTS AND REASONS

At present under article 72 of the Constitution any convicted person may approach the President to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence. However, the need is to restrict accused persons convicted for an offence under Protection of Children from Sexual offences Act, 2012 (POCSO Act) from the scope of article 72 of the Constitution.

The exercise of the power by the President under article 72 is primarily a matter for his discretion and the courts would not interfere with his actual decision on the merits.

The power of President is independent of judiciary. Moreover all the convicts regardless of their crime have the right to request for mercy is illogical, disgrace, injustice and incompatibility with a civilized society.

Once President of India had also suggested that rape convicts under the POCSO Act should not have the right to file a mercy petition. In fact, the President called for an amendment to the Constitution with regards to mercy petitions. I recommended that there should be an amendment to the Constitution with regards to mercy petition. In my opinion, people convicted under the POCSO Act should not be allowed to come under the ambit of mercy petition. There should be no mercy for rapists. These kind of incidents shocked the whole nation.

The truth of the matter is that law is made for man. Justice is much more than mere codes and precedents. There are occasions when justice and humanity demand that mercy be shown in the matter of sentence. For that purpose article 72 is included in the Constitution. But a convicted person found guilty of an offence under POCSO Act shall in no case deserve a special relief under the Constitution. Justice and humanity demand that mercy be felt to the victim also. It will be the only humanitarian move.

The Bill seeks to achieve the above objectives.

NEW DELHI;
11 *March*, 2022.

HIBI EDEN

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

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(Shri Hibi Eden, M.P.)