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# A Study of Eligibility Criteria for Legislature in India

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## ABSTRACT

*India is considered the largest democracy in the world, but what would happen if democracies had uneducated and corrupt leaders. The concept of democracy is a political philosophy and an ideal practiced by many nations, which is culturally advanced and politically mature, by resorting to governance by representatives of the people elected directly or indirectly. The universal adult franchise was a bold and ambitious political move and a symbol of the abiding faith that the government implemented in the country. Generally, in India, the significance of a political leader is understood in connection with gathering crowds and polarizing the populace for winning the election. But we must remember that an elected candidate's duties entails much more than that. A candidate who is elected serves in the Council of Ministers and the State Legislature, where he is required to participate in discussions and vote on a range of matters that might one day be enacted into law and have an impact on our daily lives. The Representation of the People's Act, 1951 which deals with the conduct of elections in the country has not stipulated any minimum educational qualification for People's Representatives.*

*This research paper will analyze the probable mindset behind not prescribing any basic minimum educational qualification for the legislature in India and will explore the possibilities of introducing the same, to make quality of contributions of people's representatives at various levels. Further, it will look into the need of introducing minimum educational qualification and will also suggest some modal laws which can be introduced in the country.*

**Keywords:** *democracy, universal adult franchise, representation of people's act, 1951, minimum educational qualifications.*

## I. INTRODUCTION

India is the second most populated country after China and has the most populated democracy in the world. The Indian Constitution became operative on January 26, 1950. It ranks high in military power and is well known for its vast culture, peace, and harmony. Elections in India are held every 5 years. The government of India is divided into three levels - central, state, and

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local. It follows the principle of ‘Universal Adult Franchise’ which gives rights to every citizen to have one vote and each vote will be treated equally. All the systems and procedures of elections are carried out by a separate body known as the ‘Election Commission’ where there are certain members of the office who look after the process in a fair manner. It is ensured that not a single citizen is denied of their basic right. In elections, there is a voters list where the names of the voters are given so that people can get to know about the contesting candidates. These voter lists are updated every 5 years. Our country is referred to as the Secular Federal Republic, and it is controlled mostly through a democratic parliamentary system. The Government of India is governed according to the Constitution of India which is our country’s supreme document. All the rules and regulations which are mentioned in the constitution are amended by the parliament if needed and if any of them is violated then they can approach the court and seek justice for the same. There are three branches of Government i.e., Executive, Legislature, and Judiciary. Our country has a well-known political history, with politicians leading numerous states, playing diverse roles, and applying reasoning to serve the public. The democratic political system in India depends on elections to survive. The parliament of India consists of two houses i.e., the Lower House or the ‘House of the People’ or Lok Sabha, and the Upper House or the ‘Council of States’ or Rajya Sabha. The two houses along with President constitute Parliament.<sup>3</sup> The qualifications of its members are enshrined under Articles 84 and 173 of the constitution, and disqualifications under Articles 102<sup>4</sup> and 191<sup>5</sup>, respectively. The Constitution also authorizes the Parliament to make laws prescribing for further qualifications and disqualifications. However, the Indian Constitution does not provide any educational qualification for being a Member of Parliament (MP) or Member of Legislative Assembly (MLA). With changing times, there is a need for introducing minimum educational qualifications for contesting elections in the country.

## **II. ELECTIONS IN INDIA**

India is a “federal” country that includes strong center but weak states. The Prime Minister of India is in charge of the Government, while the President of India is in charge of the state. The Election Commission, a permanent and independent institution created by the Indian Constitution, is responsible for ensuring free and fair elections throughout the nation. The commission is not involved in the state's municipal and panchayat elections. Every state has a

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<sup>3</sup> Christophe Jaffrelot, *Laws Prescribing Educational Qualifications for Contesting Elections Are Undemocratic*, INDIAN EXPRESS (MAY 10, 2016 12:00 PM), <https://carnegieendowment.org/2016/05/10/laws-prescribing-educational-qualifications-for-contesting-elections-are-undemocratic-pub-63544>.

