

Bill No. XXXVII of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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

Short title and commencement.

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

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

Insertion of new article 3A.

10 "3A. Notwithstanding anything in this Constitution or any law for the time being in force, the Legislature of a State shall have the power to make laws for establishing or changing one or more capitals of the State within its territory and for all matters supplemental, incidental or consequential thereto."

Power of Legislature of a State to establish or change one or more capitals of the State.

STATEMENT OF OBJECTS AND REASONS

As a matter of practice, the power to decide which territory or territories shall serve as the capital or capitals of a State has been exercised solely by that State. This common practice has emerged as a natural extension of the fundamental principle that all matters involving the internal governance of a State are vested in that State only. Hence over the Years, all existing and new States have used this power to determine their respective capitals without any external interference. However, most recently, this decision-making power of the States was diluted and weakened through judicial overreach. In the case of *Rajadhani Rythu Parirakshnana Samithi v. State of Andhra Pradesh*, it was held that the State of Andhra Pradesh has no legislative competence to change its capital or establish multiple capitals.

This judgment is in stark contrast to the prevailing customary practice whereby States have been implicitly empowered to determine or change their capital or establish multiple capitals. For instance, Gujarat changed its capital from Ahmedabad to Gandhinagar in 1970. Several States have also established more than one capital, including Maharashtra (Mumbai and Nagpur) and Himachal Pradesh (Shimla and Dharamshala). Hence, it is not unprecedented for States to change their capitals or establish multiple capitals. Nor has the higher judiciary interfered with such decisions of the States in the past.

The aforementioned judgment also states that only the Parliament has the competence to decide the capital of a newly formed State. However, when viewed from the lens of federalism, the role of the Parliament is merely to provide the new State with a basic model of governance from which the subsequently elected State legislature can take over. This is evident from the several State Reorganization Acts passed by the Parliament in the exercise of its powers under Articles 3 and 4 of the Constitution. None of the State Reorganization Acts passed to date mention the territory that would serve as the capital of the newly created state(s). The practice has been that a territory decided by the Parliaments serves as a temporary capital till the elected representatives of the State decide on the new permanent capital.

However, the legal status of this inherent power of the States has remained unclear as the Constitution is silent in this regard. Nonetheless, it has become common practice for States to decide on all matters regarding their capitals and States have continued to exercise this power unabated since independence.

Hence, in light of the foregoing, this Bill seeks to insert a new provision in Part I of the Constitution to provide legislative certainty to the implied power of States to establish or change one or more of their capitals. This amendment will provide much-needed clarity on this contentious issue, in line with the federal structure of our Constitution.

Hence, this Bill.

V. VIJAYASAI REDDY

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