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The Need for a Political Eligibility Test for Elected Representatives in the Indian Political Framework

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ABSTRACT

In a democratic government, the elected representatives of the government represent the people's will and have a crucial role to play. In India, the elected representatives of Parliament represent the sovereign and have responsibilities such as passing legislation, administering laws, etc. With such responsibilities for government representatives kept in mind, the forefathers envisioned eligibility criteria that had to be met by those candidates intending to run for political office. When compared to other developed countries, however, India lags in several areas concerning political eligibility. Such areas include a lack of educational qualifications and corruption, preventing the Indian political system from working efficiently. This is in contrast to developed democracies which can maintain a strict eligibility standard for those wishing to contest for office. This paper will expand upon the need for a political eligibility test for elected representatives in the Indian political framework. It will focus on understanding the current political eligibility standards present in the country and its shortcomings. The paper will compare the political eligibility standards of the Commonwealth of Australia with that of India to see where India stands and where it might improve. Following this, the paper's authors seek to provide a viable and efficient political eligibility test that may be adopted to address the current problems faced.

Keywords *Political Eligibility Test, Political Framework, Education Qualification, Criminalization, Dual Citizenship.*

I. INTRODUCTION

In its preamble, the Constitution of India declares itself to be a "Sovereign, Socialist, Secular, Democratic Republic."³ The declaration of India as a democracy sets the political framework of the country.

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³ The Constitution of India, National Portal of India, <https://www.india.gov.in/>

Political scientist David Easton has defined political framework as "*the interactions through which values are authoritatively allocated for a society.*"⁴ In India, the document that primarily highlights the country's political framework is the Constitution of India. The Constitution is seen as the supreme law of the land.

In a democratic government, the government's elected representatives play an essential role in representing the people's will. In India, the elected representatives of Parliament represent the sovereign and have responsibilities such as passing legislation, administering laws, authorizing funds, etc. With such responsibilities for government representatives in mind, the constitution drafters envisioned eligibility criteria that candidates had to meet to run for office. The eligibility criteria for those who intend to run for office are laid down in the Indian Constitution and the Representation of People's Act 1951.⁵

India lags in several political eligibility areas compared to other developed countries, compounded by lack of educational qualifications, criminalization of politics, and corruption. This contrasts with developed democracies that enforce strict eligibility standards for those wishing to contest for office.

In light of the above, this paper will expand upon the need for a political eligibility test for elected representatives in the Indian political framework. It will focus on understanding the current political eligibility standards in the country and where it lacks. The paper will compare Australia and India's political eligibility standards to see where India stands and where it might improve.

II. EVOLUTION OF DEMOCRACY

The origins of the Democratic form of government, and democracy, dates back to the Ancient Greeks' times. The term democracy is derived from the Greek word "Demokratila," which in itself was formed from the words "demos" and "Kratos" in the 5th century. The democratic form of government was first established in the ancient Greek city-state of Athens.⁶

Ancient Greek democracy was seen as highly progressive as a form of government because it foreshadowed and set the seeds for democratic practices emulated by later democratic states. This was seen as who was deemed eligible to constitute the people's representative (demos), where said representation applied to all male citizens who were 18 years of age or older.

⁴ David Easton, *The Political System: An Inquiry Into The State Of Political Science*, (2 ed. Knopf 2008)

⁵ Legislative Department, *The Representation of Peoples Act 1951*, Ministry of Law and Justice, Government of India (Jul23, 2020, 12:16pm) http://legislative.gov.in/sites/default/files/04_representation%20of%20the%20people%20act%2C%201951.pdf

⁶ Robert A Dahl, *Democracy*, Britannica, (Sep 3, 2020) <https://www.britannica.com/topic/democracy>

Women and slaves were excluded from the demos in Ancient Greece.⁷

Another precedent that was set in ancient Greek democracy was keeping the judiciary through the popular courts. Said courts were deemed to be vested with powers to control the magistrates, leaders, and representatives. On eligibility to occupy posts in popular courts, jurors were selected from a group of citizens, who had to be male, and over 30 years old. Once again, women and slaves were excluded from the representation.⁸

(A) Political Eligibility in India

Pre-Independent India saw the development of political eligibility as a result of the influence and policies of Britain. This political eligibility related to those who could vote in various elections and those who could participate in the political processes through office occupation.