<sup>4</sup> INDIA CONST. art.102

<sup>5</sup> INDIA CONST. art 191

provision of a separate State Election Commission provided by the Constitution of India. The Election Commission has the authority to oversee, direct, and manage elections for the Indian Parliament, state legislatures, the President of India, and the Vice-President of India, according to Article 324<sup>6</sup> of the Indian Constitution. Hence, the election commission is a body that is common to both the Central Government as well as the State Governments. If a candidate wishes to run for office, he or she must submit nomination papers to the election commission. A list of all the candidates is published when all the papers have been scrutinized. No political party should use government resources for the purpose of election campaigns. Furthermore, no candidate should be bribed by any party.<sup>7</sup> If all these things are brought to the commission's attention, the nomination of that candidate can be revoked. Typically, two days before election day, the campaigning is over. All the electoral processes are overseen by government officials. To avoid such fraud, electronic voting machines (EVMs) are employed instead of ballot boxes. After citizen votes, an indelible ink mark is placed on his or her left index finger. The commission is responsible to conduct free and fair elections, without any degree of unfairness. Additionally, it makes sure that members' conduct prior to, during, and after elections complies with applicable laws. Elections are held in the Republic of India for the following offices:

- Members of Parliament in the Lok Sabha;
- Members of State Legislative Assemblies all over;
- Members of the Parliament in the Rajya Sabha;
- Members of State Legislative Council;
- Members in Village Panchayats;<sup>8</sup>

### III. QUALIFICATIONS REQUIRED TO CONTEST IN INDIA

There are different criteria for contesting the election to different houses of government. The minimum age to run for office is:

- Lok Sabha (i.e., the House of the People) is 25 years
- Vidhan Sabha (i.e., Legislative Assembly) is 25 years
- Rajya Sabha (i.e., Council of States) is 30 years

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<sup>6</sup> INDIA CONST. art.324

<sup>7</sup> Ahmad, Masood and Imran, Mohd, *Educational Qualifications of Elected Representatives: Need of the Hour for a Progressive Democracy*, Vol. VII No. 3 SSRN, pp. 19-27 (2017).

<sup>8</sup> Bhanja, A. K., *Question of Minimum Educational Qualification for People's Representatives* (3) JSTOR 873–884(2009).

- Vidhan Parishad (i.e., Legislative Council) is 30 years

There are also certain qualifications and disqualifications for contesting elections which are mentioned in Articles 84<sup>9</sup>, 102, 173 & 191 of the Indian Constitution and Sections 3 to 10A of the Representation of People Act, 1951 also known as RP Act, 1951. This legislation deals with the conduct of elections in the country and is very important to regulate elections in the country. This act has been amended many times. Talking about the criteria for the legislature in India, Article 84 of the Indian Constitution deals with the Qualification for membership of Parliament, according to which –

A candidate cannot be selected to fill a seat in Parliament unless he -

- is an Indian citizen who takes an oath or affirmation in the form specified in the Third Schedule before a person appointed by the Election Commission in that capacity;
- is at least 25 years old in the event of a seat in the House of the People and at least 30 years old in the case of a seat in the Council of States; and
- satisfies any additional requirements that may be imposed in that regard by or pursuant to any law passed by Parliament<sup>10</sup>.

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he or she is in compliance with Article 102, which deals with disqualifications for membership, and Article 173, which deals with qualifications for membership, which are as follows-

- is an Indian citizen who takes an oath or affirmation in the form specified in the Third Schedule before a person appointed by the Election Commission in that capacity;
- is not less than 25 years of age for a seat in the Legislative Assembly and not less than 30 years of age for a seat in the Legislative Council.
- possesses such further qualifications as may be required in that respect by or under any legislation passed by Parliament;

There is no minimum qualification required to contest elections in India.<sup>11</sup>

#### IV. NEED FOR EDUCATIONAL QUALIFICATIONS

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<sup>9</sup> INDIA CONST. art.84

<sup>10</sup> Ayush Mehrotra, *Minimum educational qualification is no criteria for local body elections*, Spontaneous Order ( July 24, 2020, 01:20 PM ), <https://spontaneousorder.in/minimum-educational-qualification-is-no-criteria-for-local-body-elections/>.

<sup>11</sup> Kumar Utkaesh, *Should Candidates Meet Educational Criteria to Contest Elections?* Elections (Nov 13,2014, 10:23 AM), <https://www.elections.in/political-corner/should-candidates-meet-educational-criteria-to-contest-elections/>.

