



Election Commission of India

TOPIC –QUALIFICATION & DISQUALIFICATION



India International Institute of Democracy and Election Management



Introduction

Any person aspiring to be Member of Lok Sabha/ Legislative Assembly, whether by election or by nomination, must be qualified and must not be disqualified under the Constitution or under any law for such membership.

Crucial date for determining whether a candidate is qualified or disqualified is not the date of filing nomination paper but the date fixed for the scrutiny of nominations.



Constitutional Qualifications

(Articles 84 and 173 of the Constitution)

The constitutional qualifications as per the **Articles 84 (for becoming a member of Parliament) and 173 (for becoming a member of State Legislative assembly)** of the Constitution are:

1. Citizenship of India.

2. Oath or affirmation to bear true faith and allegiance to the Constitution.

Constitutional
Qualifications

3. Minimum qualifying age.

4. Any other qualification prescribed by Parliament



All About Oath or Affirmation

Purpose of Oath:

The real purpose of this oath or affirmation is that ***the person undertakes to bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India.***

Oath to be made by:

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



All About Oath or Affirmation-Contd.

When to be made:

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

Oath or affirmation by a candidate contesting election from more than one constituency :

- ✓ Making and subscribing of requisite oath or affirmation in one constituency is sufficient if the candidate is contesting for the same house.
- ✓ Separate Oath or affirmation is required if candidate is contesting elections both to the House of the People and to a State Legislative Assembly at a simultaneous election.



All About Oath or Affirmation-Contd.

Authorities Before Whom Oath Or Affirmation To Be Made:

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



All About Oath or Affirmation-Contd.

Authorities Before Whom Oath Or Affirmation To Be Made:

- Diplomatic or Consular Representative of India in the country, if the candidate is out of India.
- Any other person nominated by the ECI, on application made to it.

Note:

- 1. Certificate of oath to be given to the candidate without his applying for it.**
- 2. If taken before a different authority-Onus is on candidate to produce Certificate of Oath before the RO**



Age qualification-[Articles 84(3) and 173(b)]



- ✓ A person shall not be qualified to be chosen to fill a seat in the Lok Sabha/State Legislative Assembly, unless he is of 25 years of age.
- ✓ Age qualification should be fulfilled by the candidate on the date fixed for the scrutiny of nominations [section 36 (2) (a) of 1951-Act].



Statutory Qualification (Sec. 5)

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

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



Constitutional Disqualifications

[Articles 102 (1) & 191(1)]

The constitutional disqualifications as per the Articles 102 (1) (for becoming and being a member of Parliament) and 191(1) (for becoming and for being a member of State Legislative assembly) of the Constitution are:

Holding an Office of profit under the Government.

Unsoundness of mind

Un-discharged insolvent.

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

Any other disqualification prescribed by Parliament.

Constitutional Disqualifications



Office of profit under the Government

[Articles 102 (1a) and 191(1)(a)]

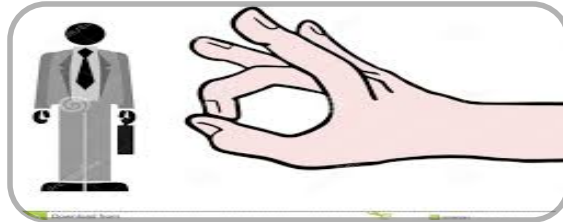
What does 'Office of profit under the Government' mean?:

All questions whether a particular person is holding an office of profit under the government or not have to be decided by applying the following tests to the facts and circumstances of each case in the light of Supreme Court decision in **Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanappa [(1971) 3 SCC 870]** and in several other cases:



Test-1

Whether the government makes the appointment



Test-2

Whether the government has the right to remove or dismiss the holder



Test-3

Whether any remuneration is paid



Office of profit under the Government [Articles 102 (1a) and 191(1)(a)]



- ✓ However, Parliament and all State Legislatures have passed Acts removing disqualification in respect of certain offices mentioned therein.
- ✓ Please refer to Central/State Act on Removal of Disqualification.



