

Bill No. LI of 2019

THE CONSTITUTION (AMENDMENT) BILL, 2019

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BILL

*further to amend the Constitution of India.*

Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

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| 1. (1) This Act may be called the Constitution (Amendment) Act, 2019.   | Short title and commencement. |
| (2) It shall come into force at once.   |                               |
| 2. In article 217 of the Constitution, in clause (1), for the words "sixty-two years", the words "sixty-five years" shall be substituted. | Amendment to article 217.     |
| 3. In article 224 of the Constitution, in clause (3), for the words "sixty-two years", the words "sixty-five years" shall be substituted. | Amendment to article 224.     |

STATEMENT OF OBJECTS AND REASONS

The persistent problem of backlog of cases in the higher judiciary — the High Courts and Supreme Court is a matter of grave public concern. As per recent statistics, there are 58,669 cases pending before the Supreme Court and about 45 lakh cases pending before the High Courts. It is a well known adage that justice delayed is justice denied. There are several factors which contribute to the inability of our higher judiciary to effectively tackle the backlog of cases. One of the chief causes of delay in disposing cases is the large number of vacancies in High Courts across the country. As per the Department of Justice, as on 01.11.2019, out of a total sanctioned strength of 1079 Judges across 26 High Courts, 424 positions are vacant. This situation is further worsened by the fact that when judges retire, appointment of new judges in thier places is not immediate. The Memorandum of Procedure for appointment of Judges states that the process of filling up of vacancies must commence six months prior to the expected date of retirement of High Court Judges, so that the vacancy is immediately filled upon retirement of a judge. However, due to various reasons, this process is not completed on time leading to large number of vacancies as stated above.

2. One of the ways in which this situation can be ameliorated is by increasing the age of retirement of High Court Judges from 62 to 65 years. When the Constitution was originally enacted, article 217 (1) fixed the age of retirement of High Court Judges as 60 years. Subsequently, within 13 years, it was realized that the human body and mind does not become so incapacitated at the age of 60 that Judge must retire at that age. Hence, by virtue of the Constitution (Fifteenth Amendment) Act, 1963, the age of retirement was increased to 62 years. From 1963 onwards, the age of retirement has remained at 62. Over the past five decades, advancement in science and technology, medicine, better infrastructure and lifestyle has allowed Indians in other walks of life to be efficient, functional and work well up to the age of about 75 years.

3. In fact, in the year 2018, 25 retired Chief Justices and Judges of various High Courts were designated as Senior Advocates by the Supreme Court and in the year 2016, 26 such retired Chief Justices and Judges of the High Court were designated as Senior Advocates by the Supreme Court. This shows that the Judges upon retirement are keen on continuing to work in the legal field in one capacity or the other. This is due to two reasons:

- (i) The mind of an intellectual who has worked tirelessly as a Judge of the High Court cannot remain idle at the age of 62 when much energy, enthusiasm and zeal is still left to contribute.
- (ii) Judges need to continue to work in order to maintain a good standard of living, since their pensions are not entirely sufficient to maintain themselves and their families in urban cities.

4. In these circumstances, the time has come to increase the age of retirement of Judges of the High Court from 62 to 65 years. This would not only help the judicial system but also the public at large, specifically the litigants before the Courts. The judicial system would be greatly benefited because a person who has a wealth of experience under his or her belt by virtue of a long tenure in the High Court would continue to serve the High Court for a further period of 3 years. undoubtedly, the experience of the Judge would mean that he or she is better suited to perform the functions of a Judge than a newly elevated Judge of the High Court. The wealth of judicial experience gained over a decade or so in the High Court cannot be replaced by a newly elevated Judge. Longer tenures also ensure impartiality of Judges — an oft raised criticism is that Judges begin looking for post-retirement jobs in the last year of their service. This can be removed by extending their tenure by a further three

years. Similarly, the litigant public is also benefited, since the occurrence of vacancies would be less frequent and consequently, there would be Judges to hear and dispose cases. Such a move would also benefit the Government of the day, since the Government would not be frequently embroiled with the process of appointment of new Judges.

5. In 2000, The National Commission to review the working of the Constitution (NCRWC) also known as Justice M.N. Venkatachaliah Commission was set up by the then NDA Government. The said Commission submitted its report in the year 2002. One of the recommendations of this Commission was to increase age of retirement Judges of the High Court to 65 years. In 2010, the constitution (114th Amendment) Bill was tabled to increase the age of High Court Judges to 65 years. However, this Bill could not be passed.

6. Internationally, the age of retirement of Judges is well above the current age of 62 years in India. The age of retirement of Judges in developed countries with good medical facilities and infrastructure is around 70. The USA, Austria and Greece, have lifetime tenure for Judges of its Supreme Court and Federal Courts. In the U.K., the age of retirement is presently 70, though there have been calls to increase it to 75. In Belgium, Denmark, Ireland, the Netherlands, Norway and Australia, the retirement age for judges is 70 years. Judges in Canada and Germany retire at 75 and 68, respectively. Although India is a developing country, the Government provides Judges of the High Court with staff car, housing and sufficient facilities like office assistants, domestic assistants, etc. Therefore, our Judges are definitely in a position to continue serving as Judges of the High court till the age of 65 years.

7. Apart from this, the Hon'ble Law Minister has also informed the Parliament that the Hon'ble Chief Justice of India has also sent a proposal to the Government to increase the age retirement of High Court Judges to 65 years.

8. In view of the above, the instant bill proposes to increase the age of retirement of High Court Judges by amending the constitution article 217 (1) and 224 (3).

9. The Bill seeks to achieve the above objectives.

P. WILSON