

Bill No. XVII of 2012

THE CONSTITUTION (AMENDMENT) BILL, 2012

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BILL

further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (Amendment) Act, 2012.

Short title
and
commencement.

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

5 2. For article 220 of the Constitution, the following article shall be substituted, namely:—

Substitution
of article
220.

“220. No person who, after the commencement of this Constitution, has held office as a permanent Judge or an Additional Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts”.

Restriction
on practice
after being a
judge.

10 3. After article 220 of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
220A.

“220A. No person who, after the commencement of this Constitution, has held office as a permanent Judge or an Additional Judge of a High Court shall be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold office”.

Restriction
on holding of
offices after
being a Judge.

STATEMENT OF OBJECTS AND REASONS

Our Constitution contained various safeguards to ensure the independence of High Court judges when they are in office it does so for permanent judges even after their retirement as proposed in Seventy-second Law Commission Report titled, "Restriction on Practice After Being a Permanent Judge" under the Chairmanship of Shri H.R. Khanna but it provides none for this very independence of Additional Judges of High Courts, in so far as it may be affected by prospects after their retirement. Article 220 of the Constitution is only applicable to persons who have been permanent judge of a High Court. It is essential that restriction on practice and prohibition as to holding of offices after retirement should also apply to a person who has worked as an Additional Judge of a High Court in India. It has happened that a person working as an officiating Additional Judge of a High Court, started practicing in that very High Court where he was once an Additional Judge even before his resignation was accepted in conformity with article 217 (1) (a) of Constitution. Appropriate provisions exist in the Constitution which debar the Comptroller and Auditor General of India and the members of the Union and State Public Service Commissions from employment by the Unions or the State Governments after their retirement but such provision do not exist in case of Judges of High Courts where similar considerations do not apply. The explanation to article 220 excludes the High Court of Delhi from its purview, this amendment also aims to bring Delhi High Court under the ambit of article 220.

The Law Commission has also testified that the existing provisions are not satisfactory and can severely affect the independence of the judiciary. Therefore, the proposed amendments are required to ensure and strengthen the judicial independence which is absolutely necessary for enforcing the Rule of Law.

Hence, the Bill.

TARUN VIJAY

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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220. No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Restriction
on practice
after being a
permanent
Judge.

Explanation.—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956.

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RAJYA SABHA

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(Shri Tarun Vijay, M.P.)