The concept of democracy itself says government by the people, for the people, and of the people. This concept can be seen in a country through elections but what is the whole point of choosing someone who is not educationally qualified to govern the country. It is believed that education gives a human being the power to discriminate between right and wrong, good, and bad. Therefore, the prescription of an educational qualification is not irrelevant for better administration, especially at the grassroots level. There must be some criteria regarding educational qualifications to contest in the election. Since these qualifications can help improve the efficiency of governance of the country.

Following are the reasons why there is a need for minimum educational qualifications for the legislature in the country: -

- A politician who does not have any capability of reading and understating files will not be able to make proper decisions for the country or the region under him. There is a need for the minimum educational qualification because to administer and to make laws for a country a politician must have some basic knowledge of the country, such as the total population of the country, the geographical importance of the country, etc. Decades after, independence the socio-economic indicators in India, especially in rural areas, are still dreadful, and setting such qualifications necessary for contesting elections could motivate the people to improve these indicators. The people will not only be encouraged for studying but also, they will be able to set examples for others in the society.
- Education is essential to make society harmonious and to bring out unity in the country. It is something that helps to mold one's personality, character, and behavior in person in a positive direction. In India, there are many sections of people, rich and poor, forward caste and backward class, etc. to understand their needs, their culture, their traditions, etc. a politician must have some basic knowledge for the same so that it can make proper legislations which can benefit them. This cannot be done until and unless there are certain basic minimum criteria set for the contest of the legislature.
- An educated politician can easily find a solution to the problems. He can think of many ideas. Only a good, educated leader can lead a country, hence in India, the parliament makes the majority of the nation-building programmes and policies. As a result, members of the parliament are required to have a certain minimum level of education.
- Education also builds a sense of leadership qualities which is needed to rule the people. Yes, it is not necessary that a person who is not educated cannot possess good leadership qualities. But it should also be taken into consideration that leadership also needs to be

guided in the right direction or else it can cause a situation of chaos and political unrest in the country.<sup>12</sup> Hence, education can help a person to develop and enhance their leadership qualities in the right direction and to frame the right mindset.

- If a politician himself is not educated, then how will he voice for the education of other people in the country. Moreover, its youngsters will feel that there is no importance of education cause the government ruling us is also not educated but still, they are in power. This can set a very negative impact on society.
- Education is a viable and most important aspect in the present world. We look upon our politicians as able people who can guide us and make proper and appropriate decisions. But if a politician does not have a proper or minimum academic background then what impact will he have at local and international levels.
- A politician does not only have to look after the country, but it also has the responsibility to maintain peace and harmony between other countries and our country. A low qualified politician or a politician with no educational qualities will not be able to cope up with the diplomatic situations & relations with other countries of the world.
- It is also believed that education gives a human being the power to discriminate between right and wrong, good and bad. Therefore, implementing an educational qualification is not irrelevant for better administration, especially at the grassroots level. Thus, these qualifications are meant to improve the efficiency of governance.
- Educational qualifications would help motivate people to take measures for improving their life chances, like promoting education, sanitation, etc. It also makes people aware of citizens who are capable of better understanding and analyzing different issues comprehensively.<sup>13</sup>

In the Constituent Assembly, B. R. Ambedkar said, "I think it is an issue which might be left to the legislatures. I have no doubt that the legislature will implement the requirement if they believe that it is essential at the time, they are prescribing it. This seems to suggest that the framers of the Indian Constitution believed that the power to the Parliament under the clauses of Articles 84 and 102, included the power to prescribe literacy qualifications.

## V. RECENT CHANGES IN SOME STATES

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<sup>12</sup> Palicherlu V. Prakash, "Minimum educational qualification a must to contest elections," TOI Mar 31, 2019, at 01.

<sup>13</sup> Gautam Bhatia, *The Educational Disqualifications Case: A Round-Up*, Indian Constitutional Law and Philosophy (October 28, 2015, 10:00 AM), <https://indconlawphil.wordpress.com/tag/educational-qualifications/>.