The first instances of political eligibility in the subcontinent were seen through the Government of India Act 1858, which transferred ruling power over the subcontinent to the British Crown from the East India Company. This was followed by the Indian Councils Acts of 1861 and 1892, which mandated legislative bodies to legislate local laws. The 1861 Act granted no right of representation to Indians in the legislative councils.⁹ The 1892 Act made some progress by granting a small number of Indians some representation on the councils. Further development on political eligibility came in the 1901 Indian Councils Act. The Act provided for the setting up of new legislative councils. Said councils consisted of 68 members, out of which 27 were elected. Here political eligibility could be seen, as the common people were not allowed to vote; however, election rights were given to constituencies, universities, and trade associations.¹⁰

The creation of legislative bodies continued with the 1909 Indian Councils Act, which the 1915 Government of India Act superseded. The 1915 Act was amended in 1919 with the intent to initiate the Montagu – Chelmsford Reforms. One detrimental feature to the political eligibility was that both the 1919 Act and the 1901 Indian Councils Act provided separate electorates and reservations for Muslims. The 1919 Government of India Act was responsible for creating a bicameral legislative body at the center. The Council Of States served as the Upper House and the Central Legislative Assembly at the lower house.¹¹ The 1919 Act proved to be a significant

⁷ *Id.*

⁸ Tsneem Sultana, *The Evolution of Democracy through the Ages: Focus on the European Experience*, Journal of European Studies, 33 – 37, (2012)

⁹ VS Rama Devi, SK Mendiratta, *How India Votes: History of Elections During The British Rule*, Sahapedia, (Sep 14, 2020) <https://www.sahapedia.org/how-india-votes-history-elections-during-british-rule>

¹⁰ *Id.*

¹¹ Krishna Kumar, *Education and Society In Post Independent India: Looking towards the Future*, 33 Economic and Political Weekly, 1391 – 1396 (1998)

step in the development of political eligibility, as for the first time, elected members constituted the majority in both houses. The 1919 Act also established an Indian Council, consisting of 12 members, out of which three were Indian. However, the political eligibility of those who could vote was restricted to a limited number of persons based on qualifications such as the ownership of property, holding of land, and payment of income tax. The political eligibility of who could hold office was also limited, based on property ownership, such that only the wealthiest landowners and merchants could meet the criteria set.¹²

The 1935 Government of India Act was passed because of the disenchantment of the Indian community over the 1919 Government of India Act. The 1935 Act provided for the establishment of a Federation of India. The said federation would consist of all British Indian provinces and princely states that wished to be a part of the federation.¹³ The 1935 Act provided a bicameral federal legislature, with the chambers being the Council of States (the upper house) and the Federal Assembly (the lower house). Both houses would have representation from the princely states as well. Representatives of British India were to be elected, and some members were to be nominated by the British government.¹⁴

Perhaps the essential features of the 1935 Act that enabled its functioning were that the Act granted provincial autonomy to the provinces. However, the degree of autonomy provided to the provincial governments was severely limited by several restrictions. Direct Elections came in the subcontinent, with 10% of the total population gaining voting rights. Voter eligibility was again was on qualifications such as taxation, property, and income. This was for the Council Of States. The Federal Assembly was to be elected indirectly. This was done despite strong demand from the leaders of the National Movement for Universal Adult Franchise. Under the election system, the Act continued the practice of having communal electorates in the country.¹⁵

(B) Political Eligibility and the Constituent Assembly Debates

Upon independence, the Constituent Assembly was formed to formulate the fundamental laws governing India and its nature. A critical discussion in the constituent assembly debates was on determining political eligibility for India's rule. India's colonial experience influenced the decisions and suggestions debated upon.

¹² *Id.*

¹³ Government Of India Act of 1935 And Provincial Politics, *Shodhganga*, https://shodhganga.inflibnet.ac.in/bitstream/10603/21131/10/10_chapter%203.pdf

¹⁴ *Id.*

¹⁵ *Supra* note. 11

Firstly, Nehru aimed to ensure that India was a democracy. Discussions turned to how the country's people were represented and the expectations of those chosen as people's representatives. It was decided that the first qualification on the ability to represent was that each person, regardless of caste, colour, creed, sex, religion, or income, would elect chosen representatives.¹⁶ The Constituent Assembly had first decided to have universal adult franchise, a factor put forward by Jawaharlal Nehru as an essential of democracy – to have all citizens' voice. BR Ambedkar had opined that universal adult franchise was a fundamental right of the people in the country.¹⁷

Members of the constituent assembly stated that effective representation of the people's interests was fundamental. However, Nehru also pointed out that while elected representatives had a duty to represent the interests of the people who vote for them, they also had an obligation to think of India and make laws and policies keeping India a single entity.¹⁸

Keeping the above in mind, the Constituent Assembly, while drafting the Constitution, believed that those elected to the Parliament had to meet specific qualifications. Such qualifications envisioned were that the representatives had to be of a certain age and be literate. Here, it must be noted that most Indians were illiterate, with only 11% knowing how to read and write.¹⁹

The decisions taken by the forefathers set the standards of political eligibility for those who intended to run for and occupy the office.

