

**Bill No. XXXIV of 2021**

THE CONSTITUTION (AMENDMENT) BILL, 2021

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BILL

*further to amend the Constitution of India.*

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

1. (1) This Act may be called the Constitution (Amendment) Act, 2021.

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.

2. In Tenth Schedule to the Constitution—

Amendment of Tenth Schedule.

(a) In clause (1) of paragraph 6 after the words "...the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House, the following words shall be inserted, namely:—

Amendment of para 6.

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"within a period of 30 days from the date on which the said question arises but not later than a period of 3 months";

(b) In 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 of the Schedule, the disqualification proceedings against said Member of the House shall be deemed to have been lapsed." 5

## STATEMENT OF OBJECTS AND REASONS

The amendment of Tenth Schedule is necessitated primarily on account of numerous cases where either the Speaker or Chairman, as the case may be, of either of a House of Parliament or the Legislative Assembly or the Legislative Council of a State, have left the question of disqualification of Member(s) undecided for an unreasonably long period after filing of disqualification petition against such member(s) of the House.

The power to decide the question as to disqualification of a Member of a given House, is a constitutional obligation which the Speaker or the Chairman, as the case may be, has to discharge, in order to give effect to the provisions of the Tenth Schedule of the Constitution of India, which was inserted to check the menace of defection of members elected to the Legislature belonging to respective political parties.

The Hon'ble Supreme Court in a recent judgement in *Keisham Meghachandra Singh v. Manipur Legislative Assembly 2020 SCC Online SC 55* has ruled that a person who had incurred disqualification for defection does not deserve to be a member of the Legislature even for a single day and disqualification petitions under the Tenth Schedule should be decided within three months.

As earlier held by 7-Judges Constitution Bench of the Hon'ble Supreme Court in *Kihoto Hollohan v. Zachillhu 1992 Supp (2) SCC 651*, the scope of judicial review in case of decision of the Speaker or Chairman of the House of Legislature is limited, in view of the finality clause in Paragraph 6 of the Tenth Schedule. That apart, the power of judicial review is not available at the stage prior to making of decision by the Speaker or Chairman of the given House, nor at an interlocutory stage of the disqualification proceedings.

Accordingly, it is necessary to amend the Tenth Schedule to the extent of providing a fixed time limit to decide the question of disqualification of Member(s) of the House of Parliament or Legislative Assembly of a State.

The Bill seeks to achieve the aforesaid objectives.

Hence, this Bill.

KTS TULSI

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

TENTH SCHEDULE

**6. Decision on questions as to disqualification on ground of defection.—**

(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:

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 a State within the meaning of article 212.

RAJYA SABHA

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*(Shri K.T.S. Tulsi, M.P.)*