



REVIEW OF RESEARCH

ISSN: 2249-894X

IMPACT FACTOR : 5.7631 (UIF)

UGC APPROVED JOURNAL NO. 48514

VOLUME - 8 | ISSUE - 9 | JUNE - 2019



A CURB ON CRIMINALISATION OF POLITICS

Dr. Raj Kumar

**Sr. Associate Professor, Faculty of Law, Lucknow University,
Lucknow (U.P.)**

ABSTRACT:

Criminalisation of politics is a serious problem in Indian democracy. Inaction on the part of legislature and executive is making the situation worse. But, the judiciary is consistently trying to establish curbs on criminalisation of politics. Recently the Supreme Court in Public Interest Foundation case has issued some directions in this regard. Earlier, in Lily Thomas case, it declared the MPs and MLAs to be disqualified for holding membership on conviction without giving three-month time for appeal. Various aspects of the issue have critically been analysed in this research paper.



KEYWORDS: : Criminalisation of politics , part of legislature and executive.

LEGAL PERSPECTIVE

The validity of Section 8(4) of the Representation of the People Act, 1951 was challenged in the two writ petitions *Lily Thomas v. Union of India*¹ and *Lok Prahari v. Union of India*² on the ground that the provision is contrary to the mandate of Articles 102(1)(e) and 191(1)(e) of the Constitution of India³. Section 8 of the Act of 1951 deals with disqualifications on conviction for certain offences. The expression "disqualified" has been defined in Section 7 (b) according to which disqualified means disqualified for being chosen as and for being a members of Parliament or State

Legislature. The sub-section (4) of Section 8 provides exemption to a person who is a members of Parliament or State Legislature on the date of conviction, from being disqualified under any of these sub-sections (1), (2) and (3) of Section 8 for the period of three months or till the disposal of appeal or application of revision if these are brought within the period of three months.

JUDICIAL APPROACH

A Bench of the Supreme Court comprising Justice A.K. Patnaik and Justice S.J. Mukhopadhyaya held the sub-section (4) of Section 8 in contravention of provisions of Articles 102(1)(e) and 191 (1) (e) on the ground that Parliament has been vested with power under these provisions to make law

laying down the same disqualifications for a person to be chosen as, and for a person being, a member of Parliament or State Legislature⁴. Article 102 (1) (e) is as follows: "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament". A similar provision has been made regarding State under Article 191(1) (e).

Parliament made different laws under Section 8 (4) for a person to be chosen as member and for a sitting member⁵. Reasonably, if a person cannot be chosen as a member because of a disqualification, he cannot continue as a member being charged with the same

disqualification.

The Court examined the validity of Section 8 (4) on the ground of provisions of Articles 101 (3) (a) and 190 (3) (a) also which lay down the effect of disqualification under Articles 102 (1) (e) and 191 (1) (e)⁶. According to these provisions, if a member of Parliament or State Legislature becomes subject to any of the disqualifications mentioned in Articles 102(1) and 191(1), his seat shall there upon become vacant. Accordingly, if a person, who was once a member, becomes disqualified, his seat automatically becomes vacant by virtue of Articles 101 (3) (a) and 190 (3) (a) on the date on which he incurs the disqualification. Consequently, Parliament cannot make a provision as in Section 8(4) to defer the date on which the disqualification will have effect and thus, prevent his seat becoming vacant.

In view of the aforesaid examination, it was observed that Articles 101(3) (a) and 190(3) (a) put express limitation on such a power of Parliament as to defer the date on which the disqualification will have effect and thus, the Parliament has exceeded its power in enacting Section 8(4)⁷. Accordingly, it was declared *ultravires* the Constitution⁸.

The review petition was filed against this judgment. But the court declined to review the judgment on the ground that it is a well considered judgment and there is no error on the face of record⁹.

In another step towards elimination of criminalisation of politics, the Supreme Court, hearing a petition filed by Public Interest Foundation, ordered the Government in March 2014 to conclude criminal trials involving MPs and MLAs speedily and expeditiously within a year¹⁰.