(C) Universal Adult Franchise

Upon commencement of the Constitution of India, India became a republic. The preamble of the Constitution declared India to be a sovereign, socialist, secular, democratic republic.²⁰ Keeping in mind India's declaration as a democratic country, the Constituent Assembly adopted the policy of universal adult franchise, stating that all individuals, barring certain exceptions, had the right to vote. Article 326 of the Constitution established universal adult suffrage as a critical element of the eligibility to vote.²¹ Article 326 also stipulated the necessary qualifications required to vote, which are²²

- The person has to be a citizen of India

¹⁶ Shefali Jha, *Representation and Its Epiphanies: A Reading of Constituent Assembly Debates*, 39 Economic and Political Weekly, 4357 (2004)

¹⁷ *Id.*

¹⁸ Bipan Chandra, *India Since Independence*, 38 – 44, (Penguin Books, 2008)

¹⁹ *Id.*

²⁰ The words Sovereign and Secular were not added originally to the Constitution. They were added as part of the 42nd Amendment.

²¹ India Const. Art 326

²² India Const. Art 326

- The person must be at least 18 years of age
- The person cannot be disqualified under any laws of unsoundness of mind, criminal activities, non-residence
- The person must be a registered voter.

(D) Political Eligibility to Hold Office and Representation of People

Political eligibility in India does not limit itself to universal adult franchise and those who can vote. Political eligibility also extends to those representing the people in the Houses of Parliament and concerning holding office and government posts.

The Constitution of India and the Representation of People's Act 1951 govern individuals' political eligibility to hold office or represent the people. The essential eligibility criteria for membership and representation in either house of Parliament lies in Article 84 of the Constitution.

In Article 84, the qualifications given to be a member of Parliament are that an individual must be an Indian citizen, must be at least 25 years to sit in the Lok Sabha, and at least 30 years to sit in the Rajya Sabha.²³ On the matter of citizenship, India adopts the policy of single citizenship. As such, foreigners are deemed as ineligible.

Qualification as a representative in any of the State legislatures is given in Article 173.²⁴ Much like Article 84, it stipulates that for an individual to be a member of any state legislature, he is to be an Indian citizen, be at least 25 years to sit in the Legislative Assembly, and 30 to sit in the legislative council.²⁵

Other eligibility and qualification criteria are in the RPA 1951. It is also mandatory to qualify as a member of either house of Parliament; an individual must be an elector for any parliamentary constituency. Furthermore, an individual must be a scheduled caste or scheduled tribe member if they wish to contest a seat under the SC /ST reservation system.

Essential criteria which disqualify individuals from holding office, or representing the people, are laid down in Article 102 (1) of the Constitution. It gives the following grounds for disqualification:²⁶

- If a person has held any office of profit under the Union or State Government,
- If a person has been declared as having unsoundness of mind by a competent court.

²³ India Const. Art 84

²⁴ India Const. Art 173

²⁵ India Const. Art 173

²⁶ India Const. Art 102

- If a person is not an Indian citizen.
- If a person is insolvent.
- If under any other law, a person is disqualified.

Article 102 (2) further provides that a person is not eligible for holding office or representing the country's people if he or she is disqualified under the 10th Schedule of the Constitution.²⁷ Article 191 (1) lays down the disqualifications for a person to represent in the State Legislatures. The article stipulates the very same grounds as Article 102 for the Union Government.²⁸

(E) Office of Profit

One of the main criteria for determining a person's political eligibility to be a Parliament or State Legislature member is the Office of Profit. An office of profit refers to any post or designation, which gives the holder some profit. For a post to constitute an office of profit, it must be under the Central or State Government, and it must yield some profit such as pay or allowance.

In various cases, the judiciary has interpreted what constitutes an office of profit. It has laid down the essentials for an "office" to fall under the category of Office Of Profit. The case of *Jaya Bachan V. Union Of India*²⁹ laid down the essential criteria of office of profit. If the office gave any profit or pecuniary gain, then said post could constitute an office of profit. Remuneration was interpreted as a factor that could constitute a post of Office of Profit in *Divya Prakash V. Kultar Chand*.³⁰

There exists a test to prove if an office under the government was an office of profit or not. The test established five essentials. They were:³¹

- The post was to be appointed by the government
- The government paid the salaries and wages
- The government had the sole right to dismiss the office holder
- The government has the authority to dictate the duties and functions of the holder
- The tasks carried out by the holder are for the government.

While the test establishes five main criteria, all five essentials don't need to be present. Courts have the jurisdiction to examine different matters on the case's circumstances to determine if

²⁷ India Const. Art 102

²⁸ India Const. Art 191

²⁹ *Jaya Bachan V. Union Of India* (AIR 2006 SC 2119)

³⁰ *Divya Prakash V. Kultar Chand* (AIR 1975 SC 1067)

³¹ MP Jain, *Indian Constitution Law*, 30 – 33, (7 ed. Lexis Nexis, 2015)

an office fell under the banner of "Office of Profit."³²

If offices are independent of the government or are autonomous bodies without government interference, such an office does not attract the designation of "office of profit." An individual under such office is qualified to become a member of Parliament or a member of the State legislature.³³ For example, in the case of *Govinda Kurup V. SA Paul*, it was held that being a schoolteacher in a government-aided and government-controlled school did not fall under the office of profit, as the school had a distinct, independent personality and source of funds.³⁴ In another case, *Ashok Kumar V. Ajol Biswas*³⁵ held that an accountant of a municipality was not disqualified under "office of profit" as the municipality enjoyed a significant degree of autonomy from the government.³⁶

(F) Political Eligibility in Australia

1. Political Eligibility to Vote

Political eligibility in Australia refers to the eligibility to hold office and the eligibility to vote. Australia does not explicitly grant universal adult franchise. The only explicit provision which provides some insight into giving the political eligibility to vote from a constitutional perspective in Section 41³⁷ of the Australian Constitution. The section reads as follows:

"No adult person who has or acquires a right to vote at elections for the more numerous Houses of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth."

