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**A COMPARATIVE STUDY OF THE DISQUALIFICATION OF
MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURE IN
INDIA AND THE USA**

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ABSTRACT

This research paper deals with the legislation intact in India and USA that deals with the disqualification of members of parliament and state legislature in India and the USA. It deals with how both the constitutions define the disqualification and key distinctions between disqualifications in the Indian Constitution and the US Constitution. Two literature articles titled “Parliamentary Disqualification on Conviction: Issues and Remedies” and “Qualifications of Members of Congress” are also reviewed in this research paper. Which helped in the comparative study between both the country.

KEYWORDS

Parliament Membership, Disqualification, Literature review, Comparative analysis, Constitution.

INTRODUCTION

While the qualifications for membership to Parliament are almost similar in India and the US, there is a vast difference in terms of disqualifications. The Constitution of India [“the Constitution”], and the Representation of People Act [“the R.P. Act”] provide for several disqualifications from both being a member of the Parliament or State Legislature, and grounds for removal after becoming a member. Meanwhile, the US Constitution does not provide any specific provision listing down the disqualifications, but merely some provisions that can be construed as such.

Under the Constitution, a person is disqualified by holding any office of profit, being of unsound mind, or an undischarged insolvent, and being a non-citizen of India.¹ Additionally, the Constitution provides that a person can be disqualified by any other law – here the R.P. Act. Meanwhile, in the US, a person is only disqualified if they are involved in any insurrection, rebellion, or aid to enemies, or by holding any other federal office², or by impeachment and conviction.

RESEARCH OBJECTIVE

1. What are the major laws regarding disqualification of membership in India and the USA?
2. What are the key distinctions between disqualifications in the Indian Constitution and the US Constitution?

DISQUALIFICATION OF MEMBERSHIP IN INDIA

Disqualification of membership in India is governed by The Representation of the People’s Act, 1951(Act 43 of 1951). Article 8, 1(a)³ of the act states the article of the Indian Penal Code under which, a member if convicted can be disqualified. All of these section deals with heinous crimes like bribery, rape, or promoting religious imbalance in the country. Further Article 8, 1(b) deals with the practice of untouchability and so on. Other offenses include

¹ The Constitution of India, art. 102.

² The Constitution of United States of America, art.1, s.6, c2

³ The Representation of the People’s Act, 1951(Act 43 of 1951), art. 8.

importing/exporting prohibited goods, being part of an illegal association, committing terrorist and disruptive activities, and any offense of insulting the national flag.

The Supreme court of India, in 2013 held in a landmark judgment that held provisions of the R.P. Act violative of Articles 102 (1) and 191 (1) of the Constitution of India. These provisions were there to prevent the disqualification of the Parliamentarians and Member of the State Legislative Assemblies for the period of three months or if an appeal is filed during that period of three months, till the disposal of the appeal on the conviction in criminal offenses. However, there were declared null and void by the division bench of the supreme court.

Article 8(a) states that a person can be disqualified if found guilty of corruption or disloyalty for a maximum period of 6 years. The president will determine whether he should be disqualified and the period.

Article 10⁴ states that “A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than twenty-five percent. Share.” And Article 10(A) mentions that the election commission can declare any member by a published order in the official gazette for 3 years if the member has failed to lodge the election expense account without any reasonable reason.

Article (11)⁵ of the act states that The Election commission has the full authority to remove or reduce the time of any member found guilty of any crime above mentioned except Article 8(A).

Article 11A (2) mentions the decision of disqualification by the president shall stay in place without any remedy.

DISQUALIFICATION OF MEMBERSHIP IN THE USA

USA doesn't have any separate provision or act to supervise the disqualification. However, in the 14th amendment section 3, the basic guidelines were indicated which stated-

“No Person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having

⁴ The Representation of the People's Act, 1951(Act 43 of 1951), art. 10.

⁵ The Representation of the People's Act, 1951(Act 43 of 1951), art. 11.

*previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability”.*⁶

Anyone who has previously taken an oath of office (Senators, Representatives, and other public officials) is barred from holding public office if they have "acted in insurrection or rebellion" against the United States, according to Section 3 of the Fourteenth Amendment. This implies that lawmakers who join in or promote a revolt against the government may be removed from office and barred from seeking state or federal office in the future, at least theoretically. However, the 14th Amendment has never made it obvious how disqualification works.

LITERATURE REVIEW-

1. Parliamentary Disqualification on Conviction: Issues and Remedies⁷

The author discusses the disqualifications of membership to Parliament provided under the Constitution and the R.P. Act. He further discusses the constitutionality of Section 8(4) of the R.P. Act with the help of various case laws. The article discusses the issues and consequences of the removal of Section 8(4) of the R.P. Act in detail and provides solutions and recommendations for these issues. The law in India prescribes harsh disqualifications, and the removal of Section 8(4) has made it easier to disqualify the members of Parliament and Legislative Assemblies.

2. Qualifications of Members of Congress⁸

In this paper, the author discusses the grounds for qualifications, and disqualifications of the members of the Senate and the House of Representatives in the USA. The author highlights that the Constitution of the US apart from the three positive grounds for membership to the Parliament provides for certain disqualifications. It can be derived from the paper that the disqualifications prescribed in the US Constitution are comparatively much relaxed than

⁶ The Constitution of United States of America, Fourth teen Amendment, s. 3.

⁷ Waseem Ahmad Bhat, "Parliamentary Disqualification on Conviction: Issues and Remedies", 6 GNLU J.L. DEV. & POL. 155 (2016).

⁸ Jack Maskell, "Qualifications of Members of Congress", CSR REPORT, (2015).

prescribed in the Indian Constitution. The Senators and Representatives enjoy a secure tenure in comparison to their Indian counterparts in Parliament.



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CONCLUSION

Through the help of this research paper, it can be concluded that India and USA both being one of the biggest democracies around the globe have a vast difference in their laws regarding the Disqualification of Membership of State legislature and Parliament. Laws regarding disqualification in India are much stringent than those in USA. The laws in use are much relaxed because there are only three provisions in which a member can be disqualified, however in India it does not provide scope for any misdemeanour by any member.



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