

FAQ on the Supreme Court Judgement declaring immediate disqualification of convicted MPs/MLAs

(Petitioners: Ms Lily Thomas & Mr Shukla (General Secretary: Lok Prahari)

The Supreme Court judgement on the 10th July, 2013 on Writ Petitions filed by Ms Lily Thomas and Mr Shukla of Lok Prahari has stated that if a sitting MP/MLA is convicted (not only charged) then he/ she would be disqualified immediately and the seat would be declared as vacant. Below are a few frequently asked questions about the judgement and its effect.

1. What is the crux of the judgement?

The judgement says that if a sitting MP/ MLA is convicted (not only charged), he/ she would be immediately disqualified and the seat declared vacant

2. Will all convictions lead to immediate disqualification?

No, it depends on the charges listed under Sections 8(1), 8(2), 8(3) of the Representation of the People Act, (RPA)

3. What is the basis behind the judgement?

The judgement says that if certain criteria stop a person from contesting in elections, then the same criteria also hold for sitting MPs/ MLAs hence they cannot continue being a member of the Parliament or State Legislature.

The judgement also says that the Parliament does not have powers to make different laws for the disqualification of a person based on whether he is a contesting candidate or if he is an MP/ MLA, as it is against the provisions of the Constitution.

4. What does the Constitution say to support the basis behind the judgement?

Articles 102(1)(e) and 191(1)(e) of the Constitution say that the Parliament is to make one law for a person to be disqualified for contesting and for being a member of either House of the Parliament or Legislative Assembly or Legislative Council of the State.

5. If convicted, how long would it take to be disqualified?

The judgement says that If a sitting MP/ MLA is convicted, he/ she would be immediately disqualified

6. Would a member be disqualified even if he is convicted and sentenced to imprisonment for less than 2 years?

Sub-sections (1) of Section 8 of RPA states that a person will be disqualified for a period of 6 years from contesting or for being an MP/ MLA if he/ she is convicted of an offence mentioned in the sub-section which includes charges of rape. Sub-section (2) of Section 8 of the RPA states the person will be disqualified for a period of 6 years since release for charges with imprisonment upto 6 months. Sub-section (3) of Section 8 of the RPA states that if a person is convicted and sentenced for more than 2 years then he/ she would be disqualified from the date of conviction for six years from release.

7. Who all will be covered under this judgement from now?

Any MP/ MLA, including sitting members, will be disqualified as soon as they get convicted in any case from the date of judgement (10th July, 2013)

8. If the conviction of a sitting member is upheld by a Court, will he be disqualified or will he retain the seat until his further appeals to a higher Court is disposed?

The present Supreme Court judgement has ruled that henceforth if MPs and MLAs get convicted in a court of law then such a conviction will lead to instant disqualification of the legislators. But earlier convictions don't come under the purview of this judgement. Also, if convicted MPs/MLAs appeal in higher courts and get convicted again, they would be disqualified under this Supreme Court ruling.

9. Would this judgement act as a deterrent to those political parties which continue to give tickets to candidates with a tainted past?

The present Supreme Court judgement only talks about the convictions in a court of law as the criteria for instant disqualification of the sitting MPs or MLAs. Earlier there was no deterrence for Political Parties for not giving tickets to these candidates with pending criminal cases because even if any such candidate got convicted, they would appeal against the conviction and continue to be an MP or MLA. Now since the convicted representative will immediately lose his/her seat, parties would be hesitant to give tickets to such candidates.

10. Is this judgement enough to remove criminals from politics?

This is a very significant judgement, as it would act as a deterrent to political parties from giving tickets to tainted candidates. The problem concerning pending criminal cases against MPs and MLAs being dragged in the court for many years (actually decades) is also paramount. There is a PIL on this issue in the Supreme Court for which the Court has asked for response from the center and the states. We hope that the court will take it soon as this will be a very important step in the direction of curbing criminalisation of politics.

In addition, electoral reforms such as introducing a Bill for reform political parties apart from judicial and police reforms would help in removing criminals from politics.