

Disqualification of Convicted Legislators from Assembly

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About Disqualification of Convicted Legislators from Assembly:

- **Section 8 of the Representation of the People Act (RPA), 1951**, contains provisions aimed at decriminalising electoral politics.
- There are **two categories of criminal cases that attract disqualification upon conviction**.
- In the **first category** are offences that entail disqualification for a period of six years upon any conviction.
 - If the punishment is a fine, the six-year period will run from the date of conviction, but if there is a prison sentence, the disqualification will begin on the date of conviction, and will continue up to the completion of six years after the date of release from jail.
 - **Major IPC offences are included under this head:**
 - making speeches that cause enmity between groups (Sec.153A) and doing so in a place of worship (Sec.505), bribery and personation during elections and other electoral offences, offences relating to rape and cruelty to women by husband and latter's relatives.
 - Besides, serious provisions of special laws such as the Protection of Civil Rights Act, Customs Act, Unlawful Activities (Prevention) Act etc are among the category of offences that entail disqualification regardless of the quantum of punishment.
 - Laws for prevention of Sati, corruption, terrorism and insult to national flag and national anthem etc are also part of this group.

- **All other criminal provisions form a separate category** under which mere conviction will not entail disqualification. A sentence of at least two years in prison is needed to incur such disqualification.

Legal protection:

- **Under Section 8(4) of the RPA, legislators could avoid immediate disqualification until 2013.**
- The provision said that with respect to a Member of Parliament or a State legislator the disqualification will not take effect for three months.
- If within that period, the convicted legislator files an appeal or revision application, it will not take effect until the disposal of the appeal or application.
- In **Lily Thomas vs. Union of India**, the Supreme Court **struck down clause (4) as unconstitutional**, thus removing the protection enjoyed by lawmakers.

Can the disqualification be removed?

- **The Supreme Court has the power to stay not only the sentence, but also the conviction of a person.**
- In some rare cases, conviction has been stayed to enable the appellant to contest an election. However, the SC has made it clear that such a stay should be very rare and for special reasons.
- The RPA itself provides a remedy through the Election Commission.
- Under **11 of the Act, the EC** may record reasons and either remove, or reduce the period of, a person's disqualification.
 - The EC exercised this power for Sikkim Chief Minister P.S. Tamang, who served a one-year sentence for corruption, and reduced his disqualification so as to contest a byelection and remain in office.

Source : [The Hindu](#)

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