

Bill No. LXV 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.

(2) It shall come into force at once.

5 2. In article 124 of the Constitution, after clause (7), the following clause shall be inserted, namely:—

Amendment of article 124.

"(8) No person who has held office as a Judge of the Supreme Court shall hold any executive position or any office of profit, under the Government of India or any of the State Governments, before the expiry of five years from the date he ceases to hold
10 such office."

Amendment of article 220.

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

Restriction on post-retirement employment under Government of a Judge of a High Court.

"220A. No person who has held office as a Judge or as the Chief Justice of a High Court shall hold any executive position or any office of profit, under the Government of India or any of the State Governments, before the expiry of five years from the date he ceases to hold such office." 5

STATEMENT OF OBJECTS AND REASONS

Independence and impartial functioning of the judiciary and the protection of constitutional governance depend upon the separation of powers. The judiciary is supposed to uphold the Constitution. It acts as a check against excesses, arbitrariness, and unlawful steps that may emanate from other branches.

This independence of the judiciary is achieved by many protective constitutional provisions. Judges cannot be arbitrarily removed once they are appointed, and can only be removed from office by a special majority of both Houses under article 124(4) of the Constitution. Judges, therefore, enjoy security of tenure while holding office, which is essential for maintaining judicial independence.

The Constitution also prohibits post-retirement work by judges as lawyers. Article 124(7) of the Constitution provides that a retired Supreme Court judge cannot "plead or act in any court or before any authority within the territory of India".

However, this provision only restricts post-retirement appointments in judiciary itself, but not in posts of President, Governor, Member of Parliament, etc. The post-retirement appointment of judges to other executive posts may undermine judicial independence.

In the Constituent Assembly, K T Shah, had put forward the suggestion that High Court and Supreme Court judges should not take up an executive office with the Government, "so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge."

In its 14th report in 1958, the Law Commission strongly recommended banning post-retirement Government employment for Supreme Court judges because the Government was a litigant in the courts in large number of cases.

Several appointments to administrative bodies require a cooling-off period for individuals so as to eliminate the possibility or suspicion of a conflict of interest or *quid pro quo*. This cooling-off period must be extended to Indian Judiciary. No person who has been appointed as judge in the Supreme Court or the judge or chief justice of a High Court shall hold any executive position or any office of profit, under the Government of India or any of the States of India, before the expiry of five years from the date of retirement from the post of the Judge of the respective court.

The Bill seeks to achieve these objectives.

DR. V. SIVADASAN.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

Establishment
and
constitution
of Supreme
Court.

124. * * * * *

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court of before any authority within the territory of India

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RAJYA SABHA

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further to amend the Constitution of India.

(Dr. V. Sivadasan, M.P.)