

Election Petition

May 3, 2020

What is an election petition?

- **Any elector or candidate** can file an election petition if he or she thinks there has been **malpractice during the election**. An election petition is not an ordinary civil suit, but treated as a contest in which the whole constituency is involved. Election petitions are **tried by the High Court of the state involved**, and if upheld can even lead to the restaging of the election in that constituency. An election petition calling in question an election shall be filed within the time period of 45 days from the date of declaration of results.

Rules of the election petition

- The election of a particular candidate can be declared void under **section 100 of the Representation of People Act, 1951**, if the High Court is of the opinion that
- on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat because of
- corrupt practice (as explained below) was being committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent (corrupt practices are mentioned under Sec 123 of RPA, 1951)
- There was improper acceptance of any nomination.
- There was improper reception, refusal or rejection of any vote or the reception of any vote which is void.
- There was non-compliance with the provisions of the Constitution or RPA or any rules or orders made under this act.
- When the election of a candidate is declared void, any of his acts or proceedings in which that candidate has

participated as a Member of Parliament or State Legislature, **shall not be invalidated** by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

- The current practice is that once the High Court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued.
- The Commission recommends that in matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification on the direct opinion of the EC and avoid the delay currently experienced.