

Bill No. LXII of 2013

THE REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT
AND VALIDATION) BILL, 2013

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BILL

further to amend the Representation of the People Act, 1951

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

1. (1) This Act may be called the Representation of the People (Second Amendment and Validation) Act, 2013.

Short title and commencement.

5 (2) It shall be deemed to have come into force on the 10th day of July, 2013.

43 of 1951.

2. In the Representation of the People Act, 1951, in section 8, for sub-section (4), the following sub-section shall be substituted, namely:—

Amendment of section 8.

“(4) Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), a disqualification under any of the said sub-sections shall not, in the

case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect, if an appeal or application for revision is filed in respect of the conviction and sentence within a period of ninety days from the date of conviction and such conviction or sentence is stayed by the court:

Provided that after the date of the conviction and until the date on which the conviction is set aside by the court, the member shall neither be entitled to vote nor draw salary and allowances, but may continue to take part in the proceedings of Parliament or the Legislature of a State, as the case may be.” 5

Validation.

3. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of the Representation of the People Act, 1951, as amended by this Act, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act had been in force at all material times. 10 43 of 1951.

STATEMENT OF OBJECTS AND REASONS

The Representation of the People Act, 1951 provides for the conduct of elections of the Houses of Parliament and the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

2. Section 8 of the said Act provides that a person convicted of an offence mentioned in the said section shall be disqualified from the date of conviction and the disqualification is to be continued for such period as specified in that section. Sub-section (4) thereof carves out an exception providing that the disqualification under sub-sections (1), (2) or (3) of the said section shall not take effect in the case of a sitting member of Parliament or the Legislature of a State until three months being elapsed from the date of conviction or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

3. The saving provision, provided in sub-section (4) of section 8 of the said Act, was challenged by way of public interest litigation before the Supreme Court in *Lilly Thomas Vs. Union of India and others* [W.P. (Civil) No. 490 of 2005]. A Division Bench of the Supreme Court, by its judgment dated 10th July, 2013 has held in the said case that Parliament has no power to enact sub-section (4) of section 8 of the said Act and declared that the said provision is *ultra vires* the Constitution and the judgment be given prospective effect.

4. The Government has examined the said judgment of the Supreme Court and has filed a petition for review of the same in consultation with the Learned Attorney-General for India. Further, the Government is of the view that without waiting for the outcome of the said review petition, there is a need for suitably addressing the situation arising out of the said judgment of the Supreme Court. Therefore, it has been proposed to amend the said Act.

5. The amendment proposed in the Representation of the People (Second Amendment and Validation) Bill, 2013, *inter alia*, is to substitute sub-section (4) of section 8, so as to provide that the disqualification in view of conviction under sub-sections (1), (2) or (3) of the said section in respect of a member of Parliament or the Legislature of a State shall not take effect, if an appeal or application for revision is filed in respect of the conviction and sentence within a period of ninety days from the date of conviction and such conviction or sentence is stayed by a court, and further to provide that after the date of conviction and until the date on which the conviction is set aside by the court, the member shall neither be entitled to vote nor draw salary and allowances, but may continue to take part in the proceedings of Parliament or the Legislature of a State, as the case may be.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 23rd August, 2013

KAPIL SIBAL

ANNEXURE

EXTRACT FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

(43 OF 1951)

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| * | | * | | * | | * | | * |
| Disqualification on conviction for certain offences. | 8. (1) | * | * | * | * | * | * | * |
| | <p>(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.</p> | | | | | | | |
| | <p><i>Explanation.</i>—In this section,—</p> | | | | | | | |
| | <p>(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—</p> | | | | | | | |
| | <p>(i) the regulation of production or manufacture of any essential commodity;</p> | | | | | | | |
| | <p>(ii) the control of price at which any essential commodity may be brought or sold;</p> | | | | | | | |
| | <p>(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;</p> | | | | | | | |
| | <p>(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;</p> | | | | | | | |
| | <p>(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940;</p> | | | | | | 23 of 1940. | |
| | <p>(c) "essential commodity" has the meaning assigned to it in the Essential Commodities Act, 1955;</p> | | | | | | 10 of 1955. | |
| | <p>(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954.</p> | | | | | | 37 of 1954. | |
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RAJYA SABHA

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BILL

further to amend the Representation of the People Act, 1951

(Shri Kapil Sibal, Minister of Law and Justice)