

# Theme 1 - Qualification & Disqualification

## Guidance Plan:

1. This falls in RO's core statutory work, therefore the constitutional and statutory provisions on Qualifications and Disqualifications, have to be thoroughly understood.
2. The slides breakdown the Qualification and Disqualification, in terms of grounds and also add the extant judicial pronouncements explaining the grounds.
3. The slides will also discern for the RO that while he alone is the statutory decision making authority (**S 36 RPA 1951**) yet the space is available to the RO where he can take inputs (informally) from other authorities for clarity before the decision making stage.
4. The RO has to exercise caution that no action of RO is interpreted as a violation of his statutory autonomy, which if factual, may trigger complaints and judicial pleas to vitiate the proceedings.
5. The RO must clearly understand the legal position **{S 36(2) RPA 1951}** that reference date w.r.t which qualification and disqualification of candidates is to be determined is the date fixed for scrutiny of nominations.
6. These 27 slides are therefore structured as an overall narrative with a sub-text of RO's attention being drawn to the actual legal provisions.
7. At the end of the presentation a check-list/risk matrix has been attempted for a summary-cum-revision for this sub-thematic.
8. A question & answer format is also embedded for the RO to do a self-test after going through these slides



## 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  
**(RPA 1951)****

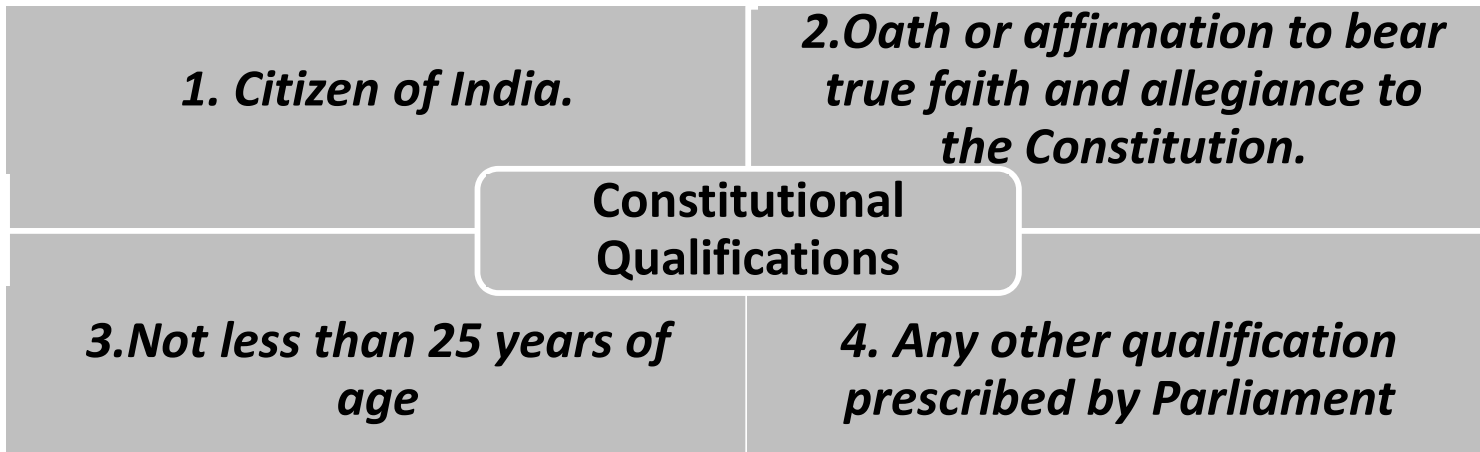
**NB: Crucial date for determining whether a candidate is qualified or disqualified is not the date of filing nomination paper but the date fixed for the scrutiny of nominations.**



## 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:



Note: Oath as per the format given in the Third schedule of the Constitution under **A 84(a)**

**ANNEXURE 13****FORM OF OATH OR AFFIRMATION****[ARTICLE 84(A) OF THE CONSTITUTION OF INDIA]**

(To be made by a candidate for election to Parliament)

I..... having been nominated as a candidate to fill a seat in the Council of States (\*House of the People) do swear in the name of the God /Solemnly affirm that I will bear true faith and allegiance to the constitution of India as by law established and that I will uphold the sovereignty and integrity of India.

Signature and name in block letters of the candidate

Sworn in the name of God/Solemnly affirmed by Shri/ Shrimati at ..... (Place) at .....(hour) this the.....day of .....200..... before me.

Signature of authorized person  
Name and designation and Seal

**(CERTIFICATE FOR RECEIPT OF OATH)**

(To be handed over to the candidate by the authorized person)

Certified that.....(name) a candidate for election to the Council of States (\*or the House of the People) has made and subscribed the oath / affirmation as required by the Constitution of India before me at my office at ..... (hour) on .....(date).

Signature of authorized person  
Name Designation and Seal

Date:

\*Strike out which is not applicable.

N.B.: This Form should be supplied to the candidates both in English and in the Official Language of the State/ Union Territory.

