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Educational Qualifications for the Legislators: A Comparative Study

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Abstract: *Constitutional law governs Indian politics. In our country, there is a dual system of government, in which a central government sits at the center and a state at the periphery. By voting, the people decide which representatives they want and which government they want. That government formulates policies to address the concerns of the people. India follows the system of Universal Adult Franchise according to which every person of sound mind above the age of 18 is entitled to vote and his will be treated equally. The research paper deals with the need of educational qualifications for India and to make people aware of how education can play a key role in allowing politicians to make wise decisions that will ultimately benefit us only, as well as to draw a clear distinction between our country's politicians and politicians from other countries. Only by electing WEP will we be able to effect change; otherwise, we will be unable.*

Keywords: *Politics, Educated Politicians, Educational Qualifications, Universal Adult Franchise.*

I. INTRODUCTION

Elections are the lifeblood of India's democratic polity. The supreme law included provisions for an election machinery to conduct free and fair elections. The goal of the entire electoral process was to ensure that the people got the best representatives to govern them in the most efficient way possible. One of the ways to ensure that people get the best representatives is to elect those persons who are educated because education makes the life of the man prosperous and change the whole outlook of his by remedying the wrong ways in which he lives his life. According to Plato "Education is an integral and necessary part of the larger subject of human society's well-being in The Republic. The ultimate goal of education is to help people understand the good idea, which is to be virtuous and there can be no virtue without knowledge".¹ The requirement of a minimum educational qualification as a mandatory condition for contesting elections was not specified in either the Constitution or in the relevant Statutes. When the Parliament prescribed the qualifications for MPs and MLAs in the early 1950s, it decided not to include any educational qualification, understandably because doing so would have meant closing the doors of those august Houses to vast numbers of illiterates, as well as freedom fighters who had left schools and colleges to join the fight for independence. When in Rajasthan (2014) and Haryana (2015), the minimum educational qualifications limit was proposed for contesting in the Panchayati Raj, then it led to debate because a person who fulfills the condition as per the relevant statutes but lagging behind due to non-educational background, will not be able to contest the elections.

A. Literature Review

Arti Puri, 'Educational Qualification for Elected Representatives' (2018) Vol. 8 (Issue 5)

International Journal of Research in Social Sciences²

The author in this article is discussing about the qualification for politicians in India. When the Parliament established the qualifications for MPs and MLAs in the early 1950s, it wisely decided not to include any educational requirements, as this would have effectively closed the doors of those Houses to vast numbers of illiterates and even to freedom fighters who had left schools and colleges to join the fight for independence and had no formal education. However, when the minimum educational qualification for Panchayat contestants was added to their respective Panchayati Raj Acts in Rajasthan (2014) and Haryana (2015), it sparked a debate about whether the time has come to impose a similar requirement for Members of Parliament and State Legislative Assemblies.

¹ Madonna Murphy, 'Plato's Philosophy of Education and the Common Core debate' (2015) Association for the Development of Philosophy Teaching (ADOPT) Spring Conference 1.

² Arti Puri, 'Educational Qualification for Elected Representatives' (2018) Vol. 8 (Issue 5) International Journal of Research in Social Sciences 835.

The implementation of this criteria at the grassroots level resulted in a situation where someone became qualified under constitutional rules to run for MP and MLA but was unable to run for panchayat election owing to a lack of the required educational qualification.

Madonna Murphy, 'Plato's Philosophy of Education and the Common Core debate' (2015)³

In this paper, the author is discussing about Greek views regarding education and educational procedures have had a significant impact on other cultures. One of Rome's greatest contributions to humanity was to spread the Greek legacy throughout the Western world. Between 1200 to 490 B.C., Greek civilisation flourished. Around 500 B.C., during the Age of Pericles, the author observed the first concerted endeavour in a Western culture for formal education. The study of ancient Greek civilisation teaches vital lessons about citizenship and civic education, emphasising the need of education in the development of decent citizens. Plato's ideas on the aim of education, what should be taught to others, and how the teacher should transfer this knowledge are revealed via textual study of his numerous dialogues. Many of the issues that today's educators encounter is illuminated by Plato's educational philosophy. The author in this paper encourages all to extend Plato's argument to the contemporary common core discussion in particular.

