

Bill No. LVII of 2016

THE CONSTITUTION (AMENDMENT) BILL, 2016

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further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (Amendment) Act, 2016.

Short title, and commencement.

(2) It shall be deemed to have come into force on the 10th day of July, 2013.

5 2. In article 102 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment of article 102.

10 “(1A) Nothing in clause (1) of this article shall prevent the Parliament from making any law containing special provisions concerning the elected members of either House of Parliament with regard to the date of disqualification and such other matters pertaining to the rights and privileges of the elected members.”

3. In article 191 of the Constitution, after clause(1), the following clause shall be inserted, namely:—

Amendment of article 191.

“(1A) Nothing in clause (1) of this article shall prevent the Parliament from making any law containing special provisions concerning the elected members of the

Legislative Assembly or Legislative Council of a State with regard to the date of disqualification and such other matters pertaining to the rights and privileges of the elected members.”

STATEMENT OF OBJECTS AND REASONS

The Representation of the People Act, 1951 provides for the conduct of elections of the Houses of Parliament and the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Section 8 of the said Act provides that a person convicted of an offence mentioned in the said section shall be disqualified from the date of conviction and the disqualification is to be continued for such period as specified in that section. sub-section (4) thereof carves out an exception providing that the disqualification under sub-sections (1), (2) or (3) of the said section shall not take effect in the case of a sitting member of Parliament or the Legislature of a State until three months have elapsed from the date of conviction or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

The Supreme Court in *Lilly Thomas Vs. Union of India and others* [W.P. (Civil) No. 490 of 2005], in its judgement dated 10th July, 2013 has held that Parliament has no power to enact sub-section (4) of section 8 of the said Act and declared that the said provision as *ultra vires* of the Constitution and judgement be given prospective effect the Court also observed that in view of the provisions of the article 102(3)(1)(e)(a) and article 191(1)(e), Parliament has power to make law laying down the same disqualifications for a person who is to be chosen as member of either House of Parliament or as a member of the Legislative Assembly or Legislative Council of a State and for a person who is a sitting member of a House of Parliament or a House of the State Legislature. The Honourable Court has also held that disqualification is instantaneous unless judicially redressed by an order of the appellate/revisional court suspending the operation of such conviction.

Having regard to the fact that there are rights and privileges constitutionally mandated in respect of elected Members of the Parliament and Legislatures, imbued with the obligation of espousing the cause of the electorate in the law-making bodies, it is deemed fit and proper to enable the law to recognise such distinction between the elected members and persons who seek such election *vis-a-vis* the effects of disqualification under the law referable to article 102(1)(e) and article 191(1)(e).

It is further noticed that the disqualification of an elected member immediately from the date of conviction and sentence and vacation of his Parliamentary or Legislative seat creates vacuum in respect of representation of the people in the Lower House and Vidhan Sabha as case may be. There cannot be any vacuum in respect of representation of people in an elective democracy. This is more so because, the right of the electors to be represented in the legislative process is a tenet of elective democracy. Further, the elections to the seat so vacated by elected member owing to his disqualification given effect instantaneously, would incur considerable expenditure to the Consolidated Fund of India.

It is further noticed that should a High Court or Supreme Court in its final judgement overrule or set aside the conviction or sentence, any process of bye-election initiated within six months of the vacancy under section 151A of the Representation of People Act, 1951 resulting in election of another person, cannot be reversed. In the Interregnum, if the elected member is deprived of his rights and Privileges of being an elected Member, the injury to the elected Member is irreparable including the right of the electors to be represented by such elected Member.

Therefore, it has been proposed to amend the provisions of article 102 and article 191 of the Constitution of India to empower Parliament to provide for special provisions in regard to elected members *vis-a-vis* disqualification by operation of law referable to article

102(1)(e) and 191(1)(e) of the Constitution validating section 8(4) of the Representation of People Act, 1951, by legislatively removing the basis of the judgement of the Supreme Court in Lily Thomas case. The amendment is proposed with retrospective effect, *i.e.*, 10th July, 2013, the date on which the honourable Supreme Court prospectively declared section 8(4) of the Representation of People Act, 1951 as *ultra vires*.

The Bill seeks to achieve the above objectives.

Hence this Bill.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

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191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

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RAJYA SABHA

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further to amend the Constitution of India.

(Shri V. Vijayasai Reddy, M.P.)