

DISQUALIFICATION OF MLA'S: POLITY

NEWS: Undented so far by illegal mining charges, Janardhan Reddy now disqualified as MLA

WHAT'S IN THE NEWS?

The disqualification of legislators in India is governed by constitutional provisions, the Representation of the People Act, and the Tenth Schedule, but suffers from delays, political bias, and legal loopholes. Recent cases highlight the urgent need for reforms to ensure timely, impartial, and transparent enforcement of disqualification rules.

Context: Disqualification of Karnataka MLA

- A Karnataka MLA has been disqualified from the Legislative Assembly following conviction by the Principal Special Judge for CBI cases in Hyderabad.
- This has once again brought attention to the legal, constitutional, and procedural framework for disqualification of legislators in India.

Constitutional and Legal Provisions for Disqualification

For MPs – Governed by:

- Article 102 of the Constitution
- Representation of the People Act (RPA), 1951
- Tenth Schedule (Anti-Defection Law)

For MLAs – Governed by:

- Article 191 of the Constitution
- Representation of the People Act (RPA), 1951
- Tenth Schedule (Anti-Defection Law)

Disqualification Under Article 102 and 191 (Common Provisions)

- Holding an office of profit under the government, unless exempted by Parliament.
- Declared of unsound mind by a competent court.
- Declared undischarged insolvent.
- Not a citizen of India or has acquired foreign citizenship or allegiance.

Disqualification under Representation of the People Act, 1951

- A person is disqualified if convicted and sentenced to imprisonment for two years or more.
- The disqualification continues for the duration of the sentence plus six additional years.
- However, this only applies after conviction, allowing many accused individuals to continue contesting elections during trial.

Disqualification under Tenth Schedule (Anti-Defection Law)

- Applies to both MPs and MLAs.
- Disqualified if:
 - Voluntarily gives up membership of the political party.
 - Votes or abstains in the House contrary to party direction without prior permission.
 - An independent member joins a political party.
 - A nominated member joins a party after six months of taking oath.

Authorities Empowered to Decide Disqualification

For MPs:

- Under Article 103: President of India, after consultation with the Election Commission of India (ECI).

- Under Tenth Schedule: Speaker (Lok Sabha) or Chairman (Rajya Sabha).

For MLAs:

- Under Article 192: Governor, after consulting the Election Commission of India.
- Under Tenth Schedule: Speaker of the Legislative Assembly.

Key Challenges in the Disqualification Process

1. Delay by Presiding Officers

- No constitutional time limit for decisions on defection under the Tenth Schedule.
- This leads to prolonged delays and undermines legislative integrity.

2. Political Bias

- Speaker/Chairman usually belongs to the ruling party or a coalition, raising concerns of partisanship and conflict of interest.

3. Judicial Delays

- Though courts have jurisdiction to review disqualification decisions, appeals and interim reliefs often delay final outcomes.
- Disqualified members may continue in office until litigation ends.

4. Delayed Convictions in Criminal Cases

- Disqualification under RPA 1951 takes effect only after conviction, allowing those facing serious charges to continue in politics for years.

5. Ambiguity on "Office of Profit"

- No clear legal definition; leads to interpretational disputes and litigation.

6. Weak Public Accountability

- Even after disqualification, politicians can contest elections again after short bans.
- This erodes public faith in the electoral process.

Significant Supreme Court Verdicts on Disqualification

1. Union of India vs. Association for Democratic Reforms (2002)

- Voters have the right to know the criminal antecedents of candidates.
- Did not rule for a lifetime ban on convicted politicians.

2. Lily Thomas vs Union of India (2013)

- Struck down Section 8(4) of RPA which allowed convicted legislators to retain seats during appeal.
- After this ruling, disqualification is immediate upon conviction.

3. CEC vs Jan Chaukidar (2013)

- Held that undertrial prisoners are not qualified electors, and hence cannot contest elections.
- Parliament overturned this judgment via amendment, allowing undertrials to contest elections.

4. Public Interest Foundation vs Union of India (2018)

- Supreme Court ordered that candidates facing serious criminal charges must disclose criminal records publicly in affidavits.
- Left the matter of lifetime disqualification to Parliament.

Reforms Suggested and Undertaken

1. Strengthening the Anti-Defection Law

- 52nd Constitutional Amendment (1985) introduced the Tenth Schedule to curb defections.
- 91st Amendment (2003) removed the provision for one-third splits and made party defections more difficult.

2. Institutional Reform of Disqualification Process

- Expert bodies have recommended that President (for MPs) or Governor (for MLAs) decide disqualification only on the advice of ECI, removing discretion from the Speaker/Chairman.

3. Private Member's Bills

- Some MPs have introduced bills proposing:
 - Strict timelines for deciding defection cases.
 - Automatic disqualification in defection cases instead of relying on presiding officer's decision.

4. Demand for Judicial Oversight

- Legal experts and civil society demand that courts or independent tribunals be empowered to decide disqualifications, ensuring impartiality and timeliness.

Conclusion

- India's legal and constitutional provisions for disqualification aim to uphold the integrity and ethics of the legislature.
- Landmark judgments like Lily Thomas (2013) and Public Interest Foundation (2018) have advanced transparency and accountability.
- However, delays, political interference, and criminalisation of politics continue to weaken the effectiveness of these safeguards.
- Urgent reforms are required to ensure a cleaner, transparent, and more accountable democratic process.

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