Unsoundness of mind

[Articles 102 (1)(b) 191 (1) (b)]:

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





Un-discharged insolvent [Articles 102 (1)(c) & 191 (1) (c)]:

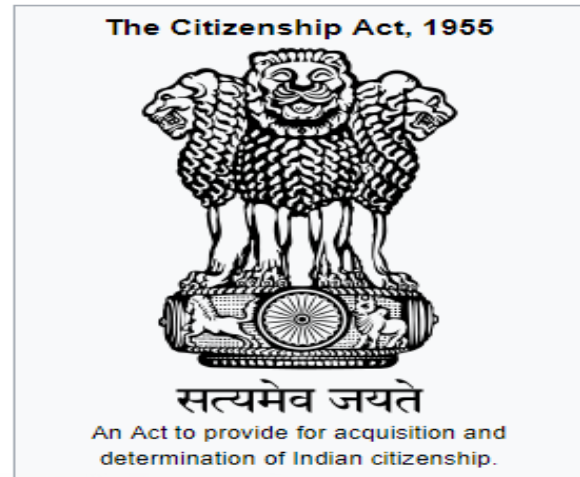
- A person **adjudged insolvent by a competent insolvency court** under the Provincial Insolvency Act, 1920 and **has not been discharged from insolvency** under the provision of that Act, **is disqualified for contesting** an election to Parliament/State Legislature.
- Mere commission of acts of insolvency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



Non-citizenship of India or acknowledgement of allegiance or adherence to a foreign State [Articles 102(1) (d) and 191 (1) (d)]:



- Citizenship of India a fundamental and essential qualification – additionally a person shall be disqualified for being chosen as, and also for being a Member of Parliament/State Legislature 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.

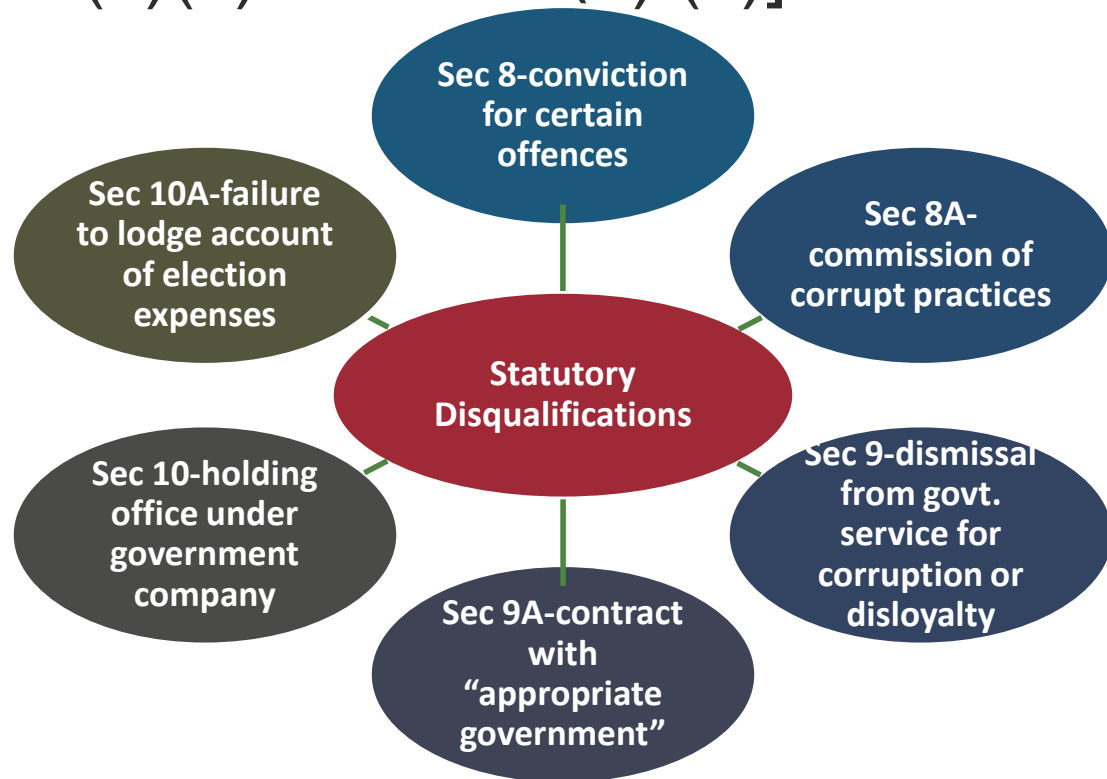




Statutory disqualifications

[Articles 102(1)(e) and 191 (1) (e)]

