



# Jus Corpus Law Journal

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## Case Comment: Lily Thomas vs Union of India & Ors.

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### INTRODUCTION

One of the most disturbing issues that ruin the Indian lawmaking body is the measure of discretionary competitors with criminal predecessors housed inside them. Notwithstanding sanctioning legal measures to neutralize the expansion of criminal agents, insights keep on showing a vertical pattern.

- Eminently, the General Elections of 2009 brought about the appointment of a little more than 28% of Members of Parliament with a criminal record,
- which went up to 34 percent in 2014,
- And afterward went to an outshining high at 43% in 2019.<sup>1</sup>
- There is a gain of 109% (in 2019) in the sum of MPs sentenced with extreme criminal cases beginning around 2009.<sup>2</sup>

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<sup>1</sup> National Election Watch & Association for Democratic Reforms, 'Analysis of Criminal and Financial Details of MPs of 15th Lok Sabha' (2014) <<https://adrindia.org/download/file/fid/3753>> accessed 01 October 2021

<sup>2</sup> '43% of Newly Elected MPs Face Criminal Charges: ADR Report' (*The Wire*, 2019) <<https://thewire.in/politics/43-of-newly-elected-mps-face-criminal-charges-adr-report>> accessed 01 October 2021

Administrative congregations have shown a comparable pattern. These measurements mirror an upsetting situation opportune where we are going in the event that we keep on heading a similar way. Throughout the long term, Parliament has continued to decline to pass a bill to spread outlaws controlling disciplines where legislators had lawful offense narratives or feelings. Be that as it may, inferable from the personal stakes of people serving in Parliament, this ought not to involve amazement.<sup>3</sup>

## FACTS OF THE CASE

The background realities crucial for understanding the test to Sub-Section (4) of Section 8 of the ROP Act are that the Constituent Assembly<sup>4</sup> when drafting the Constitution expected to have a few exclusions for people being picked as, or filling in as individuals from one or the other House of Parliament or State Legislatures.

Thus, Article 102(1)<sup>5</sup> gave exclusions to participation in Lok Sabha and Rajya Sabha, and Article 191(1)<sup>6</sup> gave exclusions to participation in the State Legislative Assembly or Legislative Council. A perception of the arrangements referenced above demonstrates that notwithstanding the exclusions illustrated in Clauses (a), (b), (c), and (d), the governing body could authorize extra exclusions for participation in Parliament and State Legislatures. In like manner, Parliament practiced this right and established Sections 7<sup>7</sup> and 8<sup>8</sup> of the ROP Act, which is worried about this situation and manages preclusions for participation in Parliament and State Legislatures.

## ISSUES ACKNOWLEDGED

- Regardless of whether the Parliament was capable to carry out Section 8(4) of the Representation of the People Act, 1951?

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<sup>3</sup> *Ibid*

<sup>4</sup> Representation of the People Act 1951, s 8(4)

<sup>5</sup> Constitution of India, art 102(1)

<sup>6</sup> Constitution of India, art 191(1)

<sup>7</sup> Representation of the People Act 1951, s 7

<sup>8</sup> Representation of the People Act 1951, s 8

- Regardless of whether Section 8(4) of the Act disregarded the arrangements of the Indian Constitution and in the event that it conflicted with the target and goals of the Constitution's composers by permitting individuals from a specific gathering to hold enrollment even in the wake of being sentenced for an offense?

## **ARGUMENTS ON BEHALF OF THE PETITIONERS**

Through the Senior Counsel Fall. S. Nariman, the applicants battled that the Constitution doesn't give any ability to be a part when indicted. Besides, that, it is an express arrangement in Articles 102<sup>9</sup> and 191<sup>10</sup>, which has no uncertainty, and no discussion is needed on this. Also, they fought that the initial expressions of the statement (1) of Articles 191 and 102 of the Constitution clarify explicitly that an individual looking for a political race to either the House of Parliament or the State Legislatures, just as an individual sitting in either the House of Parliament or the State Governing bodies, is dependent upon similar preclusions. They further fought that this arrangement disregards Article 14<sup>11</sup> in light of the fact that it separated between a chosen and a to-be chosen part as it had various arrangements, which they battled was discretionary. On the side of their contention, the petitioners referred to a sacred seat judgment<sup>12</sup> of the Supreme court in which the Court had held that the preclusions are something very similar for the two standings in a political decision and proceeding as a part. Besides, they fought that Section 8(4), which says that a part has no effect in the event that he records an allure or amendment against a conviction in 90 days till the Court settles it, 12 cases of abuse clause (1) of Articles 102 and 191 of the Indian Constitution. The applicants, in this manner, argued that Section 8(4) be hit down as ultra vires the Constitution since the Parliament doesn't have the administrative ability to sanction such an arrangement.<sup>13</sup>

## **ARGUMENTS ON BEHALF OF THE DEFENDANT**

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<sup>9</sup> Constitution of India, art 102

