

THE MLA DISQUALIFICATION CASE: STEP TOWARDS CURBING CRIMINALIZATION OF POLITICS

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INTRODUCTION

India is called the largest democracy in the world, where people have the power to choose their representatives who, in turn, have the responsibility of working toward the citizen's interests. In this way, citizens are 'indirectly' involved in Indian politics. But are all elected personnel compatible or worthy to hold such a vital position in Indian politics? Some will say yes, but the statistics say otherwise: Nearly 50% of M.P.s in the new Lok Sabha have criminal records. The increasing number of members with criminal records in parliament threatens the survival of any true democracy.¹

Politics and criminality are inextricably intertwined in India, and the country suffers from the disease of Criminalisation of Politics. When criminals engage in government politics—when they run for office and are elected to the legislatures of states and the federal government—this is known as the criminalization of politics. For this reason, the Indian Parliament, the Election Commission, and the Supreme Court of India have established several limitations and guidelines to make it impossible for criminals to remain in politics and serve the people's interests. One such provision is Section 8 of the Representation of People Act, 1951,² which provides for the disqualification of MLAs and MPs. Recently, the disqualification of Rahul Gandhi, a Member of Parliament, on March 2023 in the case of defamation has ignited a spark, and there is a plethora of debate going on regarding the validity of striking down section 8(4) in the Lily Thomas v Union of India. Through the lens of this case, we will try to shed light on the validity of striking down this section and the terms for disqualification of MLA's and MP's.

FACTS

A two-judge bench made up of Justices A.K. Patnaik and S.J. Mukhopadhyay issued their decision in this matter, which deals with the disqualification of Members of Parliament or the

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¹ Abhishek Kumar, 'Criminalization of Politics' The Times Of India (2 October , 2021)
<<https://timesofindia.indiatimes.com/readersblog/rationalthoughts/criminalization-of-politics-2-37946/>>

accessed 12 January 2024

² Representation of People Act 1951, s 8 (4)

Legislature as the case may be, in 2013. Two writ petitions under Article 32 concerning ³the issue of whether MLAs or MPs should be disqualified when they are convicted in a criminal case were submitted to the Supreme Court, one by Advocate Lily Thomas and the other by Lok Prahari, through its General Secretary S.N. Shukla. Legislation governing the disqualification of elected legislators is now governed by the Representation of the People Act, of 1951. The RP Act's Sections 8(1)⁴, 8(2), ⁵and 8(3) ⁶provide that a legislator who is found guilty of one of the offenses listed in these sections will be disqualified from holding office. Section 8 of the Act's subsection (4), however, states that regardless of subsections (1), (2), or (3), a disqualification under either subsection will not apply to a person who was an MP or MLA on the date of the conviction until three months have passed since that date or, if within that time, an appeal or application for revision is made about the conviction or the sentence.

It is this subsection i.e., 8(4) that stands challenged by way of the instant writ petitions. Therefore, the Court had to determine whether Section 8(4) is ultra vires to constitutional provisions.

LEGAL ISSUES

1. Whether the power exercised by parliament for enacting section 8(4) of the Representation of People's Act is competent or consistent with the provision given in the constitution.
2. Whether Section 8(4) of the ROP Act applied to sitting members and elected to be, was treating them equally.
3. Will the convicted person have any remedy if the appellate Court grants acquittal?

ARGUMENTS ADVANCED

By Petitioner: Fali Nariman, who argued the case for the petitioner, argued that in light of articles 102(1) (e) and 191(1) (e), the Parliament is not constitutionally competent to enact section 8(4). Even though these two articles give power to the parliament to pass any new law regarding the disqualification of members of parliament and members of the legislative assembly a bare reading of these articles signifies that the sitting member and the member chosen should be treated equally and suggest that the parliament should make similar laws

³ Constitution of India, art 32

⁴ Representation of People Act 1951, s 8 (1)

⁵ Representation of People Act 1951, s 8 (2)

⁶ Representation of People Act 1951, s 8 (3)

regarding the disqualification of both. Contrary to that section 8(4) of the Representation of People Act, 1951 is passed for only sitting members and that is inconsistent with the reading of these two Articles.

