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DISQUALIFICATION OF MP IN INDIA

This article covers "Daily Current Affairs" and the topic details the Disqualification of MP in India. The recent disqualification of Congress MP Rahul Gandhi has raised a political storm with both sides arguing over the legality of the action. The topic "Disqualification of MPs In India" has relevance in the Polity section for the UPSC CSE exam.

Relevance of Disqualification of MPs In India for UPSC-CSE

For Prelims:

- Constitutional provisions for Disqualification of MPs In India?
- Legal provisions (RPA 1951) over the Disqualification of MPs In India

For Mains:

- GS: Polity and Governance
- Disqualification of MPs In India

Why in the news?

Recently, a notification has been released by the Lok Sabha Secretariat where the Lok Sabha membership of Congress MP Rahul Gandhi has been disqualified. The basis of such a move is the verdict of the Surat Court which sentenced Rahul Gandhi to 2 years for criminal defamation. According to the constitutional provisions and judgments of the Supreme Court, a legislator stands 'automatically' disqualified post-conviction for a jail term of over 2 years.

Disqualification of MP

WHAT ARE THE PROVISIONS FOR THE DISQUALIFICATION OF MPS IN INDIA?

There are Constitutional, Legal, and various Supreme Court judgments for the disqualification of MPs in India.



Disqualification of MPs in India

WHAT ARE THE CONSTITUTIONAL PROVISIONS FOR THE DISQUALIFICATION OF MPS IN INDIA?

In India, the Constitution provides for the disqualification of Members of Parliament (MPs) on certain grounds. The provisions for the disqualification of MPs are as follows:

Article 102 of the Indian Constitution provides for the grounds for disqualification of MPs, which include:

- a. Being of unsound mind.
- b. Being an undischarged insolvent.
- c. Holding any office of profit under the Government of India or any state government or local authority.
- d. Conviction of an offense results in imprisonment for a period of two or more years.
- e. Disqualification on the grounds of defection as per the Tenth Schedule of the Constitution.

The Constitution provides for the determination of disqualification of MPs by the President of India or the Governor of a state, as the case may be, based on the recommendation of the Election Commission of India. The Election Commission can take up the matter on its own or a petition by any person.

WHAT ARE THE LEGAL PROVISIONS FOR THE DISQUALIFICATION OF MP IN INDIA?

The legal provisions for the disqualification of Members of Parliament (MPs) in India are outlined in the Representation of the People Act, 1951, and the Tenth Schedule of the Indian Constitution.

DISQUALIFICATION UNDER THE REPRESENTATION OF THE PEOPLE ACT, 1951

- Section 8 of the Act provides for the disqualification of an MP for the following offenses:
 - I) Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to the maintenance of harmony
 - II) Bribery
 - III) Rape
 - IV) Domestic violence
- Section 9 of the Act provides for the disqualification of an MP for the following offenses:
 - I) Corruption or disloyalty
 - II) For entering into government contracts while being a lawmaker.
- Section 10 of the Act provides for the disqualification of an MP for the following offenses:
 - I) Failure to lodge an account of election expenses.
- Section 11 of the Act provides for the disqualification of an MP for the following offenses:
 - I) Corrupt practices

DISQUALIFICATION UNDER THE TENTH SCHEDULE OF THE INDIAN CONSTITUTION

The Tenth Schedule, also known as the Anti-Defection Law, was added to the Constitution in 1985 to curb political defections. The law provides for the disqualification of an MP if he or she:

- Voluntarily gives up the membership of the political party on whose ticket he or she was elected.
- Votes or abstains from voting in the House of Parliament contrary to the directions issued by the political party.
- Joins another political party after being elected on the ticket of a particular party.
- Is expelled from the political party on whose ticket he or she was elected.

WHAT ARE THE SUPREME COURT JUDGMENTS FOR THE DISQUALIFICATION OF MP IN INDIA?

The Supreme Court of India through its various judgments has clarified and interpreted various provisions of the constitution and Representation of Peoples Act, 1951:

- **Kihoto Hollohan vs. Zachillhu: Anti-Defection Law**

In this landmark case of 1992, the Supreme Court upheld the validity of the Tenth Schedule of the Constitution and held that the Speaker's decision on disqualification under the Anti-Defection Law is subject to judicial review, but the court should not intervene unless the decision is mala fide or patently illegal.

- **Jaya Bachchan vs. Union of India: Office of Profit issue**

In this case of 2006, the Supreme Court upheld the disqualification of Jaya Bachchan, an MP from Uttar Pradesh, for holding an office as the Chairperson of the Uttar Pradesh Film Development Council. The court held that the disqualification was valid under the Constitution and the Representation of the People Act, of 1951.

- **Puttaswamy Gowda vs. Union of India: Tenth Schedule**

In this case of 2011, the Supreme Court upheld the disqualification of Puttaswamy Gowda, an MP from Karnataka, for defection under the Tenth Schedule. The court held that the decision of the Speaker on disqualification is subject to judicial review, and the court can intervene if there is a violation of the principles of natural justice, the decision is without jurisdiction, or there is a mala fide exercise of power.

- **Lily Thomas vs. Union of India: Conviction over 2 years**

Section 8(4) of the Representation of the People Act, 1951: This provision allowed convicted MPs and MLAs to continue holding their seats in the legislature if they file an appeal against their conviction within three months of the conviction.

The Supreme Court held that Section 8(4) of the RPA was ultra vires (beyond the powers) of the Constitution of India as it violated the principles of democracy, morality, and the rule of law.

The Court, therefore, struck down Section 8(4) of the RPA and held that a person convicted of a criminal offense and sentenced to imprisonment for two years or more shall be disqualified from being a member of the Parliament or the Legislature of a state. The disqualification would operate from the date of the conviction and continue for six years from the date of release from imprisonment.

Source:

[Hindustan times](#)

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