



सत्यमेव जयते
गुजरात सरकार
Government of Gujarat



TOPIC- QUALIFICATION & DISQUALIFICATION

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Introduction

- ❑ In India, the members of parliament are members of Lok Sabha and Rajya Sabha. Both the houses have elected as well as nominated members. each state has their own state legislative assembly and members are elected members.
- ❑ The elected members of Lok Sabha and State legislative assembly are elected directly on the basis of adult suffrage; the elected members of Rajya Sabha are indirectly elected by members of legislative assemblies of states.
- ❑ The term period of an elected and nominated member of the Rajya Sabha and state legislative council is 6 years, while the same for an elected member of Lok Sabha and state legislative assembly is 5 years subject to other conditions.



Constitutional Qualifications (Article 84 and 173 of the Constitution)

Citizenship
of India

Oath or affirmation
to bear true faith
and allegiance to
the constitution

Minimum
qualifying
age

Any other
qualification
prescribed by
Parliament



Constitutional Qualifications (Article 84 and 173 of the Constitution)



Citizenship of India

- ❑ He must be a citizen of India.
- ❑ The Constitution deals with the citizenship from Articles 5 to 11 under Part II.
- ❑ Constitution empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time
- ❑ By Birth , By Descent, By Registration, By Naturalisation , By Incorporation of Territory



Oath or affirmation

□ Purpose

He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose.

In his oath or affirmation, he swears



**To bear true faith and allegiance
to the Constitution of India**



**To uphold the sovereignty and
integrity of India**



Oath or affirmation



Every candidates has to make and subscribe either an oath in the name of god or solemn affirmation in the form prescribed for the purpose in the Third Schedule to the Constitution.



Oath or affirmation must be made after the nomination paper has been submitted to RO and before the commencement of the date of scrutiny of nominations, i.e, latest by mid-night of the date preceding the date of scrutiny.



Oath or affirmation

Authorities Before Whom Oath Or Affirmation To Be Made:

- ✓ RO or any of the Assistant ROs of the constituency.
- ✓ All stipendiary Magistrates of the first class, District Judges and persons belonging to judicial service of the State.
- ✓ Superintendent of the prison if the candidate is confined in a prison.
- ✓ Commandant of the detention camp if the candidate is under preventive detention.
- ✓ Medical Superintendent/Medical Practitioner attending to the candidate in case candidate is admitted in hospital.

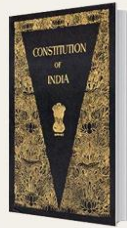


Minimum qualifying age **(Article 84(3) and 173(b) of the Constitution)**

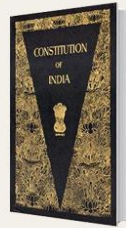
- He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
- He must be not less than 30 years of age in the case of the State legislative council and not less than 25 years of age in the case of the State Legislative assembly.



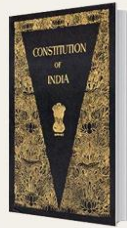
Any other qualification prescribed by parliament



He must possess other qualifications prescribed by Parliament



RPA act-1951



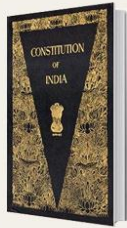
Section-3-
Qualification for membership of the Council of states



Section-4
Qualification for membership of the House of People



Section-5
Qualification for membership of the State Legislative Assembly



Section-6
Qualification for membership of the State Legislative Council



Qualification for membership of the Council of States (Sec-3)

- ❑ He has to be registered as a voter in any parliamentary constituency of India. This is applicable for both, the Rajya Sabha and the Lok Sabha.
- ❑ Before 2003, there was a rule that contesting for a Rajya Sabha seat the candidate must be an elector in the particular state from where he is contesting but this requirement has been waived off since 2003.
- ❑ In 2006, the Supreme Court upheld the constitutional validity of this change.
- ❑ A member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.



Qualification for membership of the House of People (Sec-4)

- ❑ Seat reserved of Scheduled Castes- He is a member of Scheduled Castes, whether of that state or any other state and , and is an elector for any Parliamentary constituency
- ❑ Seat reserved for Scheduled Tribes -He is a member of ST, whether of that state or any other state (other than those in the autonomous districts of Assam)and , and is an elector for any Parliamentary constituency
- ❑ In the case of the seat allotted to the state of Sikkim, he is an elector for Parliamentary constituency for Sikkim;
- ❑ In the case of any other seat, he is an elector for any Parliamentary constituency.

