

THE CONSTITUTION (NINETY-FIRST AMENDMENT) ACT, 2003

India

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Act 91 of 2003

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STATEMENT OF OBJECTS AND REASONS

1. Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule to the Constitution of India, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provisions for exemption from disqualification in case of splits as provided in paragraph 3 of the Tenth Schedule to the Constitution of India has, in particular, come under severe criticism on account of its destabilising effect on the Government.

2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of May, 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of March 31, 2002 have, inter alia, recommended omission of said paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to exemption from disqualification in case of splits. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a Minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. It is proposed to accept these

suggestions.

3. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

4. In the light of the above, it is proposed to amend the Constitution by omitting paragraph 3 of the Tenth Schedule to the Constitution of India and to provide that the size of the Council of Ministers should not be more than 10% of the strength of House or Houses concerned whether Unicameral or Bicameral. However, in case of smaller States like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of seven Ministers is proposed.

5. The Bill seeks to achieve the objects mentioned above.

An Act further to amend the Constitution of India. BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:-

1. Short title.

This Act may be called the Constitution (Ninety-first Amendment) Act, 2003.

2. Amendment of article 75.

In article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:--“(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent of the total number of members of the House of the People.(1B)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 also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contest any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”.

3. Amendment of article 164.

In article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:--“(1A) The total number of Ministers, including the Chief Minister, in the Council of

Ministers in a State shall not exceed fifteen percent of the total number of members of the Legislative Assembly of that State: Provided that the number of Ministers, including Chief Minister in a State shall not be less than twelve: Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint. (1B) 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 also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”.

4. Insertion of new article 361B.

After article 361A of the Constitution, the following article shall be inserted, namely:--Disqualification for appointment on remunerative political post‘361B. A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.Explanation.—For the purposes of this article,--(a)the expression “House” has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;(b)the expression “remunerative political post” means any office—(i)under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or(ii)under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.’.

5. Amendment of the Tenth Schedule.

In the Tenth Schedule to the Constitution,--(a)in paragraph 1, in clause (b), the words and figure “paragraph 3 or, as the case may be,” shall be omitted;(b)in paragraph 2, in sub-paragraph (1), for the words and figures “paragraphs 3, 4 and 5”, the words and figures “paragraphs 4 and 5” shall be substituted;(c)paragraph 3 shall be omitted.**ANNEXURE**EXTRACTS FROM THE CONSTITUTION OF INDIA* * * * ***TENTH SCHEDULE**[Articles 102(2) and 191(2)]Provisions as to disqualification on ground of defection

1. Interpretation.—

In this Schedule, unless the context otherwise requires,—* * * * *(b)“legislature party”, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions.* * * * *

2. Disqualification on ground of defection.—

(1)Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—* * * * *

3. Disqualification on ground of defection not to apply in case of split.—

Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party,—(a)he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground—(i)that he has voluntarily given up his membership of his original political party; or(ii)that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and(b)from the time of such split, such faction 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 paragraph.* * * * *[The Constitution (Ninety-first Amendment) Act, 2003, aimed to reduce the number of members serving on the Council of Ministers, prohibit traitors from holding public office and tighten the anti-betrayal regulations that had been adopted by the fifty-second amendment. This Amendment added clause 1A in Article 164, which states “the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed 15% of the total number of members of the Legislative Assembly of that State. It also mentioned that the number of Ministers, including the Chief Minister in a State shall not be less than twelve”. Similarly, changes were made to article 75. As mentioned in it, the PM shall be appointed by the president and the other Ministers shall be appointed by the President on the advice of the PM. Lastly, The total number of ministers, including the Prime Minister, in the COM shall not exceed 15% of the total strength of the Lok Sabha.Also Refer)]