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Disqualification of MP

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Why is 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.

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,

- (a) 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;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) 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;
- (e) if he is so disqualified by or under any law made by Parliament

The Representation of the People Act, 1951

The Representation of the People Act, 1951 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.

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. Senior Samajwadi Party leader Azam Khan lost his Uttar Pradesh Assembly membership in October 2022 after he was convicted in a hate speech case. 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

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years since his release.” This is the provision under which Rahul Gandhi has been disqualified.

Lily Thomas v Union of India

In 2005, a PIL was filed before the Apex Court by a Kerala-based lawyer Lily Thomas and NGO Lok Prahari, through its General Secretary SN Shukla, challenging Section 8(4) of the RPA as “ultra vires” to the Constitution, which protects convicted legislators from disqualification on account of their appeals pending before the higher courts.

This plea sought to clean Indian politics of criminal elements by barring convicted politicians from contesting elections or holding an official seat. It drew attention to Articles 102(1) and 191(1) of the Constitution.

Article 102(1) lays down the disqualifications for membership to either House of Parliament and Article 191(1) lays down the disqualifications for membership to the Legislative Assembly or Legislative Council of the state. The plea argued that these provisions empower the Centre to add more disqualifications.

Section 8(4) of the RPA said that the disqualification takes effect only “after three months have elapsed” from the date of conviction. Within that period, the convicted lawmaker could have filed an appeal against the sentence before a higher court.

However, this provision was struck down as “unconstitutional” in the Supreme Court’s landmark 2013 ruling in ‘Lily Thomas v Union of India’. Before this judgment, convicted MPs could easily file an appeal against their conviction and continue holding their official seats.

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.

Losing amenities as an MP

Losing his membership of the Lok Sabha comes alongside the loss of the many amenities that MPs receive.

Members of Parliament are entitled to certain perks and benefits with “a view to enable them to function effectively”. These are governed by the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the rules made thereunder. The latest amendment to the Act was made on May 11, 2022.

Salary and allowance for ‘residence on duty’

An MP is entitled to a salary of Rs 1 lakh a month and an allowance of Rs 2,000 per day during any period of residence on duty. ‘Period of residence on duty’ means the period during which a member resides at a place where a session of a House of Parliament or a sitting of a Committee is held or where any other business connected with his duties as such member is transacted, for the purpose of attending such session or sitting or for the purpose of attending to such other business.

The salary and daily allowance of MPs are increased every five years, on the basis of the Cost Inflation Index.

Travelling allowance and free rail transit

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MPs also get a travel allowance to facilitate any journeys they undertake in connection with their duties as a member of Parliament.

They get paid the airfare for any journey they may undertake to fulfil their duties. If they travel by road, they get paid a mileage fee of Rs 16 per kilometre.

While previously, MPs were also paid rail fare if they chose to travel by rail, now they are given a free, non-transferable pass which entitles them to travel at any time by any train in air-conditioned first class or executive class of any train.

This pass is valid for the term of the MP's office. If they have not received a rail pass for any reason, MPs are still entitled to free travel by rail, with their fare being reimbursed.