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PROPORTIONALITY IN ELECTORAL DISQUALIFICATIONS: THE CASE AGAINST LIFETIME BANS FOR CONVICTED POLITICIANS - A CONSTITUTIONAL AND COMPARATIVE INQUIRY INTO INDIA'S DISQUALIFICATION REGIME

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I. ABSTRACT

*The increasing criminalisation of electoral politics presents a serious challenge to democratic governance, public accountability, and the rule of law in India. In response, recent proposals have called for imposing a lifetime ban on convicted politicians to restore public trust and protect electoral integrity. This paper critically examines whether such permanent exclusions are constitutionally justified or whether they risk undermining democratic participation itself. The study focuses on Section 8 of the Representation of the People Act, 1951, which currently prescribes time-bound disqualification following conviction. Using a doctrinal methodology grounded in constitutional law, the paper applies the structured proportionality test to assess the legality of both the existing disqualification regime and the proposed lifetime ban. It evaluates these measures against Articles 14, 19(1)(a), and 21 of the Indian Constitution, emphasising political participation as a core democratic right rather than a mere statutory privilege. Judicial developments in *Lily Thomas v. Union of India* and *Public Interest Foundation v. Union of India* are analysed to highlight the judiciary's evolving approach to electoral accountability, legislative competence, and democratic restraint. The paper further adopts a comparative perspective, drawing on international jurisprudence, particularly the European Court of Human Rights' decision in *Paksas v. Lithuania*, and Commonwealth models that favour time-limited and reviewable disqualifications. The paper argues that while safeguarding electoral integrity is a legitimate democratic objective, lifetime disqualification fails the necessity and balancing requirements of proportionality by permanently excluding individuals from political life and disregarding the possibility of rehabilitation. It concludes by*

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proposing a graded, offence-based disqualification framework that better reconciles electoral integrity with democratic participation, constitutional accountability, and the rule of law.

II. KEYWORDS

Electoral Disqualification; Constitutional Proportionality; Representation of the People Act, 1951; Lifetime Ban; Comparative Constitutional Law.

III. INTRODUCTION

Maintaining the sanctity of the Indian election process while protecting individual rights enshrined in the Constitution is a subtle equilibrium. The Representation of the People Act, 1951 (RPA) seeks to debar convicted persons from contesting elections by imposing automatic disqualification for the period of sentence plus six additional years of cooling-off period under Section 8. Articles 14, 19(1)(a), and 21 of the Constitution constitute the "golden triangle" of basic rights, granting equality before law, freedom of speech and expression, and protection of life and individual liberty respectively. Article 326 enshrines the constitutional right to vote by universal adult suffrage to all citizens of India who are 18 years and above.

A public interest litigation was brought to the Supreme Court at the beginning of 2025, seeking to impose a lifetime disbarment as an equal penalty. The submission was that only a lifelong disbarment would adequately prevent criminalization of politics and revive public confidence. The Central Government has, however, submitted that a life ban would be disproportionate to the offence and hence violate Articles 14, 19(1)(a), and 21 of the Constitution and violate the principle of reasonable classification as well.

Central to this controversy is the principle of proportionality, selectively applied by Indian courts to cases involving fundamental rights while being unevenly applied to electoral disqualification situations. Using a four-level framework consisting of legitimate aim, appropriateness, necessity, and strict proportionality, any interference with political rights is obliged to promote a substantial public interest, adopt means rigorously related to that interest, follow the least restrictive means approach, and refraining from excessive rights incursion. The 2013 judgement in Lily Thomas held Section 8(4) to be non-constitutional as it allowed convicted persons to remain

members until all appeals ran their full course, and disqualification takes effect at the moment of conviction. Thereafter, in *Public Interest Foundation v. Union of India* (2018), reasserting its position regarding differentiation between charged and convicted candidates with a nod to fairness and accountability in elections, the Court held its position once again.

However, precise limits of proportionality continue to be unclear. The reasoning supporting a lifelong disqualification is based on the belief that only an absolute ban will efficiently prevent criminal elements from engaging in electoral procedures. Its opponents argue that such lifelong disenfranchisement can violate the irrebuttable presumption of fault and deprive rehabilitated persons of any chance at public rehabilitation. In addition, international case law most notably represented by the European Court of Human Rights in *Paksas v. Lithuania* has categorized lifelong disqualification as a disproportionate interference with Article 3 of Protocol No. 1 to the European Convention on Human Rights, corresponding to India's Article 326 right to vote.

Beyond questions of fundamental-rights theory, empirical data reveal that nearly half of India's sitting Members of Parliament and Legislative Assemblies face pending criminal charges, amplifying public disillusionment. This reality intensifies the normative imperative to design an electoral-disqualification regime that is both effective and constitutionally sound. Comparative practice in the UK, Canada, Australia, and South Africa offers a range of models: time-limited prohibition related to sentence, rehabilitative periods related to offence seriousness, and procedural protections like fast-track courts for criminal-politics offences. The paper conducts a doctrinal and comparative examination to determine if a present six-year prohibition or a possible lifetime ban is constitutionally appropriate. The paper chronicles Section 8's legislative origins, surveys judgments by the Supreme Court using proportionality as a prism, takes account of international best practices, and concludes with advanced reform recommendations. Harmonising democratic integrity with citizen rights, this research hopes to substantially contribute to governance regarding participation by convicted politicians in India's thriving yet transforming electoral democracy.

A. Research Problem

The research at present is interested in studying the constitutional validity and proportionality of disqualified membership for legislators found guilty by virtue of convictions through the Representation of the People Act, 1951, and finding out whether lifetime disqualifications are possible when weighed with democratic rights and constitutional safeguards. The research questions can thus be framed thus:

1. **Equality and Political Participation:** Section 8 of the Representation of the People Act, 1951, disqualifying for six years legislators who have been found guilty by courts of law, gives rise to a constitutional issue whether it is compatible with the equality guaranteed by Article 14 and political activity as a constituent of freedom of speech guaranteed by Article 19(1)(a).
2. **Proportionality and Lifetime Disqualification:** Extension of electoral disqualification to a life-long disqualification invokes the principle of proportionality with an examination whether such a step is necessary, appropriate, and least-restrictive for achieving electoral integrity, but not disproportionately violating the right to life and liberty of the concerned individual under Article 21.
3. **Judicial Interpretation in India:** Judicial reason in *Lily Thomas v. Union of India* (2013) and *Public Interest Foundation v. Union of India* (2018) illustrates how the Supreme Court has applied the requirements of reasonable classification and proportionality to electoral disqualifications, a key element of the challenge.
4. **Comparative Constitutional Guidance:** The European Court of Human Rights' case law in *Paksas v. Lithuania* and taking cues from Commonwealth courts such as the United Kingdom, Canada, and Australia present comparative views upon constitutionality that bring to light the challenge discovering permissibility with reference to lifetime bans compared to time-limited bans.

B. Research Objectives

1. To trace the evolution and policy rationale underlying Section 8 of the Representation of the People Act, 1951.
2. To examine constitutional challenges to electoral disqualification under Articles 14, 19, and 21 of the Constitution.
3. To assess the application of the proportionality doctrine in Indian judicial interpretation of electoral bans.
4. To undertake a comparative analysis of disqualification frameworks in select democratic jurisdictions.
5. To formulate balanced reform proposals that reconcile electoral integrity with constitutional rights.

C. Research Questions

This paper seeks to interrogate the constitutional validity of lifetime electoral disqualifications for convicted politicians through the lens of proportionality and comparative constitutional law. The inquiry is guided by the following research questions:

1. What legislative history and constitutional debates informed the framing of Section 8 of the Representation of the People Act, 1951, and how do these debates reflect the balance between democratic participation and electoral integrity?
2. In what ways have Indian courts, particularly the Supreme Court, interpreted and applied the doctrine of proportionality to electoral disqualification provisions, and how consistent has this jurisprudence been with broader constitutional principles?
3. Do lifetime disqualifications for convicted politicians satisfy the necessity and least-restrictive-means requirements of India's proportionality framework, or do they risk imposing disproportionate restrictions on fundamental rights under Articles 14, 19, and 21?

4. Which international models such as those in the United Kingdom, Canada, Australia, and the jurisprudence of the European Court of Human Rights provide instructive frameworks for calibrating the duration of disqualification, and what lessons can India derive from these comparative experiences?
5. Is there any need of reform in the existing framework and laws?

D. Research Hypotheses

1. The current six-year disqualification under Section 8 RPA 1951 meets the “legitimate aim” and “suitability” limbs of the proportionality test but fails the “necessity” and “strict proportionality” criteria, indicating a need for tiered ban durations.
2. A lifetime ban on convicted politicians would amount to an excessive and disproportionate restriction on Articles 14, 19, and 21, contravening India’s constitutional commitment to reasonable classification and personal rehabilitation.
3. Adopting a tiered electoral-disqualification regime linking ban duration to the gravity of conviction and sentence length will better balance electoral integrity with fundamental-rights protection than either a uniform six-year or lifetime prohibition.

