

Bill No. LXVI of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

further to amend the Constitution of India.

BE it enacted by the 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.
- (2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.
2. In article 102 of the Constitution, after clause (2), the following clause shall be inserted, namely,— Amendment of article 102.
- “(3) A person shall be disqualified for being a member of either House of Parliament if he has ever been a Governor of a State.”
- 10 3. For article 155 of the Constitution, the following article shall be substituted, namely,— Substitution of article 155.
- ”155. (1) The Governor of a State shall be appointed by the President by warrant under his hand and seal, after obtaining the concurrence of the Chief Minister of the State. Appointment of Governor.

(2) The President may appoint any Governor of a State to hold full additional charge as the Governor of another State, on a temporary basis, for a period not exceeding six months, in case a vacancy has arisen which cannot be immediately filled."

Amendment
of article 156.

4. In article 156 of the Constitution,—

(1) for clause (1), the following clause shall be substituted, namely,— 5

"(1) The Governor shall hold office for a term of five years;

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."

(2) for clause (3), the following clause shall be substituted, namely,—

"(3) A Governor may be removed from office before the expiry of his term 10
by the President only on recommendation of the Chief Minister of that State:

Provided that the President shall however, remove a Governor from office without the recommendation of the Chief Minister, if the Governor suffers from any of the disqualifications specified in article 157 after his appointment." 15

Amendment
of article 157.

5. For article 157 of the Constitution, the following article shall be substituted, namely,—

Qualifications
and
disqualifications
for
appointment
as Governor.

"157. (1) No person shall be eligible for appointment as Governor unless he—

(a) is a citizen of India and has completed the age of thirty- five years; and

(b) is an eminent personality in some walk of life. 20

(2) A person shall be disqualified for appointment as Governor if he—

(a) has attained the age of seventy-five years;

(b) he has been in the employment of the Union or State Government or any Union or State owned undertaking or body or corporation or agency, or any local authority in the preceding ten years; 25

(c) he has served as a Minister in the Union, any State or Union Territory Government in the preceding ten years;

(d) he has served as a Member of either House of Parliament or of a House of Legislature of any State in the preceding ten years;

(e) he has been a Judge of the Supreme Court of India or any High Court; 30

(f) he has been a member of any Panchayat or Municipality in the preceding ten years;

(g) he has been an office bearer of a registered or recognised political party in the preceding ten years;

(h) has had a charge framed against him by a Court for an offence involving moral turpitude; 35

(i) had been convicted of any criminal offence with a punishment of one year or more;

(j) is of unsound mind and stands so declared by a competent court;

(k) is an undischarged insolvent; 40

(l) has ever been disqualified under the Tenth Schedule;

(m) he ordinarily resides within that State."

Amendment
of article 158.

6. In article 158 of the Constitution, after clause (4), the following clause shall be inserted, namely—

"(5) Any person who has held the office of Governor of a State shall not be appointed to any other public office for a period of ten years."

7. In article 191 of the Constitution, after clause (2), the following clause shall be inserted, namely— Amendment
of article 191.

5 "(3) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he has ever been a Governor of a State."

STATEMENT OF OBJECTS AND REASONS

The Constitution of India states that the executive power of the State vests in the Governor. The Governor being a head of the State is however expected to exercise that power as per the aid and advice of the Cabinet of the State. The Governor is appointed by the President of India, on the recommendations of the Union Cabinet. The Governor serves at the pleasure of the President.

2. During the Constituent Assembly Debates the framers of our Constitution foresaw a Governor who would be a "guide, philosopher and friend of the Ministry as well as the people in general". The Governor performs important Constitutional functions, which require him to be impartial and a person of impeccable integrity. Democracy is the lifeblood of our Constitution. It is only to establish a democratic government that our freedom fighters sacrificed their lives to fight the British. It may therefore appear odd that they chose to vest the executive powers of an elected State Government in an unelected Governor. The answer to this perplexing puzzle is two fold—firstly that they always imagined that the Governor would act in line with the aid and advice of his elected Cabinet and secondly that a person who adorns the office of Governor will be of the highest caliber, integrity and personality. When even one of these two conditions break down, chaos ensues and the will of the people can be defeated by a single individual. There are not enough safeguards in the Constitution against such a break down. It was predicted by one learned member of the Constituent Assembly who foretold that if the Governor serves at the pleasure of the President, "he will be purely a creature of the President, that is to say, the Prime Minister and the party in power at the Centre".