Reading the provision shows no explicit mention of universal adult suffrage and the qualifications required to vote. However, it does stipulate that if a person has acquired the right to elect in the State Parliaments, he will vote regarding the Federal Parliament. The right to vote has been granted by the Commonwealth Electorate Act 1918. Section 93 of the Act on reading states that the right to vote stems from being enrolled as a voter.³⁸ It addresses both the political eligibility and ineligibility to vote. Section 93 stipulates that to vote, one must be an Australian citizen, above 18 years of age (for both men and women), or a subject of the British

³² *Ashok Kumar V. Ajol Biswas* (AIR 1985 SC 211) – The Supreme Court observed that to determine if an individual held an office of profit, each case had to be examined in light of the provisions of the Representation of Peoples Act.

³³ *Supra* note. 32

³⁴ *Govinda Kurup V. SA. Paul* (AIR 1961 Ker 242)

³⁵ *Ashok Kumar V. Ajol Biswas* (AIR 1985 SC 211)

³⁶ *Supra* note. 32

³⁷ Australia Const. Sec 41

³⁸ Commonwealth Electorate Act 1918. Sec 93

Crown.³⁹ Section 93 further lays down the disqualifications from voting. Grounds for disqualification under the Act include not being a citizen, being an illegal non-citizen, or temporary visa holder. Those deemed unsound minds or have been convicted on treason charges are barred from voting unless pardoned. Finally, those who are sentenced for crimes of 3 years or more are barred from electing.⁴⁰

The political eligibility of universal adult suffrage in Australia is a matter of evolution. In 1975 in the case of *Attorney-General (Cth) (Ex Rel McKinlay) V. Commonwealth*,⁴¹ the majority judgment ruled that the Australian Constitution did not grant universal adult franchise. However, in the case of *Roach V. Election Commissioner (2007)*⁴², Chief Justice Gleeson of the High Court noted that the founding fathers of Australia had left it to Parliament to determine representative democracy and that by legislative action, universal adult suffrage was practiced throughout the country.⁴³

(G) Political Eligibility to Hold Office and Representation in Parliament

The qualifications for the representatives in the Australian Parliament are provided for in Section 34 of the Australian Constitution.⁴⁴ It reads as such

"Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:

(i) he must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;

(ii) he must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State."

Reading the section, one understands that to be a House Of Representatives member, one must be 21 years and above and be an elector, entitled to elect House of Representatives members. It also stipulates that such an individual must be a resident for three years. Further reading of Section 34 explains that an individual must be a subject of the Queen of England and must be

³⁹ Commonwealth Electorate Act 1918. Sec 93

⁴⁰ Anthony Gray, *The Guaranteed Right To Vote In Australia*, 7, QUT Law Review, 178 – 180 (2007)

⁴¹ *Attorney General (Cth) (Ex. Rel McKinlay) V. Commonwealth* (1975) 135 CLR 1

⁴² *Roach V. Election Commissioner* (2007) HCA 43

⁴³ *Supra* note. 42

⁴⁴ Australia Const. Sec 34

born under any law of the UK or a British colony or State derived from a British colony.

It has been provided in Section 16 of the Constitution that the same provisions as Section 34 apply for political eligibility to the Senate.⁴⁵

The disqualifications concerning eligibility to represent in the Parliament, and hold office, are laid down in Section 44 of the Constitution.⁴⁶

44. Disqualification

"Any person who:

- (a) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or*
- (b) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or*
- (c) is an undischarged bankrupt or insolvent; or*
- (d) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or*
- (e) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons; shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives."*

Under Section 44, citizens of another country are not eligible to sit in Parliament. Also, those holding any office of profit or office granting pecuniary gain are disqualified from Parliament membership. Other grounds of disqualification include insolvency or conviction of any offence and being sentenced as such.

