

Nomination Process for Election - Need for Reform

Mains: *GS II - Salient features of representation of people act*

Why in News?

Recently there were many instances of the rejection of nomination papers filed by the candidates, which raises the question of inclusivity of the election process.

What are the procedures for nomination?

- **Legal framework** - The Representation of the People Act (RP), 1951, particularly Sections 33 to 36, and the Conduct of Elections Rules, 1961, govern the nomination process.
- **Section 33** - Prescribes who may file nominations.
- **Section 34** - Provides for security deposits
- **Section 36** - Authorises the RO to scrutinise nominations and reject those deemed invalid.
- **Section 36(2)** - The RO's power to conduct a "summary inquiry" and to reject nominations for "defects of a substantial character".
- It is extraordinarily wide, and largely un-reviewable before polling, since Article 329 (b) bars courts from interfering mid-election.
- India's electoral nomination process vests extraordinary discretion in a single official — the Returning Officer (RO).

What are the issues and procedural traps?

- **The problem with verification** - Section 36 of the RP Act mandates that only qualified candidates can contest.
- However, the process of verifying qualification has accumulated complexity over the years.
- **Judicial interventions** - Well-intended judicial interventions have paradoxically worsened the problem.
- Supreme Court directions mandating detailed affidavits on assets, liabilities, and criminal cases were meant to ensure transparency, yet each new disclosure requirement added another opportunity for technical rejection.
 - **For example**, in *Resurgence India versus Election Commission* (2013), the Supreme Court held that false declarations lead to prosecution but don't invalidate nominations, only incomplete ones do.
- This means that a candidate who lies but fills all columns stays on the ballot, and one who makes a good-faith error can be rejected.

- **Instances of incomplete application** – The system now punishes incomplete declarations more harshly than dishonest ones.
 - A missing signature,
 - A mismatched electoral number,
 - A form filed at 3:05 PM instead of 3:00 PM,
 - A blank column in an affidavit,
 - A delayed oath,
 - A missing no-dues certificate
- Any of these can end a candidacy.
- The burden of proof thus lies entirely on the citizen seeking to exercise a legal right, and not on the official denying it and this is constitutionally backwards.
- The right to be voted for is the necessary twin of the right to vote.
- Without candidates to choose from, the ballot is ritual without substance.
- The first principle must be that every qualified citizen has a presumptive right to contest.
- That right can be denied only when the RO establishes, with clear evidence, a substantive constitutional or statutory disqualification.
- Technical paperwork errors cannot be a reason for disqualification.
- Some of the common procedural technicalities on which nominations are rejected include:
- **The oath trap** – Every candidate must take an oath before a specified authority after filing nomination but before scrutiny. If it's too early, it's invalid, and if too late, the nomination is rejected.
- Moreover, if it is not before the specified authority, your form is again bound to be rejected.
- **The treasury trap** – Security deposits must be made in cash or through treasury challans.
- A candidate arriving after 3 PM with the correct amount but wrong payment mode can be disqualified.
- Security deposit submissions can be made more citizen friendly by including payment modes such as UPI, RTGS, or debit card.
- **The notarisation trap** – Every Form 26 affidavit (an affidavit which needs to be filed by the candidate along with nomination papers) must be notarised by a specified authority.
- Not having done so can result in rejection of the nomination.
- **The certificate trap** – Along with nomination papers, the candidate is liable to submit:
 - No-dues certificates from municipal bodies, electricity boards, or other government departments,
 - Clearance certificates from the Election Commission for government servants,
 - Various other bureaucratic attestations,
- Each of them a veto point when it comes to the time of scrutiny.
- Thus, each issuing office becomes a potential chokepoint where deliberate delay can eliminate a candidacy.
- These procedures, once designed as safeguards, have turned into potential opportunities for delay and manipulation.
- Here, bureaucratic compliance is being rewarded over democratic legitimacy.

