

Undue process

The disqualification of 20 MLAs of Delhi from the [Aam Aadmi Party](#) (AAP) by the President of India on Sunday on a binding recommendation of the Election Commission (EC) raises disturbing questions. The AAP, and some former election commissioners, have challenged the manner in which the disqualification has taken place and the alleged disregard of due process in the action. The issues they have flagged call for wider discussion.

The legislators who have been disqualified for holding an “office of profit” were appointed as legislative secretaries by the Delhi government in 2015. In 2016, the Delhi High Court set aside the appointments, and the AAP pleaded before the EC that the matter was now void. On June 23, 2017, however, the EC said because the MLAs held the post at the time of appointment, the case will continue. Since June last year, there has been no hearing of the matter. Many states, such as Rajasthan and Karnataka, allow legislators to be appointed as parliamentary secretaries. There is, however, a precedent to back the EC’s decision: Jaya Bachchan was disqualified from the Rajya Sabha for her holding the post of the chairman of UP Film Development Council and the disqualification was upheld by the Supreme Court in 2006. But in the case of [Sonia Gandhi](#), her chairmanship of the National Advisory Council was exempted by an amendment to the Parliament Prevention of Disqualification Act, 1956. The Delhi Assembly too tried to amend the Delhi Members of Legislative Assembly (Removal of Disqualification) Act in 2015 to expand the exemption to parliamentary secretaries. However, the amendment was not approved by the President — bills passed by the Delhi legislature do not have the force of “law” unless approved by the Lieutenant Governor and the Centre.

Whether or not the EC’s decision is in accordance with the spirit of the law is a matter for the courts to decide. But beyond the immediate debate, there is a larger question at hand over two conflicting constitutional principles that have played out at regular intervals in Delhi’s politics since 2015: The letter of the law and the role of the elected legislature. In most other states, an act by the legislature would have resolved the “office of profit” issue. Article 239AA, which deals with the distribution of powers between the Centre and the Delhi government, remains contentious, though the high court had ruled in the LG’s favour. The disqualified MLAs were elected to office for a full term and the “office of profit” they held ceased to exist in 2016. In this context, the action of EC, an institution admired for its impartial conduct, appears far too disproportionate.

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