According to Subsections (1), (2), and (3) of Section 8 of the Representation of People Act, 1951, a person convicted of an offense listed in any of these Subsections shall be disqualified as of the date of conviction and as long as the Subsection specifies. On the other hand, subsection (4) of Section 8 of the Act states that, regardless of what is stated in Subsections (1), (2), or (3) of Section 8 of the Act, a person who was a member of Parliament on the day of the conviction who is disqualified under either subsection will not be rendered ineligible for office for three months. The court will not pronounce on the conviction or sentence if an appeal or application for revision is filed within that time frame; the decision will be made after the appeal or application has been handled. The petitioners requested the declaration of Section 8(4) extra vires, arguing that the Parliament lacks the legislative competence to approve such a provision.

On behalf of the Respondent:

ASG Sidharth Luthra, appearing for the government, argued two things:

If the Parliament has the constitutional authority to declare under articles 102(1)(e) ⁷and 191(1)(e) ⁸the circumstances under which an MP or MLA shall be disqualified from membership, then that authority must also include the authority to pass legislation that may temporarily delay the effect of such disqualification.

Second, he contended that Article 246(1) ⁹read with Entry 97 of List I of the Seventh Schedule of the Constitution and Article 248 ¹⁰of the Constitution, which confer powers on Parliament to legislate on any matter not enumerated in List II and List III of the Seventh Schedule of the Constitution are the source of power of legislation and not article 102 and 191

He argued that the Constitution Bench of this Court had upheld the validity of Sub-section (4) of Section 8 of the Act in *K. Prabhakaran v. P. Jayarajan*, wherein it was declared that the intent

⁷ Constitution of India,art102(e)

⁸ Constitution of India,art191(e)

⁹ Constitution Of India, art 246(1)

¹⁰ Constitution of India , art 248

behind creating a saving in Sub-section (4) of Section 8 of the Act is to safeguard the House rather than to provide a benefit to sitting members of Parliament or State Legislatures.

OBSERVATIONS BY COURT

The Supreme Court, after considering both side's arguments, made certain observations. Denying the rationality of the respondent's argument that the validity of Sub-section (4) of Section 8 of the Act has been upheld by the Constitution Bench of this Court in *K. Prabhakaran v. P. Jayarajan*,¹¹ the Hon'ble Supreme Court said that in the said case issue of legislative power to enact sub-section (4) of section 8 was not taken into account by Supreme Court. Also, it was clarified in the case that the legislative power to enact laws for the disqualification of a Member of Parliament or Legislative Assembly or Legislative Council could be located only in Articles 102(1)(e) and 191(1)(e) of the Constitution.

Hence, the contention of the respondent that the power to enact Section 8 comes from Article 246(1), read with Schedule 7 List 1 Entry 97 and Article 248 of the Constitution, was not accepted by the court stating that Art 246 and Art 248 provide power only in residuary matters. Citing the case of *Election Commission v Saka Venkata Rao*¹² court said that Under Articles 101(3)(a)¹³ and 190(3)(a)¹⁴ of the Constitution, if a member of either House of Parliament or House of the State Legislature becomes subject to any of the disqualifications mentioned under Articles 102(1) and 191(1) of the Constitution, his seat automatically falls vacant. So, parliament does not have the power to make a provision that deters the date on which qualification occurs.

In response to the third issue, the Supreme Court cited the *Golak Nath v. State of Punjab* case to hold that this court has the authority to both declare the law and to limit its future operation while preserving any statutory or non-statutory transactions that were carried out in accordance with an earlier law. According to sub-section (4) of Section 8, sitting members of Parliament and state legislatures who have already been found guilty of any of the offenses listed in subsections (1), (2), and (3) of the Act and who have filed pending appeals or revisions are exempt from disqualification.

¹¹ *K. Prabhakaran v. P. Jayarajan* (2005) 1 SCC 754

¹² *Election Commission v Saka Venkata Rao* AIR 1953 SC 210

¹³ Constitution of India , art 101 (3)(a)

¹⁴ Constitution of India , art 190(3)(a)

DECISION

The court held that the membership of Parliament or the State Legislature, as the case may be, will not be saved by Sub-Section 4 and the same will terminate immediately after conviction for any of the offenses listed in sub-sections (1), (2), and (3) of Section 8 of the Representation of the People Act 1951 because sub-section(4) of section(8) is ultra vires the Constitution and the Parliament has exceeded its powers granted by the Constitution in enacting it. It also held that the grounds for disqualifying a candidate and a member are the same. Therefore, by introducing Section 8(4), which discriminates between those elected and those chosen to be elected members of parliament, Parliament has overreached its authority.

