

Bill No. 126 of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

By

ADV. DEAN KURIAKOSE, M.P.

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BILL

further to amend the Constitution of India.

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

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

Short title.

2. In the Tenth Schedule to the Constitution,—

Amendment
of the Tenth
Schedule.

5 (a) In paragraph 2, in sub-paragraph (1) for the words “shall be disqualified for being a member”, the words “shall cease to be a member” shall be substituted; and

(b) in paragraph 4, in sub-paragraph (2) for the words “not less than two-thirds”, the words “not less than ninety per cent.” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Tenth Schedule to the Constitution popularly known as Anti-Defection Law was added to the Constitution by the Constitution (Fifty-second Amendment) Act, 1985.

The 52nd Amendment to the Constitution was introduced to herald an era of healthy parliamentary democracy and sought to put an end to the scourge of political defections that were plaguing our body politic. It was indeed successful in creating a punitive atmosphere with respect to defections. In many ways, this has led to reduction in defections.

However, we see that many provisions of this schedule is being misused by certain political actors to subvert the political process and undermine the constitution of our country. If we look at recent history, we will see legislators switched sides in hordes and this have led to the fall of many elected legitimate Governments in the country. Through this Bill, I seek to further strengthen the safeguards against mass defections. Most of these defection happened by misusing the provision for party mergers. Ostensibly, legislators are chosen in such a way to meet this “two-thirds” criteria. It is imperative that we make this number as high as possible as to prevent its misuse.

Hence this Bill.

NEW DELHI;

4 July, 2022

DEAN KURIAKOSE

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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[TENTH SCHEDULE]

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

2. (1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

Disqualification on ground of defection.

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

(b) if he votes or abstains from voting in such House 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.—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such 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 before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

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4. (1)

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

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

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(Adv. Dean Kuriakose, M.P.)