E. Research Methodology

1. Nature of the Research

This Research adopts a doctrinal legal research methodology, anchored in the analysis of statutes, constitutional provisions, judicial precedents, and authoritative commentaries. The emphasis is on evaluating the constitutional validity of electoral disqualifications through legal reasoning and established interpretative frameworks. While primarily doctrinal, the inquiry is supplemented by comparative and empirical dimensions to ensure comprehensiveness.

2. Sources of Data

- **Primary Sources**

- **Legislative Texts:** Representation of the People Act, 1951 (with focus on Section 8 and its sub-sections); Constitution of India (Articles 14, 19, 21, 102, 191).
- **Judicial Decisions:** Landmark judgments such as *Lily Thomas v. Union of India* (2013), *Public Interest Foundation v. Union of India* (2018), and pending PILs on lifetime disqualification.
- **Parliamentary Debates and Law Commission Reports:** Debates during the enactment of the RPA 1951; Law Commission of India's 170th, 244th, and 255th Reports; Election Commission recommendations.
- **Secondary Sources**
 - **Scholarly Articles and Monographs:** Academic writing on proportionality, electoral reforms, and democratic theory.
 - **Policy Documents and Commentaries:** Reports from civil society (ADR reports), think-tank working papers, and election reform advocacy material.

3. Research Tools and Techniques

- **Doctrinal Analysis:** Close reading of constitutional provisions, statutory texts, and judgments to distill principles governing disqualification.
- **Proportionality Framework:** Application of the four-step proportionality test as developed by the Supreme Court (*Modern Dental College v. State of M.P.*, 2016) to assess lifetime bans.
- **Comparative Method:** Systematic comparison with select democracies to highlight similarities, divergences, and transferable lessons.

4. Methodological Limitations

- The empirical component is illustrative, not conclusive, and does not claim statistical representativeness.

- Comparative references are selective (UK, Canada, Australia, ECtHR), avoiding an unwieldy global survey.
- The research consciously excludes broader electoral reforms (e.g., campaign finance, reservation policies), to remain tightly focused on conviction-based disqualification.

F. Review of Literature

1. Primary Legal Texts and Constitutional Commentaries

- V.S. Rama Devi & S.K. Mendiratta, *How India Votes: Election Laws, Practice and Procedure* (5th ed., 2025)², this definitive treatise offers exhaustive coverage of India's electoral system, including in-depth examination of Section 8 RPA 1951 and disqualifications. The book provides practical details on Election Commission practice, nomination of candidates, and judicial decisions over seven decades. The authors bring on board recent constitutional evolution and Supreme Court judgments to develop a practitioner's resource book. Unfortunately, while the book is exemplary in procedure, it falls short of critical examination of constitutionally on proportionality doctrine applied to electoral restrictions. Writing on disqualification is solely administration-focused and not constitutional, and opportunities are not taken to examine Article 14 equality challenges and Article 19(1)(a) consequences. Research Gap is the insufficient engagement with fundamental rights jurisprudence in electoral participation context.
- Kuber Mahajan, *Election Laws and Practice in India* (2nd ed., 2024)³, focuses on contemporary electoral developments including recent amendments to RPA 1951, judicial developments regarding floor tests, and comprehensive anti-defection law analysis. The text demonstrates particular strength in covering 2020-2024 judicial developments,

² V S Rama Devi and S K Mendiratta, *How India Votes: Election Laws, Practice and Procedure* (5th edn, LexisNexis 2025).

³ Kuber Mahajan, *Election Laws and Practice in India* (2nd edn, Eastern Book Company 2024).

including Election Commission guidelines and Supreme Court directions on candidate disclosure. The author provides detailed case studies of electoral disputes and practical guidance on election petition procedures. However, the work provides limited theoretical framework for constitutional analysis of disqualification periods. The absence of proportionality analysis and comparative constitutional perspectives significantly limits its contribution to understanding electoral disqualification as constitutional issue. Research Gap is the treats legal provisions as static rules rather than rights-balancing mechanisms.

- O.P. Tewari, *Law of Election in India* (4th ed., 2019, reprinted 2023)⁴, provides systematic topic-wise coverage of election law with focus on practical applicability and dispute redressal mechanism. The book comprehensively encompasses candidate disqualifications, qualifications, election petition proceedings, and corrupt practices with judicious judicial precedents. The real strength of the book is in rendering practitioner-specific direction through detailed procedure charts, forms, and time-line requirements. The book incorporates insightful analysis of delimitation of constituency, reservation provisions, and procedure for preparation of electoral rolls. Research Gap is the insufficient engagement with proportionality doctrine developments and lacks comparative constitutional perspectives on electoral disqualification. Treatment of Section 8 disqualifications remains procedural without engaging fundamental constitutional questions of rights-balancing.

2. Constitutional Law and Fundamental Rights Scholarship

- Constitutional Law Manuals - Part III Fundamental Rights Analysis⁵, Standard constitutional law texts provide foundational understanding of Articles 14, 19, and 21, with detailed equality doctrine and due

⁴ O P Tewari, *Law of Election in India* (4th edn, Eastern Book Company 2023).

⁵ M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

process development analysis. These works systematically examine Supreme Court's evolution from formal equality to substantive equality and arbitrariness test emergence. The texts comprehensively cover horizontal application of fundamental rights, state action doctrine, and inter-rights relationships. However, these foundational texts lack specialized treatment of electoral rights as distinct constitutional category requiring nuanced proportionality analysis. They fail to address specific constitutional challenges posed by electoral disqualification, treating political participation as merely general fundamental rights aspect. Research Gap is no recognition of electoral rights' special constitutional significance in democratic governance.

- Aparna Chandra, "Proportionality in India: A Bridge to Nowhere?" (Oxford Human Rights Hub, 2021)⁶, critical academic analysis providing comprehensive examination of Supreme Court's four-step proportionality test adoption following *Modern Dental College* (2016). The work traces doctrinal evolution from traditional fundamental rights analysis to structured proportionality, examining judicial confusion and inconsistent application. The author identifies conceptual confusion in judicial application, noting courts often cite proportionality without systematic four-step test implementation. The analysis covers landmark cases including *Anuradha Bhasin* and privacy jurisprudence, demonstrating proportionality doctrine's potential and limitations. However, the work does not address electoral disqualification context specifically, presenting opportunity for specialized proportionality framework application. Research Gap is the missing electoral rights and democratic participation analysis.

⁶ Aparna Chandra, 'Proportionality in India: A Bridge to Nowhere?' (2021) Oxford Human Rights Hub <https://ohrh.law.ox.ac.uk/proportionality-in-india-a-bridge-to-nowhere> accessed 6 September 2025.

- "Conflicting Fundamental Rights Under the Indian Constitution" (Columbia Law School, 2023)⁷, in-depth analysis discussing Supreme Court's approach to resolve inter-rights dilemmas, focusing on previously ad-hoc practice and attempts to systematize in recent years. The book addresses Article 19 and Article 21 conflicts, Article 14 and Article 19 conflicts, and tension between collective and individual rights. It proves Court's transition from simplistic balancing tests to institutionally embedded approaches, including adopting proportionality in limited situations. Detailed case studies on rights conflicts in media regulation, privacy and transparency cases are presented in the Research. Research Gap is that there is no specific treatment of electoral rights versus equality/due process tensions in disqualification cases. Missing crucial area where rights conflicts are particularly acute and constitutional resolution mechanisms remain underdeveloped.

3. Supreme Court Jurisprudence and Case Analysis

- "Lily Thomas v. Union of India: Academic Commentary" (Multiple Sources 2023-2025)⁸, extensive judicial analysis of 2013 landmark judgment striking down Section 8(4), demonstrating constitutional significance of immediate disqualification upon conviction. Academic commentaries examine Court's reasoning that allowing convicted legislators continuation pending appeals undermines electoral integrity. The analysis covers Court's rejection of "innocent until proven guilty" argument in electoral context, distinguishing criminal law and electoral law standards. Commentators examine judgment's federalism impact and separation of powers implications. Strengths: Comprehensive doctrinal analysis of immediate disqualification principle and constitutional foundations. Research Gap - Limited

⁷ Ariel L Bendor, 'Conflicting Fundamental Rights Under the Indian Constitution' (2023) Columbia Law School LL.M. Essays and Theses.

⁸ Lily Thomas v Union of India (2013) 7 SCC 653. Public Interest Foundation v Union of India (2019) 3 SCC 224.

proportionality analysis and insufficient comparative constitutional perspective examining how other democracies handle similar constitutional tensions.

4. Comparative Constitutional Law Literature

- "Paksas v. Lithuania: ECtHR Analysis and Academic Commentary" (Multiple Sources 2011-2023)⁹, comprehensive analysis of European Court of Human Rights' 2011 ruling that lifetime disqualification constitutes disproportionate interference with electoral participation rights. Academic commentary examines Court's four-step proportionality analysis, noting distinction between office disqualification and electoral participation disqualification. The analysis covers Court's reasoning that lifetime bans fail "necessity" test by being overly broad without considering rehabilitation possibilities. Commentary explores judgment's implications for other European jurisdictions and proportionality standards development in electoral rights cases. **Strength:** Detailed proportionality test application in electoral context with sophisticated rights-balancing analysis. Research Gap - Limited engagement with Indian constitutional doctrine and insufficient comparative applicability analysis to Indian legal contexts.

