

Disqualification of MPs and MLAs

March 24, 2023 • vajiramandravi.com



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Why in news?

- Congress leader Rahul Gandhi was held guilty and sentenced to two years in jail in a 2019 defamation case over his remarks about the "Modi surname" by a court in Gujarat's Surat.
- The court, which held Gandhi guilty, also granted him bail and suspended the sentence for 30 days to allow him to appeal in a higher court.
- Gandhi's conviction has led to questions over his status as a Member of Parliament from Wayanad, Kerala.

- A conviction which carries a sentence of two years or more will automatically result in disqualification.

Disqualification of MPs/MLAs

What are the legal provisions regarding the disqualification of MPs/MLAs?

- Disqualification of a lawmaker is prescribed in three situations.
 - First is through the **Articles 102(1) and 191(1)** for disqualification of a member of Parliament and a member of the Legislative Assembly respectively.
 - The grounds here include holding an office of profit, being of unsound mind or insolvent or not having valid citizenship.
 - The second prescription of disqualification is in the **Tenth Schedule of the Constitution.**
 - This provides for the disqualification of the members on grounds of defection.
 - The third prescription is under **The Representation of The People Act (RPA), 1951.**
 - This law provides for disqualification for conviction in criminal cases.

What does the RPA say?

- There are several provisions that deal with disqualification under the RPA.
 - **Section 8 of the RPA** deals with disqualification for conviction of offences.
 - **Section 8(1) of the act** includes specific offences such as promoting enmity between two groups, bribery, and undue influence or personation at an election.
 - **Section 8(2)** lists offences that deal with hoarding or profiteering, adulteration of food or drugs and for conviction and sentence of at least six months for an offence under any provisions of the Dowry Prohibition Act.
 - **Section 8(3)** disqualifies a convicted person who has been sentenced to imprisonment for not less than two years.
 - He is disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.
 - **Section 9: Disqualification for dismissal for corruption or disloyalty.**
 - **Section 9(A): Disqualification for Government contracts, etc.**
 - **Section 10: Disqualification for office under Government company.**
 - **Section 10(A). Disqualification for failure to lodge account of election expenses.**
 - **Section 11: Removal or reduction of period of disqualification.**
 - **Section 11(A): Disqualification arising out of conviction and corrupt practices.**
 - **Section 11(B): Removal of disqualifications.**

How does the disqualification operate?

- The disqualification can be reversed if a higher court grants a stay on the conviction or decides the appeal in favour of the convicted lawmaker.
- In 2018, in '**Lok Prahari v Union of India**' case, the SC clarified that the disqualification will not operate from the date of the stay of conviction by the appellate court.
 - Here, it should be noted that the stay cannot merely be a suspension of sentence, but a stay of conviction.
 - Under Section 389 of the CrPC, an Appellate Court can suspend the sentence of a convict while the appeal is pending.
 - This is akin to releasing the appellant on bail.

How does an appeal against the conviction impact disqualification?

- Section 8(4) of the RPA stated that the disqualification takes effect only after three months have elapsed from the date of conviction.
 - Within that period, a person can file an appeal against the sentence before the higher Court.
 - Earlier, the law had provided for a **pause on disqualification** if an appeal against the conviction was filed before a higher court.
 - However, in the landmark 2013 ruling in '**Lily Thomas v Union of India**', the Supreme Court struck down Section 8(4) of the RPA as unconstitutional.
 - This means that simply filing an appeal will not be enough to prevent disqualification.
 - The convicted MP must secure a specific order of **stay against the conviction** of the trial court.
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Q1) What is the Lily Thomas Case?

In the Lily Thomas case, the Supreme Court of India held that Section 8(4) of the RPA, which allowed convicted lawmakers to continue to hold office and contest elections on the grounds of pendency of appeal against their conviction in the higher courts, was unconstitutional. The court held that such a provision violated the principles of democracy and integrity in public life, as it allowed individuals with a criminal background to continue to participate in the political process and hold public office.

Q2) What is anti-defection law in India?

The Anti-Defection Law is a set of provisions in the Constitution of India that aim to prevent elected representatives from switching parties or betraying the mandate of the people who elected them. The law was introduced by the 52nd Amendment to the Constitution in 1985 and is laid out in the Tenth Schedule of the Constitution.

Source: [After Rahul Gandhi's conviction: How an MP's disqualification happens](#) | [Indian Express](#) | [The Economic Times](#)

Source: <https://vajiramandravi.com/current-affairs/disqualification-of-mps-and-mlas/>

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