The state of Rajasthan has set the nation's first minimum educational requirements for candidates running in elections for Panchayati Raj institutions. For this, the Rajasthan Government amended the Rajasthan Panchayati Raj, 1994. The amendment came to be known as Panchayati Raj (Second Amendment) Ordinance 2014 which was promulgated on Dec 20, 2014. According to this, there is a certain minimum educational qualification that is prescribed for contesting local body elections in Rajasthan. The ordinance stipulated that:

- a member of a Zila Parishad or a Panchayat Samiti should have a minimum qualification of secondary education.
- While for the post of Sarpanch of a Scheduled Area should have passed Class V and the Sarpanch of a Panchayat other than in a Scheduled Area should have passed Class VIII.

Later in 2015, the Haryana Government came up with a similar ordinance and legislation for amending the Haryana Panchayati Raj Act 1994<sup>14</sup>, mandating educational criteria for contestants of local body elections. According to Section 175, of the Haryana Panchayati Raj Act 1994 mandates that persons suffering from any one of the disqualifications mentioned in Section 175 are neither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur anyone of the disqualifications, after having been elected. By the recent amendment, five more categories of persons have been rendered incapable of contesting elections for any one of the elected offices under the Act. With the amendment in 2015, few more clauses (clauses aa, t, u, w, and v) have been added.

- Among these clauses (v) mandated minimum educational qualification of matriculation for anybody seeking to contest an election to any one of the offices as mentioned in Sec 175(1).
- For Scheduled Castes and Women, the required minimum educational qualification shall be middle pass and for scheduled caste women, the minimum qualification shall be 5th pass.<sup>15</sup>

The reasoning behind ensuring this provision was that since panchayats are to perform multiple functions i.e., from planning to implementation of government schemes, it is necessary that those who are occupying these public offices must be aware of their role as envisaged. Being educated will help them to be in a better position and to take a balanced view of things through different perspectives. Although it was challenged in the court on the ground of being contrary

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<sup>14</sup> Haryana Panchayati Raj Act 1994, No.11

<sup>15</sup> P. Venketraman, *Fix Minimum Educational Qualification for MPs, MLAs: Haryana Government to Centre*, NDTV, December 03, 2017, at 01.



to constitutional provisions and against the very foundation of democracy. The main basis of challenging this amendment was that it was violating the right to equality of the people of Haryana. The case was “*Rajbala & Or’s vs State of Haryana*”<sup>16</sup> in which the Supreme Court upheld the amendment. The court observed that the illiteracy, lack of sanitation, etc. are due to lack of requisite will, rather than only due to poverty. The Court further observed that the law was meant to elect “model representatives for local self-government for better administrative efficiency.” According to Justice Chelameswar, who authored the verdict, reasoned that there is nothing “irrational or illegal or unconnected” if the law prescribes minimum educational qualifications for candidates. A human being can only distinguish between right and wrong, good and terrible, thanks to education. As a result, the requirement of education is important for better leadership.

## VI. WHY THERE SHOULD NOT BE ANY MINIMUM EDUCATIONAL QUALIFICATIONS

- Many people think that there is no relation between commitment and education in society. people think that education is not an ultimate source of gaining knowledge and it is a misconception that only educated people can govern the country.
- Further, making minimum education qualifications compulsory can deprive people of backward areas or tribal areas to come forward and contest in the elections. As most of the people in India are not well educated or literate.
- Along with academic needs, leadership qualities are also important in a politician. And it is not necessary that a person who is literate must have good leadership qualities in him.
- It is not necessary that if a person is well educated then he or she can govern the country in the right way. It is important that along with the basic knowledge of the country or the region where he is contesting, he should also possess political knowledge in himself. Because at the end of the day it no amount of scholarly degree will be considered until and unless those pieces of knowledge are used in the right direction.<sup>17</sup>
- Limiting people's ability to select the representative they believe is best fit by building obstacles to admittance based on educational qualifications.

## VII. THE SITUATION IN OTHER COUNTRIES

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<sup>16</sup> *Rajbala & Or’s vs State of Haryana*, (2016) 2 SCC 445 (India).

<sup>17</sup> Admin, “*Should Candidates Meet Educational Criteria to Contest Elections ?*”, Elections.in, (Nov 13, 2014, 10:00 PM), <https://www.elections.in/political-corner/should-candidates-meet-educational-criteria-to-contest-elections/>.

