

Bill No. XLIII of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

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. In article 102 of the Constitution, after clause (2), the following proviso shall be inserted, namely:—

Amendment
of article
102.

10 "Provided that a member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall continue to be disqualified for a further period of six years from the date of his disqualification."

Amendment
of article 191.

3. In article 191 of the Constitution, after clause (2), the following proviso shall be substituted:—

"Provided that a member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall continue to be disqualified for a further period of six years from the date of his disqualification." 5

Amendment
of the Tenth
Schedule.

4. In Tenth Schedule to the Constitution—

(i) in paragraph 2 after clause (a) of sub-paragraph (1), the following shall be inserted, namely:— 10

"Provided that if a member of a House fails to present himself within seven days before the Chairman or Speaker of the House when such attendance is sought by the party whip, he shall be deemed to have voluntarily given up his membership of such political party."

(b) in clause (b) of sub-paragraph, after the words "if he votes or abstains from voting", the words "in a motion of a vote of confidence or no-confidence" shall be inserted. 15

(ii) for sub-paragraph (2) of paragraph 4, the following shall be substituted:—

"(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than three-fourth of the members of the legislature party concerned have agreed to such merger." 20

(iii) in sub-paragraph (1) of paragraph 6, after the words, "the Speaker of such House", the following words shall be inserted, namely:—

"within a period of thirty days from the date on which the said question arises but not later than a period of three months"; 25

(iv) after paragraph 6, the following new paragraph shall be inserted, namely:—

"6A. If the question as to whether, a Member of a House has become subject to disqualification under this Schedule, is not decided by the Chairman or, as the case may be, the Speaker of such House, within the period stipulated in paragraph 6, the disqualification proceedings against the said Member of the House shall consider to be deemed to have been lapsed." 30

Lapse of
disqualification
proceedings.

STATEMENT OF OBJECTS AND REASONS

With the framing of Constitution, we adopted the Westminster System of representative democracy followed in Britain in the formation of our Legislatures. The leader who enjoys the majority support of the Legislature is chosen as the head of the Government. During late 1970s, our country witnessed nefarious floor crossing by legislators in total disregard of the democratic wishes of the electorate who returned them. The elections of 1967 were a water-shed moment in Indian political history, in that they led to the introduction of coalition Governments in India.

2. After the failure of an attempt in 1978, the Constitution (52nd Amendment) Act, 1985 came into being and with it came Tenth Schedule to the Constitution. The law has undergone many changes since then. Paragraph 3 of the Tenth Schedule originally recognised a 'split' if one-third members of the legislature party decided to form or join another political party. The 2003 amendment changed it to "at least two-thirds of the members" should agree for merger.

3. While the anti-defection law envisaged the prevention of horse-trading of the legislators of our country, even today, the problem is notoriously prevalent. The rampant misuse of Tenth Schedule and instances of it being bypassed are a blot on our democracy and the recent instances of resort politics, use of money and muscle power have initiated a debated over the efficacy of having a Tenth Schedule which prohibits individual defection but legalizes mass defection along with putting a limit on the freedom of expression of a legislator on the floor of the house. The concept of a blanket whip on every voting leads to low quality debates and inability of Members to speak their mind or express their reservations against the policy of the Government.

4. We are an evolving democracy and the law makers should be given freedom to express their views in the Parliament or Legislatures along with having an enforcement mechanism which doesn't defeat the mandate given by the public.

5. The Bill aims to strengthen our democracy and help our public representatives in becoming informed law makers rather than political party workers, who have to follow a direction for this purpose, the Bill seeks to amend Articles 102 and 191 of the Constitution to make it more stringent by adding a proviso which leads to a further disqualification of six years from the date a member is disqualified under Tenth Schedule and through the introduction of such a provision, the legislators who indulge in horse trading and dishonor the mandate of the electorate shall be debarred from contesting a by-election and getting re-elected for a period of six years.

6. The Bill also seeks to amend paragraph 2 of Tenth Schedule through a proviso which clearly lays down that where a member is unable to present himself within seven days before the Chairman or Speaker of the House when his attendance is sought by the party whip, it shall amount to voluntarily giving up the membership of such political party. Due to ambiguous interpretation of voluntary giving up of membership, there has been a steep increase in cases of resort politics on the expense of the tax-payer. This provision lays down clear criteria that will lead to disqualification, if a person doesn't reply to the notice of the Chairman or Speaker.

7. Further, the amendment to clause (b) of sub-paragraph (1) of paragraph 2, will act as a reformative measure whereby Members will be exempted from the whip system except in cases of Confidence Motion or No Confidence Motion. Our country has a freedom of expression for everyone except the elected representatives who are bound by the whip system for discussion on legislations concerning the common man. The amendment to paragraph 4 shall increase the existing threshold for merger from 2/3rd to 3/4th of members of

legislature party in order to avoid disqualification. This provision is necessitated due to growing instances of anti-defection in smaller States where the strength of the House ranges from 30 to 70.

8. The amendment to paragraph 6 is required due to its misuse by a party in power. The absence of a time limit to decide disqualification petition leads to political bias and at times the delay also extends till the House is dissolved. The time limit for the same has been proposed as thirty days, with an extension of maximum limit of three months. In addition to this, a new paragraph 6A is proposed to be added which renders a disqualification petition infructuous, if it is not decided or kept pending beyond three months.

Hence, this Bill.

RAGHAV CHADHA

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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102. (2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.				Disqualifications for membership.
*	*	*	*	*
191. (2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.				Disqualifications for membership.
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TENTH SCHEDULE

[Articles 102(2) and 191 (2)]

Provisions as to disqualification on ground of defection

*	*	*	*	*
2. (1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—				Disqualifications on ground of defection.
(a) if he has voluntarily given up his membership of such political party; or				
(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.				
<i>Explanation.</i> —For the purposes of this sub-paragraph,—				
(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;				
(b) a nominated member of a House shall,—				
(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;				
(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.				
*	*	*	*	*
4. (2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.				Disqualification on ground of defection not to apply in case of merger.
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Decision on questions as to disqualification on ground of defection.

6. (I) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

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RAJYA SABHA

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(Shri Raghav Chadha, M.P.)