The Case of Defamation

Why in news?

Recently Mr. Rahul Gandhi has been sentenced to 2 years in prison for criminal defamation and disqualified from his membership in the Lok Sabha.

What are the reasons for disqualification?

- Rahul Gandhi was disqualified for violating the provisions of
  - Article 102 (1) (e) of the Constitution of India
  - Section 8 (3) of the Representation of People Act, 1951
- **Article 102 -** It deals with the disqualification of MPs from either house of the Parliament.
- **Article 102 (1) (e)** – It deals with disqualification under any law made by Parliament.
- **RPA –** The Representation of the People Act (RPA), 1951 is an act of Parliament of India deals with:
  1. **Elections –** Conduction of election of the Houses of Parliament and state legislative assemblies.
  2. **Disqualifications –** The qualifications and disqualifications for membership of Houses of Parliament and state legislative assemblies.
  3. **Offences –** Other offences, decision of doubts and disputes for the election for Houses of Parliament and state legislative assemblies.
- **Section 8 of the RPA, 1951 –** The Section (8) of the RPA, 1951 consists of the following provisions:
  1. **Section8 (1) –** It includes specific offences such as promoting enmity between two groups, bribery, and undue influence or personation at an election.
  2. **Section 8(2) –** It lists offences that deal with hoarding or profiteering, adulteration of food or drugs and for conviction and sentence of at least six months for an offence under any provisions of the Dowry Prohibition Act.
  3. **Section 8(3) –** A person convicted of any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of 6 years since his release.
  4. **Section 8(4) –** The disqualification takes effect only after 3 months have elapsed from the date of conviction.
- However, in the landmark 2013 ruling in ***'Lily Thomas V Union of India'***, the Supreme Court made *Section 8(4) of the RPA as unconstitutional*.

What is defamation?

- **Section 499 of IPC –** It defines 'defamation' as being committed through
    1. Words that are spoken or intended to be read
    2. Signs or visible representations which are a published or spoken
    3. Imputation concerning any person if the imputation is spoken or published with
        i. The intention of causing harm to the reputation of the person
        ii. Reason to believe that the imputation will harm the reputation of the person

Defamation as a Tort or Civil Offence

- **Law of Torts –** Civil Defamation under the Law of Torts focuses mainly on libel (i.e., written defamation) and not on slander (i.e., spoken defamation).
- To establish that a statement is defamatory or libelous, it must prove to be - False, Written, Defamatory, and Published.

Defamation as a Crime or Criminal Offence

- **Section 499 IPC –** Defamation is defined as a criminal offense under *Section 499 of the Indian Penal Code, 1860*.
- The types of insult may also be known as Slander or Libel.
- **Slander –** A slander is a form of defamation that is communicated verbally.
- **Libel –** Libel is the form of insult which is represented in a pictorial or a written form.

How has the judiciary inferred?

- In ***Shreya Singhal V. Union of India*** case the Court found the criminal defamation laws to be fair and reasonable.
- **Case law -** It was observed that the expression collection of persons used in the IPC, has to be an identifiable class or group.
- In such case the particular member who initiates criminal proceedings for defamation must demonstrate personal harm or injury by the alleged defamatory statement.
    - Case law is the law based on decisions made by judges in earlier legal processes (cases).

Defamation does not fall in Section8 (1) The Representation of the People Act (RPA), 1951.

What is the way forward?

- A modern democracy should not treat defamation as a criminal offence at all.
- Opposition parties should include abolishing criminal defamation in their agenda.

References

1. The Hindu| Defamation

2. The Indian Express |Disqualification Of Rahul Gandhi
3. Legal Service | Defamation And Free Speech _