On a petition filed by Ashwani Kumar Upadhyay in November 2017 seeking life ban on convicted legislators, the Supreme Court asked the Government to frame a central scheme for setting up special courts across the country to exclusively try criminal cases involving political persons¹¹. The Government informed the Court on the 12th December 2017 that it will set up at least 12 special courts for that purpose¹² and the Court gave green signal for that¹³. In pursuance of the order of the Court, the Government set up 12 special courts across 11 States¹⁴.

The petition of public interest foundation was filed to declare the legislators, facing criminal charges, disqualified for contesting elections at the stage of framing of criminal charges against them. The issue was referred to a Constitution Bench¹⁵. A five-judge Constitution Bench, along with other petitions on the same issue, heard the matter in the *Public Interest Foundation & Ors. v. Union of India & Anr.*¹⁶ and observed that Parliament must make law to ensure that persons facing serious criminal cases do not inter into the political stream¹⁷. The Court issued following directions also regarding contesting candidate and political party :

- (1) Each challenging competitor will top off the structure as given by Election Commission and the structure must contain every one of the points of interest as required therein¹⁸.
- (2) With respect to criminal bodies of evidence pending against the hopeful, it will state in intense letters¹⁹.
- (3) If an applicant is challenging a decision on the ticket of a specific gathering, he/she is required to illuminate that gathering about the criminal bodies of evidence pending against him/her²⁰ and the concerned ideological group will be committed to set up that data on its website²¹.
- (4) The competitor just as the concerned ideological group will issue a statement in the generally circled paper in the region about the forerunners of the hopeful and furthermore give wide attention in the electronic media²².

CRITICAL EVALUATION

As we know that in democracy, the nation is governed through representatives of the people according to their will for the attainment of objectives enshrined in the Constitution. The participation of people in government formation and will of the people as the basis of authority of government have been recognised as human right under Article 21 of The Universal Declaration of Human Rights. The will of the people can be said to be reflected only when the election is free and fair. Politics in India, no doubt, has been criminalised to a great extent and the welfare of the people is neglected.

The judgment of the Supreme Court in *Lily Thomas* Case can be said to be a historic one, as it may be proved crucial in eliminating the criminalisation of politics. A democratic country cannot be said to be governed democratically unless and until charge sheeted persons or persons with criminal record are elected or continued being as representatives of the people, as they do not reflect the will of the people in general and adversely affect the process of elections as well as functioning of Government. The judgement of the Supreme Court in *Public Interest Foundation* case can be considered a further step towards elimination of criminalisation of politics.

CONCLUDING OBSERVATION AND SUGGESTIONS

The democracy ensured through free and fair election has been recognized as basic feature of the Constitution. The relevant constitutional mandate reveals that the intention of the framers of the Constitution was in favour of the free and fair election needed for effective functioning of democracy. In view of the oath of bearing true faith and allegiance to the Constitution and faithfully discharge duties as a minister of the Union, the Union Government should take initiative to make strong law to prevent the entry of charge sheeted persons and persons with criminal record into legislatures. The Political Parties should unite to save the democracy and the Constitution so that the objectives of the welfare state can be fulfilled.

REFERENCE :

1. Supreme Court, July 10, 2013; available at: <http://indiankanoon.org>.
2. Supreme Court, July 10, 2013; available at: <http://indiankanoon.org>.
3. *Supra* note para 4-6.
4. *Id* at para 20.
5. *Id* at para 16.
6. *Id* at para 19.
7. *Ibid*.
8. *Id* at para 20.
9. *The Hindu*, September 5, 2013 at front page and at page 10.
10. *The Hindu*, November 2, 2017 at front page and page 10.
11. *Ibid*.
12. *The Hindu*, December 13, 2017 at page 10.
13. *The Hindu*, December 15, 2017 at front page 10.
14. *The Hindu*, September 12, 2018 at page 10.
15. *The Hindu*, March 9, 2016 at page 12.
16. Supreme Court, September 25, 2018 available at: www.livelaw.in.
17. *Id* at para 118.
18. *Id* at para 116(i).
19. *Ibid* para 116(ii).
20. *Ibid* para 116(iii).
21. *Ibid* para 116(iv).
22. *Ibid* para 116(v).



Dr. Raj Kumar

Sr. Associate Professor, Faculty of Law, Lucknow University, Lucknow (U.P.)