

# DANGEROUS PRECEDENT: ON SIKKIM CM'S DISQUALIFICATION

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

The [Election Commission \(EC\)'s order reducing the period of Sikkim Chief Minister Prem Singh Tamang's](#) disqualification from electoral contest is morally wrong and a dangerous precedent that may end up reversing the trend towards decriminalising politics. Under Section 11 of the Representation of the People Act, 1951, the EC indeed has the power to remove or reduce the disqualification attached to a conviction. However, this has been used rarely, and seldom in a case involving a conviction for corruption. Mr. Tamang was convicted under the Prevention of Corruption Act for misappropriating 9.50 lakh in the purchase of milch cows for distribution in 1996-97. His one-year prison term was upheld by the High Court and the Supreme Court. He went to jail and was released on August 10, 2018. He was controversially — and in brazen disregard of the Supreme Court's 2001 ruling in the case of late Tamil Nadu Chief Minister Jayalalithaa — appointed [Chief Minister by the Sikkim Governor](#) earlier this year. Mr. Tamang did not contest, but was elected legislature party leader by the Sikkim Krantikari Morcha (SKM), which won the election. His appointment as Chief Minister was challenged in the Supreme Court. Meanwhile, he approached the EC for removing his disqualification. His main argument was that the law prevailing at the time of his offence entailed disqualification only if the sentence was for a term of two years or more; and that the amendment in 2003, under which any conviction under the anti-corruption law would attract the six-year disqualification norm, should not be applied to him.

Disqualification from contest is a civil disability created by electoral law to keep those convicted by criminal courts from entering elected offices. It is not a second punishment in a criminal sense. Mr. Tamang cannot argue that disqualification for a one-year term amounts to being given a punishment not prevalent at the time of the offence. The EC decision also goes against the grain of a series of legislative and judicial measures to strengthen the legal framework against corruption in recent years. The apex court has described corruption as a serious malady and one impinging on the economy. In 2013, the protection given to sitting legislators from immediate disqualification was removed. Further, common sense would suggest that disqualification should be more strictly applied to those convicted for corruption. Legislators handle public funds, and there is good reason to keep out those guilty of misusing them. Mr. Tamang, even by virtue of the order reducing his disqualification to one-year-and-a-month, was not eligible to be sworn in, as his disqualification continued till September 10. Yet, he is now eligible to contest a byelection and retain his post. The EC is already battling a perception that its actions are partisan. Its order in favour of Mr. Tamang, coming just a day after the BJP struck an alliance with the SKM for bypolls to be held on October 21, is bound to further strain its credibility.

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