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Disqualification And Expulsion Of Member Of Parliament In India: Provisions And Implications

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ABSTRACT:

Parliamentarians in India have a little more freedom of expression and personal choice. They also have privileges in parliament. However, they also bear more responsibility and are required to uphold the dignity, exclusivity, and privacy of the legislature. They must refrain from engaging in unethical behaviour, such as accepting favours in exchange for posing questions in parliament. Recently MP Ms Mahua Moitra faced the heat for sharing confidential information to her friend and took bribery for the same. Matter has been heard by the Ethics committee of Parliament and suggested the expulsion of her. This Article deals with the Constitutional and legal provision of disqualification of MPs from house, expulsion, case laws and earlier instances of expulsion and disqualification.

Keywords: Disqualification, Bribery, Ethics, Expulsion, Parliamentary Privileges.

INTRODUCTION:

One of the most fierce speakers of Indian Parliament Ms Mahua Moitra has recently come under fire for allegedly sharing her login credentials with Dubai based businessman Darshan Hiranandani and giving him access to the parliamentary portal to pose queries. It is alleged that she received monetary benefits in return. The ethics committee of the Lok Sabha (the lower house of Indian Parliament) took cognizance of the issue on the complaint from another member of Parliament Mr Nishikant Dubey and issued summons to her to appear in person before the committee. And now a sword of expulsion and disqualification is hanging over her head.

Earlier this year senior leader of Indian national Congress Mr Rahul Gandhi was disqualified after he was convicted by a Surat court in a case of defamation, however his membership was restored when Hon'ble Supreme Court stayed his conviction.

The above issue made it imperative to look into the disqualification of MPs from Parliament. In a multitiered parliamentary democracy such as India, the role of a Member of Parliament is extremely important. They are the ones serving as representatives in the Lok Sabha, the Lower House of the Indian Parliament, for a legislative constituency. In India, members of parliament enjoy somewhat greater personal freedom and speech rights. They also enjoy parliamentary privileges. But at the same time they also have greater responsibilities and they are obliged to maintain the dignity, exclusivity and confidentiality of parliament. They must not be involved in corrupt practices like taking favours for asking questions in parliament.

CONSTITUTIONAL PROVISIONS:

1. Qualification for MPs:

The Indian Constitution's Article 84¹ lays down the requirements for members of parliament.

This article states that if the individual is:

- An Indian citizen.
- The minimum age requirement for members of the Rajya Sabha is thirty years, whereas the minimum age requirement for members of the Lok Sabha is twenty-five.
- Have any additional requirements imposed by or under any legislation passed by Parliament.

The Representation of the People Act of 1951 is the subject of the third criterion, wherein the act specifies other requirements for the member of parliament.

2. Disqualification of MPs:

The Indian Constitution's Article 102² outlines the criteria for disqualifying members of parliament. As per the article,

1. An individual may be excluded from consideration for election to either House of Parliament if:
 - a. They already hold an office of profit within the Indian or state governments. The term office of profit has not been defined in the constitution. The Supreme Court in **Pradyut Bordoloi vs. Swapnam**

¹ The Constitution of India, art. 84

² The Constitution of India, art. 102

Roy³ dealt with test of determination of whether a person holds an office of profit under government and held four broad principles:

- First, if the government controls the appointment, removal, and performance of the office's duties;
- Second, whether the office has any remuneration attached to it
- Third, if the body holding the office has the authority to release funds, assign land, grant licences, and other government functions.
- Fourth, whether the office enables the holder to influence by way of patronage.

Madan Mohan, an Uttar Pradesh-based Congress leader, had filed a disqualification suit against Jaya Bachchan in 2006, citing her position as Chairperson of the State Film Development Council as an office of profit that attracted constitutional prohibitions. She was disqualified from Rajya Sabha on the ground that she was holding office of profit.⁴

- b. If the person is of unsound mind.
- c. If the person is charged with insolvency,
- d. If he is not a citizen of India,
- e. If he is disqualified by or under any law made by Parliament.