5. Criminalisation of Politics: Empirical and Policy Studies

- Law Commission of India Report No. 244: Electoral Disqualifications (2014)¹⁰, authoritative government analysis addressing electoral disqualification and the criminalisation of politics through a constitutional and policy lens. The report provides detailed stakeholder consultations including political parties, civil society, Election Commission, and constitutional experts. Analysis covers historical

⁹ 'CASE OF PAKSAS v LITHUANIA' (ECtHR, Grand Chamber, 6 January 2011) App no 34932/04 <https://hudoc.echr.coe.int/eng?i=001-102617> accessed 6 September 2025.

¹⁰ Law Commission of India, Report No. 244: Electoral Disqualifications (Ministry of Law and Justice, February 2014) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081612.pdf> accessed 6 September 2025.

criminalization development, current statistical trends, constitutional challenges, and international best practices. The Commission examines various reform proposals including immediate disqualification upon charge-framing and fast-track courts establishment. Report No. 244 includes detailed constitutional analysis of conviction- and charge-based disqualification proposals, including their implications for Articles 14, 19, and 21. Research Gap - As a 2014 report, it predates later developments in proportionality doctrine and does not reflect post-2014 empirical trends in criminalisation of politics.

- Milan Vaishnav, "Criminalization, Political Parties, and India's Political Economy" (Carnegie Endowment, 2022)¹¹, empirical analysis providing sophisticated economic and political science examination of criminal-politician nexus through party incentive structures. The work addresses four key questions: party nomination reasons, voter preferences, criminal politicians' policy impact, and effective reforms. Analysis utilizes extensive electoral data, candidate affidavits, and constituency-level indicators demonstrating systematic criminal politician recruitment patterns. Research examines constituency characteristics, party competition, and criminal candidate selection relationships with empirical evidence for theoretical claims. Work includes detailed multi-state case studies demonstrating criminalisation pattern variations. Research Gap - Despite sophisticated empirical analysis, insufficient legal-constitutional disqualification remedies analysis and lacks constitutional law scholarship engagement on proportionality and rights-balancing.

6. Specialized Academic Articles

¹¹ Milan Vaishnav, *Criminalization, Political Parties, and India's Political Economy* (Carnegie Endowment for International Peace 2022) <https://milanvaishnav.com/wp-content/uploads/2022/07/criminalization-submission-final.pdf> accessed 6 September 2025.

- Sukanshika Vatsa, "Criminalisation of Politics in India: Did the Supreme Court Miss the Opportunity?" (ILI Law Review, 2022)¹², analytical critique reviewing Supreme Court's judicial response to criminalization, claiming Court forfeited significant electoral reform possibilities. Work criticizes major cases from Association for Democratic Reforms to Public Interest Foundation and reviews Court's shifting position from activism to reticence. Examination reveals way in which Court's separation of powers focus constrained desire to enact structural electoral reform. Article considers electoral regulation constitutional tensions between judicial review and parliamentary supremacy, claiming nuanced constitutional analysis. Contribution - Identifies specific implementation gaps in current judicial approaches and proposes alternative constitutional reasoning frameworks. Research Gap - Lacks systematic proportionality framework proposal and insufficient comparative constitutional solutions engagement.

IV. DOCTRINAL FOUNDATIONS OF ELECTORAL DISQUALIFICATION IN INDIA

This chapter establishes the constitutional and statutory landscape governing the disqualification of elected representatives in India. It examines the historical purpose of the Representation of the People Act, 1951 (RPA), analyses the defining Supreme Court jurisprudence, and delineates the constitutional boundaries of legislative power concerning fundamental rights under Articles 14, 19, and 21. This detailed doctrinal analysis provides the necessary foundation for assessing the proportionality of any disqualification regime, be it the existing time-limited ban (H1) or the proposed lifetime ban (H2).

¹² Sukanshika Vatsa, 'Criminalisation of Politics in India: Did the Supreme Court Miss the Opportunity?' (2022) ILI Law Review Winter Issue 28 <https://ili.ac.in/pdf/9. Sukanshika Vatsa.pdf> accessed 6 September 2025.

A. Legislative and Historical Antecedents of the RPA, 1951

The power to legislate on the qualifications and disqualifications for membership in Parliament and State Legislatures is expressly conferred upon Parliament by the Constitution. Article 102(1)(e)¹³ (for Parliament) and Article 191(1)(e)¹⁴ (for State Legislatures) authorise Parliament to prescribe specific conditions "by or under any law". This constitutional grant affirms legislative supremacy in establishing the regulatory framework for political eligibility within the broader framework of constitutional supremacy that constrains all governmental action in India.

The RPA, 1951¹⁵ Enacted by the Provisional Parliament under the transitional powers of Article 327, this established the foundational framework for conducting elections and defining eligibility prior to the first general election. The Act was introduced by Dr. B.R. Ambedkar as Law Minister, and its original long title defined its purpose as providing for the "conduct of elections," defining qualifications and disqualifications for membership, specifying corrupt practices, and dealing with electoral disputes. The constitutional framework governing elections is outlined in Part XV (Articles 324-329), which delegates comprehensive power to Parliament to make laws relating to all electoral matters.

1. The Constitutional Framework and Parliamentary Competence

The constitutional architecture underlying the RPA reflects a deliberate balance between legislative flexibility and constitutional constraints. Articles 102(1)(e) and 191(1)(e) represent enabling provisions that grant Parliament expansive authority to define disqualification criteria, but this power operates within the broader constitutional scheme that subjects all legislative action to fundamental rights protection. The Supreme Court has consistently held that Parliament's power to legislate on disqualifications, while broad, remains subject to constitutional limitations, particularly the requirements of Article 14 (equality), Article 19 (freedom of expression), and Article 21 (life and personal liberty).

¹³ Constitution of India 1950 art 102(1)(e).

¹⁴ Constitution of India 1950 art 191(1)(e).

¹⁵ Representation of the People Act 1951, Preamble.

2. Historical Context and Democratic Imperatives

The enactment of the RPA occurred within the broader context of India's transition from colonial rule to democratic governance, with particular attention to ensuring the integrity of electoral processes. The Constituent Assembly debates reveal that the framers were acutely aware of the need to balance democratic participation with the imperative of maintaining high standards of public office. This historical context is crucial for understanding the policy rationale underlying Section 8¹⁶, which was designed as a comprehensive framework for addressing criminal conduct that could undermine democratic institutions.

B. The Purpose of Section 8: Disqualification on Conviction

Section 8 of the RPA outlines disqualification specifically upon conviction for certain offences. This section was designed to address multiple forms of harm to the democratic process, with each subsection reflecting different legislative judgments about the relationship between criminal conduct and democratic unfitness

1. Tiered Structure and Legislative Classification

Section 8 establishes a sophisticated tiered structure for disqualification based on conviction, reflecting nuanced legislative judgments about different categories of criminal conduct and their relationship to democratic participation:

- **Section 8(1):** Heinous and Democracy-Specific Offences, Section 8(1)¹⁷ lists specific severe offences that attract automatic disqualification regardless of sentence length, including promoting enmity between different groups, bribery, undue influence, rape, cruelty towards women, and offences under the Prevention of Corruption Act. The legislative intent here is both punitive and deterrent, targeting crimes that demonstrate either deep moral turpitude or direct harm to the social fabric and the democratic process itself. This subsection reflects a legislative judgment that certain categories of criminal conduct are

¹⁶ Representation of the People Act 1951, s8.

¹⁷ Representation of the People Act 1951, ss 8(1).

so fundamentally incompatible with public office that even minimal sentences warrant disqualification for six years from the date of conviction.

- **Section 8(2):** Specific Economic and Social Offences, Section 8(2)¹⁸ addresses offences related to hoarding, profiteering, adulteration of food or drugs, and violations of the Dowry Prohibition Act, requiring a minimum sentence of six months for disqualification. This intermediate category reflects legislative recognition that certain economic and social crimes, while serious, require a higher threshold of judicial condemnation (longer sentences) before triggering disqualification.
- **Section 8(3):** General Criminal Conduct, Section 8(3)¹⁹ serves as a residuary clause, applying disqualification to any offence resulting in imprisonment of two years or more, provided it is not covered by subsections (1) or (2). This provision reflects a legislative judgment that serious criminal conduct, as evidenced by substantial imprisonment, is generally incompatible with public office, regardless of the specific nature of the crime.

2. Policy Rationale of the Six-Year Ban

The fixed, time-limited period codified under Section 8(3) mandates that a person convicted of any offence resulting in a sentence of two years or more is disqualified for the period of the sentence served plus a mandatory six additional years. This cumulative period reflects a core legislative policy judgment designed to strike a measured balance between necessary deterrence and the fundamental principle of democratic participation.²⁰

¹⁸ Representation of the People Act 1951, ss 8(2)

¹⁹ Representation of the People Act 1951, ss 8(3)

²⁰ S Yadav, 'Section 8 in The Representation of the People Act, 1951' (LawBhoomi, 4 June 2025) <https://lawbhoomi.com/section-8-in-the-representation-of-the-people-act-1951/> accessed 30 September 2025.

