

AS INTRODUCED IN THE RAJYA SABHA
ON 13TH AUGUST, 2010

Bill No. XXXVI of 2010

THE CONSTITUTION (AMENDMENT) BILL, 2010

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BILL

further to amend the Constitution of India.

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

1. (1) This Act may be the Constitution (Amendment) Act, 2010.

Short title and
commence-
ment.

(2) It shall come into force at once.

2. In article 75 of the Constitution, for clause (5), the following clause shall be substituted, namely:—

Amendment
of article 75.

"(5) A Minister who for any period of six consecutive months is not elected as a member of either House of Parliament shall, at the expiration of that period, cease to be a Minister; and shall not be reappointed as a Minister for one year.

- Amendment of article 80. **3.** In article 80 of the Constitution after clause (3), the following proviso shall be inserted, namely:—
 "Provided that no person belonging to any political party shall be nominated under sub-clause (a) of clause (1)."
- Amendment of article 164. **4.** In article 164 of the Constitution for clause (4), the following clause shall be substituted, namely:—
 "(4) A Minister who for any period of six consecutive months is not elected as a member of the legislature of the State shall at the expiration of that period cease to be a Minister and shall not be reappointed as a Minister for one year."
- Amendment of article 171. **5.** In article 171 of the Constitution after clause (5), the following proviso be inserted, namely:—
 "Provided that no person belonging to any political party shall be nominated under sub-clause (e) of clause (3)."
- Amendment of article 331. **6.** In article 331 of the Constitution, the following proviso be added, namely:—
 "Provided that no person belonging to any political party shall be nominated under this article."
- Amendment of article 333. **7.** In article 333 of the Constitution, the following proviso be added, namely:—
 "Provided that no person belonging to any political party shall be nominated under this article."

STATEMENT OF OBJECTS AND REASONS

The Constitution, does not bar the appointment of a person from outside the legislature as Minister. But he cannot continue to be a Minister for more than six months unless he secures a seat in either House of Parliament. Quite understandably, the founding fathers of our Constitution enshrined this provision in the Constitution so as to utilize the services and ability of some eminent persons who can be great help to the nation but at the same time are not members of legislature due to one reason or the other. Their services may possibly be indispensable for the benefit of the country.

On the other hand, article 80 of the Constitution empowers the President to nominate twelve members from amongst the persons having special knowledge or practical experience in literature, science, art and social service. Thus the Constitution adopts the principle of nomination for giving distinguished person a place in the upper House. A similar provision is there in article 171 of the Constitution for States Assemblies. Similarly, articles 331 and 333 empower the President to nominate members of the Anglo-Indian community to the Lok Sabha and Legislative Assembly of a State, if they are not adequately represented.

These provisions, i.e., appointment of a Minister who is not a member of the legislature and nomination of members to the legislatures are two distinct provisions. Therefore, to nominate a person who has been appointed a Minister without being a member of the legislature would go against the spirit of the Constitution. This would have never been the intention of the framers of our Constitution to nominate a Minister who has failed to be elected to the legislature within the time limit of six months.

Further in certain cases particularly in some States a person continues to be a Minister for years without being a member of the State legislature. In such cases, the person is reappointed as Minister after every six months. Therefore, it is proposed that if, a Minister fails to be a member of the legislature within the period of six months, he shall not be appointed a Minister at least for one year. This provision will prevent the misuse of the existing provision.

Similarly, to keep the provisions of nomination of members to the legislature away from any controversies it is proposed that persons belonging to any political party should not be nominated to the legislature. Let the experts from different sections of the society come and benefit the legislature with their experience.

Hence this Bill.

KALRAJ MISHRA

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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75. (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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80. (3) The member to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

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164. (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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171. (5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

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331. Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

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333. Notwithstanding anything in Article 170, the Governor³[***] of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, ⁴[nominate one member of that community to the Assembly].

RAJYA SABHA

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BILL

further to amend the Constitution of India.

(Shri Kalraj Mishra, M.P.)