

**Bill No. XLII of 2016**

THE CONSTITUTION (AMENDMENT) BILL, 2016

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BILL

*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 come into force at once.

2. In the Constitution of India for article 361B, the following article shall be substituted  
5 namely:—

Substitution of new article for article 361B.

10 "361B. A Member of a House belonging to any political party against whom a petition for disqualification has been presented under the Tenth Schedule for the decision of the Chairman or the Speaker, as the case may be, shall not hold any remunerative political post including that of a Minister in Government or any office of profit during the pendency of such petition or till the final decision of the Chairman or the Speaker of the House:

Disqualification for holding a remunerative political post a member against whom a petition for disqualification has been presented.

Provided that in the event of a Member of a House being disqualified under the Tenth Schedule, his disqualification shall continue till the date on which the term of his office as such Member would have expired.

*Explanation.*—For the purposes of this article,—

(a) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression "remunerative political post" means any office—

(i) under the Government of India or the Government of a State 5  
where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of State, 10  
and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.

Amendment  
of Tenth  
Schedule.

**3.** In the Tenth Schedule to the Constitution, (i) in paragraph 6 after sub-paragraph (2), the following sub-paragraphs shall be inserted, namely:—

"(3) Subject to the provisions of paragraph 8, all petitions for disqualification of 15  
a Member of a House, shall be decided by the Chairman or the Speaker of a House within a period of six months after the petition is presented to him.

(4) Nothing contained in the Tenth Schedule shall affect the jurisdiction of the Supreme Court and High Court under articles 32, 136, 226 and 227 of the constitution to secure disposal of the petitions before the Chairman or the Speaker, as the case may 20  
be".

(ii) in paragraph 8, sub-paragraph (1) for clause (d), the following shall be substituted, namely:—

(d) The procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6, including:— 25

(i) the receipt of petitions;

(ii) the objections to be complied with by the petitioner;

(iii) the resubmission of the petition after compliance with deficiencies; and

(iv) such other procedure for facilitating expeditious inquiry 30  
into the petition.

## STATEMENT OF OBJECTS AND REASONS

The Constitution (52nd Amendment) Bill, 1985 was enacted to curb the political evil of defection while providing for disqualification of any elected Member of a House on grounds of defection. There have been various instances in the recent past wherein defections on a large scale have occurred in various legislatures resulting in applications being filed in accordance with the rules, before the Speaker, seeking disqualification of such elected members. Most such defections are from the opposition party to the ruling party whereby the number of elected Member in the House, in support of the ruling party increases. Instances wherein the aggrieved political party files an application before the Speaker for disqualifying such defecting elected members, and have been kept pending, for years, without any progress until the end of the Tenure of the House have been on the rise. There has been a criticism of such conduct of the Speaker for not acting expeditiously on such applications seeking disqualification, since continuance of such Members in the House would be in derogation of the intent and express provisions of the Tenth Schedule.

Article 361B bars disqualified Members from holding any remunerative political post consequent on disqualification, for the remaining of the tenure of the House, or until the next fresh elections. Therefore, a Member who consciously defects contrary to the intent of the Tenth Schedule, is thus rewarded with public office, pending final adjudication, and after final adjudication, is enabled to contest in the by-elections and be a Member of the very Legislature in the very same tenure, in which he is disqualified. The bar on re-election of such Member shall extend to remainder of the Tenure of the House or term.

The remedy of approaching the Courts seeking a direction of the Speaker to dispose of the said applications expeditiously and within a time frame have been rendered futile, in view of the *judicial dicta* limiting Court's interference only after the final decision is made by the Speaker.

It is therefore proposed to amend the paragraph 6 of the Tenth Schedule of the Constitution to provide for a mandatory time frame for the disposal of the petitions filed before the Chairman or Speaker of the House. Such mandatory time frame would ensure sustenance of the electors' faith in the democratic process of elections apart from upholding the majesty of the House. The time frame and the remedy for judicial redressal in case of inaction, would be consistent with the view of the Supreme Court as regards the power of the Speaker being of a "Tribunal" with judicial powers of adjudication and also the areas of judicial review under articles 32, 136, 226 and 227, held to be permissible *quia timet* of the proceedings of the Tenth Schedule.

This Bill Seeks to achieved the above objectives.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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Disqualification for appointment on remunerative political post.

**361B.** A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

*Explanation.*— For the purposes of this article,—

(a) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression "remunerative political post" means any office—

(i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.

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TENTH SCHEDULE

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

Provisions as to disqualification on ground of defection

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Decision on question as to disqualification on ground of defection.

**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:

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 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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**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.

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further to amend the Constitution of India.

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