

AS INTRODUCED IN THE RAJYA SABHA
ON THE 7TH DECEMBER, 2012

Bill No. XLIX 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. (1) This Act may be called the Constitution (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 72 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

Amendment of article 72.

“(4) Nothing in sub-clause (c) of clause (1) shall be applicable in all cases in which Supreme Court of India has held any accused guilty of waging war against India under Sections 121, 121(A) and 122 of the Indian Penal Code, 1860”.

STATEMENT OF OBJECTS AND REASONS

Article 72 of the Constitution of India provides power to President of India to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute sentence in certain cases including those where the sentence is of death. In certain cases including the attack on Parliament House in 2001 and later attack on Mumbai known as "26/11 Attack" in 2008 have been adjudged as an act of waging war against India by the Supreme Court. The accused in the case of Parliament attack made a clemency petition to the President and the accused of Mumbai attack had also done the same. The acts of violence perpetrated by those accused, amount to waging war against India and therefore should not be considered with a normal parameter. The feeling of a law-abiding citizen of India is such that the sentence to be executed immediately and accused should not be benefited of exceptional provision in the Constitution of India. Therefore, the provision of President's discretion of pardoning or suspending the sentence pronounced by the Supreme Court of India should not be made available to the accused who have waged war against India as mentioned under sections 121, 121(A) and 122 of the Indian Penal Code. This Constitution amendment is, therefore, brought to prevent the accused from filing clemency petition to the President of India.

Hence this Bill.

DR. BHARATKUMAR RAUT

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) In all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

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Power of
President to
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etc., and to
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certain cases.

RAJYA SABHA

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(*Dr. Bharatkumar Raut, M.P.*)