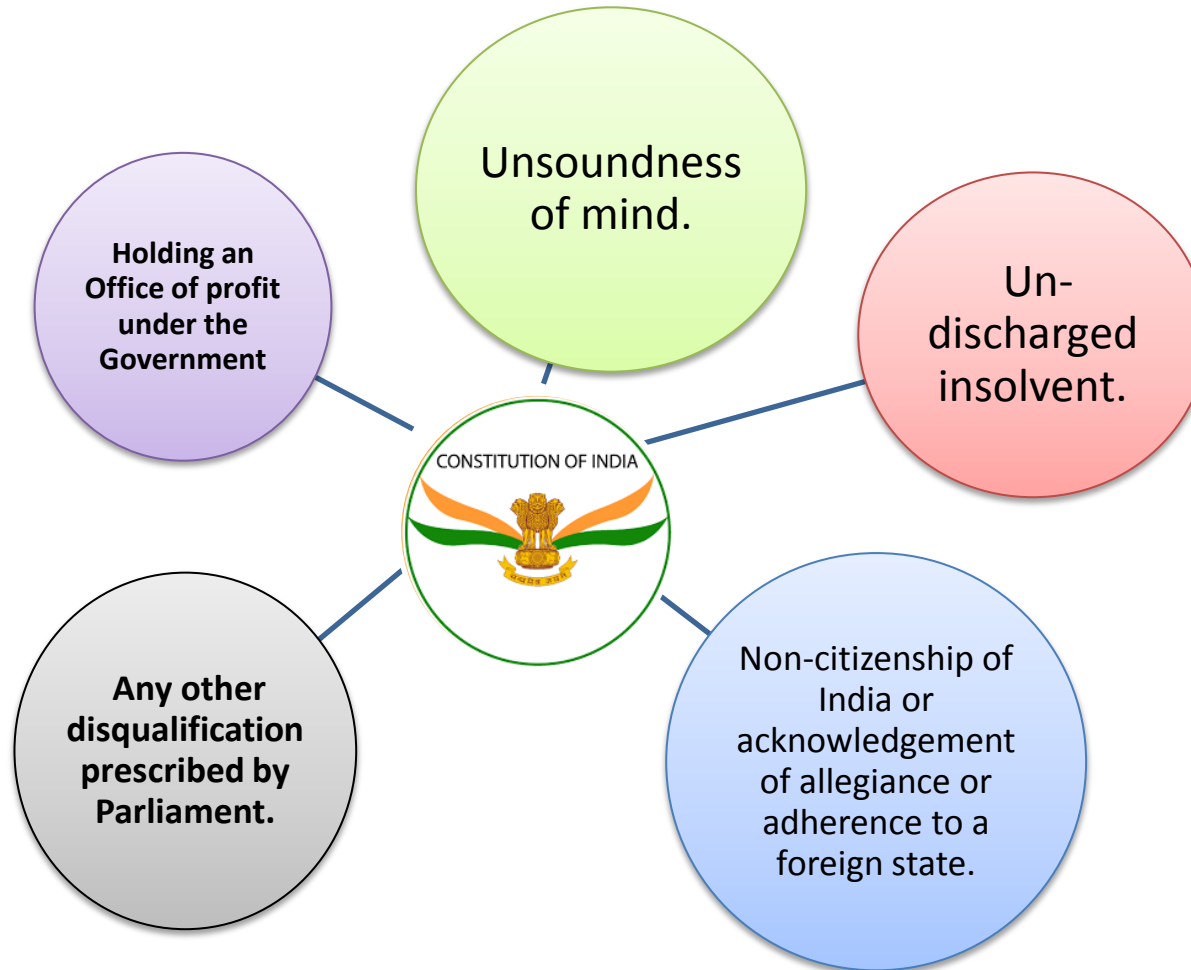


Qualifications for election to a State Legislative Assembly (section-5)

- ❑ In the case of the constituencies reserved for SCs or STs, the candidate should be a member of any of those castes or tribes, and an elector for any Assembly Constituency in the State;
- ❑ In the case of any other constituency in any State should be an elector for any Assembly Constituency in that State

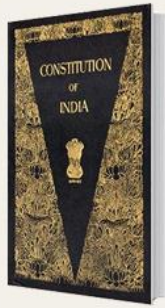


Constitutional Disqualifications (Articles 102 (1) & 191(1))

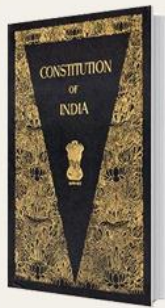


Constitutional Disqualifications

Tenth Schedule of the Constitution



Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection.



