



# CURRENT AFFAIRS



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## DEFAMATION LAWS IN INDIA

### Defamation

This article covers "Daily current affairs for UPSC" and the topic is about 'Defamation and Disqualification of MP' which is in the news, it covers "Polity and Governance" In GS-2, the following content has relevance for UPSC.

**For Prelims:** Defamation, Disqualification of MP

**For Mains:** GS-2, Polity and Governance

### Why 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. A notice issued by the Lok Sabha Secretariat said he stood disqualified from the House from March 23, the day of his conviction. Rahul Gandhi has to now move to a higher court and get his conviction to stay.

**MAY ALSO HAVE TO VACATE TUGHLAQ LANE BUNGALOW**

- > Section 8(3) of RP Act mandates **disqualification of any lawmaker who is 'convicted of any offence and sentenced to imprisonment for not less than 2 years'**
- > Sec 8(4) of Representation of People Act, 1951 states that disqualification takes effect only 'after 3 months have elapsed' from date of conviction. In 2013 ruling in '**Lily Thomas v Union of India**', **SC struck it down as unconstitutional and declared that MP/MLA would stand disqualified immediately**
- > In 2018 '**Lok Prahari v Union of India**' order, **SC said disqualification 'will not operate from date of stay of conviction by appellate court'**
- > Rahul may have to vacate 12, Tughlaq Lane house in a month if he doesn't get relief from higher court
- > Abhishek Manu Singhvi cites Lok Prahari judgment, says there's **no automatic disqualification as Article 103 of Constitution states that only President has power to disqualify after taking EC's advice**
- > Citing Section 8 of RP Act, an expert says **disqualification from contesting polls will be for 8 years - 2-year jail and 6 from date of release**
- > **Gandhi second LS member, after Lakshadweep MP P P Mohammed Faisal of NCP, to be disqualified following conviction.** Kerala HC suspended Faisal's conviction and sentence but LS Secretariat is yet to revoke his disqualification
- > **RJD chief Lalu Prasad Yadav was disqualified in 2013 after conviction**

Rahul Gandhi attended Lok Sabha's morning session and a meeting of Congress MPs

Consequent upon his conviction by the court of Chief Judicial Magistrate, Surat... **Rahul Gandhi, Lok Sabha MP representing Wayanad parliamentary constituency of Kerala, stands disqualified from the membership of the lower house from the date of his conviction, ie 23 March, 2023** -LS Secretariat

I am fighting for the voice of India, I am ready to pay any cost -Rahul Gandhi

Defamation

## **ABOUT DEFAMATION**

**What is Defamation:** Defamation is the act of spreading false claims about another person that harms that person's reputation when seen through the eyes of an ordinary man.

- **Defamation Laws in India:** Article 19 of the Constitution guarantees citizens the right to free expression. However, certain legitimate exceptions to this freedom have been established by Article 19(2), including contempt of court, defamation, and incitement to an offence.
- **In India, there are two categories of defamation:** Civil and Criminal.
- **Civil Defamation:** The individual who has been defamed can sue in either the Supreme Court or a lower court for monetary damages. There is no such thing as a prison sentence.
- **Criminal Defamation:** The individual who is the subject of a defamation prosecution may be punished to two years in prison, fined, or both.

## **FREE SPEECH V/S DEFAMATION LAWS**

- The defamation laws, it is contended, violate fundamental rights protected by Article 19 of the constitution.
- The Supreme Court has concluded that defamation laws are legally acceptable and do not violate the right to free expression.
- The Supreme Court has also ruled that treating defamation as a public wrong is permissible, and that criminal defamation is not a disproportionate restriction on free speech, because reputation protection is both a fundamental and a human right.
- The Court relied on previous decisions and confirmed the right to reputation as a component of the right to life under Article 21.
- Applying the idea of 'balancing essential rights,' the court determined that the right to freedom of expression and speech cannot be "given so much latitude that even an individual's reputation, which is a constituent of Article 21, would have no admission into that region."

## **CONCERNS ASSOCIATED WITH DEFAMATION LAWS**

- The criminal provisions have frequently been applied only for the purpose of harassment.
- Due to the arduous nature of Indian judicial proceedings, the process itself becomes a form of punishment, regardless of the merits of the case.
- Critics assert that defamation law violates the fundamental right to free speech and expression and that civil defamation is an acceptable remedy for such wrongs.
- Criminal defamation has a negative impact on society because the state uses it to compel the media and political opponents into self-censorship and unreasonable self-restraint.

## **SUPREME COURT ON DEFAMATION LAWS**

- In *Subramanian Swamy vs Union of India*, the Court upheld the constitutionality of sections 499 and 500 of the Indian Penal Code (criminal defamation), emphasising that an individual's fundamental right to live with dignity and reputation "cannot be ruined solely because another individual can have his freedom."
- In August 2016, the court additionally imposed sanctions on Tamil Nadu Chief Minister J Jayalalithaa for allegedly abusing the criminal defamation statute in order to "suffocate democracy," stating that "public people must face criticism."

## **DISQUALIFICATION OF MP**

- According to Section 8(3) of the Representation of the People (RP) Act 1951, which governs a legislator's removal from office, a Member of Parliament who is found guilty of any crime and sentenced to at least two years in prison is automatically disqualified from holding public office.

- Experts also highlight the Supreme Court's judgement in the Lok Prahari case from 2018. According to the judgement, if the conviction is overturned on appeal, the disqualification will also be overturned.
- According to constitutional law expert P.D.T. Achary, because the court suspended the MP's punishment for 30 days, the disqualification process is also on hold for the same amount of time. He says that the disqualification is directly tied to the severity of the penalty.
- Former Chief Election Commissioner S.Y. Quereshi contends that under the RP Act and its interpretation by the Supreme Court in the Lily Thomas case, disqualification is inevitable because the court postponed the punishment rather than the conviction.

#### **WHAT HAPPENS NEXT IN THE CURRENT CONTEXT**

- The disqualification would not become official until the Lok Sabha Secretariat was notified, after which the Election Commission (EC) would call new elections to fill the seat.
- There are presently no intentions to declare the MP seat vacant, according to sources within the Lok Sabha secretariat, and they are awaiting a formal complaint.
- The secretariat is proceeding with caution in view of the recent instance involving a Lakshwadeep MP.
- A Lakshadweep court accused and convicted an MP in January 2023, but the Kerala High Court suspended the decision and deemed the MP's suspension from the Lok Sabha no longer relevant a week later.
- The decision of the Election Commission to hold byelections in his constituency was promptly contested in the Supreme Court, and the court requested that the EC decision be withdrawn.

#### **MP HAVE OPTIONS**

- To have the disqualification order lifted, the MP must have his conviction stayed by a higher court.
- The MP can approach the President. Mr Achary stated that after discussing with the Electoral Commission, the President would decide whether to disqualify an MP under the terms of Article 103 of the Constitution.

**Source:**  
[The Indian Express](#)

**Saurabh kaushik**