

## **Educational Qualification for Elected Representatives**

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### **Introduction**

We, the people of India gave to ourselves a democratic republic which envisages people's participation in the decision making process. The founding fathers conceived it as the polity most suited to India's ethos, background and needs. They envisaged equal participation of all the adult citizens in the democratic process without any discrimination. Universal adult franchise was a bold and ambitious political experiment and a symbol of the abiding faith that the founders reposed in the great masses of the country and in their innate wisdom.<sup>1</sup> Since elections are the life breath of India's democratic polity<sup>2</sup>, the paramount law contained provisions for an election machinery for conducting free & fair elections. The purpose of the entire electoral exercise was to ensure that the people get the best representatives to govern them most efficiently<sup>3</sup>. For contestants the qualifications<sup>4</sup> and disqualifications<sup>5</sup> were

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<sup>1</sup> Report of NCRWC, vol. 1, New Delhi, March, 2012, p. 120.

<sup>2</sup> R.P. Bhalla, *Elections in India, Legacy and Vision*, S. Chand & Company Ltd., New Delhi, 1998, p. 216.

<sup>3</sup> S.Y. Quraishi, *An Undocumented Wonder The Making of the Great Indian Election*, Rupa Publications, New Delhi, 2014, p. 392.

<sup>4</sup> Article 84 : **Qualifications for Membership of Parliament**— A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) he is citizen 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;
- (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 173 : **Qualification for membership of the State Legislature**— A person shall not be qualified to be chosen to fill a seat in the legislature of a state unless he—

- (a) is a citizen of India and makes & 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;
- (b) is in the case of a seat in the Legislature Assembly, not less than not twenty five years of age and in the case of a seat in the Legislature Council, not less than thirty years of age, and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

<sup>5</sup> Article 102 : **Disqualifications for membership**

1. A person shall be disqualified for being chosen as, and for being a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;

enshrined in the Supreme Law itself. But since they were aware of the fact that nitty gritty of this area would require a separate law, so they empowered Parliament and State Legislatures to do the needful as and when it is so required. Parliament came up with specific laws<sup>6</sup> whereby they laid down the necessary conditions which were needed to be fulfilled before qualifying for contesting elections. In 1992 the Parliament amended (73<sup>rd</sup> amendment) the Constitution to decentralize and deepen the democratic decision making process further down to the grass root level by reviving the traditional village level decision making structures like Panchayats and gram sabhas to encourage popular participation. These lowest ground level democratic units were expected to plan prepare and implement social welfare and development schemes to ensure social justice to the poor and needy.<sup>7</sup> Part IX was added in the constitution which dealt with the Panchayats, its composition, elections, duration, disqualification<sup>8</sup> for membership and powers and responsibilities.

Neither in the Supreme Law nor in the relevant Statutes, the requirement of minimum educational qualification as mandatory condition for contesting election was prescribed. In early 1950s when the Parliament prescribed the qualifications for MPs and MLAs, it decided not to lay down any educational qualification quite understandably as that would have meant shutting the doors of those august Houses to vast multitudes, who were illiterates and even to the freedom fighters who had left schools and colleges to join the fight for independence and

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- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign state;
  - (e) if he is no disqualified by or under any law made by Parliament.

2. A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

**Article 191 : Disqualifications for Membership–**

1. A person shall be disqualified for being chosen as, & for being, a member of the Legislative Assembly or Legislature Council of a state–
  - (a) if he holds any office of profit under the Government of India or the Government of any state specified in the First Schedule, other than an office declared by the legislature of the state by law not to disqualify its holder;
  - (b) if he is of unsound mind & stands so declared by a competent court;
  - (c) if he is an undischarged insolvent;
  - (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign state;
  - (e) if he is so disqualified by or under any law made by Parliament.
2. A person shall be disqualified for being a member of the Legislature Assembly or Legislature Council of a state if he is no disqualified under the Tenth Schedule.

