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Q11

On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification.(15).

UPSC Civil Services Mains 2019 · GS II · 15 marks · Governance and Policy

Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

Core demand of the question

- On what grounds a people's representative can be disqualified under the **Representation of People Act, 1951**? Also mention the remedies available to such person against his disqualification

Revision summary

Articles 102 and 191 plus the **Representation of the People Act, 1951**, set the disqualification regime for MPs and MLAs.

Section 8 (conviction), 8A (corrupt practice), 9, 9A, 10 and 10A are the main statutory grounds.

Lily Thomas (2013) struck down **Section 8(4)**; sitting members are no longer shielded for three months after conviction.

The **Tenth Schedule** and office of profit sit beside the 1951 Act, not inside **Section 8**.

Remedies are stay of conviction, **Section 116A** appeals, writs, and limited review of Speaker or Presidential decisions.

Introduction

A people's representative - a Member of Parliament or of a State legislature - holds office under the Constitution and under the **Representation of the People Act, 1951**. Disqualification is the statutory and constitutional method of keeping that office free of crime, corrupt practice, and conflicting interest. The 1951 Act lists several grounds; **Articles 102 and 191** and the **Tenth Schedule** add others; **Lily Thomas v. Union of India (2013)** closed a sitting-member shield. Remedies exist, but they are appeals, stays, and review, not a second election by default.

Body**Constitutional frame that the 1951 Act fills**

- **Article 102 (Parliament)** and **Article 191 (State legislatures)** disqualify a person who holds an office of profit, is of unsound mind, is an undischarged insolvent, is not a citizen, or is disqualified by or under any law made by Parliament.

- The **Representation of the People Act, 1951**, is that law for most electoral bars; the **Tenth Schedule** (anti-defection) is a separate constitutional bar under **Articles 102(2) and 191(2)**.
- **Election Commission of India**, under **Article 324** and the 1951 Act, conducts polls and also decides some disqualifications (notably **Section 10A**). The President or Governor, with the **Election Commission's** opinion, decides office-of-profit and allied constitutional questions (**Articles 103 and 192**).

Grounds under the **Representation of the People Act, 1951**

- **Section 8** disqualifies a person convicted of specified offences (including the **Prevention of Corruption Act, 1988**, certain Indian Penal Code offences, and other listed statutes) if the sentence meets the Act's thresholds; for many serious offences even a sentence of two years or more attracts a six-year bar after release.
- **Lily Thomas v. Union of India (2013)** struck down **Section 8(4)**, which had allowed a sitting member three months to appeal before the disqualification took effect; conviction now operates at once for sitting and aspiring members alike.
- **Section 8A** disqualifies a person found guilty of a corrupt practice in an election petition; the President decides the period, on the **Election Commission's** opinion.
- **Section 9** disqualifies a person dismissed from government service for corruption or disloyalty.
- **Section 9A** disqualifies a person with a subsisting government contract for goods or works in the course of trade or business.
- **Section 10** disqualifies a person who is a managing agent, manager or secretary of a company or corporation in which the government holds a prescribed share.
- **Section 10A** disqualifies a person who fails to lodge the account of election expenses within time and in the manner required, unless the **Election Commission** is satisfied that the failure was for good reason.
- **Related bars that often travel with the 1951 Act in answers:** **Section 11A (disqualification for certain corrupt practices and for conviction for promoting enmity)**, and the constitutional office-of-profit and defection grounds that a representative actually faces in office.

What the Act does not do by itself

- Undertrial detention is not a **Section 8** conviction. After the Supreme Court's **2013** custody-and-vote line, Parliament amended the 1951 Act so that a person in custody is not, for that reason alone, barred from contesting; conviction remains the hard statutory line.
- Party whip and defection are **Tenth Schedule** questions for the Speaker or Chair, not **Section 8** questions, though both empty a seat.

Remedies against disqualification

- **Against a criminal conviction:** appeal to the Sessions Court, High Court or Supreme Court as the criminal procedure allows; a stay of conviction (not merely of sentence) is what keeps the seat, after *Lily Thomas*, until the appellate court says otherwise.
- **Against an election-petition finding of corrupt practice:** appeal to the Supreme Court under **Section 116A** of the 1951 Act from the High Court's order on the petition.
- **Against an Election Commission order under Section 10A:** writ jurisdiction of the High Court under **Article 226**, and further appeal as the Constitution allows.
- **Against a Presidential or gubernatorial decision under Articles 103 and 192:** the opinion of the **Election Commission** is the statutory process; courts have reviewed the decision on limited grounds of mala fides, patent error, or violation of natural justice (as in office-of-profit litigation).

- **Against a Tenth Schedule ruling:** judicial review after *Kihoto Hollohan v. Zachillhu* (1992), which treated the Speaker's order as a tribunal order subject to review.
- A disqualified person may also seek a fresh electoral mandate only after the statutory bar expires or is lifted; there is no automatic restoration of the vacated seat.

Flow diagram

RPA 1951 1951 -> Sec 8 conviction
 RPA 1951 -> Sec 8A corrupt practice
 RPA 1951 -> Secs 9 9A 10 10A
 Lily Thomas 2013 -> Sec 8 conviction
 Sec 8 conviction -> Stay of conviction appeal
 Sec 8A corrupt practice -> Sec 116A SC appeal
 Secs 9 9A 10 10A -> Art 226 writ

Conclusion

The 1951 Act disqualifies a people's representative for conviction, corrupt practice, dismissal for corruption, government contract, specified company office, and failure to file election expenses, sitting beside **Articles 102, 191** and the **Tenth Schedule**. Lily Thomas made conviction bite at once. Remedies are stay of conviction, election-petition appeal under **Section 116A**, writs against the **Election Commission**, and review of Speaker or Presidential decisions - not a right to remain in the House while the bar stands.

Facts & figures

Representation of the People Act, 1951

Parliamentary law on conduct of elections, corrupt practices, and disqualification of members under **Articles 102 and 191**.

Section 8, Representation of the People Act, 1951

Disqualification on conviction for listed offences and for sentences of specified length; the main criminal bar.

Lily Thomas v. Union of India (2013)

Struck down **Section 8(4)**; disqualification on conviction applies immediately to sitting members.

Section 10A, Representation of the People Act, 1951

Election Commission may disqualify a candidate who fails to lodge election-expense accounts without adequate reason.

Section 116A, Representation of the People Act, 1951

Appeal to the Supreme Court from a High Court order on an election petition, including findings of corrupt practice.

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