(H) Dual Citizenship and Political Eligibility in Australia

Australia is one of the many countries that permit dual citizenship and dual nationality. The primary law governing citizenship in Australia is the Australia Citizenship Act 2007. Before this, citizenship was governed by the Australian Citizenship Act 1948. Section 17 of the 1948 Act initially prohibited dual citizenship, citing automatic revocation of Australian citizenship

⁴⁵ Australia Const. Sec 16

⁴⁶ Australia Const. Sec 44

if done. In 1999, the Australian Citizenship Council issued a report highlighting 64 recommendations, including the repealing of Section 17 of the 1948 Act.⁴⁷

The aspect of dual citizenship in Australia poses an interesting question relating to the political eligibility to hold office or be a part of the Federal Parliament. In certain countries permitting dual citizenship, citizens qualify to be a part of both countries' governments. The United States and Canada serve as an example of this. However, holding dual citizenship in Australia is seen as a factor that renders an individual politically ineligible from holding office or being part of the Federal Parliament.⁴⁸

The ineligibility of dual citizens to hold office or be part of the Federal Parliament comes from a reading of Section 44 (a) of the Australian Parliament. The section stipulates that any foreigner would be deemed ineligible to be a House of Representatives member or a Senator.

The Australian High Court, in many cases, has upheld Section 44, interpreting it to mean that while an individual can hold Australian citizenship and the citizenship of another country, he or she would be barred from being eligible to be a representative in the Parliament.⁴⁹ The *Sykes V. Cleary*⁵⁰ case demonstrated this interpretation when the Australian High Court held that an individual holding dual citizenship was deemed ineligible for election to the Federal Parliament.⁵¹ The court also held that a person would only be eligible to run for election in such a circumstance on renouncing foreign citizenship. Surprisingly, the Australian judiciary had maintained the same interpretation when it came to dual citizenship of members of the Commonwealth. The case of *Sue V. Hill*⁵² showcased this interpretation when the High Court held that an individual being a dual citizen of the UK and Australia, was ineligible to be a Senate candidate.

Perhaps the most recent case involving dual citizenship as a ground for ineligibility was demonstrated in the 2017 Australian Parliamentary Eligibility Crisis, in the case of *Re Canavan*,⁵³ where 7 Parliamentarians' eligibility was questioned on the grounds of violating Section 44(a) of the Constitution. The Australian High Court unanimously held five out of the seven members so concerned as ineligible from sitting or being elected to Parliament on the

⁴⁷ Hussein Al Asedy, Lorraine Finlay, *But Wait There's More... The Ongoing Complexities Of Section 44(1)*, 45 University Of Western Australia Law Review, 196 (2019)

⁴⁸ James Morgan, *Dual Citizenship and Australian Parliamentary Eligibility: A Time for Reflection Or Referendum*, 39 Adel. L. Rev. 439 (2018).

⁴⁹ *Supra* note. 48

⁵⁰ *Sykes V. Cleary* (1992) 176 CLR 77

⁵¹ *Supra* note. 50

⁵² *Sue V. Hill* (1999) 199 CLR 462

⁵³ *Re Canavan* (2017) 349 ALR 534

grounds of possessing another country's citizenship. The case was landmark for two reasons; firstly, the disqualification of 5 members simultaneously was unprecedented in the country's history. Secondly, the court in the same case rejected the approach that a citizen had to be consciously aware of their foreign citizenship.⁵⁴ The court stated that Section 44(a) would operate regardless of the knowledge or lack of knowledge of holding another country's citizenship.

III. CURRENT PROBLEMS IN THE INDIAN POLITICAL ELIGIBILITY FRAMEWORK

It cannot be denied that the necessary qualifications that stipulate who is eligible and who is ineligible to vote or run for elections in Parliament are enforced in India to a degree. The norms set out in the Constitution by the forefathers are seen as the governing principles of political eligibility, and successive governments have made efforts to enforce the standards.

However, while the eligibility framework exists in the country, it has not been able to uniformly adapt to changing times and scenarios, giving rise to problems that are detrimental to a democracy's functioning. Such issues include corruption and criminalization of politics, low educational standards for standing in Parliament, and voters' low turnout.

(A) Criminalization of Politics

One of the biggest threats faced by any democracy, especially a developing and highly complex democratic system like India, is criminalizing politics. The Constitution of India and the RPA do classify those convicted of offences as ineligible. However, this is rarely enforced, and if and when it is implemented, aspects of corruption creep into the system.

The Election Commission of India has recommended a need to amend and make the RPA more stringent in its enforcement of those barred from eligibility to discourage criminalization of politics.⁵⁵ The 179th Law Commission Report also put forward the view that there was a need to amend the RPA by stating that charges that carried life sentences or the death penalty had to also lead to disqualification for five years or until acquittal a presidential pardon. The Report also proposed that candidates who wished to nominate and contest for elections had to inform the public of any details on criminal charges or cases against them.⁵⁶

The case of *Union Of India V. Association For Democratic Reforms* saw the Supreme Court judge that the election commission was to issue notifications, making it compulsory for those

⁵⁴ *Supra* note. 50

⁵⁵ JS Hari, *The Need For A Political Eligibility Test For Elected Representatives In the Indian Political Framework*” *Revue Libre de Droit*, 2020, 1 (2020)