**FORM OF OATH OR AFFIRMATION**  
**[Article 173 (A) of the Constitution of India]**

(To be made by a candidate for election to the Legislature of a State)

I..... having been nominated as a candidate to fill a seat in the Legislative Assembly (\*or Legislative Council) do swear in the name of the God /Solemnly affirm that I will bear true faith and allegiance to the constitution of India as by law established and that I will uphold the sovereignty and integrity of India.

Signature and name in block letters of the candidate

Sworn in the name of God/Solemnly affirmed by Shri/ Shrimati at..... (Place) at .....(hour) this the.....day of .....200..... before me.

Signature of authorized person Name, designation and Seal

**(CERTIFICATE FOR RECEIPT OF OATH)**

(To be handed over to the candidate by the authorized person)

Certified that (name) a candidate for election to the Legislative Assembly (\*or Legislative Council) has made and subscribed the oath / affirmation as required by the Constitution of India before me at my office at ..... (hour) on.....(date).

Signature of authorized person  
Name Designation and Seal

Date:

\*Strike out which is not applicable.

N.B.: This Form should be supplied to the candidates both in English and in the Official Language of the State/ Union Territory.

Contd...



## Oath or Affirmation – contd.

### 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 whom:

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.

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## Oath or Affirmation-Contd.

### Window for making Oath/when:

- 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.

### Multiple constituency situations - 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.

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## 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 Presidency 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 or under Preventive Detention.
- Commandant of the detention camp if the candidate is so confined or is under such detention. Medical Superintendent incharge of the hospital /Medical Practitioner attending to the candidate in case candidate is confined to bed in a hospital or elsewhere.

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## Oath or Affirmation-Contd.

### Authorities Before Whom Oath Or Affirmation To Be Made:

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

**NB 1: Certificate of oath to be given to the candidate without his applying for it**

**NB 2: Oath, if taken before a different authority, the onus is on the candidate to produce Certificate of Oath before 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.

**NB: Crucial date for determining whether a candidate fulfils age qualification is not the date of filing nomination paper but the date fixed for the scrutiny of nominations [S 36 (2) (a) RPA 1951]**



## Statutory Qualification (S 4, 5 RPA, 1951)

### 1. Qualifications for election to LS (S 4 RPA 1951) :

- a. In the case of the constituencies reserved for SCs or STs, the candidate should be a member of any of those castes or tribes, in any State and an elector for any PC;
- b. In the case of Lakshadweep (ST) PC, Sikkim PC and seats reserved for STs in Autonomous Districts of Assam:
  - i. Lakshadweep - candidate should be a member of any ST of Lakshadweep and an elector in Lakshadweep
  - ii. Sikkim PC - candidate should be an elector of PC of Sikkim
  - iii. Autonomous District of Assam - candidate should be a member of ST of any Autonomous District and elector for PC comprising such Autonomous District.
- c. In the case of any other constituency in any State, the candidate should be an elector for any PC in India.

### 2. Qualifications for election to LA (S 5 RPA 1951) :

- a. 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;
- b. In the case of any other constituency, candidate should be an elector for any AC in that State
- c. In the case of a seat reserved for an autonomous district of Assam, the candidate should be a member of a [Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district



## Constitutional Disqualifications – Listing of grounds [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 Central/State Government.

of unsound mind and stand, so declared by competent court

Undischarged insolvent.

Not a citizen of India or has acquired citizenship of a foreign State or is under acknowledgement of allegiance or adherence to a foreign State.

Any other disqualification prescribed by Parliament.



# Office of profit under the Government

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

### Meaning of ‘Office of profit under the Government’:

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*

**NB1:As per the Apex Court ruling (Bhagwati Prasad Dixit Gorewala vs Rajiv Gandhi - AIR 1986 SC 1534), an elected office is not treated as office under the Govt.**

**NB 2 : Any compensatory payment such as TA/DA, sitting fee ordinarily not to be treated as ‘profit’**



# Office of profit under the Government - Removal of Disqualification Acts Central and State Statutes



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

- However, Parliament has passed an Act removing disqualification in respect of certain offices mentioned therein for elections to Parliament
- Please refer to the State specific Acts regarding removal of Disqualification in relation to election to Legislature of State concerned

**NB: When an office exempted from Disqualification under the law, the holder of such office is not deemed to be holding office of profit, irrespective of receiving remuneration.**



## Person of Unsound 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 **The Mental Healthcare Act, 2017 (earlier under Indian Lunacy Act, 1912)**



## Undischarged insolvent

### [Articles 102 (1)(c) & 191 (1) (c)]:

- A person **adjudged insolvent by a competent insolvency court** under the **Insolvency and Bankruptcy Code, 2016, (Earlier 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.