2. A person shall be disqualified from membership in either house of Parliament if he is so disqualified under the Tenth Schedule of the Indian Constitution.⁵ The Indian Constitution's Tenth Schedule covers anti-defection legislation. Any of the following actions will result in the person's disqualification:⁶

- Giving up one's position in their party voluntarily.
- Acting contrary to the policies of their party.
- After winning a vote and switching to a different political party.
- In the event that the nominated individual joins a political party after the statutory six months has passed.
- When fewer than two-thirds of the members of one political party defect to another.

10th schedule in addition to disqualifying the person from membership also disqualifies him from holding any office of profit for the remaining period of house unless he gets reelected.

³ (1985) 2 SCR 50

⁴ "Jaya Bachchan Disqualified from RS", *The Times of India*, March 17, 2006, available at <https://timesofindia.indiatimes.com/india/jaya-bachchan-disqualified-from-rs/articleshow/1452761.cms> (Last Visited on November 3, 2023)

⁵ Id at 2

⁶ Constitution of India, Schedule 10

The decision of disqualification is taken by the presiding officer of the house and his decision is final. The apex court in **Kihoto Hollohan v Zachillhu**⁷ upheld the constitutionality of 10th schedule and held that though the decision of the speaker is final but the court has power to review the decision on the limited ground of being malafide.

Recently in **Sunil Prabhu v The Speaker, Maharashtra State legislative assembly**⁸ The Supreme Court gave direction to the speaker of Maharashtra assembly to decide the petition for disqualification of MLAs by 31st December 2031.

DISQUALIFICATION UNDER REPRESENTATION OF THE PEOPLE ACT,

1951:

Prior to the first general elections of 1952, the Indian provincial parliament passed the RPA Act 1951, which is referenced in Part XV of the constitution. For the sake of maintaining democracy and national security, the legislation limits and prohibits the admission of specific candidates with criminal records. In addition to ensuring transparency and inclusivity in the electoral process, it outlaws the use of unlawful election-related tactics. There are several provisions that deal with disqualification under the RPA.

1. **Section 8** of the RPA⁹ deals with disqualification for conviction of certain offences.

- Section 8(1) of the act includes specific offences such as promoting enmity between two groups, bribery, and undue influence or personation at an election.¹⁰
- Section 8(2) lists offences that deal with hoarding or profiteering, adulteration of food or drugs and for conviction and sentence of at least six months for an offence under any provisions of the Dowry Prohibition Act.¹¹
- Section 8(3) disqualifies a convicted person who has been sentenced to imprisonment for not less than two years. He is disqualified from the date

⁷ 1992 SCR (1) 686

⁸ 2023 LiveLaw SC 943

⁹ The Representative of the People Act, 1951 (Act 43 of 1951), s.8.

¹⁰The Representative of the People Act, 1951 (Act 43 of 1951), s.8(1). ¹¹

Representative of the People Act, 1951 (Act 43 of 1951), s.8(2).

of such conviction and shall continue to be disqualified for a further period of six years since his release.⁷

⁷ The Representative of the People Act, 1951 (Act 43 of 1951), s.8(3).

Section 8(4)⁸ provides that no person shall be disqualified under clause 1,2 and 3 of Section 8 if any appeal or application has been brought in respect of conviction or the sentence, until that appeal or application is disposed of by the court. The Supreme Court ruled in **Lily Thomas v. Union of India**⁹ that Section 8(4) of the RPA is unconstitutional. The court ruled that an individual convicted of a crime and given a minimum two-year imprisonment sentence would not be eligible to run for office or hold public office as of the conviction date. The court decided that politicians would lose their seats immediately if found guilty. The option to file an appeal did not automatically shield one from disqualification. Law Minister Kapil Sibal introduced the Representation of the People (Second change and Validation) Bill, 2013, into the Rajya Sabha in an attempt to overturn this ruling. Under the proposed change, members would not lose their seats immediately upon conviction. The government attempted to enact the bill as an ordinance on 24 September 2013, just days before the verdict regarding the fodder scam. In a press conference, Rahul Gandhi, the Indian National Congress's vice president at the time, expressed his disapproval of the ordinance, saying, "It's complete nonsense. It should be torn up and thrown away."¹⁰

