

Lily Thomas MLA Disqualification Case - Important SC Judgements for UPSC

Many Supreme Court judgements have changed the face of Indian polity and law. These landmark SC judgements are very important segments of the [UPSC syllabus](#). In this series, we bring to you important SC judgments explained and dissected, for the benefit of IAS aspirants. In this article, you can read all about the Lily Thomas MLA Disqualification case. Get a list of [landmark SC judgements for the UPSC exam](#) in the linked article.

Lily Thomas MLA Disqualification Case

Case Summary - Lily Thomas v Union of India (2013)

Background

This case pertains to the disqualification of Members of Parliament or the Legislature as the case may be and was pronounced by a two-judge bench comprised of Justices A.K. Patnaik and S.J. Mukhopadhaya in the year 2013. Two petitions were filed before the Supreme Court, one by Advocate Lily Thomas and the second by Lok Prahari, through its General Secretary S.N. Shukla, both of which pertained to the question of whether MLAs or MPs should be disqualified after they are convicted in a criminal case.

The criminalisation of politics is an issue that affects the very core of a democratic setup as it pertains to the fairness of the election process.

- The number of criminals that get elected in the state and the central legislature has increased manifold since India's independence.
- According to the Association for Democratic Reforms, in the year 2004, 24% of the MPs had criminal cases pending against them, the number was 30% in 2009, it shot up to 34% in 2014, while the number stands at 43% in the Parliament that was elected in the year 2019.
- These figures picture an alarming situation with regard to where we are headed if things continue to go in the same direction.
- The Parliament over the years has failed to enact a law to set rules which would govern the penalties if legislators have criminal records or convictions.
- This, however, should not be a surprise because of the vested interests of people sitting in the Parliament.
- For now, the [Representation of the People Act, 1951](#) is the legislation that governs the disqualification of elected legislators.
- The RP Act under Sections 8(1), 8(2), 8(3) provides that if a legislator is convicted of certain offences which are provided in these sections, he/she shall stand disqualified from being a lawmaker.
- However, sub-section (4) of Section 8 of the Act provides that notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) in Section 8 of the Act, a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is an MP or an MLA, take effect until 3 months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.
- 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.

Petitioners' arguments

- The petitioners through their counsel Senior Advocate Fali. S. Nariman argued that the opening words of clause (1) of Articles 191 & 102 of the Indian Constitution make it evident that the same disqualifications are provided for an individual being chosen as a member of either House of Parliament, or the State Assembly or Legislative Council of the State and for an individual being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State and so, the disqualifications for an individual to be elected as a member of either House of the Parliament or of the Legislative Council or Legislative Assembly of the State and for an individual to continue as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of the State can't be different.
- In support of their arguments, the petitioners cited a constitutional bench judgement of the Supreme Court in Election Commission of India v Saka Venkat Rao whereby the Court had held that the disqualifications were the same for both standing in an election and continuing as a member.
- The petitioners thus prayed that Section 8(4) be struck down as ultra vires because the Parliament lacks the legislative power to enact such a provision.

State's arguments

The state represented by the learned Assistant Solicitor General (ASG) Mr Siddharth Luthra contended that the validity of Section 8(4) has already been upheld by the constitutional bench of the apex court in K. Prabhakaran v P. Jayarajan. The ASG also argued that the frequency of acquittals in the higher courts is very high and as such, it is for this reason that Parliament had provided for Section 8(4).

The Judgement

- The apex court in its judgement held that Section 8(4) is indeed ultra vires to the constitutional provisions.
- It also accepted the contention of the petitioners that the grounds for disqualification of a candidate and a member are the same. Thus, Parliament has exceeded its powers by bringing in Section 8(4).
- The Court further observed that the sitting members who have already benefitted from Section 8(4) would not be affected by this judgement. However, if any sitting member of Parliament or state legislature is convicted by virtue of subsections 1, 2 and 3 of Section 8, he/she shall stand disqualified by virtue of this judgement.

Conclusion

There is no doubt that this is a landmark ruling with respect to cleaning politics from the effect of criminalisation, but the evil of criminalisation still ails the political system. The criminalisation of politics, in addition to tainting fairness of elections, also leads to bad governance, lack of trust in politics/politicians and social disharmony. The Supreme Court, in February 2020, passed another judgement whereby all candidates both at the state and central level would have to publish their criminal records if they want to stand in elections. This order was passed in the case of Rambabu Singh Thakur v Sunil Arora & others. While such rulings from the apex court are an earnest attempt to cleanse politics, this deep-rooted evil continues to ail the Indian democratic setup. Criminalisation, along with money power and muscle power, has turned the Indian electoral system into a cesspool. The attempt at cleansing politics from criminalisation is incomplete without strong legislation in this sphere along with giving the [Election Commission](#) more autonomy to deal with this issue.