Richard Briffault, 'The Contested Right to Vote' (2002) Vol. 100 (No. 6) Michigan Law Review⁴

The author in this paper is discussing about the United States and representative democracy. The events of late 2000 must have been unsettling to say the least. The candidate who obtained the most votes in the election for the most significant public office - the only genuinely national office - was proclaimed the loser, while his second-place opponent, who received 540,000 less votes, was crowned the winner. This decision was determined by the outcome in Florida, where about 150,000 ballots were discovered to be invalid. Moreover, hundreds of other Florida votes almost definitely did not represent the wishes of the voters who cast them owing to faults in ballot design. The uncounted ballots and votes that the butterfly ballot allegedly misrepresented was significantly more than the difference in votes between the state's first and second-place presidential candidates. It was later found out that between four and six million votes were lost in the 2000 election worldwide, with 1.5 to 2 million votes lost owing to malfunctioning voting equipment and perplexing ballots. Several states have greater than Florida's rate of spoiled presidential ballots.

Vijay Pal Singh, 'Education: A Fundamental Right in India'⁵

In this research paper the author discusses that the education is the most effective vehicle for human growth. It broadens, enhances, and improves a person's vision of the future. Without education, a man is nothing more than a beast.

B. Statement of Problem

In our country education is biggest issue because it is not within the reach of everyone such as tribal people, poor people etc. India's literacy rate remains at 74% of the population. Even if the law is changed to allow only literate people (those who can read and write in one language) to run for office, 26% of the population will be excluded. Only 8.1% of Indian adults have a college diploma. So, if there is change in the law to allow only graduates to run for office, it will deprive 92% of the population.

C. Hypothesis

The work mainly proceeds with the hypothesis that:

- 1) Electoral candidates who are self-funded and wealthy are not only lucrative to parties but also act as proxies for their electoral strength.
- 2) In India, literacy level is low and many voters are ignorant of the fact that what role an educational legislators can play in comparison to uneducated legislators and as well as ill-informed too.

D. Objectives Of Study

The research study is made to achieve the following objectives:

- 1) To highlight the importance of minimum educational qualifications for the legislators.
- 2) To layout the legal provisions dealing with the qualifications and disqualifications under the Constitution and the Representation of people's Act.
- 3) To make a comparative analysis of India and other countries with regard to the educational qualifications.

³ Ibid.

⁴ Richard Briffault, 'The Contested Right to Vote' (2002) Vol. 100 (No. 6) Michigan Law Review 1506.

⁵ Vijay Pal Singh, 'Education: A Fundamental Right in India' (*Legal Services India*) <https://www.legalserviceindia.com/articles/edu_pes.htm> assessed 7 November 2023.

E. Limitation And Scope

In this research paper, I am going to compare India and Pakistan on the basis of the educational qualification for legislators and will discuss about the various Indian laws deals with the educational qualification for politicians.

F. Research Questions

- 1) Whether there should be a mandate on legislators for having minimum educational qualifications or not?
- 2) Whether India is insignificant in regard to other countries when it comes to the point of being governed by uneducated legislators?

II. EDUCATIONAL QUALIFICATIONS FOR THE LEGISLATORS: A COMPARATIVE STUDY

The Indian constitution contains provisions requiring the state to provide education to all of its citizens. In its original enactment, the Indian constitution defined education as a state subject. In 1976, “an amendment to Article 42 of the constitution was added, and education became a concurrent list subject, allowing the central government to legislate it in the manner best suited to it. Furthermore, India is a signatory to a number of international covenants, including the Jomtien Declaration, the UNCRC, the MDG goals, the Dakar Declaration, and the SAARC SDG charter for children, all of which are binding on its commitment to making education a reality for all children”. Education became a fundamental right in 2002 when the 86th Constitutional Amendment became law. Parliament adopted “the Right of Children to Free and Compulsory Education Act”, which provides for the implementation of this fundamental right. Both came into effect from April 1, 2010. This has made JFR by providing free and compulsory education for all children aged 6 to 14 and make it obligatory on the part of the government to ensure that FPE is being given to such children.⁶

The Supreme Court ruled in *Mohini Jain v State of Karnataka*⁷ “that the right to an education is a fundamental right under Article 21 of the Constitution”.

