

A strong case to restore Section 8(4) of the RP Act

Rahul Gandhi of the Congress party was disqualified on being convicted and sentenced to two years imprisonment in a 2019 defamation case. The disqualification was instant because of the Supreme Court of India's judgment in *Lily Thomas vs Union of India* (2013). Through this judgment, the Court invalidated Section 8(4) of the Representation of People Act 1951, which had allowed a three-month period within which to appeal. Disqualification was not to take effect during this period; when the appeal is admitted, disqualification would depend on the final outcome of the appeal.

Thus, under the legal provision cited, there was no instant disqualification of sitting members of the legislature. But after the Court struck down this provision of the Representation of People Act 1951, according to the opinion of some experts, a sitting legislator is disqualified the moment the court orders conviction and sentence under Section 8(3) of the Representation of People Act. The top court said that Article 102(1) does not create any difference between the sitting member and a candidate so far as disqualification is concerned. It held that Parliament has no power to grant exemption to sitting members for three months and thus struck down Section 8(4) as *ultra vires* the Constitution.

A case with no sound legal basis

So now, only Section 8(3) remains in the Act which deals with disqualification of persons convicted and sentenced to two years imprisonment. This section simply says that a person who is convicted of an offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of conviction. It does not say that such a person stands disqualified from the date of conviction. So, there is no ground indeed to conclude that the disqualification takes place the moment the court pronounces a person guilty. The only condition is that such a person shall be disqualified from the date of conviction. So, it appears that the act of the instant disqualification of Mr. Gandhi did not have a sound legal basis; particularly so when we consider the words "He shall be disqualified", which could only mean that some authority has to officially declare him disqualified.

The opinion of this writer, which was



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The judgment in the Lily Thomas case, which invalidated Section 8(4) of the Representation of People Act, can play havoc with the careers of sitting legislators

expressed in few articles, is that the authority that/who can declare a sitting legislator disqualified could be the President of India exercising this power under Article 103. Although the Supreme Court did not accept this proposition in *Lily Thomas*, in *Consumer Education & Research ... vs Union Of India & Ors* (2009), a three-judge Bench held that a declaration by the President, under Article 103, that the sitting member has incurred disqualification is necessary.

Thus, the scheme of Section 8(3) seems to be that when a sitting member is convicted and sentenced to imprisonment for two years or more, he shall be disqualified with effect from the date of conviction. Further, it is the President who shall disqualify him under Article 103. The Secretariat of the House to which the member belongs has no recognisable authority to declare that a member stands disqualified as soon as he is convicted by a court of law.

Disqualification and sentence quantum

A question of legal importance that arose in the context of the disqualification of Mr. Gandhi was whether the stay of only sentence can lift the disqualification or whether stay of conviction is necessary. In the 1980s and 1990s, some of the High Courts (Allahabad High Court in *Sachindra Nath Tripathi vs Doodhnath*, 1987 and the Himachal High Court in *Vikram Anand vs Rakesh Singha*, 1994) had held the view that disqualification remains intact on staying the sentence. But the Madras High Court took a different view in the *Jayalalithaa* case (2001). It held that "the moment the sentence is suspended[,] conviction should be deemed to have been suspended or otherwise the framers of the code would have taken care to provide for stay of conviction or suspension of conviction also". However, in *Rahul Gandhi's* case, though the Supreme Court stayed the conviction, it did not express any opinion on the question of whether a stay of conviction is also necessary or on suspending the disqualification.

It must be remembered that disqualification arises only when the sentence is imprisonment for two or more years. As the Court observed in its recent order in *Rahul Gandhi's* case, if the period of imprisonment was less by one day the disqualification would not have occurred. It would mean that disqualification is directly

relatable to the quantum of sentence and not conviction. But this is a point the lawmakers and the judiciary will have to deal with.

The judgment in *Lily Thomas* can play havoc with the careers of sitting legislators in the country. Instant disqualification on conviction and sentence will upset their entire legislative career without giving them breathing space because the courts in general have a very dilatory system in dealing with appeals, revisions and such. But the case of the Agra court staying the conviction of Bharatiya Janata Party (BJP) MP Ram Shankar Katheriya within 24 hours of conviction in a criminal case, thus saving his House membership is one of the rarest exceptions.

It is heartening that a court like the Agra session court exists in our country. But the issue of instant disqualification needs to be addressed urgently as it may affect the career of legislators. The Supreme Court struck down Section 8(4) on the ground that Parliament has no power to provide for a special dispensation for convicted legislators because Article 102(1) does not permit such differentiation between them and the candidates. But so far as differentiation goes, the Constitution in fact permits it under Article 103 which provides that in the case of sitting legislators, the question of disqualification under Article 102(1) will be decided by the President. Perhaps a suitable amendment can be made in Article 102 to enable Parliament to restore the invalidated Section 8(4).