<sup>6</sup> The Representation of the People Act 1950 and the Representation of the People Act 1951.

<sup>7</sup> S.Y. Quraishi, *An undocumented Wonder the Making of the Great Indian Election*, Rupa Publications, India, New Delhi, 2014, p. 19.

**<sup>8</sup> Article 243 : Disqualifications for Membership–**

1. A person shall be disqualified for being chosen as & for being a member of a Panchayat–
  - (a) if he is no disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the state concerned; Provided that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of 21 years;
  - (b) if he is no disqualified by or under any law made by the legislature of the state.

were without formal education.<sup>9</sup> But recently, when in Rajasthan (2014) and in Haryana (2015), the minimum educational qualification for the contestants of Panchayats was added in their respective Panchayati Raj Acts, it led to a debate whether time has come for laying down some such requirement of minimum educational qualification for Members of Parliament and State Legislative Assemblies. The introduction of this condition at grass root level led to a situation where one became eligible under the constitutional provisions for contesting election for MP & MLA but due to non-fulfillment of prescribed minimum educational qualification, could not contest election at panchayat level.

Now before considering recent developments in case of Rajasthan & Haryana, it is important to understand the mental processes of those who framed the Constitution while laying down qualifications & disqualifications for MPs & MLAs whether education criteria was something which was considered by them or not.

### **Concern of makers of the constitution vis-a-vis educational qualification**

It is not that this issue did not occupy the minds of the constitution makers, but having regard to the overwhelming majority of electors in India then being illiterate, they left it to Parliament to consider this aspect on appropriate occasion at a future date.<sup>10</sup> It becomes apparent from what Dr. B.R. Ambedkar said while moving Art 68-A (Present Art 84) in the Indian Constitution). He had observed that the object of the Article is to prescribe qualifications for a person who wants to be a candidate at an election. I think the house will agree that it is desirable that a candidate who actually wishes to serve in the legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the house require experience, certain amount of knowledge & practical experience in the affairs of the world.<sup>11</sup> And when Dr. Ambedkar moved Article 152 which dealt with qualification for membership of state legislature, Prof. K.T. Shah moved an amendment in that. It stated :

“That in Article 152, after the word 'age' where it occurs for the first time, the words is literate and is not otherwise disqualified from being elected be added.”<sup>12</sup>

He thought that it would be well to lay down a positive requirement for candidates, seeking election to the legislature, to be literate at least and that anyone who is no literate will be

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<sup>9</sup> V.S. Rama Devi and S.K. Mendiratta, *How India Votes Election Laws, Practice and Procedure*, Second Edition, Lexis Nexes Butterworth, New Delhi, India, 2008, p. 387.

<sup>10</sup> Ibid, p. 385.

<sup>11</sup> CAD, Vol. VIII, p. 89.

<sup>12</sup> CAD, Vol. VIII, pp. 550-551.

disqualified.<sup>13</sup> But while replying Dr. B.R. Ambedkar said with regard to the amendment of Prof. K.T. Shah about literacy, I think that is a matter which might as well be left to the legislatures. If the legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.<sup>14</sup> Prof. Shibban Lal Saksena was also in favour of laying down the qualifications of candidates in the constitution itself. He was totally opposed to state legislatures or even Parliament being given the power of prescribing qualifications. For him it will be made a plaything of party politics. Not only the members of the Constituent Assembly but Dr. Rajendra Prasad as President of the Assembly had similar concern. It can be discerned from what he observed when he said that in this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist judges are required to possess very high qualifications, for helping the judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all. That's an anomaly but it seems to me that in this age we have to put up with that kind of anomaly.<sup>15</sup> While speaking on 26 November 1949, he said

“There are only two regrets which I must share with the honourable members. I would have liked to have some qualifications laid down for members of the legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life – in one word – to have character.<sup>16</sup>”

But the Constituent Assembly of India took a measured decision that education, gender, economic status or religion cannot restrict an adult Indian's ability to vote or stand for election.<sup>17</sup> So they made relevant provisions so far as qualifications and disqualifications for contestants for the office of President, MPs & MLAs were concerned. But nowhere it mandated minimum educational qualification. Even after right to education having been made a fundamental right under Article 21A, it has not been made a condition for becoming eligible for these offices.