ANALYSIS

Cleansing politics from criminal influence is imperative for the health of our democracy. The inclusion of Criminals in Politics has been on the rise since 2004. In a petition filed in Feb 2023, it was claimed that there has been an increase of **44% in the number of MPs with declared criminal cases since 2009.**¹⁵ **Lily Thomas v Union of India** finally made people believe prisoners should not be allowed to run for office¹⁶.

Some other cases in which SC dealt with this issue:

Public Interest Foundation v. Union of India¹⁷: The five-judge court unanimously decided that if criminal charges had already been brought against a candidate, they could not be disqualified from seeking office. The Court observed that there was respect for the division of authorities. It asked that laws forbidding candidates suspected of serious offenses from seeking public office be passed by the Parliament. It found that an informed decision is essential to a robust and unadulterated democracy.

¹⁵ ‘Criminalization of Politics’(Drishtiiias, 6 May 2023)< <https://www.drishtiiias.com/daily-updates/daily-news-analysis/criminalisation-of-politics-5>> accessed 13 January 2024

¹⁶ Apeksha Rajput , ‘CRIMINALIZATION OF POLITICS IN INDIA: POWERS OF SUPREME COURT AND LANDMARK CASES’ Indian Journal of Law and Legal Research

¹⁷ Public Interest Foundation & Ors. v. Union of India and Anr. (2019) 3 SCC 224

Rambabu Singh Thakur v. Sunil Arora & Ors,¹⁸ the Supreme Court issued several directives in exercising its constitutional jurisdiction under Articles 129¹⁹ and 142 of the Indian Constitution²⁰. Some guidelines were:

- Political parties will be required to post detailed documentation about a participant with ongoing criminal cases on their own websites.
- Instead of just "winnability" at the polling data, the considerations for selection should be based on the representative's qualifications, accolades, and merit.

This decision represents an important step toward curtailing the country's alarming rise in political criminality.

However, are these guidelines providing any considerable result? According to ADR, 28 percent of MLAs analyzed have declared serious criminal cases against themselves, including charges related to murder, attempt to murder, kidnapping, and crimes against women, among others.²¹ Criminalization is increasing, and no proper law is there that can deter it completely. Politicians are only prohibited from running for office under the current legislation for a period of six years after being found guilty of a crime. Furthermore, nothing prevents politicians with criminal records from leading political parties. So, although guidelines help to provide a uniform rule, there is no binding authority attached to them, which is why there is a need for strict legislation before the cancer of criminalization spreads throughout our political system.

CONCLUSION

India's criminalization of politics has become a serious threat to the country's democratic foundation. This disturbing trend is the influx of people with criminal histories into the political sphere, where they can exert influence and frequently undermine moral leadership. The implications are severe since they erode public confidence in the political system and threaten democratic ideals. Crime and politics are inextricably linked, endangering not only the legitimacy of elected officials but also the efficient operation of the state. With worries about

¹⁸Rambabu Singh Thakur v. Sunil Arora & Ors. 2020 SCC Online SC 17

¹⁹ Constitution of India , art 129

²⁰ Constitution of India , art 142

²¹ '44 per cent MLAs across India have criminal cases: ADR analysis quoting poll affidavits' *Economic Times* (15 July 2023) < <https://economictimes.indiatimes.com/news/politics-and-nation/44-per-cent-mlas-across-india-have-criminal-cases-adr-analysis-quoting-poll-affidavits/articleshow/101782544.cms> > accessed 13 January 2024

possible power abuse, corruption, and subversion of justice, the existence of politicians with criminal records calls into question the priorities of the democratic system. Regretfully, those who create laws are the ones who have learned the most about breaking them. This case is a milestone in increasing awareness of ensuring the integrity and credibility of the political process by disqualifying elected representatives upon their conviction.

