

## 2. Disqualification of MPs

**Prelims Syllabus:** Election & Electoral Reforms

**Mains Syllabus:** GS-II Salient features of the Representation of People's Act.



### 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.

### Constitutional Provisions for Disqualification of MLAs:

- **Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:**
  - ✓ If he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature),
  - ✓ If he is of unsound mind and stands so declared by a court,
  - ✓ If he is an undischarged insolvent,
  - ✓ If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
  - ✓ If he is so disqualified under any law made by Parliament.

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### **Parliamentary Provisions for Disqualification of MLAs:**

**The Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951) and the same is followed by Legislative Assembly and Council:**

- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years.
- But, the detention of a person under a preventive detention law is not a disqualification.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have any interest in government contracts, works or services.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- He must not have been dismissed from government service for corruption or disloyalty to the state. He must not have been convicted for promoting enmity between different groups or for the offence of bribery. He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.
- **The governor's decision is final** on the question whether a member has become subject to any of the above disqualifications.
- **The governor should obtain the opinion of the Election Commission and act accordingly.**

### **Disqualification on Ground of Defection:**

- The Constitution lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.
- The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly.
- In 1992, the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review.