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Is Re-visitation of the Political System a Need of the Hour? A Critical Study with Special Reference to Legislative Set-up in India

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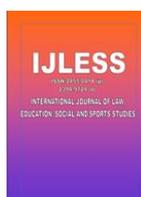
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ABSTRACT

India is a democratic and secular country whose founder aimed for achieving social fairness through the concept of good governance. The primary responsibility of the government in a welfare state is to fulfill the people's need. The attention and the people's need are brought to the knowledge of the government only through the elected representative of the particular constituency who act as a bridge between the government and the people in the society. To represent the people, the Member of Legislative Assembly (MLA) or the Member of Parliament (MP) is being elected "by the people, for the people, and of the people". The elected MLAs and MPs form the government. In this paper, the authors aspire to analyse the qualification for becoming as a members of the Parliament or State Legislature including the members of the Panchayats and Municipality. The object of the research paper is, law being an instrument of social change, to revisit the qualification of the membership in political system. When the person who works under the government needs educational qualifications, why not the person running the government? Further, to apply for the government post back ground of the antecedent and no FIR or pending criminal cases are also analysed for finding the suitability of the candidate, whereas, to apply for competing the general body elections, such type of suitability are not analysed.

In this background the researchers *inter alia* intend to analyse the provisions of the Representation of the Peoples Act, 1951 and the connected case laws for maintaining the purity of the political system in India. And lastly, the authors would suggest the remedial measures to conscience of the law makers for cleaning the political system in India.

Keywords: Decriminalisation, Politics in India, Welfare State, Minimum Qualification, Democratic State.

INTRODUCTION

India is a democratic and secular country where the founders of our Indian Constitution expected to attain the social impartiality through the notion of good governance. The primary duty of the government in a welfare state is to fulfill the requirements of the people. The prerequisites of the people are brought to the knowledge of the government only through the elected representative of the particular constituency who act as a bridge between the government and the people in the society. To represent the people, the Member of Legislative Assembly (MLA) or the Member of Parliament (MP) is being elected by the people, for the people, and of the people. The elected MLAs and MPs form the government (State Government and the Union Government with the nominal head of Governor and the President). The Union Government (Parliament) is made up of two houses: the *Rajya Sabha* (Council of States) and the *Lok Sabha* (House of People) (Lok Sabha). The *Lok Sabha* has a maximum of 552 members, while the *Rajya Sabha* has a maximum of 250 members. Sections 7 and 7-A of the Representation of the Peoples Act, 1956, read with Schedule-II, determine the number of seats in state legislative assemblies. All the laws, Rules and the Regulations are being passed by the Parliament or the State Legislature consisting of the above members.

In this paper, the authors want to look at the requirements for becoming members of the Parliament or State Legislature including the members of the Panchayats and Municipalities. The object of the research paper is, law being an instrument of social change, to revisit the qualification of the membership in political system. In all the countries, even to become a peon a minimum qualification is prescribed by the law (legislature) whereas, to become as a law maker or to become as a representative of thousands of people in India, no educational qualification is prescribed. When the person who works under the government needs educational qualifications, why not the person running the government? Further, to apply for the government post, back ground of the antecedent and no FIR or pending criminal cases are also analysed for finding the suitability of the candidate, whereas, to apply for competing the general body elections, such type of suitability are not analysed¹. In a case, the Hon'ble Apex Court of India has held that "*In a constitutional democracy...any kind of criminalization of politics is an extremely lamentable situation. It is an anathema to the sanctity of the democracy. The criminalization creates a concavity in the heart of democracy and has the potentiality to paralyse, comatose and strangulate the purity of the system*". In yet another case, the Hon'ble Apex court of India stated that "*For some time now, it has been generally perceived that the nexus between politician, bureaucrats and criminal elements in our society has been on the rise...hence, the matter needs to be handled with extreme care and circumspection*".

The Vohra committee report (*the committee formed to compile all the existing information about the activities of the crime syndicates/mafia organization*) in its para 6.2 informed that "there has been rapid spread and growth of criminal gangs which had developed an extensive network of contacts with the bureaucrats, government authorities at the local level, politicians, media persons, strategically located individuals in the non-State sector. Some of these syndicates also have international linkages, including the foreign intelligence agencies". In a recent judgment on 13.02.2020, the Hon'ble SC has also observed as follows:

"Over the last four general elections, there has been an alarming increase in the incidence of criminals in politics. In 2004, 24% of the Members of Parliament had criminal cases pending against them; in 2009, that went up to 30%; in 2014 to 34%; and in 2019 as many as 43% of MPs had criminal cases pending against them". Further, in this case, the Court anguished that political parties offers no explanation as to why candidates with pending criminal cases are selected as candidates in the first palace.

