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FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB

SEMESTER SUBJECT:

ELECTION LAWS

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NAME OF FACULTY: PANKHURI SRIVASTAVA

Lecture-4



LECTURE 4: QUALIFICATIONS GROUNDS FOR MEMBERS UNDER REPRESENTATION OF PEOPLES ACT,

The Representation of the People Act, 1951 is an act of Parliament of India to provide for the conduct of election of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. It was introduced in Parliament by law minister Dr. B.R. Ambedkar. The Act was enacted by the provisional parliament under Article 327 of Indian Constitution, before the first general election.

Representation of People Act, 1951:

- Article 324 to 329 of Part XV of the Constitution deals with the electoral system in our country.
- Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures.
- In exercise of this power, the Parliament has enacted laws like the Representation of the People Act 1950 (RPA Act 1950), Representation of the People Act 1951 (RPA Act 1951) and Delimitation Commission Act of 1952.
- RPA Act 1951 deals with the disqualification of people's representatives.
- 'Election' is defined in Section 2 (d) of Representation of People Act, 1951 as "an election to fill a seat or seats in either House of Parliament or in the House or either House of Legislature of a State."
- 'Conviction' is defined as "an outcome of a criminal prosecution which concludes in a judgment that the defendant is guilty of the crime charged."

Chapter-I and Chapter-II of Part II of RPA, 1951 provides for qualifications for Members of

Parliament (MPs) and Members of State Legislature (MLAs), which can be discussed under following heads:

1. Qualifications for Membership of Parliament

➤ *Qualification for membership of the Council of States (section 3 of RPA, 1951):*

A person has to be an elector for a parliamentary constituency in India to be qualified to be chosen as a representative of any State or UT in the Council of States.

Thus, it is not necessary for a person to be an elector in that particular state or UT where he is contesting to be elected as a representative rather he can be an elector anywhere in India.

Section 3 of RPA in its original form required the condition of elector 'in that state or territory', but this requirement was dispensed by Representation of People (Amendment) Act, 2003 and it was substituted by elector 'in India'.

In 2006, the **Supreme Court upheld the validity of this change in 'Kuldip Nayar case'**.

➤ *Qualifications for membership of the House of the People (section 4 of RPA, 1951):*

1. In order to contest a seat reserved for the Scheduled Castes/Scheduled Tribe (other than those in the autonomous districts of Assam) in any State or Union Territory, he must be a member of any of the Scheduled Castes/Tribe, whether of that State or Union Territory or of any other State or Union Territory (excluding the tribal areas of Assam), and must be elector for any Parliamentary Constituency. However, **a member of Schedule Caste or Schedule Tribe can also contest a seat not reserved for them.**
2. In order to contest a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he must be a member of any of those Scheduled Tribes and must be an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district; The protective mechanism as in case of Assam mentioned above applies to Lakshadweep and Sikkim.

3. In order to contest for any other seat, he must be an elector for any Parliamentary constituency.

➤ ***Qualifications for membership of a State Legislature (Section 5 of RPA, 1951):***

1. In order to contest a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State or Union Territory, he must be a member of any of those castes or of those tribes, as the case may be, and must be an elector for any Assembly constituency in that State or Union Territory;
2. In order to contest a seat reserved for an autonomous district of Assam, he must be a member of a Scheduled Tribe of any autonomous district and must be an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and
3. In order to contest any other seat, he must be an elector for any Assembly constituency in that State or Union Territory.
4. In order to be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland for the period referred to in clause (2) of article 371A, he must be a member of the regional council referred to in that article.
5. Section 5A mentions some special provisions regarding Qualifications for membership of Legislative Assembly of Sikkim.

➤ ***Qualifications for membership of a Legislative Council:***

1. In order to be qualified to contest a seat of Legislative Council of a State or Union Territory to be filled by election, he must be an elector for any Assembly constituency in that State.
2. In order to be qualified to be chosen for a seat in the Legislative Council of a State or Union Territory to be filled by nomination by the Governor he must be an ordinarily resident in the State or Union Territory.

The third condition of Article 84 of constitution led the parliament to include other qualifications for MPs in the Representation of People Act (1951). These qualifications-

- Only an elector can be elected. Thus, the candidate must be registered as a voter in a parliamentary constituency and must be eligible to vote. If due to any reason the person loses eligibility to vote, he would lose eligibility to contest also. For example if a person is jailed or in lawful detention at the time of elections, he shall *not be eligible for voting*. However, if a person is in preventive custody, he can vote. These define if a person is able to contest for election of MP or not.
- It is not necessary that a person should be registered as a voter in the same constituency. This is applicable for both Lok Sabha and Rajya Sabha.
- A person from reserved category only can contest election if the Lok Sabha seat is reserved for these categories. However, an SC/ST person can contest election on an unreserved seat also.