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<sup>13</sup> Ibid

<sup>14</sup> Ibid, p. 553.

<sup>15</sup> Ibid, p. 553.

<sup>16</sup> CAD, Vol. XI, p. 993.

<sup>17</sup> *The Hindu*, 'Big Questions for the generation,' by Barkha Deva, 21<sup>st</sup> December, 2015, p. 10.

### **Minimum educational qualification for contesting local body elections**

Two state governments in the recent past mandated educational qualification for contesting elections at the panchayat level, notwithstanding the fact that for MPs and MLAs, there is no such requirement. With this move of the government, many candidates who were otherwise eligible became ineligible due to want of requisite qualification and they challenged it in the Court on the ground of it being done arbitrarily, discriminatory and unconstitutional. The step of government had its admirers and critics. The rationale behind enshrining this provision was that since panchayats are to perform multiple functions from planning to implementation of government schemes, it is necessary that those who are occupying this public office, they must be aware of their role as envisaged. Being an educated person, they will be in a better position to take a balanced view of things. In both the states, it was done at a time where elections for Panchayats were due. And they did it first before the elections. The haste with which it was done and that too without much debate and discussion, led to a lot of criticism. In both the states, it was challenged in the court. In the case of Rajasthan, the court didn't interfere and in case of Haryana, the apex court declared it to be valid and constitutional. The requirement of minimum educational qualification as enshrined in the respective laws operating for local self government is as follow:

#### **The Rajasthan Panchayati Raj Act 1994 and minimum educational qualification**

Through the Rajasthan Panchayati Raj (Second Amendment) Ordinance 2014 (promulgated on Dec 20, 2014), minimum educational qualification was prescribed for contesting local body elections. The ordinance stipulated that a member of a Zila Parishad or a Panchayat Samiti should have passed secondary education.<sup>18</sup> While the Sarpanch of a Scheduled Area should have passed Class V<sup>19</sup>, the Sarpanch of a Panchayat other than in a Scheduled Area should have passed Class VIII<sup>20</sup>. This fiat came just before the elections. The last date for filing the nominations for the Panchayat polls was January 6, 2015 and the first phase of elections was to start on January 16, 2015<sup>21</sup>. With one stroke many candidates who were otherwise eligible became ineligible due to want of requisite educational qualification. Though it was challenged in the court, but the apex court refused to hear petition challenging the Rajasthan Panchayati Raj (Second Amendment) Ordinance 2014 on procedural grounds,

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<sup>18</sup> Sec 19(r).

<sup>19</sup> Sec 19(s).

<sup>20</sup> Sec 19(t).

<sup>21</sup> SC refuses to hear plea against ordinance, *The Hindu*, 6<sup>th</sup> Jan 2015, p. 10.

sending it back to the High Court<sup>22</sup>. And even in *Dulari Devi & Ors v. State of Rajasthan & Ors*. Case (Jan 15, 2015), the High Court of Judicature for Rajasthan Bench at Jaipur did not propose to pass any interim order.

This step of government was criticised by people like Ms Aruna Roy who considered it to be violating the inclusive spirit of 73<sup>rd</sup> amendment and serving as an "exit for illiterate people"<sup>23</sup> and former CECs like James lyngdoh and S.Y. Quraishi who considered it to be punitive and arbitrary and defeating the very purpose of 73<sup>rd</sup> constitutional amendment in a state like Rajasthan with abysmally low levels of literacy<sup>24</sup>. Several grassroots activists argued that panchayat governance requires ethical values and an understanding of local issues gained from experience more than Class X certificates<sup>25</sup>. And the ordinance will exclude the most marginalised sections from contesting since they are unlikely to have the educational qualifications<sup>26</sup>. But inspite of the criticism, the government went ahead with elections.

