

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. CX of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

A

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.

Amendment
of article 102.

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

"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." 5

Amendment
of article 191.

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

"Provided that a member of 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." 10

Amendment
of the Tenth
Schedule.

4. In the Tenth Schedule to the Constitution—

(i) in paragraph 1, for clause (a), the following clauses shall be substituted, namely— 15

'(a) "Adjudicating Committee" means a committee appointed to pass any order or decision under this Act.

(aa) "House" means either Houses of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;'

(ii) for paragraph 4, the following paragraph, shall be substituted, namely:— 20

"4. (1) The Members of a House, comprising not less than one-third of the total membership of a political party of that House, who—

(a) give up the membership of their original political party and merge with another political party, or

(b) form a new political party and function independently, shall be liable to disqualification under paragraph 2 of the Tenth Schedule and their seats in the House shall automatically be vacated, as per the provisions of sub-clause (a) of clause (3) of article 101 of the Constitution and such members shall have to seek fresh elections to the House, if they so desire. 25 30

(2) In the event of defection by members of the House of the People or of the Legislative Assembly of a State, comprising not less than one-third of the total membership of a political party in that House, a special session shall be convened for the purpose of discussion and voting on a motion expressing confidence or want of confidence in the Council of Ministers within a period of forty-eight hours, from the date of vacation of seat(s) by such Member(s) on defection. 35

(iii) for paragraph 6, the following paragraph shall be substituted, namely:—

(1) 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 a three-member Adjudicating Committee, constituted in such manner as the President may determine, comprising the following: 40

(a) a retired Judge of the Supreme Court as Chairperson;

(b) a retired Judge of the High Court as Member;

(c) a retired Chief Election Commissioner as Member. 45

(2) No person who has held office as a judge of the Supreme Court or as the Chief Election Commissioner shall be appointed as a member of the adjudicating committee before the expiry of six years from the date he ceases to hold such office.

Disqualification
and vacation
of seat in
cases of
merger etc.

Decisions on
question as to
disqualification
on ground of
defection.

(3) The Conditions of service and tenure of the members of the committee shall be such as the President may determine:

Provided that the conditions of service and tenure of the members shall not be varied to their disadvantage either after their appointment or during the course of their tenure in such capacity.

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(4) The decision of the Adjudicating Committee shall be final.

STATEMENT OF OBJECTS AND REASONS

India's political system has undergone tremendous changes since independence. While the formation of coalition governments since 1960s has on the one hand helped ensure wider representation and diversity of voices in the governance system, it has also parallelly increased the instances of political manoeuvring. Accordingly, India enacted anti-defection law in 1985. However, despite the legislation being in force, elected representatives have been using various loopholes in the laws to continually pursue defection.

Such a defection mostly arising out of the power tussle and political considerations often erodes the public trust in the fundamentals of a democracy. Paragraph (4) of the Tenth Schedule to the Constitution which validates mergers, where two-thirds of the members of a legislative party have consented to such merger, remains in effect as a tool of misuse by majority of the legislators.

The Tenth Schedule of the Constitution as it originally existed recognised the concept of 'split' if one-third members of any political party decided to form a new political party or join another political party. However, this provision was later modified by the Constitution amendment in 2003. While the anti-defection law aims at preventing horse-trading of the legislators, the extant provisions in Tenth Schedule fails to prevent such practices by way of misuse of loopholes therein. The defections are often instigated not by independent individual disagreement of the members, but rather by use of money and muscle power.

Additionally, putting the final authority to decide the cases of disqualification in cases of defection on the Speaker of the House may also compromise the decision. Hence, to provide for greater independence, fairness, and impartiality, there is a need to refer such a decision to a separate Adjudicating Authority.

Therefore, this Bill provides for immediate disqualification of a candidate who defects from a political party and vacation of his seat necessitating him to seek fresh mandate. Such a clause shall ensure that the legislators have a moral responsibility to the political party and to the people who trust him at large.

Hence, this Bill.

PRIYANKA CHATURVEDI.

FINANCIALMEMORANDUM

Sub-clause (iii) of clause 4 of the Bill *inter-alia* provides for constitution of a three-member Adjudicating Committee comprising a Retired Judge of the Supreme Court as Chairperson; a retired Judge of the High Court as Member; and a retired Chief Election Commissioner as Member. Therefore, if enacted, this Bill would involve expenditure from the Consolidated Fund of India. However, it is difficult to estimate the actual financial expenditure likely to be incurred at this stage.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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102 . * * * * * Disqualifications for membership.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

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191 . * * * * * Disqualifications for membership.

(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.

TENTH SCHEDULE

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

Provisions as to disqualification on ground of defection

1. In this Schedule, unless the context otherwise requires,— Interpretation.

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State; * *

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4. (1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party— Disqualification on ground of defection not to apply in case of merger.

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(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.

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6. (1) 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: Decision on questions as to disqualification on ground of defection.

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.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of State within the meaning of article 212.

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RAJYA SABHA

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(Smt. Priyanka Chaturvedi, M.P.)