2. **Section 8A**¹¹: The Representation of the People Act, 1951, Section 8A, deals with "disqualification on ground of corrupt practises." Under this section, any individual found guilty of corrupt practises by an order under Section 99, which allows for "other orders to be made by the High Court," has their case submitted to the President by the authority designated by the Central Government, who will decide whether to disqualify them and, if so, for a period of time. This is extremely complex because it is made up of numerous interconnected and diverse pieces. The ECI recommended changing the RPA to include paid news and make it a crime, even though Section 123 lists what constitutes corrupt practices.
3. Section 9: Disqualification for dismissal for corruption or disloyalty.¹²
4. Section 10: Disqualification for office under Government company.¹³
5. **Section 10(A)**: Disqualification for failure to lodge account of election expenses.¹⁴: If the Election Commission is satisfied that a person-
 - A. has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

⁸ The Representative of the People Act, 1951 (Act 43 of 1951), s.8(4).

⁹ (2013) 7 SCC 653

¹⁰ "Ordinance to nullify 'Lily Thomas' Judgement, no more automatic disqualification on conviction", *LiveLaw*, September 25, 2013, available at

https://www.livelaw.in/ordinance-to-nullify-lily-thomas-judgment-no-more-automatic-disqualification-on-conviction/?infinite_scroll=1

¹¹ Representative of the People Act, 1951 (Act 43 of 1951), s.8A.

¹² The Representative of the People Act, 1951 (Act 43 of 1951), s.9.

¹³ The Representative of the People Act, 1951 (Act 43 of 1951), s.10.

¹⁴ The Representative of the People Act, 1951 (Act 43 of 1951), s.10A.

B. has no good reason or justification for the failure,

The Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.¹⁵

This clause has important ramifications for political candidates and the democratic fabric of a country in order to guarantee fair elections and discourage irregularities. In order to prevent electoral fraud and corruption that compromises their integrity, Section 10A of the Representative People Act was introduced. In **Indira Gandhi v Raj Narain**,¹⁶ The single bench of Allahabad High Court disqualified her under section 10A for corrupt practices under 123(7). Although the Supreme Court stayed the judgement after Gandhi appealed against the High Court judgement.

DECISION IN CASE OF DISQUALIFICATION:

The Indian Constitution's Article 103¹⁷ outlines the procedures for deciding whether to disqualify members. In accordance with this article:

- (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause 1 of the article 102, the question shall be referred for the decision of the President and his decision shall be final.¹⁸
- (2) Before giving any decision on any such question, the president shall obtain the opinion of the election commission and shall act according to such opinion.¹⁹

The Speaker or Chairman of that house will determine whether or not a Member of Parliament/Member of legislative assembly is disqualified under the anti-defection law. The decision is subject to "judicial review."

¹⁵ Ibid

¹⁶ (1975) 2 SCC 159

¹⁷ Constitution of India, art.103

¹⁸ Ibid

¹⁹ Ibid

EXPULSION OF MP:

The house can expel its members on the recommendation of the disciplinary committees. The house alone has the power to expel the member if the majority of the member thinks that the conduct of a member is contrary to parliamentary etiquettes and is in contravention with the parliamentary privileges. In the famous “cash for query” case 11 MPs of the parliament were expelled on the recommendation of the ethics committee because it was proved that they received monetary kickbacks for asking questions in Parliament.²⁰²¹ The said expulsion was challenged in case of **Raja Ram Pal V. The Hon’ble Speaker**²⁶, the apex court upheld the expulsion of those 11 MPs. However in this case the speaker did not lodge a formal complaint of bribing hence the criminal case could not be pursued. Neither the court nor the law enforcement agencies could take cognizance because the acts done in parliament come under the parliamentary privileges. Expulsion per se does not disqualify a member from contesting election however if on complaint from speaker or chairman the court convicts the member then he stands disqualified under relevant sections²² of RPA 1951.

