

AS INTRODUCED IN LOK SABHA

Bill No. 43 of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

By

SHRI JAYANT SINHA, M.P.

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BILL

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

Short title.

2. The Tenth Schedule to the Constitution shall be omitted.

Omission of the
Tenth Schedule.

STATEMENT OF OBJECTS AND REASONS

The Constitution (Fifty-Second) Amendment Act, 1985 inserted the Tenth Schedule into the Constitution of India. Also known as the Anti-Defection Law, it was enacted to curtail the instability in the legislature caused due to continued defection.

In the last 37 years, the Tenth Schedule has attempted to reduce the occurrences of defection. As the political environment of India has evolved with time, it has become essential to strengthen the Constitution to make it more adept in countering the new-found challenges caused due to the Law.

At present, an inherent drawback of the Schedule is the restriction it places on the freedom of expression of Legislators. Over time, the scope of the Law has expanded to curtail their autonomy of thought. It has disincentivised Legislators from discussing matters of public importance in the House and effectively performing their duties.

Dr. B.R. Ambedkar, in his speech to the Constituent Assembly of India on 4 November, 1948, had differentiated between the Parliamentary and Presidential system of Government. While substantiating India's position to adopt the former, he identified a trade-off in a democracy between stability and responsibility of the Legislature. He believed that India requires a system of continuous accountability over stability. At present, the Anti-Defection Law threatens the accountability, and in the long run, the stability of our legislative system.

Once repealed, the Tenth Schedule shall create room for a more responsible, productive, and efficient legislative system that respects the mandate of the people. It will pave the way for Legislators to remain accountable only to their constituents and the people of India, without fear or favour from political parties.

The Bill, therefore, seeks to amend the Constitution with a view to provides for a complete repeal of the Tenth Schedule to the Constitution.

Hence this Bill.

NEW DELHI;
16 February, 2022.

JAYANT SINHA

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

TENTH SCHEDULE

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

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1. In this Schedule, unless the context otherwise requires,— Interpretation.

(a) “House” means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) “legislature party”, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) “original political party”, in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) “paragraph” means a paragraph of this Schedule.

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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) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

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

(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-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(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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5. Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

Exemption.

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

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6. (1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Decision on questions as to disqualification on ground of defection.

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

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7. Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule. Bar of jurisdiction of courts.

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8.(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for— Rules.

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the 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 members of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power

which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

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