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Lame duck - Disqualification of the Representation of the people's Act 1951

Introduction

Election is the most indispensable aspect of democratic country.

Democracy is a form of government where people rule through elected representative power.

Citizens will elect their representatives and citizens will contest for the election.

The preamble of the Indian Constitution provides that India is a democratic country. Elections will be conducted for the functioning of democratic India. The elected members will represent the interest of the public for the welfare of the nation.

The Election commission of India conducts the election and it has the power to notify the rules and procedures related to an election.

If the representatives fail to do their duty and not possess the required qualifications the Election Commission of India can disqualify their membership.

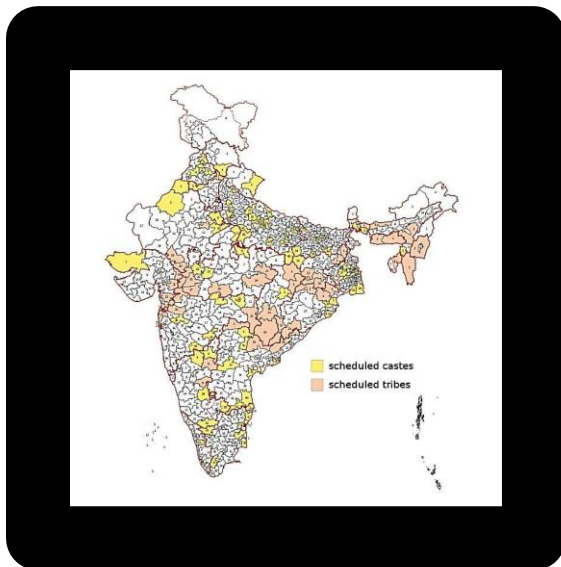
This article mainly emphasizes the qualifications, and criteria for the disqualification of representatives under the Representation of the People Act 1951.

Can you imagine a representative of the country being disqualified from office? Let's check!

Who is the members under RPA 1951

Any person aspiring to be member of Lok sabha or Legislative Assembly, whether by election or by nomination , must be qualified and must not be disqualified under the Constitution or any law for such membership⁽¹⁾

Total capacity for the Lok Sabha election as per the constitution is 552 seats allotted for different constituencies in India. Out of 552 members representing 28 states and 8 union territories, the remaining seats are reserved for scheduled castes and tribes.



Qualifications under Constitution of India

Any person aspiring to be Member of Lok Sabha/ Part V, Article 84 and 173 deal with the required qualifications for a member of parliament.

- By virtue of Article 84 (1):

A person to be elected as a member of the Parliament shall be a citizen of India. No alien can contest in the Parliamentary election.

- Article 84 (2): A person shall undertake an oath and affirmation to bear true faith allegiance to the constitution of India and uphold the sovereignty and integrity of India.
- Article 84 (3) and Article 173(b): A person shall not be chosen to fill a seat in Lok Sabha or State Legislative Assembly unless he is 25 years of age Legislative Assembly,⁽²⁾

The court in **Kuldip Nayar vs Union of India** AIR 2006 SC 3127 ^(3) ruled in favor of the respondents (Union of India & Others), finding that the removal of the domicile requirement was not unconstitutional as it applied to non-citizens and did not violate Article 84 of the Indian Constitution.

Qualifications under Representation People's Act 1952

Section 4 of the Representatives People's Act 1951⁽⁴⁾

deals with the qualifications for the **Lok Sabha representatives**. These are as follows;

- If a constituency is reserved for scheduled castes and tribes, those reservations shall be ensured in the manner prescribed. In other words, the candidate to be elected must belong to ST and ST communities as reserved
- In the case of Lakshadweep Parliamentary constituency (PC), the candidate should be a member of any ST of Lakshadweep and an elector in Lakshadweep.
- In the case of Sikkim PC , the candidate should be a member of any ST of Sikkim and an elector in Sikkim.
- If a seat is reserved for STs for Autonomous District of Assam, the candidate should be a member of any Autonomous District of Assam and an elector of any PC comprising such Autonomous District.
- The candidate should be an elector of a PC of respective states other than such candidate not belonging to any reserved PC.

