Right to Contest Elections

Why in news?

Recently a Khalistani separatist Amritpal Singh, lodged in a jail in Assam's Dibrugarh, is contesting as an independent candidate in Lok Sabha election.

What is the legal status of right to vote?

- **Article 326-** This article provides that the right to vote shall be based on universal adult suffrage, meaning that all citizens who are 18 years of age or older have the right to vote, regardless of their religion, race, caste, or gender.
- **Represenation of People's Act, 1951**- Section 62(5) of the Act prohibits individuals from voting in elections if they are confined in prison, whether under a sentence of imprisonment or otherwise, or are in lawful police custody.

  An exception is provided for those in preventive detention.

- **Supreme Court verdict on Section 62(5)**- It upheld the constitutionality of Section 62(5), the court reasoned that the restriction is reasonable to keep persons with a criminal background away from the election scene.

Supreme Court verdict on Section 62(5)
• In the case of Anukul Chandra Pradhan, Advocate, Supreme Court v. Union of India (1997), the Supreme Court rejected a challenge to Section 62(5) citing several reasons: • Voting rights are statutory and can be subject to limitations8. • Resource constraints, including infrastructure and police deployment, play a role. • A person in prison due to their conduct cannot claim equal freedom of movement, speech, and expression. • Restricting prisoners' voting rights is reasonable to keep individuals with criminal backgrounds away from the election process

- **Indira Gandhi v Raj Narain, 1975-** The Supreme Court recognised that free and fair elections are a part of the basic structure of the Constitution of India, and any laws or policies that would violate this principle could be struck down.
- **Kuldip Nayar v. Union of India, 2006**- It held that the right to vote (or the right to elect as it was called) is "pure and simple, a statutory right". This means that voting is not a fundamental right and can be repealed.

What is the legal status of right to be elected?

- **Representation of People Act, 1951-** Section 8 deals with disqualification on conviction for certain offenses.

- **Section 8**- If a person is convicted of any of the offenses listed in the provision, they will be disqualified from contesting elections to Parliament or state legislatures.
- **Applicability**- The disqualification begins from the date of conviction and lasts for 6years from the date of their release.
- **Post conviction-** This disqualification applies only after a person has been convicted, not during the period when they are merely charged with criminal offenses.
- **Court stand on Section 8**- There have been challenges to this provision, including petitions seeking disqualification for individuals facing criminal charges or filing false affidavits regarding their criminal history.
- However, the courts have ruled that only the legislature can alter the RP Act.
- **Power of ECI**- Under Section 11 of the Representation of the People Act, 1951 (RP Act), the Election Commission of India (ECI) has the authority to "remove" or "reduce" the period of disqualification.
- **Exception-** In some cases, disqualified MPs or MLAs can still contest elections if their conviction is stayed on appeal to a higher court.

Quick facts

Electoral system in India
• The electoral system in India is governed by *Articles 324 to 329* of *Part XV* of the Indian Constitution. • The Parliament has the power to adopt laws concerning elections to the Parliament and the State Legislature, according to the Constitution. • **Article 324-** It establishes the Election Commission of India as the country's watchdog for free and fair elections. • **Legislative framework**- In this context, the Representation of the People Act (RPA), 1950, and the Representation of the People Act, 1951, were enacted by Parliament. • It governs elections to the Houses of Parliament and the Houses of the State Legislature, as well as the qualifications and disqualifications for membership in those Houses. • It also governs the conduct of such elections and the resolution of doubts and disputes.

Reference

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