## Not a citizen of India or acknowledgement of allegiance or adherence to a foreign State

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

- 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 - listing

## Articles 102(1)(e) and 191 (1)(e) – RPA 1951



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

**S 10A** - failure to lodge account of election expenses

**S 8** - conviction for certain offences

**S 8A** - commission of corrupt practices

Statutory Disqualifications

**S 10** - holding office under government company

**S 9** - dismissal from govt. service for corruption or disloyalty

**S 9A** - contract with "appropriate government"



## Disqualification on conviction for certain offences

### S 8, RPA, 1951

- ✓ **S 8, RPA, 1951** 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.

**NB 1: Please note the difference between release on bail vs. stay on conviction**

**NB 2 : Conviction by any competent Court in India, will attract disqualification for all elections to State Legislatures or Parliament any where in India.**

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## Disqualification on conviction - Period of disqualification...contd.

- I. Disqualification is for a period of 6 years, commencing from the date of conviction. In case of imprisonment, the Disqualification period shall continue during the period of imprisonment and, thereafter, for a period of six years after the release.
- II. Offences and period of imprisonment for disqualification -
  - (a) On conviction for offences mentioned **u/ S 8(1) RPA 1951** -Disqualification for six years even if there is no sentence of imprisonment.
  - (b) On conviction, for offences mentioned **u/s 8(2) RPA 1951** – Disqualification only if there is sentence or imprisonment for minimum 6 months
  - (c) On conviction for any other offences (**Sec 8(3) RPA 1951**) - minimum imprisonment of 2 years only will result in disqualification



## Disqualification on conviction – conviction for more than one offence in a common Trial...contd.



- III. Release on bail does not remove disqualification unless conviction is also stayed during pendency of appeal
- IV. In case of conviction, under different penal sections, in a common trial and with the sentences of imprisonment running consecutively, for the purposes of **S 8(3) RPA, 1951**, the period of sentence of imprisonment for each offence should be added and if the total length of time is two years or more, the convicted person shall be disqualified **u/s 8(3) of RPA, 1951**.

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## Disqualification on ground of corrupt practices **S 8A RPA 1951**

- i. Disqualification on ground of corrupt practices (as defined under **S 123, RPA 1951**) arises out of order passed by the President on the opinion tendered by ECI (**S 8A, RPA 1951**)
- ii. List of such disqualified persons, if any, is circulated by ECI from time to time.

**NB 1: RO must check the updated list of disqualified persons and also note the time period for the disqualification as mentioned in the list**

**NB 2: The list circulated by the ECI operates as a bar to contest elections, with regard to the listed person all over India.**



# Disqualification for dismissal from government service for corruption or disloyalty to State **S 9, RPA, 1951**

## Dismissal from Govt. service

- A candidate dismissed from government service within the last five years must produce a certificate along with Nomination Paper issued from ECI that he was not dismissed for corruption or disloyalty to State

## Filing of certificate

- Such certificate must be filed with the nomination paper
- Otherwise nomination shall be rejected **[S 33(3) RPA 1951]**

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## Disqualification for contract with appropriate government

### S 9A, RPA, 1951 – contd.



- ‘Appropriate government’ means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature
- Conditions
  - i. Contract should be subsisting on the date of scrutiny of nominations;
  - ii. Contract should be either for supply of goods to the govt or for execution of works.
  - iii. Contract should be with the ‘appropriate government’

**NB1: Contract of gas agency, petrol pump, PD shops and such dealerships, prima facie will not constitute a ‘contract u/s 9A’**

**NB2: Prima facie, contracts with central PSUs/agencies will not constitute a disqualification for State Legislature and vice versa**



## Disqualification for contract with appropriate government

### S 9A, RPA, 1951 – contd.



- Objection **u/s 9A, RPA, 1951**

ECI Instruction no. 509/MISC/ECI/CIRCULAR/FUNC/JUD/RCC/2017, dated 13.02.2017 may be referred to, in case of objections against nomination under section 9A on the ground of subsisting contract with Govt.





# Disqualification for holding certain offices under government company

## S 10, RPA, 1951

- **Who is disqualified under S 10 RPA 1951**

Only Secretary, Manager or Managing Agent of Government Company/Corporation is disqualified

- **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 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, RPA, 1951** – contd.

- Only those persons are disqualified whose list is circulated by ECI from time to time.
- Disqualification **U/s 10A RPA 1951** is for specific period of 3 years from the date of order. Pl. go through the list of disqualified persons in respect of your State carefully.

**NB 1: The list circulated by the ECI operates as a bar to contest elections, with regard to the listed person all over India.**

**NB 2: ECI can reduce the period of disqualification in certain cases by a speaking order, copy of which will go to CEO. Accordingly, RO to coordinate with CEO**



## Risk Matrix for Qualification and Disqualification

Identified Risk	1.Lack of pre-check	2.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.

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## Risk Matrix for Qualification and Disqualification

Identified Risk	3. Not giving reasonable opportunity	4. 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.

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## Risk Matrix for Qualification and Disqualification

<b>Identified Risk</b>	<b>5.Perceived non- application of mind</b>
<b>Consequences</b>	Can lead to election petition and also be a ground for doubting the validity of election.
<b>Mitigation Measures/ Action points</b>	<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**