- The current system is not rule-based, it is ruler-based..
- **Rights violated** – When a nomination is rejected arbitrarily, two rights are violated:
 - The candidate's right to contest
 - The voters' right to choose.
- **Issues with the checklist system** – The RO Handbook instructs ROs to point out defects at the time of filing and record them in a checklist.
 - But this checklist has no legal standing.
 - The Handbook itself clarifies that the checklist *"will not prevent the Returning Officer from pointing out other defects, if any, discovered later during scrutiny."*
 - A nomination can be marked defect-free at filing, yet rejected at scrutiny for defects the RO discovers later.
 - The candidate has no right to rely on the checklist, and the RO faces no legal obligation to honour it.
 - The checklist thus remains as an illusion of transparency without offering any real protection to the candidate.
- **Absence of guidelines** – The law says no nomination should be rejected for defects not of a substantial character.
 - But there are no written guidelines on what is substantial.
 - And the only remedy to protest it is an election petition after the polls, when the damage is irreversible.
 - In a democracy, this absolutism dressed in legal language has the potential to become a tool of political exclusion.
- **Instances of rejections of nomination** – In Bihar this year, a Rashtriya Janata Dal (RJD) candidate's nomination was rejected for leaving some fields blank.
 - Last year in Surat, Opposition candidates were eliminated after proposers denied signatures, delivering a Lok Sabha seat unopposed.
 - In the 2019 elections in Varanasi, decorated BSF jawan Tej Bahadur Yadav was rejected because he could not obtain an Election Commission certificate overnight.
 - In Birbhum, former IPS officer Debasish Dhar was kept off the ballot when his no-dues certificate from the government was delayed.
 - Sikkim's first Lok Sabha election in 1977, every candidate but one failed to take the constitutional oath before scrutiny, resulting in a one-man contest.
- This is where the procedure becomes politics.
- **Lack of transparency** – There is no publicly available consolidated dataset on rejection grounds, patterns, or party-wise breakdowns.
- This opacity shields the weaponisation of procedure.

What are the approaches in other countries?

- **Best practices** – Other democracies show a different approach.
 - In, U.K, the ROs *help candidates* fix errors before deadlines.
 - Canada mandates a *48-hour correction period*.
 - Germany *requires written notice of problems*, time to remedy them, and multiple appeal layers.
 - Australia encourages *early submission* to allow corrections.
- The common idea being that election officials are facilitators, not sentinels.

- Their job is to widen participation, not narrow it.

What should be done?

- **Shift in RO's role** – The RO's role must shift from discretion to duty.
- When a deficiency exists, the RO must issue a detailed written notice specifying the exact error, the legal provision violated, and the correction needed.
- **Extension of correction period** – Candidates must get a guaranteed 48-hour window to fix it after receiving this notice.
- The law must thus classify deficiencies into 3 categories:
- **Technical or paperwork defects** – It includes issues such as missing signatures, blank affidavit columns, clerical errors, no-dues certificates etc.
 - These cannot justify rejection.
- **Matters requiring verification of authenticity** – It has issues such as disputed signatures, challenged documents etc.
 - These require investigations before rejection.
- **Constitutional and statutory bars** – These should lead to immediate and absolute disqualification.
- Moreover, every rejection order must be reasoned.
- The RO must specify which exact requirement was not met, which provision of law was violated, what evidence supports the finding, and why the defect is substantial enough to justify rejection.
- **Digital solution** – The Election Commission of India (EC) can build a nomination system that is digital-by-default, one that doesn't depend on excessive paperwork.
- A digital-by-default framework that can eliminate disqualifications based on blank columns and misspelt names or typos.
- The entire nomination process could move to an integrated online portal linked with the electoral roll.
- The system could automatically validate voter ID, age, and constituency details.
- Oath, affidavit submission, proposer verification, and deposit payment could all be digital.
- **Dedicated dashboard** – Every nomination's progress such as when it was filed, verified, deficiency notified, corrected, accepted or rejected, should be visible on a public dashboard with timestamps and reasons.

What lies ahead?

- The world's largest democracy deserves a nomination process that is modern, fair, and inclusive, where the burden of proof is on the state to justify exclusion, not on citizens to prove their right to participate.
- Fairness must extend to the nomination stage, where the voter's right to choose is determined.
- The EC should work towards a citizen-friendly nomination process that would end the bureaucratic red tape around disqualifications for blank columns, wrong payment modes, misplaced signatures, misspelt names and typos, no dues certificates or a delayed oath.
- It should work towards a simplified process that removes the possibility of using

procedure as politics

Reference

[The Hindu| Need for Reforms in Nomination](#)

