

Qualification Needs To Become a Minister

A comparative Study to find out the missing link

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Abstract: Oxford dictionary defines Minister as head of the Government department. Merriam Webster says Minister is a high officer of state entrusted with the management of a division of governmental activities. Wikipedia's view is- "A **minister** is a politician who holds public office in a national or regional government, making and implementing decisions on policies in conjunction with the other ministers. In some jurisdictions the head of government is also a minister and is designated the "prime minister", "premier", "chief minister", "Chancellor", "President" or other title."

"A person appointed by or under the authority of a sovereign or head of a government to some high office of state, especially to that of head of an administrative department. The term minister comes from Middle English, deriving from the Old French word *ministre*, originally *minister* in Latin, meaning "servant, attendant", which itself was derived from the word 'minus' meaning 'less' ". Constitution of India did not define Minister but in Article 74(1) of our constitution says:-"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice". Section 9 of Government of India Act, 1935 is the synonymous provision to Article 74(1) of our Constitution. I traced to the history to elaborate more what may be or have the missing link since incorporation of Constitution of India. Though Minister was there in ancient India; Chanakya was the Prime Minister of Chandragupta Maurya. Minister had to play a significant role for the development of the kingdom. Britishers captured two third of the world and implemented common law system in their colony. This research tries to analyse qualification of Minister- does it has any significance to build a great nation?"

I. INTRODUCTION

In the initial days of my law school I used to check who govern us what is their eligibility. I found to become a Judge, Justice, Army Officer, Civil service officers, Police every post which is part of the Government has some eligibility criteria but I could not find any criteria is enshrined in our constitution to become Minister who is Head of the Ministry. Anyone who will be elected by the people in Parliament or Legislative Assembly can become a Minister. A person without being elected can be Minister in India for six months. After six months if not elected then ceased to be a Minister.

In **Constituent Assembly Debates On 18 May, 1949** Baig Sahib Bahadur said- "*Further it is a recognised principle that when you are making a Constitution you should leave the future legislature to lay down the qualifications of persons who want to stand for election. It is surprising that while unnecessary provisions have been introduced in the Constitution, the most important provision which qualifies or disqualifies a man from becoming a member of this Parliament is sought to be left to the future Parliament. That is against principle; as Dr. Ambedkar himself has said, you are now preparing a machinery for qualifying a person to be a citizen and who, under certain circumstances, becomes a voter and a member of Parliament or a*

Minister or President or Vice-President. While you prescribed qualifications for a voter, while you prescribed qualifications for a man to become a President or Vice-President and so on and so forth, there is no reason why you should, in the case of a person who should be made eligible to stand for election, leave the matter to a future Parliament. It is dangerous and it is opposed to principle.”

II. QUALIFICATION NEEDS TO BECOME A MINISTER IN INDIA

No provision enshrined in our Constitution to become Minister but a elected member of Parliament is eligible to become Minister. Article 84 says:-“ *A person shall not be qualified to be chosen to fill a seat in Parliament unless he— 2 [(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;] (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”*

Article 102 says- “*A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament— (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder; (b) if he is of unsound mind and stands so declared by a competent court; (c) if he is an un discharged insolvent; (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; (e) if he is so disqualified by or under any law made by Parliament. 1 [Explanation.—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State. 2 [(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]”*

Tenth schedule of our Constitution says defection is a ground for disqualification from being a member of either Parliament or other Legislative Assembly.

THE REPRESENTATION OF THE PEOPLE ACT, 1951 says *A person shall not be qualified to be chosen as a representative of people unless his name is in the voter’s list.* Section 7 of the above mentioned act says:-

“A person shall be disqualified for being chosen as, and for being, a member oi either House of Parliament or of the Legislative Assembly or legislative Council of a State— (a) if, whether before or after the commencement of the Constitution, he has been convioted, or has, in proceedings for questioning the validity cr regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice which has been declared by section 13t) or section 140 to bo an offence or practice entailing

disqualification for membership of Parliament and" of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 139 or section 140, as the case may be;

(b) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release;

(c) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under this Act, unless five years have elapsed from the date by which the return ought to have obey; lodged or the Election Commission has removed the disqualification;

(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest In a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government;

(e) if he is a director or managing agent of, or holds any office of profit under, any corporation in which the appropriate Government has any share or financial interest;

(f) if, having held any office under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has, whether before or after the commencement of the Constitution, being dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal."

III. A COMPARATIVE STUDY

In U.S.A there is Secretary which is equivalent to Ministers in India. Secretary is appointed by the President of U.S.A with the advice and consent of the Senate by a simple majority vote. The only qualification is that a department secretary cannot be a current member of Congress or hold any other elected office. President can be re elected once. He is the real head of the State and executive.

