

Conviction and disqualification for parliamentary election

The meaning of the expression “moral turpitude” has not been set out in our Constitution
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PART-I

The Constitution of the People’s Republic of Bangladesh provides that a person would be disqualified for election or to remain as a member of parliament if he is convicted of criminal offence involving moral turpitude. It is a moot point whether, if convicted, a Member of Parliament or a non-member would be disqualified immediately by the verdict of the trial court or for the conviction to have any effect upon disqualification; it would have to be final through exhausting the appeal process. Simultaneously, it needs to be ascertained, whether the suspension or stay of conviction and sentence or preferring an appeal, if any, against such conviction and sentence would have the effect of removing the disqualification from date of conviction by the trial court to date of the finality of conviction by the last appellate court. This issue requires critical analysis of the constitutional provisions and other laws of Bangladesh.

Article 66(2) of the Constitution and article 12 (1) of the Representation of the People Order 1972 set out various grounds for disqualification for election to the Parliament as well as in respect of the sitting members. Article 66 (2)(d) provides that “ A person shall be disqualified for election as, or for being a member of parliament who has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release”. Article 67(1) (d) also requires a Member of Parliament to vacate his seat if he incurs disqualification under clause 2 of article 66. It appears from the above that article 66(2) contains provisions for disqualification of a member and non-member whereas article 67 (1) (d) deals with disqualification of a Member of Parliament only. It further appears from article 66(2) (d) that mere criminal conviction is not enough to warrant disqualification rather a conviction of criminal offence involving moral turpitude plus at least two-year sentence of imprisonment for that offence is required.

The meaning of the expression “moral turpitude” has not been set out in our Constitution. Black Law Dictionary defines “moral turpitude” as a conduct that is contrary to justice, honesty, or morality especially an act that demonstrates depravity. Mahmudul Islam in his Constitutional Law of Bangladesh has stated that “All criminal conviction do not attract the disqualification. It must be a conviction for offence involving moral turpitude. In the widest sense, all convictions involve moral turpitude. But the expression “moral turpitude” has been used in a narrow sense otherwise the use of this expression would be meaningless. At the same time the expression should not narrowly be construed to mean sexual offences only. In order to construe moral turpitude, there must be an element of baseness and depravity”. In the case of *Risal Sing v Chandgi Ram*, AIR 1966 Punj 393, it was held that the test for determining moral turpitude would be whether the act leading to conviction was such as could shock the moral conscience of the society in general. So whether a conviction of an offence amounts to moral turpitude depends on the nature of the offence committed and social and political standing of the concerned person. This is a question of fact and would be decided by the Election Commission or by the concerned court.

The question of whether the conviction as stated in Article 66(2) (d) has effect upon disqualification from the date when conviction is given by the trial court or it has effect from the date when confirmation of such conviction is made in the last appellate court, has not explicitly been answered in the Constitution. Article 66(2) (d) of the Constitution only mentions “on conviction of criminal offence involving moral turpitude.” It does not state “on conviction by the last appellate court” or “on conviction by the trial court”. Thus, arguably the expression “conviction” may well have the meaning of conviction by the trial court or conviction that has become final and conclusive through exhausting the appeal process.

The law in Indian Jurisdiction in this respect is quite clear. The similar article in the Indian Constitution to that of article 66 is article 102 where in clause (e) it is stated that a person

shall be disqualified for being chosen as and for being member of either House of Parliament if he is so disqualified by or under any law made by Parliament. The only law made by the parliament is relevant in this respect is the Representation of the People Act 1951 (R. P. Act).

Section 8(2) of the R.P Act provides that a person convicted by a court in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release. Section 8(3) of R. P. Act further provides that, notwithstanding anything in sub-section (1) and sub-section (2), disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of parliament or the Legislature of a State, take effect until three months have elapsed from that date or if within that period an appeal or application for revision is brought in respect of the conviction or the sentence until that appeal or application is disposed of by the Court. The aforesaid provisions coupled with interpretation made by the higher judiciary of India in various cases have established that disqualification in respect of a non- member starts to operate when the conviction is given by the trial court but in case of a Member of parliament, it starts once conviction gets finality through the exhaustion of the appeal or review process. However, the law of India is not binding on us. It may well have persuasive value in interpreting the laws of our country.