In *Bandhua Mukti Morcha v Union of India*⁸, Justices K. Ramaswamy and Sagir Ahmad observed that “illiteracy has many negative consequences in a democracy governed by the rule of law. Educated citizens can meaningfully exercise their political rights, fulfil their social responsibilities, and cultivate a spirit of tolerance and reform”.

In *M.C. Mehta v State of Tamil Nadu*⁹, “the Supreme Court stated that in order for children to reach their full potential, they should be prohibited from doing hazardous work and should have access to education and in this regard, the Court ruled that the government should start the initiative that provides job-oriented education and adjusts the timings so that their employment is not jeopardized”.

1) Concerns Expressed By The Constitution's Drafters Regarding Educational Qualifications

Almost all Indian electors at the time were illiterate, so the drafters of the constitution left the issue to Parliament to discuss at a later date.¹⁰ B. R. Ambedkar was of the view that if one wants to become a legislator and wish to serve the legislature, then he should possess quality more than just being only a voter and he should possess required experience, requisite knowledge on how to govern the affairs of the country and to serve the needs of the same. But when Prof. K. T. Shah made an amendment in the then article-152 seeking election to the legislature that one who is not literate will not be able to seat in legislature but B. R. Ambedkar while answering on this topic said “it will be left to the domain of the legislature and goes on saying that if legislature will feel the need of the same, then they will surely incorporate it as one of the qualifications “education, gender, economic status, or religion cannot be used to deny an adult Indian the right to vote or run for office”¹¹ and as a result, they enacted relevant provisions concerning the qualifications and disqualifications of candidates for the offices of President, MPs, and MLAs. However, there was no mention of a minimum educational requirement. Even after the right to education was declared a fundamental right under Article 21A, it was not made a requirement for becoming eligible for these positions.¹²

⁶Vijay Pal Singh, 'Education: A Fundamental Right in India' (*Legal Services India*) <https://www.legalserviceindia.com/articles/edu_pes.htm> assessed 7 November 2023.

⁷1998 A.I.R 1858.

⁸(1997) 10 SCC 549.

⁹1991 A.I.R 417.

¹⁰V.S. Rama Devi and S.K. Mendiratta, *How India Votes Election Laws, Practice and Procedure*, (Second Edition, Lexis Nexes Butterworth, 2008) 387.

¹¹Barkha Deva, 'Big Questions for our generation' (*The Hindu*, 21 December 2015) <<https://www.thehindu.com/opinion/lead/big-questions-for-our-generation/article8011048.ece>> assessed 7 November 2023.

¹²Arti Puri, 'Educational Qualification for Elected Representatives' (2018) Vol. 8 (Issue 5)

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2) *Minimum Educational Requirement For Contesting Elections*

"Leadership is not about the next election, it is about the next generation," said Simon Oliver Sinek, a BAA¹³. Education in today's context have become so important that it contributes to the NBP and towards the development of the people and the country. Therefore, it becomes necessary to discuss on the issue whether the criteria of minimum education for the electoral candidates should be laid down or not. The Parliament consists of the President and the two houses i.e., Lok Sabha (lower house) and Rajya Sabha (upper house). The Parliament make most of the policies and the nation-building programmes. It is therefore utmost necessary that people sitting in such LMP should possess at least minimum educational qualifications so that an efficient administration can be carried out and will enable and contribute towards the development of the nation.

3) *Qualifications/Disqualifications For Members Of Parliament And Legislative Assembly*

a) *Under Constitution of India, 1950:*

- Article -84 deals with the "Qualification for membership of Parliament".
- Article -102 deals with the "Disqualification for memberships".
- Article-173 deals with the "Qualification for membership of the State Legislature".
- Article-191 deals with the "Disqualification for membership".

b) *Under Representation of People's Act:*

- Section-3 deals with the "Qualification for membership of the Council of States".
- Section-4 deals with the "Qualifications for membership of the House of the People".
- Section-5 deals with the "Qualifications for membership of a Legislative Assembly".
- Section-5A deals with the "Qualifications for membership of Legislative Assembly of Sikkim".
- Section-6 deals with the "Qualification for membership of a Legislative Council".
- Section-8 deals with the "Disqualification on conviction for certain offences".
- Section-8A deals with the "Disqualification on ground of corrupt practices".
- Section-9 deals with the "Disqualification for dismissal for corruption or disloyalty".
- Section-9A deals with the "Disqualification for Government contracts, etc".
- Section-10 deals with the "Disqualification for office under Government company".
- Section-10A deals with the "Disqualification for failure to lodge account of election expenses".

