

How are MPs disqualified?

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In news- Congress leader Rahul Gandhi has been disqualified from the Lok Sabha, a day after he was convicted in a defamation case by a Surat court in terms of the provisions of Article 102 (1)(e) of the Constitution of India read with Section 8 of the Representation of People Act, 1951.

What is defamation?

- Defamation is a **wrong that deals with damage caused to a person's reputation.**
- **In India, defamation can both be a civil wrong and a criminal offence,** depending on the objective they seek to achieve.
- A civil wrong sees a wrong being redressed with monetary compensation, while a criminal law seeks to punish a wrongdoer and send a message to others not to commit such acts, with a jail term.
- In a criminal case, defamation has to be established beyond reasonable doubt but in a civil defamation suit, damages can be awarded based on probabilities.
- **Section 499 of the IPC defines what amounts to criminal defamation** and subsequent provisions define its punishment.
- Section 499 elaborates on how defamation could be through words – spoken or intended to be read, through signs, and also through visible representations. These can either be published or spoken about a person with the intention of damaging reputation of that person, or with the knowledge or reason to believe that the imputation will harm his reputation.
- **Section 500 of IPC stipulates imprisonment of up to two years,** with or without a fine, for someone held guilty of criminal defamation.

What is Article 102 of the Indian Constitution?

- **Article 102 deals with the disqualification of MPs from either house of the Parliament.**
- Part (1) of the article lists the reasons why an MP can be disqualified. These include,
 1. If he holds any **office of profit** under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
 2. If he is of **unsound mind** and stands so declared by a competent court;
 3. If he is an **undischarged insolvent**;
 4. If he is **not a citizen of India**, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
 5. If he is so **disqualified by or under any law made by Parliament.**
- In Rahul Gandhi's case, the last point (if he is so disqualified by or under any law made by Parliament) applies. The law under which he has been disqualified is the Representation of People Act, 1951.

The Representation of People Act, 1951-

- It is an act of Parliament of India to **provide for the conduct of election of the Houses of Parliament and to the House or Houses of the Legislature of each State**, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.
- **It was introduced in Parliament by law minister Dr BR Ambedkar.**
- There are several provisions that deal with

disqualification under the RPA.

- **Section 9 deals with disqualification for dismissal for corruption or disloyalty**, and for entering into government contracts while being a lawmaker.
- **Section 10 deals with disqualification for failure to lodge an account of election expenses.** A key provision, **Section 11, deals with disqualification for corrupt practices.**
- Section 8 of the RPA deals with disqualification for conviction of offences. The provision is aimed at “preventing criminalisation of politics” and keeping ‘tainted’ lawmakers from contesting elections.
- **First, disqualification is triggered for conviction under certain offences** listed in Section 8(1) of The Representation of The People Act. This includes specific offences such as promoting enmity between two groups, bribery, and undue influence or personation at an election. Defamation does not fall in this list.
- **Section 8(2) also 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) states: “A person convicted of any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.” This is the provision under which Rahul Gandhi has been disqualified.**

How does the disqualification work?

- 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.
- Significantly, the **stay cannot merely be a suspension of**

sentence under Section 389 of the Code of Criminal Procedure (CrPC), but a stay of conviction.

- Over the years, the law has changed when it comes to disqualification.
- **Under the RPA, Section 8(4) stated that the disqualification takes effect only “after three months have elapsed”** from the date of conviction.
- Within that period, lawmakers could file an appeal against the sentence before the High 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 is what has allowed the Lok Sabha Secretariat to immediately disqualify Rahul Gandhi.
- In a 2018 decision in ‘Lok Prahari v Union of India’, the Supreme Court clarified that the disqualification “will not operate from the date of the stay of conviction by the appellate court.”
- Significantly, the stay cannot merely be a suspension of sentence under Section 389 of the Code of Criminal Procedure (CrPC), 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.

Supreme Court verdict in ‘Lily Thomas v Union of India’ case-

- In 2013, a bench of Justices AK Patnaik and SJ Mukhopadhaya of the Apex Court held that “Parliament had no power to enact sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution.”
- The Court also held that **if any sitting member of Parliament or State Legislature is convicted of any offence under sub-section (1), (2), and (3) of Section 8, RPA, then “by virtue of such conviction and/or**

sentence” they will be disqualified.

- The court added that a **convicted parliamentarian or legislator’s membership will no longer be protected by Section 8 (4)**, as was previously the case.
- The Court on an examination of other provisions in the Constitution that deal with disqualification of a lawmaker held that the Constitution “expressly prohibits” Parliament to defer the date from which a disqualification would come into effect.