⁵⁶ *Supra* note. 32

contesting elections to make available information about their assets, liabilities, and criminal records. The Supreme Court held that all individuals had a right to know about the candidates they were voting for. There was a need to cleanse the government of unwanted elements affecting democracy and the legislature's competency.⁵⁷ The subsequent case of *People's Union For Civil Liberties (PUCL) V. Union of India*⁵⁸ further recommended the reforms suggested in the law commission report, citing the right to information as a fundamental right under Article 19. It declared Section 33 B⁵⁹ of the RPA unconstitutional.⁶⁰

(B) Low Education Qualifications

At the time of independence, only approximately 11% of India's population was literate. Today, the country's literacy rate has increased to over 74%, highlighting an increase in educated persons. However, despite such developments, a large number of India's population remains uneducated.⁶¹ This lack of education translates to a lack of understanding of rights, duties and an inability to vote correctly and govern the country. Constitution framers such as BR Ambedkar and Rajendra Prasad called for specific educational qualifications for contesting elections. Rajendra Prasad stated that the absence of academic qualifications would have damaging consequences for the democratic fabric of the country.⁶²

One main obstacle to the election process which has not been addressed for political eligibility is minimum educational qualifications. Neither the Constitution nor the RPA prescribe minimum education qualifications to represent the Parliament or hold office.⁶³ The eligibility criteria have been left to the purview of the legislature. Taking the case of *Union Of India V. Association For Democratic Reforms*, the apex court distinguished between the right to vote and freedom to vote. It held that the legislature was free to regulate norms and regulate election practices.⁶⁴

Individual states have recognized the importance of education to determine political eligibility and have enacted laws or ordinances. In 2015, the Haryana State Government passed a bill to set minimum educational qualifications for contesting at the Panchayat level.⁶⁵ The Haryana

⁵⁷ *Union Of India V. Association For Democratic Reforms* (2002) 5 SCC 294

⁵⁸ *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301.

⁵⁹ Representation of People's Act Sec. 33 B – The section declared that candidates were not liable to disclose any personal information, or any information of criminal charges notwithstanding court orders.

⁶⁰ Chaitanya Ramachandran, *Pucl V. Union Of India Revisited: Why India's Surveillance Law Must Be Redesigned For The Digital Age*, 7 NUJS Law Review, 107 – 109 (2014)

⁶¹ *Supra* note. 56

⁶² *Supra* note. 17

⁶³ *Supra* note. 56

⁶⁴ *Supra* note. 17

⁶⁵ Special Correspondent, *Fix minimum educational qualification for MPs, MLAs: Haryana to Centre*, The Tribune, December 2nd 2017, <https://www.tribuneindia.com/news/archive/haryana/fix-minimum-educational->

Government and Punjab Governments are currently asking the same be implemented at the Union level.⁶⁶ The Supreme Court also approved of the actions of the Haryana State Government, as seen in the case of *Rajbala & Ors V. State of Haryana*.⁶⁷ Justice Chelameshwar acknowledged the positive effects of education, stating, "*It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration.*"

IV. COMPARATIVE ANALYSIS

In light of the sources consulted and cases cited, Australia and India's current political eligibility norms can be compared. Australia has highly stringent standards of eligibility, which are strictly enforced. The strict enforcement of political eligibility norms in Australia can be seen because there is an obedience of the law. There is enforcement of judgments given by courts.

A prominent example can be seen in the scenario of dual citizenship and political eligibility in Australia. Courts have strictly enforced the law, disqualifying dual citizens from being elected to the Federal Parliament. This is evidenced by the case of *Re Canavan*, where the High Court unanimously judged five parliamentarians as ineligible to the Parliament on the grounds of possessing dual citizenship.

Furthermore, concerning educational qualifications, it must be noted that Australia is a highly developed country, with very high living standards. Those entering into the field of politics have degrees or doctorates in various fields, which would help build the country. Many elected representatives in the Australian Parliament have degrees in Law, Economics, or the Arts. This helps ensure a highly qualified representative, who can actively represent the will of the people who elect him or her, having the knowledge and perspectives for the same.

Comparing Australia's current political eligibility standards with that of India reveals that India though a democracy from its very inception, has to develop further to reach the standards that other democratic nations have. As stated earlier, there is a threat to India's democracy by the criminalization of politics and low educational standards, which the current political eligibility norms do not address.

qualification-for-mps-mlas-haryana-to-centre-507097

⁶⁶ IP Singh, *Punjab Ministers qualifications are under-primary, literate*. Times Of India, August 14, 2014 <https://timesofindia.indiatimes.com/india/Punjab-ministers-qualifications-are-under-primary-literate/articleshow/40231797.cms>

⁶⁷ *Rajbala v. State of Haryana* 1 SCC 463

Furthermore, while in various landmark cases, the Supreme Court has highlighted and advocated a need to reform the current political eligibility system as in the PUCL judgment. Concerning the criminalization of politics, there is rarely enforcement of the judgment or attempt to implement the verdict. In the aftermath of *Union of India V. Association of Democratic Reforms*, rather than enforcing the ruling, the Parliament tried to bypass the judgment of the court and the suggestions of the Election Commission through Section 33B of the Representation of People's Act.