The legislative choice of a finite duration affirmed the possibility of eventual rehabilitation and the restoration of civil and political rights, thereby avoiding permanent exclusion from civil society based on past criminal conduct. The six-year post-release period functions as a mandatory "cooling-off" period, intended to provide public assurance of deterrence and to allow the individual time to demonstrate reform before re-entering public life. This statutory limit signifies that the framers viewed sanctions as temporary and tied to the criminal penalty, recognising the importance of civic re-entry after the debt to society is paid.

3. Constitutional Justification and Democratic Theory

The time-limited approach embedded in Section 8 reflects sophisticated constitutional thinking about the relationship between punishment, rehabilitation, and democratic participation. The provision recognizes that while serious criminal conduct may temporarily disqualify an individual from public office, the fundamental democratic principle of eligibility for office should ultimately be restored upon completion of both the judicial penalty and the additional deterrent period. This approach is consistent with broader constitutional principles recognizing the possibility of rehabilitation and the restoration of full citizenship rights following completion of criminal sanction.

C. The Constitutional Vulnerability of Uniformity (Article 14)

The primary constitutional vulnerability of the existing Section 8(3) lies in its inherent lack of internal proportionality and its potential violation of Article 14's²¹ guarantee of equality and non-arbitrariness. The Act mandates the exact same cumulative disqualification period (sentence served + 6 years) for any offence that meets the two-year imprisonment threshold, irrespective of the crime's nature, its connection to public office, or its specific impact on the integrity of the democratic process

1. Failure of Reasonable Classification

Article 14 permits classification only if it is founded on an intelligible differentia, and if that differentia has a rational nexus to the object sought to be achieved by the legislation. While the objective of Section 8 (deterrence and integrity) is legitimate, its

²¹ Constitution of India 1950 art 14.

means (uniform punishment for disparate harms) potentially fail the test of reasonable classification established by Supreme Court jurisprudence.

The constitutional vulnerability manifests in two critical ways:

- **Classification based on Sentence Length, not Democratic Harm:** Section 8(3) focuses exclusively on the quantum of imprisonment (two years or more), potentially equating crimes that may be minor statutory transgressions (just crossing the threshold) with severe offences that pose direct threats to democratic governance. This classification approach is potentially arbitrary because the duration of disqualification becomes disconnected from the actual moral turpitude or quantum of harm inflicted on the democratic body politic. The constitutional principle against treating unequal situations equally sometimes referred to as 'negative equality' suggests that this uniformity may render the sanction disproportionate to the actual harm caused
- **Absence of Legislative Tiering Beyond Sentence Quantum:** A constitutionally sound approach would necessitate introducing legislative tiering that differentiates sanctions based on the gravity and nature of democratic harm. The current rigidity fails to recognize that a politician's conviction for calculated corruption (representing direct democratic injury) should attract different treatment than conviction for an isolated, non-political, or non-heinous crime (representing general moral injury). This uniformity represents a structural flaw that has motivated judicial and public demand for more extreme measures, but the constitutionally appropriate response would be proportionate differentiation rather than blanket permanence.
- **The Arbitrariness Doctrine and Legislative Action:** The Supreme Court's decision in *Shayara Bano v. Union of India* ²²fundamentally transformed the constitutional analysis of legislative provisions under

²² Shayara Bano v Union of India (2017) 9 SCC 1 (SC).

Article 14 by establishing that legislative enactments can be struck down on grounds of arbitrariness. The Court held that "arbitrariness in legislation is very much a facet of unreasonableness" and that any legislative provision that is "manifestly arbitrary" violates Article 14. This doctrinal development has particular relevance for evaluating the constitutional validity of both the existing Section 8(3) and any proposed lifetime disqualification regime.

The test for manifest arbitrariness requires that a legislative provision be evaluated not merely for discriminatory classification, but for whether it is "excessive, disproportionate, or bears no rational relationship to the object sought to be achieved". Applied to electoral disqualification provisions, this standard requires careful examination of whether the chosen disqualification periods bear a rational relationship to the twin objectives of deterrence and maintaining democratic integrity.

D. Constitutional Scrutiny: Articles 14, 19, and 21

Electoral disqualification provisions constitute a direct restriction on fundamental rights, necessitating rigorous constitutional scrutiny under the "golden triangle" of Articles 14, 19, and 21. The intersection of these rights creates multiple layers of constitutional protection that any disqualification regime must satisfy.

1. Political Participation as Article 19 Right

The right to contest elections is not merely a statutory privilege but is firmly recognized as a necessary and essential extension of the freedom of speech and expression guaranteed by Article 19. This constitutional characterization is crucial because political participation the ability to stand as a candidate, represent the electorate, and voice public opinion is intrinsically linked to the democratic core of freedom of expression and the ability of the populace to choose their representatives freely.

The Supreme Court's jurisprudence has consistently recognized that political speech and electoral participation occupy a privileged position within the hierarchy of constitutional rights. The Manipur High Court's recent observation that "casting of

votes is a part of the voter's right to freedom of speech and expression under Article 19(1)(a)" reflects this broader understanding of electoral processes as fundamental expressions of democratic participation. This constitutional foundation means that any restriction on the right to contest elections must meet the high standard of "reasonable restrictions" under Article 19(2), which is now rigorously evaluated using the four-step proportionality doctrine.

2. The Proportionality Standard and Electoral Rights

The application of proportionality analysis to electoral disqualification requires careful balancing of the legitimate state objectives (preventing criminalisation of politics, maintaining electoral integrity) against the fundamental right of political participation. The proportionality test involves four sequential inquiries: (1) whether the measure serves a legitimate aim; (2) whether it is suitable for achieving that aim; (3) whether it is necessary (the least restrictive means available); and (4) whether it strikes a fair balance between the rights restricted and the benefits achieved

Applied to electoral disqualification, this framework suggests that while preventing criminal elements from holding office constitutes a legitimate aim, the means chosen must be both necessary and proportionate. A blanket lifetime ban, for instance, would likely fail the necessity test by being more restrictive than required to achieve the legitimate objectives, particularly given the availability of time-limited alternatives that could achieve the same deterrent and protective effects.

3. Article 14: Prohibition of Arbitrariness and Excessive Restriction

Article 14²³'s guarantee of equality before the law and prohibition of arbitrariness has evolved into a comprehensive standard for evaluating the reasonableness of legislative measures. The Supreme Court's decision in *Shayara Bano* established that unreasonableness pervades the entire constitutional scheme, and any measure that

²³ Constitution of India, Art 14.

restricts rights far "beyond what is required in the interests of" the legitimate aim is deemed arbitrary and violative of Article 14.

The proposal for a blanket, irreversible lifetime ban on political participation would constitute such an arbitrary and excessive imposition. The constitutional standard requires that any restriction be "no more than is necessary" to achieve the legitimate state objective. A lifetime ban, by imposing an indiscriminate civil penalty on all convicted individuals regardless of the severity of the offence, the possibility of rehabilitation, or the degree of connection to democratic unfitness, clearly restricts rights far beyond the requisite necessity.

4. Article 21: Dignity, Liberty, and the Right to Rehabilitation

Article 21's guarantee of life and personal liberty encompasses the right to dignity, personal autonomy, and critically, the right to rehabilitation. The constitutional jurisprudence recognising prisoners' rights under Article 21²⁴ establishes that "a prisoner, be he a convict or an under-trial or a detenu, does not cease to be a human being" and continues to enjoy fundamental rights, including the right to life guaranteed under the Constitution.

The debate over the duration of disqualification is fundamentally an Article 21 matter concerning the permissible limits of state punitive power post-conviction. A lifetime ban would impose a permanent societal and political stigma that denies the individual's fundamental human capacity for redemption and contribution to public service after completing their sentence. Modern constitutional jurisprudence views the right to rehabilitation as integral to human dignity, encompassing the ability to re-enter society and resume meaningful civic life following completion of criminal sanctions.

5. The Constitutional Principle of Rehabilitation

The constitutional recognition of rehabilitation rights reflects deeper principles about human dignity and the purposes of criminal punishment. Article 21's protection extends to ensuring that individuals who have completed their sentences are not

²⁴ Constitution of India, Art 21.

subjected to permanent civil disabilities that effectively create a permanent class of civic outcasts. A lifelong electoral ban establishes an irrebuttable presumption of permanent democratic unfitness, extinguishing the opportunity for atonement and re-entry, thus placing an undue and potentially unconstitutional restriction on the rights to dignity and autonomy protected under Article 21.

E. Judicial Evolution I: Lily Thomas v. Union of India (2013)

The judgment in *Lily Thomas v. Union of India (2013)* ²⁵marked a critical juncture in electoral jurisprudence by enforcing immediate accountability for sitting legislators upon conviction. The case challenged the constitutional validity of Section 8(4) of the RPA, 1951, which previously allowed sitting members of Parliament (MPs) or State Legislatures (MLAs) to continue holding office for three months after conviction, effectively deferring disqualification during the pendency of appeals.

