

NLIU मंथन

Discuss, Debate and Deliberate

Summary of Discussion held on 20th July, 2013 in Academic Block- I

“Supreme Court Judgement on Legislators: Judicial Over-reach or An over-due cleansing”

On July 20th the first discussion of the ‘NLIU मंथन’ was held in Academic Block-I, on the premeditated topic “Supreme Court Judgement on Legislators: Judicial Over-reach or An over-due cleansing. The session began with the brief about the topic by Prof. Dr. Surya Prakash. He appreciated this initiative of the Students and said that this can be developed further to put forward the views of the NLIU student community on future events of national importance.

It was highlighted during the discussion that 30% of our legislators have criminal cases pending against them, and thus the recent judgement by Supreme Court in *Lily Thomas v. Union of India* is a progressive step towards the cleansing of the Indian political system.

The participants agreed unanimously that the intention of Supreme Court behind the verdict is apt but it lacks on the following points:-

1. It failed to explain what will happen to a legislators convicted by a lower court and who lost his seat, but is acquitted on appeal.
2. It failed to discuss the relevance of Article 14 vis-à-vis present situation.
3. The present judgement has clearly over looked the 2005 judgement of a Constitutional bench on the constitutionality of Section 8(4) of the RPA, 1951.
4. Moreover it failed to explain why the 2005 judgement was an *obiter dicta* and not the binding ratio.
5. It overlooked the decision of *Government of Andhra Pradesh v. P. Laxmi Devi*, in which court observed that invalidating an act of legislature is a grave step and be resorted to when that is the only possible view not open to rational question.

The participants failed to reach a consensus over the following issues:-

1. Establishment of special fast track court to specifically look into the cases against the legislators.
2. That only one appeal be allowed to the convicted legislator.

Thus, the solution proposed by the participants was that in case a legislator is convicted by the trial court, he should be allowed to continue his term but would be declared ineligible to contest in future elections if he fails to get an acquittal order for higher court. The present solution caters to the need of Section 8(4) as highlighted by Supreme Court in the 2005 case of *K Prabhakaran v. P Jayarajan-*

- To save the government in power if it is surviving on razor-edge thin majority.
- It would prevent the by-election which shall be futile if the convicted member is acquitted by the higher court.

Moreover, the participants advocated the following points. *Firstly*, the Division bench in the present case should have referred the matter to a larger Constitutional bench as the 2005 case was decided by a 5 judge Constitutional bench. *Secondly*, to strike at the root of the problem the Election Commission must use all the means at its disposal to spread awareness about the criminal track record of the candidates.