On the other hand, our Constitution neither makes the distinction between a member and a non-member nor does it provide from when the conviction would be deemed to be final. However, for the first time in Bangladesh, the issue was given elaborate consideration in the case of Hussain Muhammad Ershad vs. Abdul Muktedir Chowdhury and another, (2001) 53 DLR 569. In the aforesaid case, the petitioner Hussain Mohammad Ershad challenged the Notification No. 1(9)2000 Law 2 dated 30th August 2000 issued by the Additional Secretary, Bangladesh Parliament Secretariat, Law Division 2, declaring him as a Member of Parliament vacant. A Rule Nisi was issued on 6th September 2000 calling upon the respondents to show cause as to why the impugned Notification dated 30th August 2000 should not be declared to have been made without any lawful authority and is of no legal effect.

During the substantive hearing of the Rule two issues fell for consideration namely (1) whether the notification that was given was unlawful and without lawful authority and (2) whether the conviction starts to operate from the date of the conviction by the trial court or from the date of finality of conviction by the last appeal court. The Division Bench of High Court Division consisting of . Justice Md. Joynul Abedin and . Justice ABM Khairul Haque after conducting the substantive hearing of the Rule gave dissenting judgment in the aforesaid case. Their Lordships agreed on the first issue but could not concur on the second issue. Md. Joynul Abedin J. held that the disqualification would operate when the conviction and sentence becomes final through exhaustion of appeal process. On the other hand, ABM

Khairul Haque J. held that the expression “conviction” in article 66(2)(d) means conviction that is given by the trial court not conviction confirmed by the last appellate court.

Subsequently, the higher judiciary could settle down the issue in the case of Dr. Muhiuddin Khan Alamgir vs. Bangladesh and Others, (2010) 62 DLR (AD) 425, but unfortunately their Lordships rejected the petition on the ground of maintainability only. In this case, the petitioner, Muhiuddin Khan Alamgir challenged the rejection of his nomination paper for 9th Parliamentary election that was due to be held on 29th December 2008. Primarily, the Returning Officer rejected the nomination paper on the basis of the conviction and sentence of 13 years altogether that was passed in a case filed by the Anti-Corruption Commission. But Mohiuddin Khan Alamgir appealed to the Election Commission against the order of rejection by the Returning Officer and the Election Commission upheld the said rejection order on the ground that the conviction and sentence remained operative since the date of conviction by the trial court with the petitioner not preferring to have a stay or suspension of his conviction and sentence. On the other hand, Mohiuddin Khan Alamgir challenged such decision of the Election Commission on the ground that he had appealed against the order of conviction and sentence and therefore conviction and sentence could not be operative unless such appeal process came to an end.

The Division Bench of the High Court Division comprising . Justice Md. Iman Ali and . Justice Md. Ashfaul Islam held that the writ petition was not maintainable. On the issue of when conviction becomes final, their Lordships referring to the case of Hussain Mohammad Ershad vs. Abdul Muktedir Chowdhury above held “He agrees that the views of Md. Joynul Abedin J. and those of ABM Khairul Haque, J. in the case of Hussain Mohammad are in direct contrast and neither view has been overturned by the Appellate Division. Thus we are left without a final authoritative decision with regard to the finality of conviction whether it is the conviction awarded by the trial court or the conviction finally upheld by the Appellate Court.”Clearly the decision to reject nomination paper of Mohiuddin Khan Alamgir by the Election Commission, thus, remained undisturbed by the order of the High Court Division.

But the Chamber judge of the Appellate Division stayed the order of the High Court Division and directed the Returning Officer to accept the nomination paper of Mohiuddin Khan Alamgir. Consequently, he was able to contest the election based on the basis of stay of the Chamber Judge. In the meantime, however, the Appellate Division upheld the decision of the High Court Division and held that the order of stay by the Chamber Judge and the subsequent steps in the election process before getting the order of rejection of nomination paper was of no consequence.

(To be concluded tomorrow)

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