

Law Commission Report Summary

Electoral Disqualifications

- The Law Commission of India (Chairperson: Justice A.P. Shah) submitted its report on Electoral Disqualifications to the Ministry of Law and Justice, on February 24, 2014. The report follows the Supreme Court directive issued in December 2013, in the Public Interest Litigation filed by the NGO Public Interest Foundation, related to decriminalisation of politics.

- The report examined issues related to: (i) disqualification of candidates with criminal background, and (ii) consequences of filing false affidavits. Key recommendations include:

- **Stage at which disqualification is to be triggered**

The Commission examined the different stages at which disqualification may be triggered, and decided upon the stage of framing of charges.

- (i) **Conviction:** The current practice of disqualification upon conviction has been unable to curb the criminalisation of politics, owing to long delays in trials and rare convictions. The law must evolve to act as an effective deterrent.
- (ii) **Filing of police report:** At the stage of the filing of the police report, there is no application of judicial mind. Thus, this would not be the appropriate stage at which disqualification may be effected.
- (iii) **Framing of charges:** The stage of framing of charges is based on adequate levels of judicial scrutiny. By effecting disqualification at this stage, with adequate safeguards, the spread of criminalisation of politics may be curbed.

- **Safeguards at the stage of framing of charges**

Certain safeguards must be included to prevent misuse of this provision and to address the concern of lack of remedy for the accused. These include:

- (i) Only offences that attract a maximum punishment of five years or above should be included within the ambit of this provision.
- (ii) Charges filed within one year before the date of scrutiny of nominations for an election will not lead to disqualification.

- (iii) The disqualification will operate until acquittal by a trial court, or a period of six years, whichever is earlier.

- (iv) For charges framed against sitting MPs or MLAs, the trial must be expedited. It must be conducted on a day to day basis, and completed within one year.

- (v) If the trial is not concluded within a one year period then the MP/MLA may be disqualified at the expiry of that period. Alternatively, the MP/MLA's right to vote in the House as a member, remuneration and other perquisites attached to his office should be suspended at the end of one year.

- (vi) Disqualification at the stage of framing of charges must apply retroactively as well. Persons with charges pending (punishable by five years or more) at the time of this law coming into effect must be disqualified from contesting future elections. The safeguards for charges filed within one year of the date of scrutiny of nomination papers would apply.

- **False affidavits as grounds for disqualification**

On the issue of filing of a false affidavit, the Representation of the People Act, 1951 must be amended to reflect the following:

- (i) Conviction on the charge of filing of a false affidavit must be grounds for disqualification.
- (ii) Punishment to be enhanced, from a maximum of six months imprisonment, to a minimum of two years imprisonment.
- (iii) Filing of a false affidavit should qualify as a 'corrupt practice' under the Act.

Consequently, trials of cases in relation to false affidavits must also be conducted on a day to day basis. Further, a gap of one week should be introduced between the last date for filing nominations and the date of scrutiny. This would give adequate time to file an objection on nomination papers.

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