

Removal of Sikkim CM

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Manifest pedagogy: This year's UPSC mains paper 2 is a clear reflection of the extent and specificity to which UPSC can go. In this context the provisions of RPA 1951, the governance aspect of the neutrality of constitutional bodies like the election commission and the rules of disqualification along with their specifics become areas of importance. The aspect of political neutrality of constitutional importance also is important for paper 4 in ethics.

In news: The Delhi High Court has sought a response from the Centre and the Election Commission (EC) on a petition challenging the EC's decision to reduce the disqualification period of Sikkim CM from six years to 13 months.

Placing it in syllabus:

- State legislatures—structure and functioning
- Salient features of the Representation of the People's Act

Dimensions:

- What is the issue about?
- ECI and its decision
- Loopholes in its decision
- Solution

Content:

Barred by law from contesting elections for six years after completing his one-year prison term in a graft case in 2018, Sikkim CM Prem Singh Tamang's disqualification was reduced to just a year and a month by the EC recently.

In August 2018, Tamang came out of jail after being convicted in a corruption case. The case pertained to his tenure as State Animal Husbandry Minister, when he was accused and convicted of misappropriating funds in the procurement of cows.



This attracted the provisions of the Representation of the People Act (ROPA), debarring him from being an electoral candidate for six years from the date he was released.

Though he did not contest the Sikkim Assembly elections held earlier in 2019, the Sikkim Krantikari Morcha (SKM) leader and BJP ally was appointed as Chief Minister. As per ECI order, he will now be eligible to contest polls.

EC and its decision:

- In their order, EC cited **Section 11 of the Representation of the People Act (ROPA), 1951**, which allows the ECI to reduce or remove disqualification **“for reasons to be recorded”**.
- The EC’s order said the **“alleged offence”** for which the SKM leader had been convicted in 2016 **went back to 1996-1997**, when the minimum punishment of two years would lead to disqualification under the RP Act.
- The order noted that Mr. Tamang had been sentenced to one year imprisonment on December 26, 2016 and that the **section of the Prevention of Corruption Act, 1988, under which he was convicted, had been omitted in an amendment in 2018** (he completed the one-year sentence on August 10, 2018).
- The **consequence** of the recent EC order is that the Sikkim governor’s decision to invite **Tamang to form the government and the subsequent administration of oath of office and secrecy is now untenable**.
- Hence **when Tamang was sworn in as chief minister in May,**

2019 his disqualification was very much in force.

Loopholes in EC's decision:

- NGO Association for Democratic Reforms has said that the EC order was “**not conducive to reducing criminalisation of politics**”.
- Morally, it is wrong of parties to give tickets to those convicted of crimes or to appoint someone convicted as already **43% of the people sitting in the Lok Sabha have pending criminal cases.**
- The EC is already battling a perception that its actions are partisan. Its order in favour of Mr. Tamang is bound to further **strain its credibility.**
- The **EC decision goes against a series of legislative and judicial measures** to strengthen the legal framework against corruption in recent years.

Solutions:

The **Law Commission of India (Chairperson: Justice A.P. Shah)** in its report on Electoral Disqualifications in 2014 made the following **recommendations:**

- 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.
- Hence by effecting disqualification at the stage of framing of charges, with adequate safeguards, the spread of criminalisation of politics may be curbed.
- **Safeguards** to be included to prevent misuse of this provision and to address the concern of lack of remedy for the accused include:
 1. Only offences that attract a maximum punishment of five years or above should be included within the ambit of this provision.
 2. Charges filed within one year before the date of scrutiny of nominations for an election will not lead to

disqualification.

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

In 2001, though Jayalalitha faced disqualification as she was convicted in a corruption case involving sale of government land in April 2000, she was sworn-in as CM of TamilNadu by the governor as her party elected her as the leader.

In September **2001, a Constitution bench of the Supreme Court** held the appointment of Jayalalitha as CM of TamilNadu by the governor was unconstitutional and that a **person who was disqualified from holding the position of a legislator could not become CM.**

It dismissed the contention that the Constitutional provision allowing a person to remain chief minister for six months without being elected could be applied in the case of a disqualification.

If this precedent is applied to Tamang, it is clear that he has now lost grounds to remain chief minister as the governor's invitation to him to form the Sikkim government during his disqualification period is unconstitutional.