3. There are three broad issues with the way Governors are appointed and function under our Constitution—(i) they are appointed by and can be removed by only the President, by extension, the party in power at the Centre; (ii) the State to which they are appointed has no say whatsoever in the Governor's appointment or removal; (iii) there are no sufficient qualifications, disqualifications and safeguards prescribed in the Constitution for a person to be appointed to the highest office in the State.

4. In so far as the first issue, it cannot be gainsaid that a Governor who turns political must cease to be a Governor. The time is nigh for appointing neutral, apolitical and impartial persons as Governors.

5. This brings us to the pool from which we appoint Governors. The only way to remedy this situation is to ensure that persons who have been engaged in active politics either as party office bearers or members of houses of Legislature or Parliament do not get appointed as Governors during a cooling off period of ten years. Further, those persons who have served in Government or Government undertaking, corporations etc. must not be appointed as Governors immediately since they would be loyal to the person who was their political boss until recently. It is unrealistic to expect them to suddenly turn impartial and neutral.

6. There is no reason why the elected *de facto* head of the State should not be consulted while appointing or removing a Governor. The Chief Minister of the State is entrusted with the people's mandate, the strongest authority available under our constitution. Such pre-appointment consultation is bound to reduce friction between the Governor and the Cabinet, and will improve their working relationship. It is therefore desirable for a better administration of the State that the President appoints the Governor after obtaining the consent of the Chief Minister of the State.

7. Further, the appointment of the Governor at the pleasure of the President is a colonial hangover that has to be banished. A high constitutional authority who is the head of the State should not serve at the pleasure of anybody, even the President. A Governor must be appointed for a fixed term of five years and may be removed by the President only after consulting with the Chief Minister of the State or upon attaining any of the disqualifications prescribed.

8. Article 157 does not prescribe qualifications and disqualifications for holding office of the Governor. When qualifications have been prescribed even for a member of a Panchayat, it is not desirable that no minimum standards are set for choosing the Governor of a State. The individual performing crucial constitutional functions like inviting persons to form Government after an election must fulfill certain basic criteria. States also spend hundreds of crores on maintaining the Governor and his infrastructure. The Constituent Assembly was of the view that a Governor must not be known to be part of the local politics of that State or of the Union and desired to bring people who are outside of politics and are of eminent stature in other walks of life. The mind of a Governor should be free of any political likes or dislikes, or party politics or expectations of future appointments after his tenure expires. His entire devotion should be towards performing his constitutional duties in the interest of the State and work in accordance with the constitutional goals and ethos. To maintain his neutrality and impartiality to the people of the State and the Constitution, the appointee should not be connected with any political party or have recently retired from Government service.

9. It also cannot be gainsaid that our democracy has evolved to a point where persons with criminal antecedents are being washed away from mainstream politics. Therefore, it is only natural that a person with criminal antecedents must not be appointed as Governor of a State. Similarly, a lunatic or a declared insolvent must not be appointed as Governor.

10. Recently, we have also been acting on an unwritten rule that persons from the same State are not appointed as Governor of their home State. This is because they are bound to have some political views, even if they are not outwardly members of any party. It is time to codify the said rule.

11. It has been the practice for the President to appoint the Governor of one State to hold full additional charge as Governor of another State when a vacancy arises that could not immediately be filled. However, there is no enabling provision in the Constitution to do so.

It is therefore, proposed to amend the Constitution to achieve the above objectives.

Hence, this Bill.

P. WILSON.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

	*	*	*	*	*
Appointment of Governor.		155.	The Governor of a State shall be appointed by the President by warrant under his hand and seal.		
Term of office of Governor.		156.	(1) The Governor shall hold office during the pleasure of the President.		
	*	*	*	*	*
			(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:		
			Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.		
Qualifications for appointment as Governor.		157.	No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.		
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RAJYA SABHA

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further to amend the Constitution of India.

(Shri P. Wilson, M.P.)