Concerning educational qualifications, India lags behind other countries since no minimum education standard is prescribed in the Constitution and the RPA. Furthermore, around 5% of Parliamentarians are illiterates, and others having varying degrees of education. However, states have taken cognizance of the problem and have attempted to make minimum educational qualifications in their respective states.

V. NEED FOR A POLITICAL ELIGIBILITY TEST

The current political eligibility structure is that of an open forum. Any person, regardless of background, economic strata, can enter into politics and eventually rise to the top of the political ladder. However, keeping in mind the problems and issues that the Indian political system faces, there needs to be a comprehensive system of checks and balances to assess people who wish to represent peoples' interests.

In the authors' opinion, there needs to be a political eligibility test in India as a further means to determining if an individual is qualified to sit as a member of Parliament, hold office, or represent the country's people. Any political eligibility test formed would consider the current circumstances and problems such as lack of educational qualifications, criminalization of politics, and judgments and efforts that have been given to address the issues.

Before the creation or implementation of any political eligibility test in India, there have to be specific pre-determined laws concerning the educational qualifications of prospective members. Proper execution of the judgments given in *PUCL V. Union of India* and *Union of India V. Association of Democratic Reforms* should exist. As stated earlier, in the Association of Democratic Reforms case, the Supreme Court called for the implementation of proper legislation to make candidates make public all relevant information, including any criminal records. The steps above would also fall under the right to information for voters to know about prospective candidates, as elaborated in the PUCL judgment. There needs to be a law mandating minimum educational qualifications to enter the Union Parliament concerning academic qualifications laws. The authors believe that the minimum educational qualifications

should be a high school graduate or completing an undergraduate degree. The authors believe that the central government and the election commission should acknowledge the fact that various states, at the state level, such as Haryana and Punjab, are already mandating minimum educational standards to enter into political representation. Furthermore, the government must acknowledge the Supreme Court's view as it has recognized the value of academic qualifications as judged in the *Rajbala V. State of Haryana* case.

The authors would like to propose a political eligibility test keeping in mind the Indian political structure—the eligibility test focuses on addressing the key parameters that cause issues in Indian democracy. The proposed test would focus on the following parameters.

- Educational qualification
- Knowledge of Indian politics, as well as current affairs
- Leadership and skill application
- Criminal background checks on prospective candidates

The proposed political eligibility test on the aspect of knowledge of the politics of India and current affairs would be conducted to ensure that all prospective candidates would know how the Indian political system works and the current issues that the country faces. This would lead prospective candidates to understand how Parliamentary procedure works and understand the problems faced by the people who would seek to elect them into Parliament. Following this, leadership and skill application would be addressed. Such a test would focus on identifying major socio-economic problems and emphasize how prospective candidates would solve them and alleviate the public's issues. This component would also envision progressive interpretations and changes that existing law would need to adapt to. Furthermore, as part of the test, criminal background checks would have to be done to determine the candidate's position as a law-abiding member of society who seeks to ensure the best interests of the country's people.

Another factor that is to be examined besides educational qualifications, knowledge of politics and current affairs, criminal background checks, and leadership skill checks is the prior experience that the candidate has had in the political field. To be deemed politically eligible for the Union Parliament, a candidate must have served in some capacity as part of any municipality of the country and subsequently the state legislature of any Indian state for a specific time period. Furthermore, the candidate who intends to contest to be a part of the Union Parliament must have competency and experience in a similar position in the State Legislature. It is recommended that the Union Parliament decide the duration of the candidate's experience

in the municipalities and state legislatures. The authors consider the above to be a mandatory requirement for the political eligibility test. The authors would like to point out that determinations of prior experience exist in the Constitution for the judicial branch. The Constitution stipulates the amount of time a person has had to serve as an advocate to become a High Court judge and the amount of time a person has had to serve as a High Court Judge or advocate to be eligible for the Supreme Court. The authors suggest a similar criterion of prior experience like that of the judiciary to determine political eligibility.

Along with the above, the authors also suggest that the works and initiatives that the candidates have taken in their previous capacities in the municipalities and state legislatures are to be examined, as to what was done by them, how electoral promises made to the people while in power were fulfilled, and how the citizens benefited from the actions of the concerned candidate.

VI. VALIDITY OF THE POLITICAL ELIGIBILITY TEST

While this paper has proposed a political eligibility test for the Indian political system, it remains to be questioned if the test in question would align with India's Constitution and the Representation of People's Act.

Concerning the Representation of People's Act, the authors believe that the proposed political eligibility test would be legally valid. The test would complement and streamline the Representations of People's Act. The current grounds for qualification as per the Act dictate that any candidate must not have criminal charges against them. The eligibility test considers illegal activity by focusing on conducting criminal background checks for prospective candidates, thus further substantiating the qualification or disqualification grounds. On education qualifications, the authors feel that the test would further enhance the RPA as the current Act does not mention minimum educational qualifications. The proposed eligibility test considers the lack of minimum academic qualifications and calls for checking the educational qualifications of prospective candidates.