### **The Haryana Panchayat Raj Act 1994 and minimum educational qualification**

Recently, in 2015, just before the elections, the Haryana Government first came up with an ordinance and later a legislation for amending the Haryana Panchayati Raj Act 1994, mandating educational criteria for contestants of local body elections. Section 175<sup>27</sup> 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 anyone 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 anyone 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. The relevant clause (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 5<sup>th</sup> pass. The rationale behind ensuring this provision was that since panchayats are to perform multiple functions i.e. from planning to implementation of

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<sup>22</sup> Policy distorts gender equity, *The Hindu*, 13<sup>th</sup> Jan 2015, p. 6.

<sup>23</sup> *Supra* 21.

<sup>24</sup> Former Chief Election Commissioners oppose Rajasthan Ordinance, *The Hindi*, 30<sup>th</sup> Dec, 2014, p. 9.

<sup>25</sup> Policy distorts gender equity, *The Hindu*, 13<sup>th</sup> Jan 2015, p. 6.

<sup>26</sup> Not a level playing field in Rajasthan by Ruchi Gupta, *The Hindustan Times*, 15<sup>th</sup> Jan 2015, p. 10.

<sup>27</sup> Sec 175 of the Act stipulates that "No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such," if he falls within the audit of any of the clauses of Sec 175. In the Act provides for a number of disqualifications from contesting a Panchayat Elections.

government schemes, it is necessary that those who are occupying this public office, they must be aware of their role as envisaged. Being educated, they will be in a better position to take a balanced view of things. It was challenged in the court on the ground of this being contrary to constitutional provisions and against the very foundation of democracy. The court in *Raj Bala vs. State of Haryana (2015)* case found this restriction along with others reasonable and upheld the amendment to Sec. 175 of the Act.

Now while the court has upheld the amendment, such reasoning could extend itself to the next two levels of our democratic institutions (Assemblies and Parliament). We seem to be forgetting that the constituent Assembly of India had debated the issue but did not think it right to put it as a condition for contestants. So, 100 percent literacy is an objective that the government at state and national level must strive towards, the fact that the state has failed to provide the same must not be remedied by taking away the political voice of a citizen of this country<sup>28</sup>. This step of government has been criticised by not only those who became ineligible but also people like Nobel laureate Amartya Sen who said that we do not have to deprive the people who are already deprived and take away what is their privilege<sup>29</sup> and Rajinder Sachar who looked at it most undemocratic and unconstitutional legislation. For him, it was obviously a ploy to disenfranchise mostly the poor and deprive and that too in face of the fact that our election law upto Parliamentary election has no literacy qualification<sup>30</sup>. Does this law not create an anomalous situation that a person facing disqualification in panchayat election can contest the elections for MP and MLA? Is this law not against what was held by the apex court in *PUCL v UOI (2003) 45CC 399*, where it was held that it is the voter's discretion whether to vote in favour of an illiterate or literate candidate. A voter is the master of his vote. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. On educational qualifications. Justice P. Venkatarama Reddi's view was that consistent with the principle of adult suffrage, the constitution has not prescribed any educational qualification for being MP or MLA. To say that well educated persons will be able to serve the people better and conduct themselves in a better way inside and outside the house is nothing but overlooking the stark realities. The experience and events in public life and the legislatures have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of

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<sup>28</sup> 'Big questions for our generation', by Barkha Deva, *The Hindu*, 21<sup>st</sup> Dec 2015, p. 10.

<sup>29</sup> Re-examine literacy criteria for Panchayat Polls : Amartya Sen, *The HT*, 19<sup>th</sup> Dec, 2015, p. 4.