A person has to fulfill the requirements under the constitution of India in addition to the representation of people act. Though various reforms have been done by the committee in order to ensure free and fair election such as anti-defection law, problem of corruption and illegal funding etc. but the committee have not touched the issue on the minimum educational qualification for the electoral candidates which is an ensuing problem.

4) *The Reform Of Minimum Educational Qualification Required By Mp/Mla*

Many people assert that educational requirements are discriminative and 'abridge their constitutional right to vote.' They argue that, because of low levels of education, such laws disproportionately affect the rural poor. In his book "The Right to Vote: The Contested History of Democracy in the United States," historian Alexander Keyssar explains that "LQ were consistently used to constrict the scope of the 'right to vote,' excluding at various points landless labourers, women, and blacks".¹⁴

The Supreme Court distinguished between the "right" to vote (statutory) and the "freedom" to vote (constitutional) in the case of "*Union of India v Association for Democratic Reforms*"¹⁵, which means that the "legislature is permitted and entitled to regulate the election process (which it does through the Representation of the People Act, and other similar statutes) but if the state is permitted to introduce extraneous considerations such as "literacy" to justify such legislation, the state's most important hurdle would be to establish a link between education and election".

¹³ Pranav Arooa, 'Requirement of Minimal Educational Qualification By Electoral Candidate' (*Law Corner*, 29 June 2019) <<https://lawcorner.in/requirement-of-minimum-educational-qualification-by-electoral-candidate/>> assessed 7 November 2023.

¹⁴ Richard Briffault, 'The Contested Right to Vote' (2002) Vol. 100 (No. 6) *Michigan Law Review* 1506.

¹⁵ (2002) 5 SCC 294.

5) *The Rajasthan Panchayati Raj Act 1994 And Minimum Educational Qualification*

The state of Rajasthan through the Rajasthan Panchayati Raj (Second Amendment) Ordinance 2014 (promulgated on Dec 20, 2014) introduced the “minimum educational qualification was prescribed for contesting local body elections.” Section -19(r) provided that “a member of a Zila Parishad or a Panchayat Samiti should have PSE”. Section-19(s) provided that “the Sarpanch of a Scheduled Area should have passed Class V”, and section-19(t) provided that “the Sarpanch of a Panchayat other than in a Scheduled Area should have passed Class VIII”.

This ordinance made eligible candidate to become ineligible due to want of minimum educational requirement and the same was challenged in the Supreme court in the form of PIL but the apex court refused to entertain the same and told that High Court is the right forum to challenge the validity of the Rajasthan ordinance act, 2014. In *Dulari Devi & Ors v State of Rajasthan & Ors.*, the High Court for Rajasthan Bench at Jaipur did not take steps to pass any interim order. Several activists argued that “PGNEV and an understanding of local issues gained through experience, rather than Class X certificates”¹⁶. Furthermore, “the ordinance will bar the most marginalised groups from running because they are unlikely to have the necessary educational qualifications. Despite the criticism, the government proceeded with the elections”¹⁷.

6) *The Haryana Panchayat Raj Act 1994 And Minimum Educational Qualification*

In 2015, Haryana government passed an ordinance and then later amending the Haryana Panchayati Raj Act, 1994 with a view to mandate educational qualifications for the candidates contesting local elections. Section-175¹⁸ 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”. The 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 5th pass”. The notion behind such insertion is to ensure that who are occupying such seats in the Panchayat are well aware of their roles and tasks because panchayats indeed perform multi-task from planning till implementation of various government schemes. Therefore, it is essential that whoever is occupying must be at least aware of their duties. But the same was challenged as striking the roots of the democracy and against the very foundation of the constitutional provisions in the case of *Rajbala v State of Haryana*¹⁹, but the court found it reasonable and upheld the validity of the same.