Ms Mahua Moitra is currently facing the disciplinary proceeding before the Ethics committee of the Lok Sabha and it is likely that the matter will be taken by the privilege committee also, her fate depends upon the recommendations of these committees.

WHAT LIES AHEAD:

Mr. Dubey accused Ms. Moitra of collecting bribes totaling 20 million rupees (\$240,542; £197,700) from Mr. Hiranandani in his complaint, claiming that "until quite recently" 50 of the 61 queries Ms. Moitra posed in the Lok Sabha were directed at the Adani company.²³ The TMC leader is charged with targeting Mr. Adani "for becoming famous," according to an affidavit Mr. Hiranandani presented to the ethics committee on October 19. Despite this, Ms. Moitra refuted each and every charge. She has filed a defamation suit against BJP MP Nishikant Dubey and lawyer Jai Anant Dehadrai.²⁴

The case was heard by the Ethics Committee. The Ethics committee suggested the expulsion of Mahua Moitra. Since the Committee lacks executive authority, it is unable to penalise the Member. It can suggest suspending the member for a predetermined amount of time. However, in this instance, Mahua Moitra can be expelled from the house. There was not the slightest uncertainty regarding the House's authority to remove a

²⁰ “Cash-for-Query, 11 tainted MPs expelled”, *Times of India*, December 24, 2005, available at <https://timesofindia.indiatimes.com/india/cash-for-query-11-tainted-mps-expelled/articleshow/1344457.cms> (Last Visited on November 1, 2023)

²¹ , 3 SCC 184

²² The Representative of the People Act, 1951 (Act 43 of 1951), ss. 8, 8A, 9, 10, 10A

²³ Zoya Mateen “Mahua Moitra: TMC MP appears before parliamentary panel over bribery charge”, BBC, November 2, 2023 available at <https://www.bbc.com/news/world-asia-india-67294799> (Last Visited on November 5, 2023)

²⁴ Nupur Thapliyal “Cash For Questions Row: MP Mahua Moitra Drops Defamation Suit Against Media Outlets, Social Media Intermediaries”, LiveLaw, October 31, 2023, available at <https://www.livelaw.in/high-court/delhi-high-court/mahua-moitra-defamation-money-to-ask-questions-in-parliament-media-reporting-delhi-high-court-241246> (Last Visited on November 2, 2023) ³⁰ (1998) 4 SCC 626

member. The earlier instances of expulsion of H G Mudgal, Subramanyan Swamy and Indira Gandhi and 11 MPs in 2005 in case of query never ended up in court. The Supreme Court, however, in **PV Narasimha Rao v State**³⁰ held that the legislators enjoyed immunity from procession in case of bribery in relation to parliamentary vote and speech by virtue of the Article 105(2) and 194(2). A seven-judge panel of the Supreme Court has been constituted to consider the referral of the ruling in PV Narasimha Rao v. State.

CONCLUSION:

The Disqualification of a Member of Parliament is a significant legal process defined in the constitution of India. It is a mechanism to ensure that individuals who do not meet the eligibility requirements do not hold or continue to hold parliamentary positions. The disqualification of MPs is essential to maintain the integrity of the parliamentary positions and uphold the principles of the Indian constitution. It serves to ensure that elected representatives meet the established criteria and standards, thereby safeguarding the democratic process in the country.

In summary, expulsion is a punitive action taken during an MP's current term due to the misconduct, while the disqualification is a legal process that makes an MP ineligible to continue in office based on specific disqualification criteria defined in the constitution. Both losing their position but they differ in the process and circumstances that lead to them.

