



Disqualification of Member of the Legislative Assembly

For Prelims: [First Information Report \(FIR\)](#), Disqualification and [Suspension](#) of Member of the Legislative Assembly, Article 191 of the Constitution, [Representation of the People Act, 1951](#)

For Mains: Significance Representation of the People Act, 1951, Various grounds for disqualification of MLA

[Source: TH](#)

Why in News?

Recently, the Madras High Court convicted the Tamil Nadu Minister in a **disproportionate asset case**.

- The High Court's decision comes 12 years after the [First Information Report \(FIR\)](#) was first registered in the case in 2011. The minister now faces possible disqualification as a [Member of the Legislative Assembly \(MLA\)](#) due to his conviction, unless the conviction is overturned.

Note

- Disproportionate assets is a term used in India to describe an **individual's net economic assets** that significantly **exceed the assets they should possess**.
 - This is after accounting for the assets they previously held and all legal sources of income.

What are the Provisions for Disqualification of a Member of the Legislative Assembly?

- **Article 191:**
 - Article 191 of the Constitution of India deals with **disqualifications for membership of the State Legislative Assembly** or Legislative Council.
 - A person shall be disqualified for being chosen as, and for being, a member of either house of the State Legislature if:
 - A person holds any **office of profit** under the Government of India or the Government of any State specified in the **First Schedule** unless the office is exempted by the State Legislature by law.
 - A person is declared to be of **unsound mind** by a competent court.
 - A person is an undischarged **insolvent**.
 - A person is **not a citizen of India**, or he has voluntarily acquired the citizenship of a foreign State, or he owes allegiance or adherence to a foreign State.
 - A person is **disqualified by or under any law made by Parliament**.
 - A person can be disqualified on **grounds of defection** under the **Tenth Schedule** of the Constitution. This includes changing party affiliation before or after an

election.

▪ **Representation of the People Act(RPA), 1951:**

- According to **Section 8(1) of the [Representation of the People Act, 1951](#)**, a legislator convicted of an offence under the **[Prevention of Corruption Act \(PCA\), 1988](#)**, should be disqualified for six years, from the date of conviction, if the punishment is limited to a fine.
 - However, if a legislator is sentenced to any term of imprisonment under the PCA, 1988, then he or she should be disqualified from the **date of conviction till the entire period of imprisonment** and also for a further period of six years from the date of release, the Act says.
 - But, the **detention of a person under a [preventive detention](#) law is not a disqualification.**
 - The disqualification can be avoided only if the conviction, and not just the sentence, gets stayed or set aside.
- The person must not have been found guilty of **certain election offences or corrupt practices in the elections.**
 - **The person must not have been dismissed from government service for corruption or disloyalty to the state.**
- The person must not have been convicted for promoting enmity between **different groups or for the offence of bribery.**
- The person must not have **failed to lodge an account of his election expenses** within the time.
- The person must not have any interest in government contracts, works or services.
- The person 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% share.**
- The person must not have been punished for **preaching and practising social crimes** such as [untouchability](#), [dowry](#) and [sati](#).
- The **Governor's decision on a member's disqualification is final**, but they must seek the Election Commission's opinion before taking action.
- The disqualification can be reversed if a **higher court grants a stay** on the conviction or decides the appeal in favour of the convicted lawmaker.

How Disqualification is Different from Suspension?

- Suspension means that a **person temporarily loses his or her membership** due to some misconduct or violation of rules.
- **Rules 373, 374, and 374A of the Rules of Procedure and Conduct of Business in Lok Sabha** provide for the withdrawal of a member whose conduct is **“grossly disorderly”**, and suspension of one who abuses the rules of the House or willfully obstructs its business.
 - The maximum suspension as per these Rules is **“for five consecutive sittings or the remainder of the session, whichever is less”**.
- The maximum suspension for Rajya Sabha under Rules 255 and 256 also does not exceed the remainder of the session.
- Similarly, **each state has its own set of rules governing assembly conduct**, including provisions for the suspension of MLAs which prescribe a maximum suspension not exceeding the remainder of the session.

UPSC Civil Services Examination, Previous Year Questions (PYQ)

Prelims

Q. Which of the following are the discretionary powers given to the Governor of a State? (2014)

1. Sending a report to the President of India for imposing the President's rule
2. Appointing the Ministers
3. Reserving certain bills passed by the State Legislature for consideration of the President of India
4. Making the rules to conduct the business of the State Government

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 1 and 3 only
- (c) 2, 3 and 4 only
- (d) 1, 2, 3 and 4

Ans: (b)

PDF Reference URL: <https://www.drishtiias.com/printpdf/disqualification-of-member-of-the-legislative-assembly>