1. Doctrinal Basis: Ultra Vires Legislation and Constitutional Supremacy

The Supreme Court held Section 8(4) to be ultra vires the Constitution, with the core judicial reasoning focusing on the constitutional scheme outlined in Articles 101(3)(a) and 190(3)(a). These provisions specify that a legislative seat shall become vacant if a member becomes subject to any disqualification mentioned in Articles 102(1) or 191(1). The Court ruled that Parliament had exceeded its legislative competence by attempting to defer the date from which disqualification became effective, as this power resided solely within the constitutional framework itself.

The judgment established several crucial constitutional principles:

- **Parliamentary Limitation Doctrine:** The Court held that Parliament's power to legislate on disqualifications under Articles 102(1)(e) and 191(1)(e), while broad, cannot contradict or undermine the constitutional scheme of automatic vacancy upon disqualification. This principle establishes that legislative competence in electoral matters, though extensive, remains subject to constitutional

²⁵ *Lily Thomas v Union of India (2013)* 7 SCC 653 (SC).

constraints and cannot be exercised in ways that subvert constitutional design.

- **Equality in Disqualification Standards:** The judgment strongly affirmed Article 14's equality principle by rejecting legislative differentiation between candidates (who faced immediate disqualification upon conviction) and sitting legislators (who received a three-month grace period). The Court established that the legal consequence of conviction must be uniform and immediate, regardless of the legislator's current status, thereby eliminating any privileged treatment for incumbent officials.
- **Constitutional Interpretation and Immediate Disqualification:** The Lily Thomas²⁶ decision represents a powerful assertion of constitutional supremacy over legislative attempts to create protected enclaves for elected officials. The Court's reasoning emphasized that constitutional provisions regarding disqualification operate automatically and cannot be modified or delayed through ordinary legislation. This interpretation reinforces the immediate deterrence function of Section 8 while establishing clear constitutional limits on Parliament's ability to modify disqualification procedures. The judgment's emphasis on immediate accountability reflects broader constitutional principles about the relationship between criminal conviction and public office. By eliminating the three-month grace period, the Court ensured that the stigma of criminal conviction would have immediate consequences for public officials, thereby strengthening the deterrent effect of electoral disqualification provisions.

²⁶ Lily Thomas v Union of India (2013) 7 SCC 653 (SC).

F. Judicial Evolution II: Public Interest Foundation v. Union of India (2018)

The Public Interest Foundation v. Union of India (2018)²⁷ case further clarified the Supreme Court's approach to the criminalisation of politics, specifically addressing petitioners' demand to disqualify candidates merely upon the framing of criminal charges rather than waiting for conviction.

1. **Judicial Restraint and Separation of Powers:** The Supreme Court's five-judge Constitutional Bench, while recognising the profound dangers posed by criminalisation of politics, refused to introduce pre-conviction disqualification triggers. The Court's rationale was grounded in fundamental constitutional principles that illuminate the broader framework governing electoral disqualifications.
2. **Separation of Powers Doctrine:** The Court explicitly exercised judicial restraint, asserting that legislating new disqualification criteria falls exclusively within Parliament's domain under Articles 102(1)(e) and 191(1)(e). The Court urged Parliament to enact suitable laws to curb criminalization but refused to trespass into the legislative sphere, stating: "Whether disqualification for membership can be laid down by the Court beyond Article 102(a) to (d) and the law made by the Parliament under Article 102(e)?" The Court answered definitively: "No".
3. **Constitutional Competence and Legislative Primacy:** The decision establishes that the Constitution's explicit grant of power to Parliament to define disqualification criteria creates a zone of legislative competence that the judiciary cannot invade. This principle has significant implications for understanding the constitutional framework governing electoral disqualifications, as it confirms that changes to disqualification standards must come through legislative rather than judicial action.
4. **The Presumption of Innocence and Due Process:** The Court's refusal to expand disqualification criteria was fundamentally grounded in constitutional principles of due process and the presumption of innocence.

²⁷ Public Interest Foundation v Union of India, (2019) 3 SCC 224.

The Court maintained that disqualification must necessarily follow formal conviction, emphasizing that allegations leading to charge-framing might be false, malicious, or politically motivated. This reasoning reflects deep constitutional values about the relationship between accusation and punishment in democratic societies

5. **Constitutional Logic and Future Fitness:** The judicial logic employed in Public Interest Foundation has crucial implications for evaluating lifetime disqualification proposals. If the constitutional scheme respects the presumption of innocence before conviction, it must logically also respect the presumption of potential rehabilitation and future fitness after a sentence is fully served. A lifetime ban would establish an irrebuttable presumption of permanent unfitness, which is philosophically and legally inconsistent with the due process principles that motivated the Court's restraint in declining to expand pre-conviction disqualifications.²⁸
6. **Comparative Constitutional Analysis:** The contrast between the Court's intervention in Lily Thomas (2013)²⁹ and its restraint in Public Interest Foundation (2018)³⁰ illustrates the nuanced boundary between judicial oversight of constitutional compliance and legislative policy formulation. In Lily Thomas, the Court intervened because Section 8(4)³¹ violated explicit constitutional provisions regarding automatic disqualification. In the Public Interest Foundation, the Court declined to act because expanding the disqualification criteria would require new policy judgments that properly belong to the legislative branch. This comparative analysis suggests that judicial intervention in electoral disqualification matters is appropriate when existing legislation violates constitutional constraints, but inappropriate when petitioners seek judicial expansion of disqualification criteria beyond what the constitutional framework and

²⁸ Prisoners' rights with reference to article 21 under the Indian Constitution' (Civil Law Journal, 2025) <https://www.civillawjournal.com/article/125/5-1-23-133.pdf> accessed 30 September 2025.

²⁹ Lily Thomas v Union of India (2013) 7 SCC 653 [24-30] (SC).

³⁰ Public Interest Foundation v Union of India, (2019) 3 SCC 224.

³¹ Representation of the People Act, 1951, s 8(4).

existing legislation provide. This principle has important implications for evaluating both the existing Section 8(3)³² framework and any proposed lifetime disqualification regime, as both must satisfy constitutional requirements while respecting the boundary between judicial and legislative functions.

- 7. Democratic Values and Constitutional Morality:** The Public Interest Foundation³³ decision reflects broader constitutional values about democratic participation and the relationship between criminal justice and political rights. The Court's recognition of Parliament's exclusive competence to define disqualification criteria, combined with its emphasis on due process protections, establishes a framework that respects both democratic accountability and individual rights. This balance is essential for evaluating any proposed changes to the electoral disqualification regime, as such changes must satisfy both democratic imperatives for clean governance and constitutional requirements for procedural fairness and proportionality. The Court's approach in both cases demonstrates sophisticated constitutional reasoning that recognises the legitimate objectives of preventing criminalisation while maintaining fidelity to constitutional principles and institutional boundaries. This jurisprudential foundation provides the essential framework for analysing the proportionality and constitutional validity of different approaches to electoral disqualification, whether time-limited or permanent.

V. THE PROPORTIONALITY DOCTRINE AND ITS APPLICATION

This chapter systematically applies the structured proportionality doctrine to the central controversy: the constitutional validity of imposing a lifetime ban on electoral office for convicted politicians (Hypothesis H2). The proportionality test serves as the contemporary standard for evaluating whether governmental restrictions on fundamental rights are justified and are not arbitrary or excessive, ensuring judicial

³² Representation of the People Act, 1951, s 8(3).

³³ Public Interest Foundation v Union of India, (2019) 3 SCC 224.

review moves beyond a subjective assessment of 'reasonableness' to a rigorous, structured inquiry.

A. Proportionality as the Structured Standard of Review in India

The philosophical precursor to proportionality in India lay in the 'excessiveness' test articulated in the early republic case of *Chintaman Rao v. State of M.P.*³⁴, where the Supreme Court held that the limitation imposed on a fundamental right "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.

The Supreme Court formally adopted the structured four-part proportionality test in *Modern Dental College v. State of M.P.* (2016)³⁵, explicitly recognizing it as the required standard for rigorously scrutinizing legislative interference with constitutional rights. This standard has since been cemented in key rights cases concerning privacy (*Puttaswamy* cases) and free speech (*Anuradha Bhasin*), demonstrating its institutionalization as a check against arbitrary state action. The test requires the state to provide a detailed justification not only for the restrictive goal but also for the *specific means chosen* to achieve it.³⁶

The four mandatory limbs of the test are:

- **Legitimate Aim:** The measure must pursue a legitimate public interest or constitutional objective.
- **Suitability (Rational Nexus):** The means adopted must be rationally connected to achieving the aim.
- **Necessity (Least Restrictive Means):** The measure must be the least intrusive or restrictive option available among feasible alternatives.

³⁴ *Chintaman Rao v State of Madhya Pradesh* (1950) SCR 759 (SC).

³⁵ *Peoples College of Dental Sciences and Research Centre v State of Madhya Pradesh* (2016) 10 SCC 108 (SC).

