Disqualification of Convicted Legislators

Why in news?

Two Uttar Pradesh legislators were convicted on criminal charges, but only one of them has been disqualified and his seat declared vacant by the State's Legislative Assembly secretariat.

What is the story behind?

- Azam Khan, MLA, was sentenced to a three-year jail term, for making an inflammatory speech in 2019.
- As disqualification upon conviction on a criminal charge, accompanied by a prison sentence of two years and more is immediate, the Assembly secretariat declared his seat vacant.
- However, there has been no such response in regard to Vikram Singh Saini, MLA, after he was sentenced to two years' imprisonment in connection with the Muzaffarnagar riots of 2013.

When does conviction attract disqualification?

- **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:
    1. Making speeches that cause enmity between groups (Sec.153A) and doing so in a place of worship (Sec.505),
    2. Bribery and personation during elections and other electoral offences,
    3. Offences relating to rape and cruelty to women by husband and latter's relatives.
- Provisions of laws such as the Customs Act, Protection of Civil Rights Act, Unlawful Activities (Prevention) Act etc are among the 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 2 years in prison is needed to incur such disqualification.

Is there legal protection for legislators against disqualification?

- 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 3 months.
- If within that period, the convicted legislator files an appeal or revision application, it won't take effect until the disposal of the appeal or application.
- In other words, the mere filing of an appeal against conviction will operate as a stay against disqualification.
- In Lily Thomas vs. Union of India (2000), the Supreme Court struck down Section 8(4) of the RPA 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 Section 11 of the Act, the EC may record reasons and either remove, or reduce the period of, a person's disqualification.

References

1. The Hindu Explained | Can convicted legislators be disqualified from Assembly?
2. Lily Thomas v Union of India Case Summary 2000