¹ See also: *Brajesh Singh Vs Sunil Arora & Ors*, Contempt Pet.(Civil) No.656 of 2020 in Contempt Pet.(Civil) No. 2192 of 2018 in WP No. 536 of 2011. Date of Order: 10.08.2021, Para.71.

In this background the researchers *inter alia* intend to analyse section 8 (3) and (4) of the Representation of the Peoples Act, 1951 and the connected case laws for maintaining the purity of the political system in India. And lastly, the authors would suggest the remedial measures to conscience of the law makers for cleaning the political system.

Research Questions

1. Whether prescription of educational qualification “for being chosen as” a representative of any State or Union Territory or Parliament is need of the hour?
2. Whether, the person with criminal background can be permitted, in the technological era, to contest the public election for running the governments?
3. What are the roles of judiciary in protecting the democratic set up in India and whether the hands of the Indian judiciary are being tied up with respect to the criminal background of a candidate in competing with the general body election in India?
4. Whether the existing legislative set up needs any purification? If yes, on what basis? If no, why?

Research Objectives

1. To understand the present system of the legislative setup in India
2. To analyse the qualifications and the disqualification prescribed by the Constitution of India “for being chosen as” a representative of any State or Union Territory or Parliament.
3. To find the lacunae in the existing legislations concerning the person “to be chosen as” a representative of any State or Union Territory or Parliament of India.
4. To suggest remedial measures in the context of modern technology.

EDUCATIONAL QUALIFICATION UNDER THE CONSTITUTION OF INDIA FOR BECOMING AS A MEMBER OF PARLIAMENT OR STATE LEGISLATURE

Article 84 of the Indian Constitution advocates the requirements for membership of Parliament, while Article 173 suggests the qualification for the membership of the State Legislature. As per the above Articles, “a person shall not be qualified to chosen to fill a seat in Parliament or Legislature of the State unless (1) he or she is a citizens of India, and makes and subscribes before some person authorised in that behalf by the election commission an oath or affirmation according to the form set out for the purpose in the Third Schedule”². The Third Schedule specify the form of oath or affirmation to be administered *inter alia* by the candidate for election to Parliament or Legislature of a State and this form administers two things, *i.e.* (i) “to bear true faith and allegiance to the Constitution of India as by law established” and (ii) “to uphold the sovereignty and Integrity of India”. (2) Fulfills the age limit³ and (3) possesses such other qualifications as may be prescribed⁴. Such other qualification is prescribed by the Representation of the People Act, 1951 (Act No. 43 of 1951). According to which, “a person shall not be qualified to be chosen as a representative of any State or Union Territory in the Council of States, unless he is an ‘elector’ for a Parliamentary Constituency in India”. Further, for the reserved category, either for the Parliament or State Legislature, he or she, apart from being an ‘elector’ for a Parliamentary Constituency in India, should belong to that particular category. For the House of people also, he or she, apart from being an ‘elector’ for a Parliamentary Constituency in India may be from any other state⁵

² See Article 84 (a) and 173 (a) as substituted by the Constitution (Sixteenth Amendment) Act, 1963.

³ Not less than 35 years of age for Council of States/Legislative Council , (ii) not less than 25 years of age for the House of the People/Legislative Assembly, *See*, Article, 84 (b) and 173 (b) of the Constitution of India.

⁴ Article 84 (c) and 173 (c) of the Constitution of India. *See also*, the Representation of the People Act, 1951 (Act No. 43 of 1951).

⁵ See Section 4 of the Representation of the People Act, 1951

but for the Legislative Assembly, he or she should be from that State⁶ (for further details see: Part-II, Chapter I and II, of the Representation of the People Act, 1951).

From the bare perusal of the above provisions from the Constitution of India or from the Representative of the People Act, 1951, it is crystal clear that no educational qualification is prescribed "for being chosen as, and for being a member of either houses of Parliament or the Legislature of the States". Mere Citizenship in India, attaining the prescribed age limit (25 years or 35 years as the case may be as discussed supra), provided being an elector for a Parliamentary Constituency is sufficient for being chosen as, and for being a member of either houses of Parliament or the Legislature of the States.

WHO IS AN ELECTOR?