³⁶ V S Rama Devi and S K Mendiratta, *How India Votes: Election Laws, Practice and Procedure* (5th edn, LexisNexis 2025)

- **Strict Proportionality (Balancing):** The benefit derived from the restriction must outweigh the harm caused to the rights-holder; the measure must not have a disproportionate impact.

1. Double Proportionality and Conflicting Rights

In cases where fundamental rights conflict, such as the voter's right to information (read into Article) conflicting with the donor's right to privacy (Article 21), the Supreme Court has applied a "double proportionality test"³⁷. This requires checking the suitability, least restriction, and balancing conditions against *both* rights in question.

The electoral disqualification debate inherently involves a similar conflict: balancing the collective right to democratic integrity (voter's right to honest representation under Article 19) against the individual right to rehabilitation and political participation (Articles 19 and 21) of the convicted person. In this context, the disqualification measure must satisfy the proportionality test from the perspective of both the collective democratic interest (justifying the restriction) and the individual right-holder (ensuring the restriction is minimum and proportionate).

B. Step I & II: Legitimate Aim and Suitability (The Threshold Test)

The first two steps of the proportionality analysis determine the constitutional feasibility of the proposed measure and are generally satisfied by the proponents of a lifetime ban.

1. **Legitimate Aim:** The primary objective of imposing a lifetime ban is to eliminate the criminalization of politics, restore public confidence in democratic institutions, and ensure the fundamental integrity of the electoral process. Given the high incidence of criminal charges among legislators, this aim is unquestionably legitimate and serves a substantial public interest necessary for the health of the Republic. The goal of

³⁷ M Jain, 'Doctrine of Reasonable Classification' (iPleaders, 27 November 2023) <https://blog.iplayers.in/doctrine-of-reasonable-classification/> accessed 30 September 2025.

eradicating criminal influence in governance is a constitutionally mandated public good.

2. **Suitability (Rational Nexus):** A permanent ban is logically suited to achieving this aim. By ensuring that convicted persons are irrevocably barred from contesting elections, the measure rationally guarantees that they cannot re-enter the political stream. There is a direct, causal link between the means (lifetime exclusion) and the desired end (integrity), as the risk associated with that specific individual is permanently removed. This threshold test is therefore met.

C. Step III: The Necessity and Least-Restrictive Means Test (The Critical Hurdle)

The necessity test requires the state to prove that the restrictive measure, the lifetime ban, is the *least intrusive mechanism* capable of achieving the legitimate aim. This is the crucial stage where the proposal for a permanent ban fails (Hypothesis H2).

1. The Doctrine of Minimum Impairment

The necessity principle requires the measure to be the minimum impairment necessary to achieve the objective. If there exists an equally effective and demonstrably less restrictive alternative, the more restrictive measure is constitutionally invalid. A law imposing a limitation must not be "of an excessive nature, beyond what is required in the interests of the" state objective.

The argument against necessity rests fundamentally on the existence of equally effective alternatives that are time-limited:

- **The Efficacy of Tiered, Lengthy Bans (H3):** A constitutionally mandated tiered disqualification regime, which links the ban duration to the gravity and nature of the offense, provides a severe, substantial deterrent while preserving the possibility of future rehabilitation (Chapter VI). For heinous crimes, a ban of 20 to 25 years post-release, coupled with the sentence served, achieves comprehensive deterrence and severe public censure. This alternative is

effective in achieving the goal of integrity but is demonstrably less intrusive than permanence, thereby fulfilling the mandate of the least restrictive means.

- **Irrebuttable Presumption of Unfitness:** A lifetime ban is conceptually overbroad because it necessitates an irrebuttable presumption of permanent moral fault and democratic unfitness. It fails to distinguish between a permanent risk to the State and an individual who has fully served their sentence and reformed. By eliminating the possibility of rehabilitation, it imposes a penalty far greater than what is strictly required for the protection of democratic institutions. Since a very long, yet non-permanent, exclusion can effectively protect the democratic process, the irreversible nature of the lifetime ban is deemed an excessive means that fails the necessity test.

D. Step IV: Strict Proportionality (Balancing the Rights)

The final limb requires a final balancing act: weighing the severity of the permanent infringement on fundamental rights (Articles 14, 19, and 21) against the marginal increase in public utility gained by making the ban permanent instead of merely very lengthy (e.g., 25 years).³⁸

1. **The Weight of Infringement: Denial of Civic Life:** The permanent denial of political rights represents a catastrophic infringement on the individual's rights, amounting to a "civil death penalty" in the political sphere. The restriction is not merely the loss of the right to contest elections, but the irreversible suppression of the right to dignity, autonomy, and rehabilitation guaranteed by Article 21³⁹. Modern constitutionalism regards the capacity for reform and re-entry into public life as a fundamental aspect of human dignity. By permanently denying this possibility, the State imposes an irreversible harm that is disproportionate to the regulatory objective.
2. **The Marginal Gain Analysis:** The balancing exercise must analyse the marginal public benefit of *permanence* versus *extreme length*. For instance, if

³⁸ What is Proportionality' (BIHR Guide, 2023).

³⁹ Constitution of India, Art 21.

a 25-year post-release ban, as contemplated under Tier 3 in Chapter V, already effectively removes the individual from political influence for a generation, the additional “benefit” of making that ban permanent, that is, forever, is negligible in terms of public security or deterrence.

The strict proportionality test demands that the benefit derived from the restrictive measure must be substantially greater than the harm caused. Since the burden imposed (irreversible loss of fundamental rights) is immense, and the marginal public benefit (over a lengthy time-limited ban) is minimal, the measure fails the balancing test. The Supreme Court has repeatedly affirmed that arbitrary measures, which are excessive and unduly harsh, must be struck down under Article 14 and the doctrine of proportionality. A lifetime ban is precisely this type of arbitrary and excessive restriction, validating Hypothesis H2.

E. Proportionality and the Right to Rehabilitation (Article 21)

The principle of rehabilitation underpins the rejection of a lifetime ban. Once an individual has been convicted and served the criminal sentence, the primary punitive action of the state is exhausted. The imposition of a lifelong civic sanction creates a class of perpetually stigmatised citizens, frustrating the constitutional goal of social reintegration.⁴⁰

The proportionality doctrine requires that even post-sentence limitations must be aimed at preventing future harm, not merely perpetuating past punishment. A permanent ban effectively makes the state's judgment of unfitness *immutable*, disregarding the possibility of genuine character reform and social atonement. By refusing to provide a mechanism for review or re-entry, the State prioritizes an absolute, static notion of democratic integrity over the dynamic, evolving right to human dignity and self-determination protected by Article 21. This inherent conflict the permanent suppression of democratic participation versus the constitutional right

⁴⁰ Aparna Chandra, 'Proportionality in India: A Bridge to Nowhere?' (2021) Oxford Human Rights Hub.

to rehabilitation means that the lifetime ban fails the constitutional mandate to employ the least restrictive means necessary for achieving its objective.⁴¹

VI. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

This chapter expands the scope of the inquiry by undertaking a rigorous comparative analysis of how established democracies and international human rights bodies handle the issue of post-conviction electoral sanctions. This review is essential for validating the findings regarding the necessity limb of India's proportionality test (Chapter III), as it demonstrates that permanent exclusion is not a necessary precondition for maintaining political integrity globally.

A. Justification for Comparative Selection

The selection of the United Kingdom, Canada, Australia, and the European Court of Human Rights (ECtHR) jurisprudence is deliberate, based on shared constitutional, legal, and democratic characteristics relevant to the Indian framework:

1. **Common Law and Parliamentary Lineage:** India shares a direct legal and constitutional ancestry with the UK, Canada, and Australia, all of which operate under a common law tradition and the Westminster model of parliamentary democracy. The Indian Representation of the People Act, 1951, bears similarities to its Commonwealth counterparts, making their statutory and judicial approaches mutually informative.
2. **Judicial Review and Rights-Based Review:** All these jurisdictions share robust systems of judicial review, where legislative restrictions on political rights are subject to constitutional scrutiny. The Canadian Charter of Rights and Freedoms, the UK Human Rights Act (incorporating the ECHR), and evolved constitutional principles in Australia and India all mandate a rights-based analysis of political restrictions.
3. **The *Paksas* Standard:** The ECtHR's landmark judgment in *Paksas v. Lithuania* is universally recognized as the definitive international

⁴¹ Transparency International, *Ineligibilities Arising from Criminal Law Decisions* (2019).

standard for judging the proportionality of permanent political exclusion. Since the Indian Supreme Court frequently draws on international human rights law to interpret fundamental rights, the Paksas ruling provides the essential constitutional floor for evaluating Hypothesis H2.

B. The European Court of Human Rights: Paksas v. Lithuania (2011)

The ECtHR's judgment in *Paksas v. Lithuania* (2011)⁴² constitutes the most critical international legal precedent, directly addressing the constitutional validity of a permanent political ban on a convicted or impeached official.

