

LEGAL PROVISION REALIZING TO CONTEST ELECTION IN INDIA

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ABSTRACT

In a democratic government, elections are a way to establish the will of the people in terms of the democracy of the state. The position of the legal system is essential to ensure free and fair elections. Throughout India, rules are usually included in the Constitution itself for free and fair elections. Numerous complex rules and guidelines occur as well. Comprehensive guidelines on electoral system, political delimitation, district composition, authority's powers and duties, the protocols for the holding of elections and the announcement of results and forum, the procedures for performing elections and announcements of results and forum and p are set out in Legal Decisions.

Keywords: *Democratic Government, Electoral System, Political Delimitation, District Composition.*

Introduction

Qualifications and Disqualifications for Membership of Parliament and State Legislatures

Each person aspiring, whether by election or by appointment, to become a parliamentary member or a state legislature of India must be, and must not be, eligible by or under constitutional or legal statutes. Qualifications are the positive characteristics of a person who qualifies him or her for a specific position, position or public office. Disqualifications, on the other hand, are the negative aspects of an individual that, while eligible, campaigns against his job, role or public office. The Constitution describes two separate terms as 'qualifications' and 'disqualifications' for national or state representative representation and the 'lack of eligibility' as 'disqualification.' The Constitution also explicitly prescribes such standards or disqualifications. Membership requirements are defined in Article 84, while disqualifications are stated in Article 102 for membership of Parliament. Article 173 therefore lays out the criteria for State legislatures for membership and it is therefore Article 191 which sets out the disqualifications.

One important feature and a major difference between qualifications and disqualifications is that whereas, in Articles 84 and 173, requirements refer to 'being appointed as' (i.e. to be elected or designated as), to a member of parliament or of a state legislature, they do not apply both to the 'being selected as' or to the (t) disqualifications under Articles 102 and 191. In other terms, the requirements must be met and elected as a Member of the Parliament or of a state parliament when a vote is challenged. , Disqualifications shall have significance both for vote or nomination and for continued membership, whether appointed or approved, at any period afterwards. In brief, even if an appoint or appointed representative lacks the credentials he or she met at the time of his or her election and appointment, he shall be excluded from his / her membership of the House concerned. However he / she may forfeit the membership of the House if he is barred from being that member. He or she shall be disqualified as such.

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In **Jose Padickal v. Ibrahim Sulaiman Sait and Ors**,¹ This was decided that, by holding an appointment for boycott of the celebration of the day of republican rule, the Speaker of the Kerala Legislative Assembly breached the oath to bear true faith and allegiance to the Constitution that he was entitled to hold election pursuant to Article 173(a), and was entitled, according to Article 188, to hold a position in the Assembly. The High Court of Kerala did not, however, take that argument by claiming that the breach of oaths on membership did not disqualify members after election and that the High Court could no longer add any new disqualifications. It has also been reported that the elected President of the Council of States from the State of West Bengal Shri Pranab Kumar Mukherjee has been excluded as a Council member on the basis of his rank, which was removed from the Western Bengal poll, which constituted a requirement for the election of this State to the Council. In its view the Election Commission did not affect his perpetuity as a member of the Council of States by excluding the title from its election term, because the lack of qualifications did not mean a disqualification from his capacity as a Parliament member to proceed. Shri Murasoli Maran was equated with the accusation that he was still a member of the Council of States, for writing in a Murasoli journal some inflammatory articles, that allegedly incited the burning of the Constitution.

Another important element to be illustrated here is that it is only Parliament that is allowed to provide for additional qualifications and disqualifiers, not only for membership of parliament but also for membership of the state legislatures, apart from the unique qualifications and disqualifications stated in the Constitution itself.

Nominee is required to declare in his nominating document that he is eligible and is not ineligible to be chosen to fill the seat he wants to run in, as the credentials and disqualifications are two separate concepts. The returning officer always needs to confirm that the nominee is eligible and is not ineligible for recruitment to fill the seat during the review of the nomination papers.

Constitutional Qualifications

⇒ **Citizenship of India**

Article 84(a) and Article 173(a) impose on a person that, unless he is a citizen of India, he is not qualified to fill a seat within the parliament or a State legislature. Citizenship India not only has a fundamental qualification for membership of parliament or state legislative bodies been prescribed by the Constitution makers, but also the Constitution provides specifically that a person shall be disqualified from membership unless he is a citizen of India. if that person is a citizen of India.

