

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

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

The Supreme Court judgment on the 10th July, 2013 on Writ Petitions filed by Ms Lily Thomas and Mr. S.N Shukla of Lok Prahari has stated that if a sitting MP/MLA is convicted of an offence(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 judgment and its effect.

1. What is the crux of the judgment?

The judgment has declared Section 8(4) of the Representation of People Act as ultra vires. Earlier as per the provisions of Section 8(4) of the Act, a sitting MP/MLA, if convicted, could continue to remain in office by filing an appeal or revision application against the conviction within a period of 3 months. Now, as per the judgment if a sitting MP/ MLA is convicted of an offence (not only charged), he/ she shall be **immediately disqualified** and the seat shall be declared as vacant.

2. Will all convictions lead to immediate disqualification?

No. Only convictions under Sections 8(1), 8(2), 8(3) of the Representation of the People Act, (RPA) will lead to immediate disqualification.

3. What is the basis behind the judgment?

The judgment says that if a certain criterion stops a person from contesting in elections, then the same criterion also holds for sitting MPs/ MLAs and consequently even they cannot continue being a member of the Parliament or State Legislature.

The judgment also says that the Parliament does not have the legislative powers to make different laws for disqualification for both members and non-members, as it is against the provisions of the Constitution. As per the judgment, persons contesting elections to be elected as members of Parliament or a State Legislature stand on the same footing as sitting members of Parliament and State Legislatures so far as disqualification is concerned and sitting members of Parliament and State Legislatures cannot enjoy a special privilege of continuing as members even though they are convicted of the offences mentioned in subsections (1), (2) and (3) of Section 8 of the Act.

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

Article 102(1) lays down the criteria of disqualifications for sitting members and contesting candidates) to either House of Parliament where as Article 191(1) lays down the criteria for disqualification for sitting members and contesting candidates to the Legislative Assembly or Legislative Council of the State. However, sub-clause (e) of Articles 102(1) and 191(1) , on the other hand, has conferred specific powers on Parliament to make law providing additional

disqualifications for membership to either House of Parliament or Legislative Assembly or Legislative Council of the State.

Articles 102(1) and 191(1) of the Constitution purposely make it clear that same disqualification is applicable for a person **being chosen** as a member of either House of Parliament, or the State Assembly or Legislative Council of the State and for a person **being a member** of either House of Parliament or of the Legislative Assembly or Legislative Council of a State. Therefore, there cannot be a differential treatment on disqualification for the sitting members and non- members. Section 8(4) of the Representation of People Act which provided a special privilege(a 3 months' time to appeal) to the sitting members when it comes to disqualification, it was therefore, ultra vires the provisions of Article 102(1)(e) and 191(1)(e) and it was liable to be struck down.

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

The judgment says that if a sitting member (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?

A member shall be straight away disqualified if he is convicted of any of the offences mentioned under subsections (1), (2) and (3) of Section 8 of the Representation of People Act which also includes the offences punishable with imprisonment even less than two years¹

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

Any MP/ MLA, including sitting members, will be disqualified as soon as they get convicted in any case from the date of judgment (10th July, 2013). The judgment shall not have a retrospective effect.

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

The present Supreme Court judgment only accepts the convictions in a court of law as the criteria for an instant disqualification of the sitting members. However, this is still a major signboard against criminalization of politics. 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 member will immediately lose his/her seat, parties would hopefully be hesitant to give tickets to such candidates.

9. Is this judgment enough to remove criminals from politics?

¹ See list of the offences under Section 8 at the end of the document.

This is a very significant judgment, as it would act as a deterrent to political parties from giving tickets to the tainted candidates. However, the problem concerning pending criminal cases against MPs and MLAs being dragged in the court for many years (actually decades) is also paramount. There are some very important petitions on the issue of criminalization of politics that are already going on in the Supreme Court for which the Court has asked for the responses from the central government as well as the Election Commission of India.

In addition, the Central Information Commission has also delivered a judgment on getting Political Parties under the ambit of RTI Act. The efforts are already going on for the execution of CIC's order. Also, introducing a separate law to regulate the functioning of political parties is the need of the hour which would go its way forward in restructuring our present political set-up. Apart from that judicial and police reforms would also help in removing criminals from politics.