Parliament is empowered to make statutory laws prescribing disqualifications for membership for both Parliament and State Legislatures.





Disqualification on conviction for certain offences (s 8)

- ✓ Section 8 details the offences the conviction for which leads to disqualification.

Conviction by Trial Court attracts disqualification.

Release on bail does not remove disqualification, unless conviction is also stayed during pendency of appeal.



Disqualification on conviction for certain offences (s 8A)



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





Disqualification for dismissal from government service for corruption or disloyalty (s 9)

Dismissal from
Govt. service

- A candidate dismissed from government service within the last five years must produce a certificate from ECI that he was not dismissed for corruption or disloyalty

Filing of
certificate

- Such certificate must be filed with the nomination paper
- Otherwise nomination shall be rejected [Section 33(3)]



Disqualification for contract with appropriate government (s 9A)



'Appropriate government' means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature

Contract should be subsisting on the date of scrutiny of nominations;

Contract should be either for supply of goods to the govt or for execution of works.

Contract should be with 'appropriate government';



Disqualification for holding office under government company (s 10)

Who

Who can be disqualified under Sec 10

- Only Secretary, Manager or Managing Agent of government company is disqualified

What

What is 'Government company'

- 'Government company' means any company, corporation, etc., in which appropriate government has not less than 25% share and **does not** include cooperative society.

What

What is 'Appropriate Government'

- 'Appropriate government' means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature.



Disqualification for failure to lodge account of election expenses (s 10A)

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





Risks Associated with General Elections

Risk Matrix for Qualification and Disqualification

Identified Risk	Lack of pre-check	Apparent consultation at scrutiny time
Consequences	Leads to delay at the time of scrutiny	Leads to avoidable complaints
Mitigation Measures/ Action points	Following a prescribed check-list, all nomination forms and accompanying documents like Affidavit, electoral roll extract, caste certificate where needed, security deposit receipt, etc. must be checked after the nomination time closes.	Each and every case of doubt must be got clarified through Legal Division of the ECI much before the start of scrutiny. Under no circumstances should the RO be in telephonic consultation during the scrutiny.



Risks Associated with General Elections

Risk Matrix for Qualification and Disqualification

Identified Risk	Not giving reasonable opportunity	Wrongful rejection of a nomination
Consequences	Leads to avoidable election petitions.	Can become a valid ground for setting aside the whole election.
Mitigation Measures/ Action points	Even when the RO is very clear that there is no need to give time for resolving a particular objection or deficiency, it is prudent to give some reasonable opportunity, if specifically requested by a candidate/ agent.	After doing adequate scrutiny and analysis, in case of any doubt, the guiding principle should be to give the benefit of doubt to the candidate, as wrongful acceptance may not vitiate an election, but wrongful rejection can certainly become a ground for challenging the election.



Risks Associated with General Elections

Risk Matrix for Qualification and Disqualification

Identified Risk	Perceived non- application of mind
Consequences	Can lead to election petition and also be a ground for doubting the validity of election.
Mitigation Measures/ Action points	<p>The RO may consult the Legal Division of the ECI, or the office of the CEO or the Observer present on the occasion, but he/she must apply his/her own mind on the facts and circumstances of the matter in question and arrive at a reasoned conclusion, with a speaking order, without any mention of such extraneous consultations.</p> <p>The RO has to be guided by his/her own judgement, based on the position of law and applicable rulings, without any apparent influence of outside opinion.</p>



*Thank
you*