According to Section 2 (e) of the Representative of the People Act, 1951, 'elector' in relation to the constituency means "a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representative of the People Act, 1950 (RP Act, 1950)". Under section 16 of the RP Act, 1950, "a person shall be disqualified for registration in an electoral roll if he is not citizens of India, or is of unsound mind and stands so declared by a competent court; or is for the time being **disqualified from voting** under the provisions of any law relating to corrupt practices and other offences in connection with the elections"⁷. Any such individual whose name is struck off the electoral roll in which it appears after registration shall be immediately removed from that roll, and he may be reinstated in that roll if the disqualification is removed by any law enabling such removal.⁸ The corrupt practices (Section 123 of RP Act, 1951) and the electoral offences are mentioned in Part VII, Chapter-I and Chapter - III respectively and also under the Indian Penal Code, 1860 (IPC) vide sections 171-A to 171-I.

ANALYSIS OF THE DISQUALIFICATION UNDER THE RP ACT, 1951 AND THE IPC, 1860

Section 123 deals with the following cases as "corrupt practices". The first and foremost corrupt practice is 'bribery'.

The following acts come within the purview of the term "bribery".

According to this section, "any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election is called as bribery and deemed to be as a corrupt practice. Making undue influence *i.e.*, any direct or indirect interference or attempt to interfere on the part of the candidate with the free exercise of any electoral right"⁹ is also called as bribery.

The use of, or appeal to religious symbols, or the use of, or appeal to national symbols such as the national flag or the national emblem, by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, "to vote or refrain from voting for any person" on the basis "of his religion, race, caste, community, or language," or the use of, or appeal to religious symbols, or

⁶ See Section 5, *Ibid.*

⁷ Section 16, Representative of the People Act, 1950.

⁸ Section 16, *Ibid.*

⁹ Interference with the free exercise of any electoral rights of a candidates means "threatening any candidate or any elector, or any person in whom a candidate or elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community or inducing or attempt to induce any candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an objective of divine pleasure or spiritual censure". See: Proviso to Sub-clause (2) to Section 123 of the RP Act, 1951.

the use of, or appeal to national symbols such as the national flag or the national”¹⁰. The purpose of this provision is to emphasise that in order to sustain the democratic set up in India, it is of extreme significance that our election to the Parliament or the state legislature must be free from the ghoulis influence of appeals to religion, race, caste, community or language. “in a case it has been stated that these considerations will vitiate the secular atmosphere of democratic life if they are allowed in any way during election campaigns, and Section 123(3) wisely provides a check on this undesirable development by stating that any appeal to any of these factors made in furtherance of any candidate's candidature as therein prescribed would constitute a corrupt practise and render the said candidate's election void”¹¹.

The “promotion of, or attempt to promote”, “feelings of enmity” or “hatred between different classes of Indian citizens” based on “religion, race, caste, community, or language by a candidate or his agent or any other person with the consent of the candidate” or his election agent “for the purpose of furthering the prospects of that candidate's election or for prejudicially affecting the election of any candidate” **is also termed as a debarment**¹².

The publication of “**any statement of fact which is false**, and which he either believes to be false or does not believe to be true, **in relation to the personal character and booth capturing is termed as corrupt practices**” also leads to **disentitlement of the candidate**.

Apart from the above, Sub-clauses (a) – (n) of Section 8 (1) and 8 (2) of the RP Act, 1951 list out certain offences under which the conviction of the offence/s also leads to the disqualification of the candidate. Further, section 8 (3) disqualifies “the person who have been convicted of any offence and sentenced to imprisonment for not less than two years other than the offences referred to in section 8 (1) and (2) and this disqualification shall take place from the date of such conviction and shall continue to be disqualified for a further period of six years since his release”¹³. In addition to the above, Sections 8-A, 9, 9-A, 10, 10-A, 11, 11-A and 11-B also prescribe certain disqualification.

ELECTORAL OFFENCES UNDER THE RP ACT, 1951 AND THE IPC

“Promoting or attempting to encourage feelings of enmity” or “hatred between different classes of Indian citizens” on the basis of “religion, race, caste, community, or language”¹⁴. “Falsifying or concealing any information in the nomination paper” or “affidavit” that the candidate knows or has reason to believe is false¹⁵ are provided punishment under sections 125 and 125A of the RP Act, 1951 respectively. The Indian Penal Code in its chapter IX-A deals with offences relating to elections. According this chapter, “*whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both*”. For making or causing undue influence also imprisonment is provided for a term which may extend to one year, or with fine, or with both.

