

AS INTRODUCED IN THE RAJYA SABHA ON
THE 23RD NOVEMBER, 2012

Bill No. XLVII of 2012

THE CONSTITUTION (AMENDMENT) BILL, 2012

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BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (I) This Act may be called the Constitution (Amendment) Act, 2012.

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. In article 75 of the Constitution,—

Amendment of article 75.

(i) for clause (I), the following be substituted, namely:—

(1) The first sitting of the House of the People after it is constituted, after a General Election, shall be convened by the Speaker at which only an elected member of the House shall be elected as the leader of the House by majority of the members of the House:

Provided that the name of the person so elected shall be communicated to the President who shall appoint him as the Prime Minister and other Ministers shall be appointed by the President on the advice of the Prime Minister :

Provided further that the procedure mentioned in clause (I) shall be followed on subsequent occasion for appointment of Prime Minister. 5

(ii) for clause (5), the following be substituted, namely:—

(5) A Minister other than the Prime Minister who for any period of six consecutive months is not a member of either House of Parliament shall at expiration of that period cease to be a Minister. 10

Amendment of
article 164.

3. In article 164 of the Constitution,—

(i) for clause (I), the following be substituted, namely:—

(I) The first sitting of the State Legislative Assembly after it is constituted, after a General Election, shall be convened by the Speaker at which only an elected member of the Legislative Assembly shall be elected as the leader of the State Legislative Assembly by majority of the members of the State Legislative Assembly : 15

Provided that the name of the person so elected shall be communicated to the Governor who shall appoint him as the Chief Minister and other Ministers shall be appointed by the Governor on the advice of the Chief Minister : 20

Provided further that the procedure mentioned in clause (I) shall be followed on subsequent occasion for appointment of Chief Minister.

(ii) for clause (4), the following be substituted, namely:—

(4) A Minister other than the Chief Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at expiration of that period cease to be a Minister. 25

STATEMENT OF OBJECTS AND REASONS

It is implicit from the provisions of the Constitution including the Preamble that we the people of India have adopted Democratic System of the Government which implies that a person to be appointed as the Prime Minister or the Chief Minister must have been elected by the people to the House of People or State Legislative Assembly as the case may be and further he should have been elected by majority of the members of the House of People or the State Legislative Assembly as the case may be. But a practice has come into existence according to which clause (5) of article 75 and clause (4) of article 164 which provide for appointment as Ministers who are not members of the Parliament or the State Legislature and that they may continue for a period of six months unless elected in the meanwhile is being taken advantage of for appointment of a non-member as Prime Minister or Chief Minister, though it was not the intention of the Constitution. This is clear from the fact that clause (5) of article 75 which provides that a person who is appointed as minister but who is not a member of the Parliament shall continue as minister only for a period of six months and that if in the meanwhile he is not elected to the Parliament, he shall cease to be a minister. Similarly, clause (4) of article 164 provides that a person who is appointed as a minister though he is not a member of the State Legislature, he will continue as minister only for a period of six months and thereafter, he will cease to be a Minister, if he is not elected to the State Legislature within a period of six months. The expression Minister both under clause (5) of article 75 and clause (4) of article 164 obviously does not include Prime Minister and Chief Minister for the reason that if the Prime Minister or the Chief Minister is not a member of the Parliament or the State Legislature as the case may be, were to be appointed as Prime Minister or the Chief Minister and if he is not elected within a period of six months, at the end of the six months not only he ceases to hold the office, the entire council of ministers including all the elected members who were ministers will also cease to hold the office. Therefore, there is a clear distinction between 'Minister' and 'Prime Minister' as also 'Minister' and 'Chief Minister'. In view of the wrong practice that has come into existence in violation of the real intention of the Constitution, it has become necessary to clarify this aspect in the interest of democracy.

Another incongruous practice which has been brought to being is that the President or the Governor as the case may be, to appoint any person as Prime Minister or Chief Minister as the case may be, and thereafter to call upon him to prove his majority in the House within the time specified, which is not the real intention of article 75 or 164, and is also inconsistent with the principles of democracy. Therefore, it is expedient to provide that only a person elected by the House of People by majority and communicated to the President by the Speaker shall be appointed as the Prime Minister and similarly a member of the State Legislative Assembly who is elected by majority and communicated to the Governor by the Speaker, shall be appointed as the Chief Minister. If, however, in a given case there is doubt as to whether the person appointed as Prime Minister or Chief Minister has the support of majority in the House of the People or the person appointed as Chief Minister has the support of the majority of the legislative assembly, it is open for the opposition to move a no-confidence resolution. Neither the President nor the Governor has the authority to make appointments of Prime Minister or the Chief Minister subject to the condition of proving majority in the House of the People or State Legislative Assembly within the time specified by him.

The changes are absolutely necessary to strengthen the democratic system by avoiding the appointment of a person not elected by the people or not having majority in the House from being appointed as Prime Minister or the Chief Minister.

Hence this Bill.

M. RAMA JOIS

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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Other provisions
as to Ministers.

75. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A)	*	*	*	*	*
(1B)	*	*	*	*	*
(2)	*	*	*	*	*
(3)	*	*	*	*	*
(4)	*	*	*	*	*

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

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Other provisions
as to Ministers.

164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor :

Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(1A)	*	*	*	*	*
(1B)	*	*	*	*	*
(2)	*	*	*	*	*
(3)	*	*	*	*	*

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

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RAJYA SABHA

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(*Shri M. Rama Jois, M.P.*)