Upending Principles of Natural Justice

Why in news?

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The Election Commission's proposal to have the Representation of People Act (RPA) amended to disqualify legislators charge-sheeted for bribing voters is well-intentioned but bad in principle.

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What happened?

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- The EC has drawn its recommendation from a proposal the Law Commission mooted in 2014.
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- It attempts to turn the dictum of any justice system on its head, i.e., that a person is innocent until proven guilty.
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- The Commission had called for **including a new section in the RPA** to expand the ambit of the disqualification provision to include a person against whom "**a charge has been framed by a competent court** for an offence punishable by at least five years imprisonment" for a period of six years.
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- Or "till the date of quashing of charge or acquittal, whichever is earlier".
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- The EC has also sought to make **bribery a cognisable offence** under the CrPC, which would bestow on the police the authority to arrest an accused without a warrant.
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- These are draconian measures, which violate **the principles of natural justice.**
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What is the principles of natural justice?

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- Natural justice implies fairness, reasonableness, equity and equality.
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- Natural justice is the concept of common law and it is the common-law world counterpart of the American ‘procedural due process’.
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- In India, the principles of natural justice are **firmly grounded in Article 14 and 21 of the Constitution**.
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- Principles of natural justice are attracted whenever a person suffers a civil consequence or a prejudice is caused to him in any administrative action.
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- These two are the basic pillars of the Principles of Natural Justice. No system of law can survive without these two basic pillars.\n
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    - Nemo in propria causa judex, esse debet – ‘No one should be made a judge in his own case, or **the rule against bias.**’
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    - Audi alteram partem – ‘Hear the other party, or **the rule of fair hearing,** or the rule that no one should be condemned unheard.’
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What is the problem with the move?

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- The call for such a drastic measure evidently stems from the failure to curb corruption in elections.
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- It is said that the RPA provisions have failed to act as a deterrent against electoral malpractices since trials extend for years and rarely result in convictions.
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- The RPA, indeed, has a provision to disqualify and **bar a legislator if convicted for poll graft**. However, the keyword here is **conviction**.
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- It is true that, democracy needs to be cleansed of electoral malpractices, but that must be done by the patient labour of improving processes and reforming institutions.
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What is the way forward?

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- The way out is to **reform the judicial process** and ensure early and time-bound trial and closure in cases.
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- Surely, there must be effective deterrence to prevent the subversion of due process, but the onus for ensuring that must to be on institutions.
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Source: The Hindu

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