



Disqualifying a convicted legislator from Assembly

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In News: Two Uttar Pradesh legislators were convicted on criminal charges in recent days, but only one of them has been disqualified and his seat declared vacant by the State's Legislative Assembly secretariat. Azam Khan, the Samajwadi Party MLA for Rampur, was sentenced to a three-year jail term, for making an inflammatory speech in 2019.

What cause disqualification?

Section 8 of the Representation of the People Act (RPA), 1951, contains provisions aimed at decriminalising electoral politics.

There are two categories of criminal cases that attract disqualification upon conviction.

In the first category are offences that entail disqualification for a period of six years upon any conviction. If the punishment is a fine, the six-year period will run from the date of conviction, but if there is a prison sentence, the disqualification will begin on the date of conviction, and will continue up to the completion of six years after the date of release from jail. Major IPC offences are included under this head: making speeches that cause enmity between groups (Sec.153A) and doing so in a place of worship (Sec.505), bribery and personation during elections and other electoral offences, offences relating to rape and cruelty to women by husband and latter's relatives. Besides, serious provisions of special laws such as the Protection of Civil Rights Act, Customs Act, Unlawful Activities (Prevention) Act etc are among the category of offences that entail disqualification regardless of the quantum of punishment. Laws for prevention of Sati, corruption, terrorism and insult to national flag and national anthem etc are also part of this group.

All other criminal provisions form a separate category under which mere conviction will not entail disqualification. A sentence of at least two years in prison is needed to incur such disqualification.

Legal protection for legislators against disqualification?

- Under Section 8(4) of the RPA, legislators could avoid immediate disqualification until 2013.
- Section 8(4) allowed convicted MPs, MLAs, and MLCs to continue in their posts, provided they appealed against their conviction/sentence in higher courts within 3 months of the date of judgment by the trial court.
- In other words, the mere filing of an appeal against conviction will operate as a stay against disqualification.
- But in *Lily Thomas vs. Union of India*, the Supreme Court in July 2013 struck down section 8(4) of the RPA, 1951 and declared it ultra vires, and held that the disqualification takes place from the date of conviction.

Removing Disqualification?

Supreme Court has the power to stay not only the sentence but also the conviction of a person. In some rare cases, conviction has been stayed to enable the appellant to contest an election. But the Supreme Court has made it clear that such a stay should be very rare and for special reasons.

The RPA itself provides a remedy through the Election Commission. Under Sec. 11 of the Act, the EC may record reasons and either remove or reduce the period of, a person's disqualification. The EC exercised this power for

Sikkim Chief Minister P.S. Tamang, who served a one-year sentence for corruption, and reduced his disqualification to contest a by-election and remain in office.

Important Supreme Court Cases related to the Act

- **2002– Union of India (UOI) v. Association for Democratic Reforms and Anr:** The SC held that every candidate, contesting an election to the Parliament, State Legislatures, or Municipal Corporation, has to declare their criminal records, financial records, and educational qualifications along with their nomination paper.
- **2005- Ramesh Dalal vs. Union of India:** The SC held that a sitting MP or MLA shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law.
- **2013- In Lily Thomas v. Union of India:** The SC held that Section 8(4) of The Representation of the People Act, 1951 is unconstitutional which allows MPs and MLAs who are convicted to continue in office till an appeal against such conviction is disposed of. The court held that MP/MLA convicted for two years or above would be disqualified immediately.
- **2015: Krishnamurthy v. Sivakumar & Ors:** The SC held that disclosure of criminal antecedents (especially heinous crimes) of a candidate at the time of filing of nomination paper as mandated by law was a categorically imperative.