<sup>10</sup> Constitution of India, art 191

<sup>11</sup> Constitution of India, art 14

<sup>12</sup> *Election Commission of India v Saka Venkat Rao* AIR 1953 SC 210

<sup>13</sup> *Ibid*

The state contended that assuming a sitting chosen MP/MLA was precluded, in that circumstance, the strength of the political group from which the chosen part challenged in races and the house would influence, also, accordingly, the subject of opening would emerge. Thus, to address that, by-races were to be held, however, that will bring inconveniences if any court passes a resulting request of vindication of such prior indicted part. Also, which is the motivation behind why Parliament established Section 8(4) of the ROP Act. They proceeded with their case by contending that Parliament had the power to order such an arrangement under Articles 101(1)(e)<sup>14</sup> and 191(1)(e)<sup>15</sup>, which specify the conditions under which conviction of a chosen part influences participation in the house, and under the grounded truth that Assembly has the position to make laws regarding any matter excluded from List II<sup>16</sup> and List III<sup>17</sup> as given in Schedule 7 of the Indian Constitution.<sup>18</sup> They additionally contended that the legitimacy of Section 8(4) has effectively been kept up with by the Constitutional seat of the Supreme Court of India in one a milestone case.<sup>19</sup>

## CASES

- *Election Commission of India vs Saka Venkat Rao*<sup>20</sup>

In this case, the Apex Court held that the exclusions are something similar for the two standings in a political decision and proceeding as a part.

- *People's Union for Civil Liberties and Ors. vs Union of India (UOI)*<sup>21</sup>

The Peoples Union for Civil Liberties moved to the Supreme Court contending Section 33B of The portrayal of the People (Third Amendment) Act,<sup>22</sup> which invalidated the Apex Court's choice in Relationship for Democratic Reforms choice by saying that competitors challenging

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<sup>14</sup> Constitution of India, art 101(1)(e)

<sup>15</sup> Constitution of India, art 191(1)(e)

<sup>16</sup> Constitution of India, schedule 7, List II

<sup>17</sup> Constitution of India, schedule 7, List III

<sup>18</sup> Constitution of India, schedule 10

<sup>19</sup> *K Prabhakarn v P Jayarajan* AIR 2005 SC 688

<sup>20</sup> *Election Commission of India v Saka Venkat Rao* MANU/SC/0060/1953

<sup>21</sup> *People's Union for Civil Liberties & Ors v Union of India* 8 MANU/SC/1036/2003

<sup>22</sup> Representation of the People (Third Amendment) Act 2002

racers don't need to record an oath as coordinated by the Court on criminal predecessors and data.

## DECISION

The high court held that Articles 102(1)(e) and 191(1)(e) of the Indian Constitution approves Parliament to pass a solitary resolution accommodating the exclusion of an individual from being chosen as an individual from any house, just as of an individual from being a sitting individual from any house. It was concluded that if a part is excluded by ethics of Articles 101(3)(a)<sup>23</sup> and 190(3)(a)<sup>24</sup> his seat consequently becomes vacant. As result, the Parliament can't authorize arrangements to concede the date of exclusion or to thwart an opportunity in the part's seat because of the preclusion. It was decided that the Articles set a limitation on Parliament's capacity to defer the viable date of exclusions and that a specific condition couldn't block the preclusion's standard culmination.

## ANALYSIS

The Court pronounced Section 8(4) of the ROP Act unlawful, which once permitted indicted MPs and MLAs while filling in as individuals to hold an office until an allure against such conviction was excused. Two essential avocations were given; first, Parliament does not have the position to give completely isolated grounds to precluding to-be chosen individuals and chosen individuals. Second, conceding the compelling date of exclusion starts is illegal considering proviso 3 of Articles 101 and 190, requiring that a part's seat turns out to be quickly empty upon exclusion.<sup>25</sup> Furthermore, it ends up being unmistakable from the start expressions of Articles 102(1)(e) and 191(1)(e), "to be chosen as, and to be, an individual from one or the other House of Parliament", which specify that Parliament is answerable for authorizing enactment with respect to precluded competitors and sitting individuals.

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<sup>23</sup> Constitution of India, art 101(3)(a)

<sup>24</sup> Constitution of India, art 190(3)(a)

<sup>25</sup> Constitution of India, art 101(3); Constitution of India, art 190(3)

Moreover, in one of the milestone cases<sup>26</sup>, the Supreme Court decided that exactly the same arrangement of excluding factors applied to political decision and continuation as a part. Because of these arrangements, Parliament comes up short on the position to institute unmistakable laws for precluding an individual from being chosen as a part and right now chose individuals of Parliament or the State Legislatures.

## CONCLUSION

The criminalization of governmental issues has for some time been a basis of discontent in India's political framework. As indicated by the Relationship for Democratic Reforms, the current Parliament has by a wide margin the largest number of officials confronting criminal allegations like snatching, rape, and so forth Defilement and criminalization of legislative issues are dissolving popular government's establishments. Regardless of instituting legal measures to balance the multiplication of criminal delegates, measurements keep on showing a vertical pattern. There is no doubt that this is a memorable choice with regards to the purifying of legislative issues from the mischief of criminalization, however, the evil of criminalization actually afflicts the political framework. Sadly, the people who make the law are the ones who discovered breaking it greatest occasions.

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<sup>26</sup> *Election Commission of India* (n 20)