Under the RP Act, 1951, making undue influence is termed as a corrupt practice and warrants disqualification under section of 16 of the RP Act, 1951 and the IPC provision provides punishment for a period of one year.

¹⁰ Section 123 (3), RP Act, 1951.

¹¹ *Kultar Singh Vs Mukhtiar Singh*, 1965 AIR 141 available at: <https://indiankanoon.org/doc/1145559/>.

¹² See section 123 (3) (A)

¹³ For further details, refer *A.Nirmal Singh Heera & Prof. Dr. K Nilamudeen, Lily Thomas vs. Union of India (W.P(C). No: 490 of 2005) – A Critical Analysis, Samzhodhana, Vol: 2 (1); Pgs.34 -46*

¹⁴ The offence is “punishable with imprisonment for a term which may extend to three years, or with fine, or with both”.

¹⁵ The offence is “punishable with imprisonment for a term which may extend to six months, or with fine, or with both”.

CONCLUSION AND SUGGESTIONS

Election in any country is considered to be a vital part for maintaining the true spirit of the democratic set up in any country which is ruled by the people, for the people and of the people. Further, free and fair election is also an indispensable factor for the democracy. In India, the Election commission of India plays a pivotal role in maintain the free and fair elections and securing the true spirit of the people in India. The Election Commission of India being an independent and autonomous body bequeathed with the powers and controls for conducting all the elections in India except the election for the Panchayats and Municipalities. The Panchayats and Municipalities' election is monitored, conducted and controlled by the State Election Commission¹⁶. Hence, in order to uphold the true spirit of the democracy, we the author suggest the following

1. Bribery, black money, undue influence, and favouritism are, no doubt, ailing the countries development. Though oaths are being administered during the time of assuming the office of MPs or MLAs, or Ministers, after the end of the five year, the wealth rate are alarmingly increased. It is the high time to insist the MLAs, MPs, and the Ministers to file their wealth or asserts each and every year of their tenure and lastly, they have to file the affidavit disclosing their wealth and assets during the particular tenure as MLAs, MPs and Ministers. Failing which or filing the false affidavit, immediate action must be taken at the instance of the State Election Commission (SEC) or the Election Commission of India (ECI) as the case may be.
2. In this regard, to investigate the offences relating to the elections separate police forces or investigation wings may be established under the direct control and supervision of the ECI with respect to the general body elections (Parliament and the State Legislature) and the SEC for the local body elections respectively.
3. To guarantee the smooth running of elections, all election commissioners, including the Chief Election Commissioner, may be selected in the same way that judges in India are.
4. Since all the MPs and MLAs are representing thousands of people, atleast a Post Graduate degree or Professional Degree may be prescribed for the Ministers and an Under Graduate degree for the MLAs and MPs. In this regard, Sections 3, 4, 5 and 6 of the Representation of the People Act, 1951 may be suitably amended in the following manner.

Section 3: Qualification of the membership of the Legislative Assembly/ Council of States and the Either Houses of the Parliament: *"A person shall not be qualified to chosen as a representative of any State or Union Territory in the council of States/Legislative Assembly or the Parliament unless he is an elector for a Parliamentary Constituency in India and holder of a U.G/P.G or Professional degree in case of for being chosen as MLA/MP or Ministers of the State/UT or the Parliament".*

This affirmative action / changes in the existing legislative set up, the authors believe that would lead to the overall growth of the country.

5. The mere publication of the criminal antecedent of the candidate in the particulars party website will be of no use. As per the concern expressed by the Supreme Court of India, The Legislature must come forward to take steps for bringing out necessary amendments so that the involvement of the person with criminal background in politics will be prohibited. The supreme court of India, since its hands are being tied up, hoping that soon the legislature will wake up and carry out a major surgery for weeding out the malignancy of criminalization of politics (See: *Brajesh Singh Vs Sunil Arora & Ors, Contempt Pet.(Civil) No.656 of 2020 in Contempt Pet.(Civil) No. 2192 of 2018 in WP No. 536 of 2011. Date of Order: 10.08.2021*).

¹⁶ See Article 243K and 243ZA, The Constitution of India.

6. The heading of Section 8 "*disqualification on conviction for certain offences*" must be amended as "*disqualification on the charges of certain offences*".
7. Section 8 (1) (a) may also be suitably amended in accordance with the Criminal Law (Amendment Act), 2013 and in this section, Section 354, 354-A, 354-B and 354-C may also be inserted.

On the whole, from the above analysis and suggestions, we, the authors conclude that it is the high time to revisit the existing the political system in India in consonance with the tremendous changes taking place in the society