

Bill No. XLV of 2022

THE REPRESENTATION OF THE PEOPLE (AMENDMENT)
BILL, 2022

A

BILL

further to amend the Representation of the People Act, 1951.

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 Representation of the People (Amendment) Act, 2022.

Short title and commencement.

5 2. In section 62 of the Representation of the People Act, 1951, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment of section 62.

10 "(5A) Notwithstanding anything contained in sub-section (5), where any member of Parliament or any member of the Legislative Assembly or the Legislative Council of a State has been arrested or detained during the pendency of investigation, inquiry or trial for an offence but not convicted for that offence, he shall be given mandatory bail for:

(a) participating in the proceedings of either House of Parliament, or the Legislative Assembly or the Legislative Council of a State;

(b) voting in the business of the either House of Parliament, or the Legislative Assembly or the Legislative Council of a State; or

(c) voting in the elections for the President, Vice-President or any other position or office for which the member of Parliament or member of the Legislative Assembly or the Legislative Council of a State is otherwise entitled to vote by virtue of being such a member: 5

Provided that the arresting or detaining authority shall take all necessary measures to ensure the safe transportation of such arrested or detained member to and from the premises of either House of Parliament, or the Legislative Assembly or the Legislative Council of a State, as the case may be, for the purpose of this sub-section.” 10

STATEMENT OF OBJECTS AND REASONS

A member of Parliament or a member of the Legislative Assembly or the Legislative Council of a State performs an important public function in our democratic system. They play an instrumental role in representing the will and protecting the interests of their respective constituency/regions. Their active participation in the proceedings of the House of which they are members is absolutely essential for upholding the principles of representative democracy. Their right to vote in the business of their respective House and in all elections in which they are otherwise entitled to vote is also equally significant in the discharge of their duties.

The current framework under our electoral laws is such that a person is barred from voting at any election if he is confined in a prison or is in the lawful custody of the police. The only exception in this provision is for cases involving preventive detention. The blanket application of this provision across all categories of persons inevitably prevents public functionaries such as members of Parliament and members of the Legislative Assembly and the Legislative Council of States from discharging their duties in case of arrest or detention. This is applicable even in cases where such members are arrested or detained during the pendency of investigation, inquiry or trial for an offence but have not been convicted for that offence.

Our criminal system follows the cardinal principle of “innocent until proven guilty”. Barring an accused public representative who has not been convicted from voting in any election weakens our legal and democratic principles. There is a need to carve out an exception in our electoral laws to ensure that members of Parliament and members of the Legislative Assembly and the Legislative Council of States are not hindered in discharging their public duties in case of arrest or detention.

Therefore, this Bill seeks to amend the Representation of the People Act, 1951 to allow such members to receive mandatory bail in cases where they have been arrested or detained during the pendency of investigation, inquiry or trial for an offence but not convicted for that offence. The bail shall be granted only for the purpose of enabling these members to participate in the proceedings and vote in the business of the House and vote in the elections for the President, Vice-President or any other position or office for which the member is otherwise entitled to vote by virtue of being such a member.

For this purpose, the Bill also requires the arresting or detaining authority to take all necessary measures for ensuring the safe transportation of the arrested or detained member to and from the premises of the House of Parliament, or the Legislative Assembly or the Legislative Council of a State, as the case may be.

Hence, this Bill.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

(43 of 1951)

* * * * *

Right to Vote.

62. (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of by any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950. 43 of 1950.

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorised to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.

* * * * *

RAJYA SABHA

A
BILL

further to amend the Representation of the People Act, 1951.

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