- 1. Doctrinal Ruling on Irreversible Exclusion:** The case involved Rolandas Paksas, the former President of Lithuania, who was removed from office following impeachment for gross constitutional violations (including unlawfully granting citizenship and disclosing a state secret). Subsequent constitutional amendments imposed a permanent and irreversible ban on him from standing for parliamentary election. Paksas challenged this lifelong disqualification as contrary to Article 3 of Protocol No. 1 (Right to Free Elections)⁴³ to the ECHR, which enshrines the right to free expression of the opinion of the people. The ECtHR ruled that the permanent ban violated Article 3 of Protocol No. 1. While the Court acknowledged the restriction pursued the legitimate aim of preserving democratic order, it failed the proportionality test because of its draconian nature.
- 2. Proportionality Methodology: Time-Limit and Reviewability:** The Court established that when assessing the proportionality of such a measure, decisive weight must be attached to two factors: the existence of a time-limit and the possibility of reviewing the measure in question.
 - **Failure of Necessity (Immutability):** The irreversible nature of the disqualification was deemed irreconcilable with the democratic

⁴² Paksas v Lithuania ECHR 171/Paksas v Lithuania App no 34932/04 (ECtHR, 6 January 2011).

⁴³ European Court of Human Rights, *Guide on Article 3 of Protocol No. 1 – Right to free elections* (2025).

principle. The restriction carried a "connotation of immutability" that failed to respect the evolving political context or the possibility of rehabilitation. The Court noted that most Council of Europe member States impose time-limited, reviewable restrictions, highlighting Lithuania's outlier position.

- **Legislative Overreach:** The Court also noted that the legislative process that introduced the measure was "strongly influenced by the specific circumstances" of Paksas's alleged conduct. This implied that the law was tailored not to general principle, but to specific retribution, making the restriction disproportionate.

The *Paksas* principle is a definitive statement that even for the highest breach of public trust, permanent political exclusion is an unnecessary and disproportionate restriction on fundamental democratic rights. This mandates that any extended ban in India (H3) must be subject to constitutional review.

C. The Commonwealth Models: Suspension vs. Permanent Censure

The frameworks of the UK, Australia, and Canada demonstrate a constitutional preference for integrating political rights restoration with the conclusion of the criminal sentence, sharply contrasting with India's uniform post-release cooling-off period (H1).

1. United Kingdom: Loss of Rights Tied to Loss of Liberty

The UK electoral regime links disqualification for parliamentary membership directly to the criminal penalty being served. Disqualification is triggered if a person is sentenced to a term of imprisonment of one year or more, but it applies only *while* they are detained or unlawfully at large.

- **Principle of Suspension:** The political right is suspended primarily as a corollary of the loss of physical liberty under a serious sentence, not as an indefinite, standalone civil punishment. Once the sentence or detention is complete, political rights are automatically restored.

- **Electoral Offences:** For specific, integrity-related offenses (corrupt or illegal practices), disqualification is fixed and finite, typically three years. The UK system proves that long-term deterrence and integrity can be effectively maintained using time-limited, finite sanctions, directly undermining the necessity argument for a permanent ban in India (H2).

2. Australia: Disqualification Under Sentence

The Australian constitutional framework, under Section 44(ii) of the Commonwealth of Australia Constitution Act,⁴⁴ disqualifies a person who “is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer”.

- **Automatic Restoration:** Crucially, the ban automatically lifts upon the completion of the sentence. This model reinforces the idea that the state's legitimate interest in punitive exclusion ends when the criminal debt is paid, upholding rehabilitation as the constitutional default.
- **Canada: Maximising Democratic Rights:** Canada's approach is the most rights-protective, flowing from Section 3⁴⁵ of the Canadian Charter of Rights and Freedoms, which guarantees every citizen the right to vote. Canadian jurisprudence strongly favours maximising political participation. While historically the Canada Elections Act denied the right to vote to those serving sentences of two years or more, judicial review has favoured minimal restrictions, ensuring citizens regain full political eligibility almost immediately upon release.⁴⁶

⁴⁴ Commonwealth of Australia Constitution Act s 44(ii).

⁴⁵ Canadian Charter of Rights and Freedoms, s 3.

⁴⁶ *Sauvé v Canada (Chief Electoral Officer)* 3 SCR 519 (SCC).

D. Comparative Synthesis: Lessons for Proportionality in India

The international and comparative review confirms that permanent political exclusion stands as a constitutional outlier among major democracies. The convergence of Commonwealth models on sentence-based suspension and the ECtHR's mandate for reviewability provides crucial lessons for reforming India's Section 8:

1. **Rejection of Immutability:** The global consensus validates India's proportionality-based argument against a lifetime ban (H2), affirming that permanent restrictions are unnecessary and disproportionate.
2. **Necessity of Tiering (H3):** The current Indian six-year post-release ban (H1) is conceptually detached from the principles observed abroad, which link the restriction to the loss of liberty. Moving toward a tiered, proportionate ban longer for heinous crimes, shorter for lesser ones is necessary to bring India's law in line with international standards of necessity and proportionality.
3. **Focus on Rehabilitation:** International practice mandates that electoral restrictions must respect the individual's right to re-enter civic life. This necessitates the introduction of a judicial or quasi-judicial mechanism to review eligibility, allowing rehabilitated individuals to contest after a prescribed period, consistent with the right to dignity under Article 21.

VII. RECOMMENDATIONS AND CONCLUSIONS

This final chapter synthesizes the doctrinal analysis (Chapter II), the application of the proportionality test (Chapter III), and the comparative evidence (Chapter IV). It translates these findings into concrete; constitutionally sustainable legislative and policy recommendations aimed at strengthening electoral integrity in India while strictly safeguarding fundamental rights.

A. Synthesis of Findings: The Failure of Absolute Exclusion and the Mandate for Tiering

The research demonstrates that the pursuit of democratic integrity through absolute political exclusion (H2) is constitutionally indefensible under the structured proportionality doctrine:

- 1. Lifetime Ban Fails Proportionality (H2):** The proposed lifetime ban is fundamentally incompatible with Articles 14 and 21. It fails the Necessity limb because equally effective, less restrictive alternatives (long, tiered, and reviewable bans) exist. It fails the Strict Proportionality limb because the irreversible denial of the fundamental right to rehabilitation and political participation is grossly disproportionate to the marginal gain over a time-limited sanction.
- 2. Uniform Ban Lacks Proportionality (H1):** The current uniform six-year disqualification under Section 8(3), while time-limited, suffers from a lack of internal proportionality, violating Article 14 by treating crimes of vastly different moral and democratic gravity identically. This constitutional weakness is the systemic flaw that generates the demand for a more extreme, blanket measure.
- 3. International Mandate for Reviewability:** Comparative jurisprudence confirms that permanent exclusion is an outlier. The *Paksas* ruling establishes a constitutional floor: democratic sanctions must include time limits and the possibility of review, principles essential for Article 21 compliance in India.

The necessary path forward must therefore be rooted in the principle of graded disqualification (H3), systematically linking the duration of the sanction to the severity and nature of the offence and its demonstrable impact on democratic governance. This approach is the only means of reconciling the necessity of electoral integrity with the preservation of constitutional rights.

B. Reform Blueprint: Principles of Graded Disqualification

Effective reform requires a precise legislative intervention that moves beyond the simple sentence-length metric currently employed by the RPA. A new statutory classification system must be introduced to grade offences based primarily on the level of democratic harm and moral turpitude involved, rather than simply the quantum of imprisonment.

This approach addresses the constitutional flaw of the uniform ban (H1) by ensuring that the restriction on political participation is strictly proportional to the harm caused by the conviction (satisfying Articles 14 and 19). By implementing a tiered structure, the legislature eliminates the constitutional justification for judicial intervention aimed at imposing an extreme, unconstitutional lifetime ban (H2). The focus must be on proportionality: the sanction must be severe *enough* to deter and protect, but not so severe as to extinguish the constitutional possibility of rehabilitation.

C. Policy Recommendations and Draft Amendment Proposals

The following recommendations delineate specific legislative and policy changes required to establish a constitutionally proportionate and robust electoral disqualification regime.

1. Implementation of a Tiered Disqualification System

Section 8 of the RPA must be restructured to reflect the severity of democratic corruption and moral turpitude, categorizing offences into three distinct tiers based on the nature of the crime and the sentence served. This addresses the proportionality and equality failures of the current uniform system (H1).

Tier	Criteria (Offence Nature & Sentence)	Disqualification Period	Constitutional Rationale
Tier 1: Lesser Offences	Convictions leading to 2-4 years sentence, non-violent, minor	Duration of sentence served + mandatory three-	Sufficient deterrence for crimes not involving grave public trust breach;

	statutory/economic crimes.	year cooling-off period.	upholds rapid rehabilitation (Art. 21).
Tier 2: Serious Offences	Convictions leading to 4-10 years sentence, corruption, abuse of office, major financial fraud, severe communal enmity (Non-S. 8(1)).	Duration of sentence served + mandatory ten-year cooling-off period.	Reflects heightened breach of public trust; substantial sanction proportional to democratic harm (Art. 14).
Tier 3: Heinous Offences	Convictions leading to 10+ years or Life Imprisonment (e.g., Murder, Rape, Terrorism, Organized Crime), including severe S. 8(1) offences.	Duration of sentence served + mandatory twenty-year cooling-off period.	Maximum deterrence and severe public censure; spans decades but remains time-limited, adhering to Necessity (H2) and <i>Paksas</i> principles.