No qualitative change

In fact, the judgment in *Lily Thomas* has not resulted in any perceptible qualitative change in the criminal proclivity of politicians. Politicians belonging to the powerful ruling dispensation at a particular time may be able to get a conviction stayed within a few hours, thus saving themselves from instant disqualification. But others will have to wait like Mr. Gandhi had to for four months and for the intervention of the Supreme Court just to get a stay on conviction in a defamation case which is non-cognisable and bailable. This and other cases show that Section 8(4) needs to be restored and protected constitutionally in order to protect the careers of India's legislators from abrupt convulsions caused by court orders which are given, in the words of the Supreme Court, "without any application of mind".

No bulwark for Pakistan's minorities

Pakistan has again witnessed violent backlash fuelled by allegations of blasphemy. The recent incident where a mob went on the rampage in Jaranwala, Faisalabad, setting fire to churches, attacking the homes of the Christian community and vandalising the local assistant commissioner's office only underscores the country's failure in upholding its fundamental duty of safeguarding its minorities and marginalised groups. The violence followed allegations of blasphemy, sparked by the alleged desecration of pages from the Koran near a house where two Christian brothers lived.

Amid rumours, the situation worsened with the involvement of members from the Tehreek-i-Labbaik Pakistan (TLP), who shored up tensions by issuing public statements. The mob directed their aggression towards the home of the accused Christian brothers, which served as a catalyst for a series of violent occurrences.

Christian leaders condemned police inertia, asserting that officers stood inactive even as families sought assistance. Senior administrative and police officials intervened and were engaged in discussions with the protest leaders. Rangers were deployed and additional police personnel were dispatched, according to reports.

Amidst the chaos, a first information report was registered against the two Christian suspects. The incident's repercussions gained censure, with the focus on what was perceived to be discriminatory conduct by the police in managing the situation. A senior police official was reassigned to special duty – a decision made in an attempt to address the demands of the protesting individuals who had been calling for his transfer.

Obviously, in Pakistan, the requirement for evidence loses significance when the focus shifts to blasphemy, thereby setting a path for acts of vigilante justice. This incident marks the second occurrence of an event of this nature in recent times. Just earlier, an English teacher in



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Pakistan is an example of a nation that has one of the highest blasphemy-related prosecutions and cases of communal aggression in the world

Balochistan was murdered following allegations of blasphemy. In February 2022, the brutal murder of priest William Siraj in Peshawar spread fear and outrage among Pakistan's minority communities.

Resurgence of terror

Rising aggression against Pakistan's minorities has been compounded by the revival of terrorist activities, a resurgence notably magnified by the Taliban's seizure of authority in Kabul in 2021. Terrorist attacks in Pakistan have grown more severe over time, especially after the decision by the Pakistani Taliban's (Tehrik-i-Taliban Pakistan-TTP) to temporarily terminate a ceasefire with Islamabad in 2021. With the TTP's confidence boosted by the Taliban's takeover of Afghanistan, new waves of violence against minority groups in Pakistan have emerged.

There was a period when minorities comprised approximately 15% of the population in major cities. However, their representation has dwindled to less than 4% now. Among these minorities, Christians constitute a faction in this predominantly Sunni Muslim nation. On multiple occasions, accusations of blasphemy have resulted in both court judgments and violence targeting minority groups, including Christians. In September 2020, a Lahore court handed Asif Pervaiz, a young Christian, the death penalty for supposedly sending 'text messages' that had 'blasphemous content.' Pervaiz had already spent almost seven years in custody facing charges of blasphemy. There have been numerous instances where minorities such as the Ahmadis, Shias, and Christians have been accused of blasphemy. The case of Asia Bibi, a Pakistani Christian woman, is widely known.

Numerous reports have highlighted the systematic failure of Pakistani courts to adequately safeguard and deliver justice to victims. In relation to the blasphemy regulations, a United States Commission on International Religious Freedom report, for instance, showed

that the enforcement of these blasphemy laws positioned Pakistan as the foremost perpetrator of blasphemy-related prosecutions and communal aggression in the world.

The report further observed that Sections 295 and 298 of Pakistan's Penal Code classify actions and utterances that insult the religion or desecrate the Koran, the Prophet, places of worship, or religious symbols as criminal offences. These ambiguous clauses are often exploited to unjustly accuse the Ahmadis, Shia Muslims, Hindus, Christians, Sikhs, and individuals holding beliefs differing from the predominant Sunni interpretation of Islam.

According to Siegfried O. Wolf, Director of Research at the South Asia Democratic Forum (SADF), religious minorities, including Christians, encounter profound discrimination in various Muslim-majority nations. However, no other country subjects Christians to such systematic and institutional persecution and victimisation as Pakistan, he said.

A silence

A conspicuous silence has pervaded the corridors of power, while blasphemy laws have been flaunted as instruments to settle personal scores, seize property, and intimidate minority factions. Amidst this backdrop, can one genuinely feign surprise as occurrences akin to the Jaranwala incident surface repeatedly? Employing violence under the guise of religion stands indefensible in any realm. Yet, within Pakistan, the manipulation of blasphemy laws has evolved into a shield for vested agendas, as the Dawn has noted in its editorial.

In any case, the litmus test for Pakistan as a democratic state lies in its ability to safeguard the rights of even its smallest minority. The country faces a critical moment, wherein the task at hand is to uphold its fledgling democratic structure in the face of challenges posed by the presence of a deep state, a complex civil society, and a praetorian state machinery.