



Should only elected legislators be eligible for chief ministership?

The sudden exit of Tirath Singh Rawat as Chief Minister of Uttarakhand, a development the Bharatiya Janata Party sought to explain in terms of a constitutional roadblock to being elected as a legislator within six months, has led to thickening speculation about the fate of West Bengal's Mamata Banerjee, another unelected Chief Minister. The option provided in the Constitution should be used with honesty, not just to tinker with politics.

The confidence of the majority

1. We have a parliamentary democracy, which essentially means that whoever has the confidence of the majority of the members of the Lok Sabha, in the case of the Centre, will be the Prime Minister.
2. It also requires that all Ministers should be a Member of Parliament (MP) or get elected within six months. Rather, it puts it in negative terms. Anybody who is a Minister and is not an MP for six months automatically stands to be disqualified from the administration.
3. It visualises the Chief Minister as being elected by the members of the House of their own free will. And it assumes that the Chief Minister is a member.
4. There are, of course, exceptional circumstances, especially for Ministers. Let me mention the fairly non-controversial case of Dr Manmohan Singh in 1991 when there was a crisis, and Prime Minister P.V. Narasimha Rao wanted him as the Finance Minister.
5. In the case of a Chief Minister, it becomes slightly dicey. There is a party high command, especially in the case of national parties, which decides who will become the Chief Minister.
6. Effectively you have removed the whole concept of the person being the popular choice of the elected people. So, the Chief Minister is an indirectly elected person by the directly elected members.

Two offices:

1. It's clear that the Constitution expects a person not to hold more than one constitutional position at a time. If you look at Article 101, it says that if a person is a member of both Houses of Parliament, he or she loses membership



of one; if a person is an MP and gets elected as an MLA or vice versa, he or she has about 14 days to resign from one.

Fate of Mamata Banerjee:

1. If she doesn't get elected, she can't be the Chief Minister. It is the job of the ECI, and not of anyone else, to ensure that there is no constitutional crisis.
2. Under Section 151 of the Representation of the People Act, it is provided that if only one year is left of a House, a by-election will not be held.
3. Now, in Section 151, a subsection provides that the ECI in consultation with the Central government certify that it is difficult to hold the by-election within the set period.

ECI:

1. There's the legitimacy of a government being formed in a free and fair election, and everybody subscribes to that. If that legitimacy is undermined, we are in deep crisis. The legitimacy rests on public belief and public trust in the ECI holding free and fair elections. The ECI has been a very trusted institution for a fairly long time now.
2. The ECI has a constitution designed for it to be insulated from the government. This is why once appointed, the Chief Election Commissioner cannot be removed except through impeachment.
3. Now, there are two reforms that we have been shouting for. The Commission is appointed by the government of the day without consulting the Opposition.
4. It is a different matter that all the Election Commissioners appointed through this route performed very well. And we hope that it will continue to happen. But hope is not a strategy, a system has to be in place.
5. Nowhere in the world does such a situation exist. In some countries, there is scrutiny by Parliament. In some cases, the candidates are interviewed by Parliament. The systemic change we are pleading for is that appointments should be through a collegium. And promotions should be automatic, on the basis of seniority.
6. Second, the removal procedure of the two Election Commissioners. They are not protected, so they feel they are on probation. They're always looking over



their shoulder to see if the government is happy with them or not. That fear is absolutely dangerous and disastrous.

7. So, that protection has to be provided. Government after government has not paid any heed to this extremely important and critical issue. And even the Supreme Court has not claimed the issue, despite its grave importance.

Today, the CBI [Central Bureau of Investigation] Director is appointed by a committee that includes the Chief Justice of India, the Prime Minister and the Leader of the Opposition. The ECI is far more fundamental and important an institution than the head of the CBI. This would also provide greater authority to the Commission because appointments would be made after an agreement across political lines. The Central Information Commission is not a constitutional body, it is a statutory body, but appointments are through a collegium. The CBI is not even a constitutional or statutory body.