

## **Legal and Political Implications of Disqualifying Lawmakers in India**

In India, there has been a concerning trend in recent years of employing defamation and sedition charges to suppress opposition leaders, including prominent figures such as Rahul Gandhi. This insidious tactic undermines the core tenets of democracy, stifling open dialogue and impeding the free exchange of ideas. Despite having the right to express their opinions and criticize government policies, opposition figures have been unjustly targeted with charges of defamation and sedition, posing a grave threat to the very foundations of democracy, exemplified by the recent defamation case brought against Rahul Gandhi. This case can be seen through the lens of the Indian Constitution, historical precedents, political realities, and the dynamic nature of Indian democracy.

The disqualification of Rahul Gandhi as a lawmaker following his conviction in a criminal defamation case filed by a MLA of the BJP in Gujarat is a critical moment in India's shifting political landscape. The case was filed against a speech delivered by Mr. Gandhi during the 2019 general election campaign in Karnataka.

### **The Curious Case of Article 102(1)(e) of the Constitution and Section 8 of the RP Act**

Article 102 of the Indian Constitution outlines the grounds for disqualifying a member of parliament, including disqualification under any legislatively sanctioned act. In this instance, Section 8 of the RP Act is a deterrent against crime in politics. It ensures that only individuals with 'clean' records may represent the people in the House of Representatives. This rule intends to prohibit the criminalisation of politics and the nomination of "tainted" politicians and to uphold public confidence in the democratic process.

Additionally, this act disqualifies a person convicted of any offence and sentenced to imprisonment for not less than two years. The disqualification is effective from the date of conviction, and he/she shall be disqualified for six years post his/her release.

Earlier, Section 8(4) of the Representation of the People Act allowed three months' time before the disqualification came into effect. The lawmaker could approach the higher court with an appeal. This was a safeguard to protect the interest of lawmakers from disqualification. But the Supreme Court knocked down this rule, in 2013 as unconstitutional in the landmark case of Lily Thomas Vs Union Of India.

Lily Thomas, a Kerala-based lawyer, filed a PIL before the Supreme Court, which challenged Section 8(4) of the Representation of the People Act as ultra virus, saying it protected convicted legislates from disqualification. The apex court held that if a sitting member of parliament or state legislature is convicted of any offence under subsection 1,2,3 of section 8 of RPA, 1951. By virtue of such conviction, they stand disqualified. So now, the parliamentarians would no longer be protected under Section 8 (4). The Supreme Court concluded that Section 8(4) was unconstitutional because permitting guilty politicians to continue in office ran against democratic, moral, and legal principles. The court emphasised that the legislature is a crucial institution in a democracy and that criminals have no place.

The court ruled that although the privilege to vote was not a fundamental right, it was a statutory right subjected to legitimate legislative limitations. Consequently, the court determined that barring convicted legislators was a reasonable restriction for the greater interest. By barring anyone with a

criminal history from holding public office, the Lily Thomas conviction contributed significantly to the cleansing of democratic system. The judgement ensures that guilty legislators cannot hold office regardless of their appeal status. This has helped to the preservation of the democratic system's integrity and maintenance of the public's trust in democracy. The Lily Thomas verdict serves as a reminder that the public interest must take primacy, and democratic ideals must be safeguarded at all costs.

In 2018, the Supreme Court delivered a verdict in Lokprahari v. Union of India, which dealt with the disqualification of convicted elected officials. The court held that the disqualification could be revoked only if a higher court stayed the conviction or ruled in favour of the convicted lawmaker's appeal. The stay cannot merely be a suspension of sentence under section 389 of Code of Criminal Procedure , but a stay of conviction. This ruling is significant because it prevents convicted politicians from holding public office until their conviction is overturned or their appeal is granted. This helps to maintain the integrity of the democratic system and ensures that public officials do not have a criminal record.

It also prohibits convicted lawmakers from continuing in office until their conviction is reversed or their appeal is successful, which helps to safeguard the integrity of the political system and restore public confidence in democracy.

In a similar case, Mr. Faisal an MP from Lakshwadeep was convicted of murder attempt and sentenced to imprisonment for 10 years, by the Kavaratti District Court. Within two days of his conviction, Lok Sabha declared his disqualification. However, five days later, the Election Commission notified a byelection to replace the vacant seat.

Mr. Faisal appealed against his conviction, and he High Court of Kerala stayed his conviction. If we follow the Supreme Court verdict in Lokprahari v. Union of India, he is to be reinstated, but till now this has not been implemented by the Lok Sabha. This is conforming with the Supreme Court's ruling in Lily Thomas v. Union of India, which stated that convicted MPs could not hold office, and their appeal is ongoing unless a stay of conviction is granted.

In another example, Navjot Singh Sidhu was convicted and sentenced to three-year imprisonment as an MP in 2007. He resigned from his post as an MP though he wanted to contest an election and approached the Supreme Court. The Supreme Court stayed his conviction which removed the disqualification until the appeal was settled. This decision allowed him to contest the election.

The confusion between the Lily Thomas v. Union of India case, which says if a member is disqualified under article 102, his/her seat shall become vacant. The disqualification was automatic and had an immediate effect. Whereas, Lokprahari v. Union of India case, the stay of conviction removes disqualification. The Lok Sabha Secretariat, which disqualified Rahul Gandhi within a day of a court verdict, must explain why Lakshadweep MP Faisal is not reinstated in accordance with the Lokprahari v. Union of India judgement, even though the Kerala High Court has stayed his conviction. This precisely illustrates the political nature of the acts taken by the Lak Sabha secretariat.

To prevent future confrontations, it is imperative for the Supreme Court to establish a clear time-frame for reinstating a disqualified member if their conviction is stayed by the apex court. This would provide legal clarity and ensure consistency in upholding the rule of law and democratic values.

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