



Annulment of Election of MLA

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Why in News

The **Gujarat High Court** has set aside the election of a BJP leader in 2017 on grounds of “**corrupt practice**” and “**manipulation of record**”.

Key Points

- The order passed on a petition, filed by the opposing Congress candidate, alleged that the returning officer had illegally rejected 429 votes received via postal ballot.
- The Court held election as void under Section 100(1)(d)(iv) of the **Representation of the People Act, 1951**.
- The observation gains relevance since the number of **rejected votes (429) was more than the victory margin (327)**.
- The judgment also held that the **instructions of the Election Commission was not followed**, giving an unfair advantage to the winning candidate and thus materially affecting the election.

Election to the State Legislature

- The **Constitution of India as well as the Parliament of India** has laid down qualifications and disqualifications for being elected as a member of State Legislative Assembly and State Legislative Council.
- We can study about various provisions on the same in the table given below.

Qualifications

Constitutional Provisions

- Citizenship of India.
- Subscription to an oath or affirmation before the person authorised by the Election Commission.
- Age must be not less than **25 years for the legislative assembly** and **not less than 30 years for the legislative council**.
- Need to possess other qualifications **prescribed by Parliament**.

Parliamentary Provisions (RPA, 1951):

- A person to be elected to the legislative assembly must be an **elector for an assembly constituency** in the concerned state.
- A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he **must be a resident in the concerned state**.
- He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Constitutional Provisions:

- Any **office of profit** under the Union or State government (except that of a minister or any other office exempted by the state legislature).
- **Unsound mind** and stands so declared by a court.
- **Undischarged insolvent.**
- Not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state.
- Disqualified under any law made by Parliament.

Parliamentary Provisions (RPA, 1951):

- Must **not** have been found guilty of certain **election offences or corrupt practices** in the elections.
- Must **not** have been convicted for any offence resulting in **imprisonment for two or more years**. But, the detention of a person under a **preventive detention law is not a disqualification.**
- Must **not fail** to lodge an account of **election expenses** within the time.
- Must **not** have any interest in **government contracts, works or services.**
- Must **not** be a **director** or managing agent nor hold an office of profit in a corporation in which the **government has at least 25% share.**
- Must **not** have been **dismissed from government service** for **corruption** or **disloyalty to the state.**
- Must **not** have been convicted for promoting enmity between different groups or for the **offence of bribery.**
- Must **not** have been punished for preaching and practicing **social crimes** such as untouchability, dowry and sati.

Note: On the question of whether a member has become subject to any of the above disqualifications, the **governor's decision is final**. However, he should obtain the **opinion of the Election Commission and act accordingly**.

Election Petition

- The **Constitution** lays down that no election to the Parliament or the state legislature is to be questioned except by an election petition presented to such authority and in such manner as provided by the appropriate legislature.
- **Since 1966**, the election petitions are triable by **High Courts alone**. Whereas the **appellate jurisdiction** lies with the **Supreme Court alone**.
- **Article 323 B** empowers the appropriate legislature (Parliament or a state legislature) to establish a tribunal for the adjudication of election disputes.
 - It also provides for the exclusion of the jurisdiction of all courts (except the special leave appeal jurisdiction of the Supreme Court) in such disputes.
 - So far, no such tribunal has been established.

- In **Chandra Kumar case (1997)**, the clause of the exclusion of **the jurisdiction of all courts in election disputes** was declared **unconstitutional** by the Supreme Court.
- Consequently, if at any time an election tribunal is established, an appeal from its decision lies to the high court.

Source: IE