In *Lal Babu Hussain v Electoral Registrar and Ors*, the Supreme Court observed that it was a question of fact that the inquiry was a quasi-judicial issue, and was to be decided by the Central Government and not by courts, as was held earlier, if an individual is a foreigner, i.e. a resident of India. *Andhra Pradesh v. Syed Mohd*² and *State of Uttar Pradesh v. Rehamatullah*.³

In *Bhagwati Prashad Dixit Ghorewala v Rajiv Gandhi*, the Supreme Court further decided that once an entity has been recognised or retained as a citizen of Indian, he or she will not be considered to have become an Indian citizen except where the Central Government, in compliance with Article 9(2) of the Citizenship Act 1955, has rendered the person an Indian citizen. This topic can not be handled separately by the courts themselves. But in *Akbar Khan Alam Khan and Anor v. Union of India and Ors* a constitutional bench of the Supreme Court previously held that it is necessary to investigate whether anybody was never the Indian person who differentiated himself from the matter of anyone gaining nationality of a state (and consequently terminated his Indian citizenship) in a civil court.

In the case of **Hari Shanker Jam v. Sonia**,⁴ In its judgment to continue in the election petition and to proceed with an electoral proceedings at the hearing on the election petition, the Supreme Court stated that the legitimacy of an attestation of nationality by registration with compliance with section 5(1)(c) of the Citizenship Act 1955 could be challenged if the question arises whether the applicant is eligible to contest the vote, or not.

⇒ **Oath or Affirmation under the Constitution**

To be eligible to vote for the Parliament or a state legislature, any nominee is to render and accept, in a manner specified for the reason of the Constitution, either an oath in the name of God or a

¹ Original Petition No 22 of 1987 before the Kerala High Court.

² AIR 1962 SC 1778.

³ AIR 1971 SC 1382.

⁴ AIR 2001 SC 3689.

sacred declaration. Originally, there was no such provision to award or claim a nominee in a national or state legislature. There was no such requirement. In 1963, on the advice of the Comité National Integration et Regionalisme, the Constitution (Sixteenth Amendment) Act 1963 laid down "To uphold the Constitution, and to maintain the integrity and independence of the Republic, any nominee for the membership of a State Legislature, Parliament and any aspirant or public officer must agree to do so." The true purpose of the oath is to make a commitment to be committed to India's sacred faith and allegiance and to maintain India's independence and dignity.

It is compulsory that a candidate makes or subscribes the oath and pledge. The omission of an oath or an affirmation will render the candidate's nomination paper liable for a rejection.' After becoming an Indian Union, the nomination papers of all but one nominee were refused at the time of the first election to the House of the citizens of Sikkim in 1977, because they were unable to create and adhere to the requisite oaths or affirmations. The only nominee to render his oath was proclaimed unopposed. The Sikkim High Court kept his undisputed election as legitimate.

In **Aad Lal v Kanshi Ram**,¹ The words "swear on behalf of Christ" and "solemnly affirm" are used in the context of an oath offered by a claimant and the alternatives were not rejected. However it was made clear from a form of support of the returning officer to whom the oath had been taken that the applicant was in the name of God taking and subscribing the oath and that, because of the rush of labour, the terms 'solemnly affirm.' But those words are graded in the candidate's certification immediately following his oath. In the cases, the Supreme Court ruled that, at the time of filing his nomination papers, the nominee gave a correct oath and signed it.

• In **VR Sutar v NP Bhanvadia**,² In the Gujarati parliamentary legislature, a member was chosen for elections and the term 'Rajya Sabha' was translated as 'the legislative assembly' in the context of Gujarat, which literally means the Council of States, but which is considered a legislative council in the judgment.' The word 'Rajya Sabha.' Whether the oath was validly administered in such an improper manner before the Supreme Court. In the circumstances surrounding the creation and issuance of oaths, the Supreme Court ruled that, while their adherence was not absolute, the criteria of Article 173(a) had been satisfied.



¹ AIR 1980 SC 1358.

² AIR 1970 SC 765.