Section 5 of the Act 1951⁽⁵⁾ , prescribes **qualifications** for the representatives in **State Assembly** elections.

- In the case of ST & SC reserved constituencies, the candidate should be a member of any ST , SC of communities of such state and should be elector of the state.
- In case of a non reserved constituency, the candidate should be an elector of any Assembly Constituency(AC).
- If a seat is reserved for STs for Autonomous District of Assam, the candidate should be a member of any Autonomous District of Assam and an elector of any AC comprising such Autonomous District.

Disqualification under Indian Constitution ⁽⁶⁾

Article 102(1) prescribes the constitutional disqualification for becoming and being a member of **Parliament**.

Article 191(1) prescribes the constitutional disqualification for becoming and being a member of the **State Constituency Assembly**.

Those disqualification are listed below;

- Holding office of profit under any Government
- Unsoundness of mind
- Undischarged insolvent
- Non citizenship of country
- Any other disqualification as prescribed by the Parliament

In *Shivamurthy swami Inamdhar v. Agadi Sanganna Andanappa* [(1971) 3 SCC 870] ⁽⁷⁾

The SC ruled for a test for whether a person holds an office of profit or not. Thus such factors are as follows;

- whether the government is the appointing authority,
- whether the government has the power to terminate the appointment,
- whether the government determines the remuneration,

Those positions are excluded under above provisions to disqualify such as sitting president, Vice President, Governors of states, minister of union and states etc .

Disqualification under the Representation People's Act 1951 ⁽⁸⁾

Parliament is empowered to make statutory rules for the disqualification for membership of both parliament and state legislatures. Here we will discuss the disqualification of members of both parliament and State legislature under the Representation People's Act 1951.

- Section 8 of the RPA Act 1951, a member is disqualified on **conviction** of certain offences and conviction made by the tradable court. The disqualification is not removed by the release on bail unless the acquitted by the court or appeal pending on court on conviction.
- Section 8 A of RPA Act 1951 , a member is disqualified on **conviction of corruption** arisen out of an order passed by the President on the advices of ECI
- Section 9 of RPA 1951 , a member is disqualified on dismissal from Government office within the last 5 years or disloyal to the Govt.
- Section 10 of RPA 1951, a person disqualified as holder of certain office under Govt company. Example: Secretary, Appropriate Government etc.
- Section 10 A of RPA 1951, Disqualification on failure to lodge account of election expenses, and it will be effected for 3 years of such orders

Conclusion

This article mainly focuses on the disqualification for members of Lok Sabha and state legislative assemblies. It is clear that a person to be elected as a member of parliament and state assemblies, he / she shall be a citizen of India. Under the provisions of Representation People's Act 1951, qualifications and disqualifications are specified by the Indian Constitution and RPA 1951.

Election is the most cardinal mechanism of india. The candidate for the election of House of parliament and House of state legislatures, must require those qualifications under the RPA 1951. In case any person fails to follow the prescribed qualifications he should be disqualified by the provisions of the aforementioned Act . Hence it is the duty of every candidate to adhere out these provisions of the Act.

End notes

1. The Representation of The People's Act , 1951, No. 43, Act of Parliament 1951 (India).
2. INDIA CONST. art 84.
3. Kuldip Nayar vs. Union of India, AIR 2006 SC 312.
4. The Representation of The People's Act 1951, § 4, No. 43, Act of Parliament 1951 (India).
5. The Representation of The People's Act 1951, § 5, No. 43, Act of Parliament 1951 (India).
6. INDIAN CONST. art 102(1) & 191(1)
7. Shivamurthy swami Inamdar v. Agadi Sanganna Andanappa [(1971) 3 SCC 870]
8. The Representation of The People's Act 1951, The Representation of The People's Act 1951, § 8,9,10, No. 43, Act of Parliament 1951 (India).