By analysing the above two situation, the researcher has come to the conclusion that mandating educational requirement will not be able to produce a desired result as seen because in India literacy level is still low and if the people are coming from the lower-strata of the class, then that would mean to deprive them when they are already under-privileged. Therefore, if the state has failed in providing this objective of literacy level, then the same should not be rectified by suppressing the voices of such MPs/MLAs²⁰. Amartya Sen also criticised this act as saying “the persons who are already deprived will suffer more due to such deprivation, then what will constitute their privilege”²¹. Therefore, the time has not come where MEQ for the legislators will effectively provide a desired result because India has low literacy level, in order to achieve the high % of literacy level, first the state must strive toward attaining such fulfilment, because it has been seen in the history of India such as Smriti Irani, P.M. Narendra Modi do not have such outstanding qualifications but are enough competent to govern the Indian system. Though, education is of utmost importance but a potential leader must not be judged by his degree rather than by his intellectuals.

7) *Comparison Of Pakistan With India*

PAKISTAN: In 2002, General Musharraf, the then President of Pakistan introduced that Bachelor's degree or higher was required for all candidates to contest elections for the lower house of parliament due to which 60 out of 207 legislators were disqualified.

¹⁶ ‘Policy distorts gender equity’ (*The Hindu*, 13 January 2015) <<https://www.thehindu.com/todays-paper/tp-opinion/policy-distorts-gender-equity/article6782399.ece>> assessed 7 November 2023.

¹⁷ Ruchi Gupta, ‘Not a level playing field in Rajasthan’ (*The Hindustan Times*, 14 January 2015) <<https://www.hindustantimes.com/ht-view/not-a-level-playing-field-in-rajasthan/story-0rqifD1irpb7VnDcTC49NJ.html>> assessed 7 November 2023.

¹⁸ 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.

¹⁹ W.P.(C)No. of 2015.

²⁰ See Supra 11.

²¹ ‘Re-examine literacy criteria for Panchayat Polls: Amartya Sen’ (*The Hindustan Times*) <https://zeenews.india.com/news/india/re-examine-literacy-criteria-for-panchayat-polls-amartya-sen_1835817.html> assessed 7 November 2023.

But the Commission granted that candidates who have Islamic degrees, then that would be deemed to be equivalence to a Bachelor's degree. Due to which this issue became highly controversial and was challenged in the Supreme court of Pakistan.

EFFECT: This policy experiment resulted in the “disqualification of 60 of the 207 MNAs elected in the 1997 election, accounting for 29% of the National Assembly incumbents. Even more dramatically, it barred 97% of the country from running for Parliament, leaving only 3% of the voting population with a college diploma eligible to run in national elections”.

RESULT: As a result, Political competition fell sharply in areas where the incumbent was disqualified and finding a replacement candidate was difficult. The educated, religious party legislator initially increased spending, but this effect slimmed off in the second half of the term resulting in low level of education.

The researcher has come to the conclusion that one cannot possibly argue that only educated legislators can contribute well to nation-building programme because as studied above this might result into declination of the competition but in India if this requirement is made mandatory then it will surely lead to the hap-hazard situation and mal-administration of the system.

III. CONCLUSION AND SUGGESTIONS

A. Conclusion

The researcher has come to the conclusion that India's literacy rate remains at 74% of the population. Even if the law is changed to allow only literate people (those who can read and write in one language) to run for office, 26% of the population will be excluded. Only 8.1% of Indian adults have a college diploma. So, if there is change in the law to allow only graduates to run for office, it will deprive 92% of the population²². Therefore, there is imperative need to make India literacy level high and then this requirement of minimum education can be made mandatory, otherwise it will impede the growth of the society when its proceeding towards becoming a developed nation.

B. Suggestions

By the analysis of the topic, I would like to suggest that:

- 1) At least the cabinet ministers, if not all, should possess degrees according to the portfolios they are granted so that an efficient administration can be carried out.
- 2) Making education a reality is mandate on part of the state and if this fulfilled, one can think forward because ultimately it is the people wish whether they want a literate or illiterate leader.
- 3) In principle, educational qualifications are acceptable; however, in order for them to be applicable to all contestants at all levels of political institutions, adequate time must be allotted.

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LIST OF ABBREVIATIONS

| Abbreviations | Full Forms |
|---------------|--|
| BAA | British-American Author |
| FPE | Free Primary Education |
| JFR | Justifiable Fundamental Right |
| LMP | Law-Making Process |
| LQ | Literary Qualifications |
| MEQ | Mandating Educational Qualifications |
| NBP | Nation-Building Process |
| PGNEV | Panchayat Governance Necessitates Ethical Values |
| PSE | Passed Secondary Education |
| WEP | Well-Educated Politicians |

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