

#### **4. Disqualification of Sitting MP: The Conundrum**

**Prelims Syllabus: Polity**

**Mains Syllabus: GS-II Polity | Parliament & State Legislatures, Representation of People's Act**



#### **Why in News?**

- The instance where the Kerala High Court, in January this year, suspended the verdict passed by the Kavaratti District and Sessions Court (in an attempt to murder case) in which the then sitting Member of Parliament (MP) of Lakshadweep was sentenced to 10 years in jail.
- The issue is on whether disqualification for conviction is final or whether it can be revoked. This issue can arise whenever a legislator is disqualified.

#### **The background:**

- The facts are as follows. Mr. Faizal The then sitting MP of Lakshadweep was convicted by the Kavaratti sessions court on January 11 for attempt to murder, and sentenced to 10 years imprisonment. On January 13, the Lok Sabha announced that he was disqualified as an MP with effect from the date of conviction.
- On January 18, the Election Commission of India (ECI) fixed February 27 as the date for by-election to that constituency, with the formal notification to be issued on January 31.
- Faizal appealed to the Kerala High Court for a stay on his conviction and sentence, which the High Court suspended on January 25.
- The High Court suspended Faizal Faizal's conviction due to the cost of a parliamentary election and the disruption of developmental activities in Lakshadweep.
- Faizal challenged the ECI's announcement in the Supreme Court of India.
- On January 30, the ECI said it was deferring the election.

### The specific provisions:

- **The provision for disqualification is given in Article 102 of the Constitution:** It specifies that a person shall be disqualified for contesting elections and being a Member of Parliament under certain conditions. These include holding an office of profit, being of unsound mind or insolvent, or not being a citizen of India. It also authorises Parliament to make law determining conditions of disqualifications.
- **The Representation of the People Act (RPA), 1951:** The RPA provides that a person will be disqualified if convicted and sentenced to imprisonment for two years or more. The person is disqualified for the period of imprisonment and a further six years.
- **Exception for the sitting members:** There is an exception for sitting members; they have been provided a period of three months from the date of conviction to appeal; the disqualification will not be applicable until the appeal is decided.

### A case of differential treatment of candidates

- **Challenges under Article 14 of the constitution:** The differential treatment of candidates for elections and sitting members was challenged under Article 14 (right to equality).
- **Prabhakaran vs P. Jayarajan:** A Constitution Bench of the Supreme Court, in 2005 (K. Prabhakaran vs P. Jayarajan), decided that the consequences of disqualifying a contestant and a sitting member were different.
- **Reasoning behind treating differently:** The strength of the party in the legislature would change, and could have an adverse impact if a government had a thin majority. It would also trigger a by-election. Therefore, it was reasonable to treat the two categories differently.
- **Lily Thomas vs Union of India:** In 2013, a two-judge Bench of the Supreme Court again considered whether this exception was constitutionally invalid (Lily Thomas vs Union of India). It stated that Article 102 empowers Parliament to make law regarding disqualification of a person for being chosen as, and for being, a member of either House of Parliament.
- **Exception for sitting members was unconstitutional:** The judgment stated that making an exception for sitting members was against the constitution. As per Article 101, if a Member of Parliament is disqualified under Article 102, their seat will become vacant immediately. This means that if the conditions outlined in Article 102 are met, the disqualification will take effect automatically and immediately.

### What is the confusion?

- **In Navjot Singh Sidhu case, Supreme Court stayed his conviction:** Navjot Singh Sidhu, an MP, was convicted and sentenced to three years imprisonment. He resigned from his seat but wanted to contest the election and appealed for a stay on his conviction. In 2007, the Supreme Court stayed his conviction, which removed the disqualification until the appeal was decided, allowing him to contest the election.
- **Question arises In Kerala case:** The Lakshadweep seat was declared vacant, but the Election Commission of India (ECI) announced deferring the by-election after a stay order was granted. The Lok Sabha has kept the seat vacant and has not reinstated the MP. The question is whether the disqualification can be backdated, as if it never happened, and the election avoided. Or, whether the disqualification is removed only from the date of the stay order, and the vacated seat can be filled only through a by-election.
- **Conundrum and Implications:** The conundrum arises because the Lily Thomas judgment requires the seat to be vacated immediately upon disqualification, whereas the Kerala High Court stay aims to keep the MP in the seat until the appeal is decided. The answer to this issue will have implications for similar cases in the future.

### Conclusion:

- As India continues to strengthen its democratic system, one important issue that needs resolution is determining the correct answer for when a disqualification is removed for a sitting member of parliament who has been granted a stay on their conviction. The conflicting court judgments and constitutional provisions only highlight the need for a clear and definitive resolution to this issue, which will undoubtedly enhance the credibility and legitimacy of the Indian political system.