Concerning India's Constitution, the authors believe that the proposed political eligibility test would align with the Fundamental Rights.

Article 14 of the Constitution states, "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*" Equality before the law does not mean absolute equality but refers to relative equality – equality amongst similarly situated people. Relative equality also means that some amount of discrimination is justified because said discrimination is reasonable. The taking of various steps to ensure the competency

of the government cannot be violative of Article 14 as a political eligibility test is a matter of public policy and ensures that the country can function with a robust, dynamic, and efficient government.

The proposed political eligibility test is also valid, keeping in mind Article 19. Article 19(1)(g) grants citizens the right to practice any profession or carry on any occupation, trade, or business. Thus, it can be interpreted that the right to contest and hold office falls under the realm of occupation. Article 19(6)(g) grants the State the right to make reasonable restrictions concerning laws dictating the professional qualifications for practicing any profession. The political eligibility test so proposed would fall under the ambit of Article 19(6)(g), as it is merely a means to determine if prospective candidates meet the qualifications set for being eligible for Parliament.

With regard to the proposal of having minimum educational qualifications, the authors feel that such a proposal would be in line with the Fundamental Rights. Article 16 of the Constitution stipulates that the State shall grant equal opportunities for all citizens with regard to employment or appointment in any public office, and that the State shall not discriminate on basis of caste, color, creed, sex or religion for the same. While Article 16 grants equality of opportunity, it does stipulate that the State is not barred from drafting any law which prescribes essential qualifications for being eligible for appointment or employment for any office. Therefore, if laws are drafted prescribing a minimum educational qualification for candidates wishing to run for office as part of determining political eligibility the State is within its competency to do so, keeping in mind the interests of the community at large, and for ensuring further progress in the consistent evolution of the Indian political system.

The right to vote and the right to contest elections does not fall under the ambit of Article 21, which guarantees the right to life and liberty due to separate statutory provisions. The right to vote is governed by Article 326 of the Constitution, and the RPA regulates elections. As such, it falls under a statutory right. The Supreme Court has affirmed that the right to contest elections is not a constitutional right but a statutory right in *Jammuna Prasad V. Lacchi Ram*. It held that the right to contest elections was a special right created and governed by a statute. In a subsequent case, *Javed and Ors V. State of Haryana*⁶⁸, the court reaffirmed that the right to contest election did not fall under the ambit of Fundamental Rights, but rather that of a statutory right, being regulated by separate statutes. As a result of laws governing elections being a different statutory law, there is no question of infringement or conflict with the Fundamental

⁶⁸ Javed & Ors vs State of Haryana & Ors 2003 8 SCC 369.

Right to life and liberty. However, there must be harmonious co-existence between the Fundamental Rights and the concerned legislations. While the right to contest elections is not a fundamental right, it must align with citizens' right to good governance and have a competent, efficient, and efficient government.

VII. CONCLUSION

From the sources consulted, authorities and legislations referred to, and the cases cited from Australia and India, it can be concluded that there is a need for a political eligibility test for India's elected representatives and India's political framework.

As stated earlier, significant problems that plague Indian democracy and India's political structure include criminalization of politics, lack of educational qualifications amongst members of Parliament, and no concrete standards for the same. Furthermore, as evident in the cases of *PUCL V. Union of India* and *Union of India V. Association for Democratic Reforms*, the Supreme Court has voiced its opinion that reforms are needed to address the problems faced by Indian democracy. Individual states in India have taken note of the issues facing the Indian political structure and have taken measures, though at the state level, to combat education and criminalization problems. The Haryana State government has created minimum educational qualifications at the Panchayat Raj level as the first reform step. The apex court of India has taken note of the State government's efforts and voiced its approval for the same.

After comparing the political eligibility norms in Australia and India, it can be said that the Australian government fairs better than the Indian government in terms of its political eligibility. This is because the Australian government emphasizes strict enforcement of laws and the application of judicial precedents set down by courts. The Australian government makes attempts to enforce the judgments of courts, effectively showing the practical application of the binding principle of court interpretations as a force of law. Furthermore, Australia is classed as a developed country and does not face criminalization of politics and low educational qualifications. In the Indian scenario, judicial interpretations and calls to reform the eligibility system exist through judgments. However, India suffers from a lack of effective implementation of said precedents and criminalization of politics.

The authors feel that the political eligibility test proposed in this paper, keeping in mind the shortcomings and issues in the Indian political framework, would be compatible with existing laws and would stay in line with India's Constitution. The test proposed addresses the issue of criminalization of politics, educational qualifications, prior experience and focuses on knowledge and application in the face of decision-making, which is deemed to be necessary to

govern the world's largest democracy.