This schedule was added by 52nd Constitutional Amendment Act of 1985 also known as Anti-defection law.



Office of profit under the government

Articles 102(1a) and 191(a)

- ✓ What does ‘Office of profit under the Government’ mean?: All questions whether a particular person is holding an office of profit under the government or not have to be decided by applying the following tests to the facts and circumstances of each case in the light of Supreme Court decision in Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanappa [(1971) 3 SCC 870 and in several other cases:
 - Test-1 Whether the government makes the appointment
 - Test-2 Whether the government has the right to remove or dismiss the holder
 - Test-3 Whether any remuneration is paid



Unsoundness of mind

articles 102(1)(b), 191(1)(b)

- ❑ A person is disqualified if he is of unsound mind and stands so declared by a competent court.
- ❑ Mere allegation not sufficient – such person should be so declared by a competent court under the Indian Lunacy Act, 1912.



Un-discharged insolvent.

Articles 102(1)(c), 191(1)(c)

- ❑ A person adjudged insolvent by a competent insolvency court under the Provincial Insolvency Act, 1920 and has not been discharged from insolvency under the provision of that Act, is disqualified for contesting an election to Parliament/State Legislature.
- ❑ Mere commission of acts of insolvency not a ground for disqualification.
- ❑ Disqualification on this account ceases to be operative, if the insolvent is discharged from insolvency by the competent court



Non-citizenship of India or acknowledgement of allegiance or adherence to a foreign state.

Articles 102(1)(d), 191(1)(d)

- ❑ Loss of Citizenship The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:



Statutory Disqualifications

Articles 102(1)(e), 191(1)(e) and RPA act-1951

- *parliament is empowered to make statutory laws prescribing disqualifications for membership for both Parliament and State Legislatures.*
- *section 8*
- *section 8-A*
- *section 9*
- *section 9-A*
- *section 10*
- *section 10-A*



conviction for certain offences (section 8 of RPA act-1951)

- ❑ Conviction by Trial Court attracts disqualification.
- ❑ Release on bail does not remove disqualification, unless conviction is also stayed during pendency of appeal.
- ❑ **Lily Thomas Case 2013 (Section 8(4))**

Section 8(4) of RPA, 1951 gave a reprieve of three months to legislators from immediate disqualification if they were convicted for an offence, so that they could file an appeal in the higher courts.

The SC in Lily Thomas case 2013, reversing one of its own judgment of 2005 where it accepted differential treatment of legislators and candidates, invalidated Section 8(4) on the grounds that :

- (i) Differential treatment of legislators and candidates violates the law of equality as envisaged under Art 14
- (ii) It interpreted Article 101(3)(a) to state that any disqualification is immediate



commission of corrupt practices (section 8-A of RPA act-1951)

- ❑ Only those persons are disqualified whose list is circulated by ECI from time to time.



dismissal from govt. service for corruption or disloyalty (section 9 of RPA act-1951)

- ❑ A candidate dismissed from government service within the last five years must produce a certificate from ECI that he was not dismissed for corruption or disloyalty
- ❑ Such certificate must be filed with the nomination paper ,
Otherwise nomination shall be rejected [Section 33(3)]



contract with “appropriate government” (section 9-A of RPA act-1951)

- ❑ ‘Appropriate government’ means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature
- ❑ Contract should be subsisting on the date of scrutiny of nominations;
- ❑ Contract should be either for supply of goods to the govt or for execution of works.
- ❑ Contract should be with ‘appropriate government’;



holding office under government company (section 10 of RPA act-1951)

❑ Who can be disqualified under Sec 10?

- Only Secretary, Manager or Managing Agent of government company is disqualified
- What is 'Government company'?
- 'Government company' means any company, corporation, etc., in which appropriate government has not less than 25% share and does not include cooperative society.
- What is 'Appropriate Government'?
- 'Appropriate government' means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature.



Failure to lodge account of election expenses (section 10-A of RPA act-1951)

- ❑ Only those persons are disqualified whose list is circulated by ECI from time to time.
- ❑ Disqualification U/s 10A is for specific period of 3 years. Pl. go through the list of disqualified persons in respect of your State carefully



“Thank You”

