

Public Interest Foundation vs Union of India (2018): Criminalisation of Politics & Article 102

Court: Supreme Court of India (5-Judge Constitution Bench) **Citation:** (2019) 3 SCC 224 **Date:** 25 September, 2018

Bench: Dipak Misra, C.J., R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud and Indu Malhotra, JJ.

Facts of the Case

A writ petition raised the problem of criminalisation of politics — candidates facing serious criminal charges contesting and winning elections, and going on to become lawmakers. A three-judge bench considered the question whether courts could create additional grounds of disqualification for Parliament members beyond Article 102, and referred it under Article 145(3) to a five-judge Constitution Bench as a substantial question of constitutional interpretation.

Issues Before the Court

1. Can courts create grounds of disqualification for Parliament members beyond Article 102 and laws made under it?
2. Can a candidate facing serious criminal charges be barred from contesting under the party's reserved election symbol?

Arguments

The petitioners argued that permitting candidates facing serious criminal charges to become lawmakers undermines democracy and Article 14, and sought Election Commission guidelines preventing such candidates from contesting on a party symbol. The respondents argued that creating new disqualifications is exclusively Parliament's function under the separation of powers, that the Court could at most recommend a legislative change, and that Section 29A(5) of the Representation of the People Act was already a complete and self-sufficient provision.

Decision of the Court

The Constitution Bench held that only Parliament has the power to legislate additional grounds of disqualification; the Court could not create such grounds itself. It also held that barring a candidate from a party's reserved symbol on the basis of pending criminal charges would amount to an indirect disqualification, which the Court equally had no power to impose. Instead, the Court issued binding directions requiring candidates to fully disclose pending criminal cases on their nomination forms in bold letters, to inform their political party, and for the party to publish and publicise this information through its website and widely circulated media at least three times after nomination.

Principle of Law

The judiciary can interpret constitutional and statutory provisions but cannot create new grounds of disqualification for elected office — that power under Article 102 belongs exclusively to Parliament. Courts also cannot achieve indirectly (such as through a party-symbol restriction) what they have no power to do directly.

Important Legal Provisions

Article 102 (disqualification of Members of Parliament); Article 191 (disqualification of members of State legislatures, parallel provision); Article 145(3) (Constitution Bench requirement for substantial constitutional questions); the Tenth Schedule (disqualification on the ground of defection); Section 29A(5), Representation of the People Act, 1951; Article 14 (equality before the law).

Important Observations

The Court observed that a voter's right to make an informed choice is central to a genuine democracy, and that transparency about a candidate's criminal antecedents serves that right even where the judiciary lacks the power to disqualify the candidate outright. It emphasised that respecting the separation of powers, even in the face of a pressing social problem, is essential to the Constitution's design.

Simple Explanation

The Supreme Court could not stop people facing criminal charges from contesting elections, because only Parliament can create that kind of rule. Instead, it made sure voters would always be told about those charges clearly, so they could decide for themselves.

Teaching Notes

Emphasise the two-part structure: (1) the Court declines to legislate (separation of powers), and (2) the Court still acts within its own proper role (procedural/disclosure directions). This is a good contrasting case to *Vishaka vs. State of Rajasthan* (1997), where the Court DID create binding substantive guidelines in the total absence of any law — the difference is that in *Vishaka* there was no legislative occupied field at all, while here Article 102 already occupies the field of MP disqualification.

Key Points for Students

- Decided by a 5-judge Constitution Bench on 25 September 2018.
- Only Parliament can add new grounds of disqualification for MPs — not the courts.
- Barring a candidate from a party symbol was rejected as disqualification "through the back door."
- The Court's remedy: mandatory disclosure of criminal cases on the nomination form, in bold, published and publicised.
- Core principle: courts interpret the law, Parliament legislates.

Case-Law Video

Watch the video explanation: <https://www.youtube.com/watch?v=ArZU8WCT4G4>