2. Mandatory Procedural Safeguards and Rehabilitation Mechanisms

To safeguard the constitutional validity of lengthy sanctions (Tier 2 and Tier 3), a mechanism for reviewability must be introduced, echoing the standard set in *Paksas v. Lithuania* and upholding the right to dignity under Article 21.

- **Judicial Review of Rehabilitation:** A new statutory provision should mandate that any disqualification exceeding 10 years (Tier 2 and Tier 3) must be subject to a Rehabilitation Review by a designated Judicial Tribunal (or the High Court). The convicted individual may apply for early termination of the remaining cooling-off period after 75% of the post-release ban has elapsed. The Tribunal’s review must consider

demonstrable evidence of rehabilitation, reform, and mandatory community conduct assessments.

- **Rationale:** This process ensures that lengthy sanctions do not become *de facto* permanent, satisfying the necessity criterion by rendering the measure reversible and proportionate while still upholding long-term integrity.
- **Strict Enforcement of Immediate Disqualification:** The principles established in *Lily Thomas v. Union of India*⁴⁷ (immediate disqualification upon conviction) must be rigorously enforced, with provisions for expedited forfeiture of all legislative entitlements and automatic vacancy declarations upon the date of conviction.

D. Addressing the Pre-Conviction Criminalization Gap (Interim Measures)

While the judiciary has correctly exercised restraint regarding pre-conviction disqualification, measures are necessary to curb the influence of criminally accused politicians during protracted trials, particularly in light of the targeted recommendations made in Law Commission Report No. 244 on electoral disqualifications.

1. **Suspension of Legislative Privileges:** Adopt the recommendation previously advanced by Law Commission of India Report No. 244, *Electoral Disqualifications* (2014)⁴⁸. For serious offences (punishable by five years or more), if the trial involving a sitting MP/MLA is not concluded within one year of charges being framed, the individual must face suspension of voting rights within the House, salary, and all parliamentary perquisites until the case is concluded.

- **Rationale:** This measure serves as a proportionate, pre-conviction deterrent. It is less restrictive than outright disqualification, thereby adhering to the separation of powers and the presumption of

⁴⁷ *Lily Thomas v Union of India* (2013) 7 SCC 653 (SC).

⁴⁸ Law Commission of India, Report No. 244: *Electoral Disqualifications* (2014).

innocence, while significantly curbing the incentive for individuals facing serious charges to prolong trials or exercise power while under investigation.

E. Amendment for Judicial Review of Rehabilitation (Insertion of New S. 8A RPA, 1951)

To meet the international standard of reviewability set by the ECtHR in *Paksas*, a new statutory mechanism must be inserted into the RPA, explicitly providing for the re-entry of rehabilitated individuals.

Proposed Statutory Action: Insert a new Section 8A (Judicial Review of Rehabilitation) immediately following the existing provisions. This new section would mandate that:

1. Any disqualification period exceeding a total of 10 years (i.e., Tier 2 and Tier 3 convictions) shall be subject to a mandatory Rehabilitation Review.
2. The convicted person may apply to the High Court (or a specialized Judicial Tribunal created under the Act) for early termination of the remaining cooling-off period after 75% of the mandatory post-release ban has been served.
3. The Tribunal's decision must be based on demonstrable evidence of reform, character assessment reports, prison conduct records, and community service undertaken.
4. *Rationale:* This provision transforms the ban from an immutable civil penalty into a proportionate, reviewable sanction, satisfying the Necessity limb of the proportionality test and upholding the right to dignity under Article 21.

F. Amendment for Pre-Conviction Sanction (Insertion of New S. 8B RPA, 1951)

To address systemic delay that allows criminally charged individuals to retain office, the recommendation of Law Commission of India Report No. 244, Electoral Disqualifications (2014), concerning suspension of legislative privileges should be codified.

Proposed Statutory Action: Insert a new Section 8B (Suspension of Legislative Privileges):

1. A sitting Member (MP/MLA) charged with a serious offence (punishable by five years' imprisonment or more) shall face suspension of legislative privileges (voting rights, salary, and perquisites) if the trial is not concluded within one year of the charges being framed.
2. The suspension shall operate until the trial concludes with an acquittal or conviction. *Rationale:* This is an approach that utilises the least restrictive means to curb criminal influence pre-conviction, respecting the presumption of innocence while maintaining the integrity of the House.

G. The Legislative Process for Enactment

The proposed amendments to the RPA, 1951, do not require a constitutional amendment (Article 368) as the power to legislate on disqualifications is expressly granted to Parliament under Articles 102(1)(e) and 191(1)(e). The process must be undertaken through an Ordinary Amendment Bill.

Step-by-Step Enactment Procedure:

1. **Preparation and Drafting:** The Ministry of Law and Justice must draft the Representation of the People (Amendment) Bill (including the repeal, replacement, and insertion of new sections 8A and 8B), incorporating recommendations from the Election Commission of India (ECI) and the Law Commission Reports.
2. **Introduction:** The Bill must be introduced in either House of Parliament (Lok Sabha or Rajya Sabha). Due to the nature of electoral law, it is usually introduced as a Government Bill.
3. **Referral to Standing Committee:** Given the complex constitutional implications and public importance, the Bill should be mandatorily referred to the Parliamentary Standing Committee on Law and Justice for detailed, non-partisan scrutiny. This ensures broad consultation and addresses the principle of proportionality across political lines.

4. **Debate and Passage (Simple Majority):** The Bill must be debated and passed by a simple majority (more than half of the members present and voting) in both Houses of Parliament (Article 107).
5. **Presidential Assent:** Upon passage by both Houses, the Bill is presented to the President of India for assent, whereupon it becomes an Act of Parliament and takes immediate statutory effect.
6. **Emphasis on Expediency:** Given the Supreme Court's continuous urging for legislative action on criminalisation, the political process must be expedited, treating this Bill as a matter of urgent democratic necessity, thereby shifting the responsibility for systemic electoral reform squarely onto the legislative branch.

VIII. CONCLUSION: THE FUTURE OF PROPORTIONALITY IN INDIAN ELECTORAL LAW

The pervasive criminalisation of politics demands decisive and immediate action, but such action must be meticulously calibrated to adhere to constitutional principles. The doctrinal and comparative analysis rigorously demonstrates that the pursuit of electoral integrity via a lifetime political ban (H2) is unconstitutional because it fails the structured test of proportionality.

The constitutional integrity of the Indian electoral system ultimately depends on the adoption of proportionate, reviewable sanctions (H3). The necessary defence against criminalisation is not the imposition of an unconstitutional civil death penalty, but rather the implementation of a balanced, tiered regime that simultaneously enforces strict, graded deterrence for heinous crimes and upholds the constitutional right to rehabilitation and democratic participation. This proportional legislative reform, executed through targeted amendments to the RPA, 1951, represents the only sustainable pathway for harmonising democratic necessity with individual liberty in India's transforming electoral landscape.

IX. REFERENCES

A. Table of Cases

1. *Chintaman Rao v State of MP* AIR 1951 SC 118
2. *Lily Thomas v Union of India*, AIR 2013 SC 2662; (2013) 7 SCC 653
3. *Modern Dental College and Research Centre v State of MP* (2016) 7 SCC 353
4. *Paksas v Lithuania* (2011) 53 EHRR 15
5. *Public Interest Foundation v Union of India*, (2019) 3 SCC 224
6. *Shayara Bano v Union of India* (2017) 9 SCC 1

B. Legislation

1. Constitution of India, 1950
2. Representation of the People Act, 1951

C. Books

1. Mahajan, K, *Election Laws and Practice in India* (2nd edn, LexisNexis 2024)
2. Rama Devi, VS and Mendiratta, SK, *How India Votes: Election Laws, Practice and Procedure* (5th edn, LexisNexis 2025)
3. Tewari, OP, *Law of Election in India* (4th edn, Central Law Publications 2019)
4. Ginsburg, T, Huq, A and Landau, D, *The Law of Democratic Disqualification* (University of Chicago Press 2021)
5. Vaishnav, M, *Criminalization, Political Parties, and India's Political Economy* (Carnegie Endowment for International Peace 2022)

D. Law Commission and Committee Reports

1. Law Commission of India,
2. *Report on Electoral Reforms* (Report No 255, 2015)

E. Journal Articles and Other Secondary Sources

1. Chandra, A, 'Proportionality in India: A Bridge to Nowhere?' (2021) Oxford Human Rights Hub Blog
2. Vatsa, S, 'Criminalisation of Politics in India: Did the Supreme Court Miss the Opportunity?' (2022) ILI Law Review
3. 'Conflicting Fundamental Rights Under the Indian Constitution' (Columbia Law School, 2023)
4. 'Lily Thomas v. Union of India: Academic Commentary' (Multiple Sources 2023-2025)
5. 'Paksas v. Lithuania: ECtHR Analysis and Academic Commentary' (Multiple Sources 2011-2023)