

Thirteenth Kerala Legislative Assembly

Bill No. 95

**THE LEGISLATIVE ASSEMBLY (REMOVAL OF DISQUALIFICATIONS)
AMENDMENT BILL, 2012**

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further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951.

Preamble.—WHEREAS, it is expedient further to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951), for the purposes hereinafter appearing ;

BE it enacted in the Sixty-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Legislative Assembly (Removal of Disqualifications) Amendment Act, 2012.

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 11th day of October, 1951.

2. *Amendment of section 2.*—In section 2 of the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) (hereinafter referred to as the principal Act), after clause (i) of sub-section (1), the following Explanation and Note shall be inserted, namely:—

“Explanation.—For the purpose of this clause, members of the Legislative Assembly shall include the Ministers, the Speaker, the Deputy Speaker, the Leader of the Opposition and the Chief Whip.

Note.—This explanation shall be deemed to have come into force in respect of the Leader of the Opposition on the 1st day of September, 1977 and in respect of the Chief Whip on the 1st day of October, 1982.”.

3. *Repeal and saving.*—(1) The Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 (23 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

As per sub-clause (a) of clause (1) of article 191 of the Constitution of India, a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State, if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder. The Legislative Assembly (Removal of Disqualifications) Act, 1951 has been enacted pursuant to sub-clause (a) of clause (1) of article 191 of the Constitution of India to declare certain offices as offices which will not disqualify the holders thereof being chosen as, and for being, members of the Legislative Assembly of the State of Kerala. Clause (i) of sub-section (1) of Section 2 of the said Act *inter alia* provides that a person shall not be disqualified for being chosen as and for being a member of the Legislative Assembly of the State of Kerala by reason only that he is in receipt of the salaries or allowances to which he is entitled under the law being in force relating to the payment of salaries and allowances to members of the Legislative Assembly of the State of Kerala. The Payment of Salaries and Allowances Act, 1951 is an enactment to provide for the salaries and allowances of the Ministers, the Speaker, the Deputy Speaker, the Leader of Opposition, the Chief Whip and the members of the Legislative Assembly. In view of the above, all the holders of the above mentioned offices are insulated from disqualification under the office of profit. However, taking advantage of the fact that such offices have not been specifically mentioned in clause (i) of sub-section (1) of section 2 of the Legislative Assembly (Removal of Disqualifications) Act, 1951, doubts have been expressed at some corners that the holders of the offices of the Chief Whip and the Leader of the Opposition are disqualified from being a Member of Legislative Assembly. With a view to remove such doubts and to clarify the position, it is necessary to specifically mention the various offices in the said provision by making amendments in the Legislative Assembly (Removal of Disqualifications) Act, 1951 (XV of 1951) with retrospective effect. In these circumstances, Government have decided to amend the Legislative Assembly (Removal of Disqualifications) Act, 1951.

2. As the Kerala Legislative Assembly was not in session and the said proposal had to be given effect to immediately, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2011 was promulgated by the Governor of Kerala on the 10th day of November, 2011 and the same was published as Ordinance No. 47 of 2011 in the Kerala Gazette Extraordinary No. 2129 dated the 10th day of November, 2011.

3. A Bill to replace Ordinance No. 47 of 2011 by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly during its Third Session which commenced on the 9th day of December, 2011 and ended on the same day itself. As the provisions of the said Ordinance have to be kept alive, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 was promulgated by the Governor on the 16th day of January, 2012 and same was published as Ordinance No.7 of 2012 in the Kerala Gazette Extraordinary No. 121 dated the 18th day of January, 2012.

4. Though a Bill to replace Ordinance No. 7 of 2012 was published as Bill No. 82 of the 13th Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Kerala Legislative Assembly during its Fourth Session which commenced on the 1st day of March, 2012 and ended on the 23rd day of March, 2012. Since difficulties would arise, if the provisions of the said Ordinance were not kept alive, the Legislative Assembly (Removal of Disqualifications) Amendment Ordinance, 2012 was promulgated by the Governor of Kerala on the 11th day of April, 2012 and the same was published as Ordinance No. 23 of 2012 in the Kerala Gazette Extraordinary No. 725 dated, the 11th day of April, 2012.

5. The Bill is intended to replace Ordinance No. 23 of 2012 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

OOMMEN CHANDY

EXTRACT OF THE RELEVANT PORTIONS FROM THE LEGISLATIVE
ASSEMBLY (REMOVAL OF DISQUALIFICATIONS) ACT, 1951

(ACT XV OF 1951)

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2. *Removal of certain disqualifications for membership.*—(1) A person shall not be disqualified for being chosen as, and for being a member of the Legislative Assembly of the State of Kerala by reason only,—

(i) that he is in receipt of the salaries or allowances to which he is entitled under the law for the time being in force relating to the payment of salaries and allowances to members of the Legislative Assembly of the State of Kerala or of travelling and daily allowances while serving as a member of any Committee or Board constituted by the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or

(ii) that he holds under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India an office which is not remunerated either by salary or by fees payable out of the Consolidated Fund of India or of any such State, or

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