Other countries do not have any prescribed minimum educational qualifications because the politicians are themselves well educated. For example, Barack Obama, Abraham Lincoln, etc. still some developing countries are trying to bring minimum educational qualifications in their system.<sup>18</sup> Several countries, such as Ethiopia, Kenya have proposed that a member of the legislature must have a minimum of a university degree. The 21<sup>st</sup> century's more complicated and convoluted social, political, and economic globalization highlights the urgent need for knowledgeable lawmakers who can successfully traverse these realities. As a result, more nations are making an effort to guarantee that their legislators hold college degrees.<sup>19</sup>

In Nigeria, most of the 360 members of the House of Representatives that make up the eighth National Assembly have at least a bachelor's degree, with only 26 holding a secondary school certificate. The house has at least 13 Ph.D. holders. Whereas in the United States, all members of the Senate have higher degrees, as do all but 19 members of the House of Representatives: 15 Republicans and four Democrats. The only governor without a college degree is from the tiny state of Utah. More than 40% of US voters have a college degree and only three countries – Canada, Israel, and Japan have a more educated electorate.

In the United Kingdom, 126 of the 649 members of the House of Commons, or 84% of the members, have postgraduate degrees in addition to their university education.<sup>20</sup>

### **VIII. SUGGESTED MODEL LAWS**

- Every state should make certain minimum educational criteria according to the population of that state and their requirements.
- Since there are still many remote places in the country which does not have access to education, such areas should be given exemption from minimum educational qualification. But it should be removed as soon as there is the provision of acquiring education in that area. Also, to avoid the misuse of such areas the election commission must check the documents of such candidates very carefully and there should be certain more criteria that to avail this provision, the person should be born and brought up in that area, should be economically weak and have resided in the area for more than 25 years. As imparting education is now a duty of the State and the right to have free education is now a fundamental right, the socially and educationally backward classes

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<sup>18</sup> George H. Haynes, “*Educational Qualifications for the Suffrage in the United States*”, PSQ vol. 13, no. 3, pp. 495-513 (1898).

<sup>19</sup> Henry Umoru, *Constitutional Review: Senate moves to set new educational qualification for President, Govs, Others*, VNN, March 12, 2020, at 01.

<sup>20</sup> Erwin Fernandes, *Should There Be a Minimum Educational Qualification to Contest Polls?* Quint, January 06, 2019, at 01.

of people of areas which are identified to have very poor literacy rates may be given such relaxation as may be prescribed.

- So far as the candidates belonging to SCs, STs, and women are concerned, a further relaxation may be granted by the law prescribed by the Parliament.
- The persons who have done an excellent job for the social welfare in rural areas may be exempted from such qualification based on objective criteria in the concerned indicators, given the state help, rather than fixing a static criterion.
- Given that laws may be implemented either prospectively or retroactively, it is possible to implement a rule requiring a minimum level of education prospectively by allowing interested and current applicants a reasonable amount of time to satisfy their educational requirements.

## **IX. CONCLUSION**

At the time of independence, the literacy rate of the nation was very low. But now the situation has improved and so with the change in time, there should also be changed in the legislations of the country. Specifically, there is a need to bring certain changes in the criteria for contesting the elections in the country. Changes brought by the Rajasthan and Haryana government for contesting in the Panchayati Raj system can set a very good example for the others states as well. Since a legislative body with discernible academic and professional deficits is a burden both to the nation and to itself, that's why it is necessary to introduce minimum educational qualifications in the electoral process. Members of parliament make decisions on behalf of an entire nation; they must have the necessary competencies and qualifications enabling them to fulfill their functions efficiently and effectively in an increasingly complex and globalized world. The legislature should bring a law were in if not all the political leaders at least the members who are being chosen as Cabinet Ministers should have a degree according to the portfolio to which they are awarded. This will not only help us in better implementation of policies but will also increase the development rate of the nation. Although, there is no clarity on what concrete competencies and qualifications a politician should possess which are necessary to benefit the nation. Therefore, different countries of the world apply different practices. There is no one-size-fits-all method for the qualification development of the parliamentarians. Although still there are people who argue that educational qualifications are discriminatory and that it abrogates their constitutional right to contest elections. The educational qualification emphasizes the fact that the granting of suffrage should be in recognition of the voter's having reached a certain plane of mental and moral development.

Looking at the present scenario of the nation there is a need to bring electoral reforms and one of the much-needed changes is to make some amendments to the Constitution providing for a minimum level of education for contesting elections.

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