<sup>30</sup> Rajinder Sachar, 'Most Undemocratic Act', *Mainstream*, Sept 11-17, 2015, Vol. LIII, No. 38, p. 17.



the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well educated persons. The court has upheld the amendments in the haryana case, the same rationale could extend itself to the next two levels of our democratic institutions (Legislative Assemblies and Parliament). Because eyebrows will be raised when one finds that the post of Governor has the least qualification prescribed under the Constitution. All constitutional posts except those pertaining to higher judiciary do not have any educational qualification to hold the post. Even Article 171 which provides for composition of legislative councils in a state. It makes separate constituencies of graduates to elect members to legislative council. It is obligatory to be a graduate to elect a certain proportion of members of legislative council but it is immaterial of person elected is a graduate. The SC ruled in *S. Narayanaswami Vs G. Panneerselvam* case in 1972: The concept of such representation does not carry with it, the notion that representative must also possess the many qualifications of those he represents. It would be for members of such a constituency themselves to decide whether a person who stands for election from their constituency possesses the right type of knowledge, experience and wisdom which satisfy certain standards<sup>31</sup>.

### **Conclusion**

Mandatory educational qualifications for contestants at grass root level in Haryana and Rajasthan has brought forth the urgency to debate the subject in public domain for its emulation at other levels as well. One school of thought holds the view that time has now come when a certain minimum educational qualification must be prescribed for those who aspire to be chosen as representatives of the people in the august Houses of Parliament and State Legislatures. What should be the minimum educational standard for candidates is for the Parliament to decide in its collective wisdom, but a beginning should be made<sup>32</sup>. It seems a bit ironical that every candidate wishing to contest election to Parliament or a State Legislature has to make and subscribe an oath or affirmation under the Constitution that he will bear true faith and allegiance to the constitution as by law established. If elected, he has to reiterate such oath or affirmation before he takes his seat in the House to which he has been chosen. But if he is illiterate, can he even read the Constitution, much less comprehend its provisions to which he is acknowledging his true faith and allegiance.<sup>33</sup> Prescribing such qualification does not require any amendment to the Constitution, because the constitution already empowers Parliament to lay down such qualification under arts 84(c) and 173(c) &

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<sup>31</sup> K. Chandru, Panchayats must not be elitist, *The Hindu*, 16 December, 2015, p. 11.

<sup>32</sup> V.S. Rama Devi and S.K. Mendiratta, *How India Votes Election Laws, Practice and Procedure*, Second Edition, Lexis Nexis Butterworths, New Delhi, India, 2008, p. 1133

<sup>33</sup> Ibid, p. 387



by doing so, Parliament will be fulfilling the expectation of two of the main architects of the Indian Constitution, Dr. Rajendra Prasad and Dr. B.R. Ambedkar.<sup>34</sup>

But Parliament has so far not considered it advisable to lay down any educational qualification for MPs and MLAs. But the fast pace with which the state governments of Haryana Rajasthan introduced these changes just before the election led to suspicion, as to what was the hurry? Could it not have been better had government gone in for public debate, should public not have been made aware of the ground realities as to how an uneducated sarpanch or panch can go wrong in the formulation & implementation of plans & policies. And then when educational qualifications has not been fixed for MPs & MLAs who are bestowed with huge responsibility, why this bottom up approach. The dichotomy created through the recent changes at grass root level needs a serious debate because exclusion of large number of men and women from participating in the election on this ground cannot be justified by saying that it was done to incentivise education. No doubt education is a worthy issue but first it needs to be made available to everyone. Till that is done, let people decide whether they want literate or illiterate as their leader. The State cannot penalize people for its own failure. Making right to education a reality for every citizen is state's mandate. Having failed in that and later disenfranchising people on that count is something which needs introspection. Educational qualification in principle is acceptable but for that to be applicable for all the contestants at every level of political institutions, it is required that sufficient time is given.

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<sup>34</sup> Supra 32.