Constitution of United Kingdom says:-

- 1) Ministers must be members of either House of Parliament and are appointed and dismissed by the Head of State, acting on the advice of the Prime Minister;
- 2) Ministers shall be appointed by the Prime Minister and hold office at his or her discretion.
- 3) The Prime Minister and Ministers are responsible to Parliament for the exercise of these powers.
- 4) Members of the Government are political appointees and are usually drawn from one of the two Houses of Parliament.

- 5) Government also includes *junior ministers* (who bear the title of *Under Secretary of State, Minister of State, or Parliamentary Secretary*), *whips* (responsible for enforcing party discipline within the two Houses), and *Parliamentary Private Secretaries* (political assistants to ministers).

Constitution (Fundamental law) of the Union of Soviet Socialist Republics, 1936 was silent regarding this topic. The Russian Federation's constitution, 1993 section one chapter four discussed about President of the Russian Federation. **Article 83** says-

"The President of the Russian Federation shall appoint Chairman of the Government of the Russian Federation subject to consent of the State Duma."

Article 110 says:-

1. *Executive power in the Russian Federation shall be exercised by the Government of the Russian Federation.*

2. *The Government of the Russian Federation shall consist of the Chairman of the Government of the Russian Federation, Deputy Chairmen of the Government and federal ministers.*

Article 111 says:-

The Chairman of the Government of the Russian Federation shall be appointed by the President of the Russian Federation with consent of the State Duma.

Article 112 says:-

1. *The Chairman of the Government of the Russian Federation shall, not later than one week after appointment, submit to the President of the Russian Federation proposals on the structures of the federal bodies of executive power.*

2. *The Chairman of the Government of the Russian Federation shall propose to the President of the Russian Federation candidates for the office of Deputy Chairmen of the Government of the Russian Federation and federal ministers.*

My observation is President has edge over the Chairman of the Government of the Russian Federation, Deputy Chairmen of the Government and federal ministers.

Constitution Act, 1867 of **Canada**, formerly known as British North America Act, 1867 and Constitution Act, 1982 laid down the provision of qualification and disqualification of Senators. The **Australian Constitution** was then passed as part of a British Act of Parliament in 1900, and took effect on 1 January 1901. No specific mention of this discussed topic is there in both of those Nation's constitution.

Chapter five Article 91 of the Constitution of South Africa,1996 says:-

- (1) *The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.*
- (2) *The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.*
- (3) *The President— (a) must select the Deputy President from among the members of the National Assembly; (b) may select any number of Ministers from among the members of the Assembly; and (c) may select no more than two Ministers from outside the Assembly.*

The Constitution of Japan (which came into force on May 3, 1947) in its Article 65,66,67 describes:-

- 1) *Executive power shall be vested in the Cabinet.(Article 65)*
- 2) *The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.*
- 3) *The Prime Minister and other Ministers of State must be civilians. The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.(Article 66)*
- 4) *The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business. If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.(Article 67)*

The Constitution of the German Empire of August 11, 1919 (Weimar Constitution) provides:-

- 1) *The Reich Cabinet consists of the Reich Chancellor and the Reich Ministers.(Article 52)*
- 2) *The Reich Chancellor and, on his recommendation, the Reich Ministers, are appointed and dismissed by the Reich President.(Article 53)*

Germany's Constitution of 1949 enacted:-

- 1) *The Federal Government shall consist of the Federal Chancellor and the Federal Ministers.(Article 62)*
- 2) *The Federal Chancellor shall be elected by the Bundestag without debate on the proposal of the Federal President.(Article 63)*

Article 8 and Article 9 of the Constitution of France,1958 provides that:-

- 1) *The President of the Republic shall appoint the Prime Minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government.*

- 2) *On the recommendation of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments.*
- 3) *The President of the Republic shall preside over the Council of Ministers.*

IV. QUESTIONS OF MISSING LINK OR LOOPHOLES

I mainly mentioned those countries from which Our Countries get the inspiration while adopting its own constitution. But the question lies why maximum countries are silent in the case of laid down a provision for the qualification of a Minister. Yes it is necessary to be a true representative of the people because Government is “by the people, for the people and of the people”. But when there are provision of qualification for the Judges, Civil Service officer; these posts are very high then why there are no provision for becoming head of a Ministry. When our constitution was enacted at that time integration of our country was not that strong and maximum people either ill educated or less educated. Parliament time by time used to fill up the gaps and supplement needs of the time..May be that’s why the framers of our Constitution were silent and hoped that let this matter can be handled by future legislator. But till no such provisions are enacted. People follow its leader A to Z and vice versa the character, education, consciousness, idealism, awareness of the people reflects to its elected Government.

V. SUGGESTIONS

There is an eligibility criteria for a post of safaiwala and other Group D or lower post. Another fact now a day’s very educated person used to commit such incident which may an illiterate never think of committing like here and there not abiding by traffic rules, open defecation etc. I don’t feel only educated person as Minister will be the solution. In Union Cabinet of NDA Government,2014 maximum Ministers are B.A.LL.B. We can build a beautiful nation when an appropriate qualified person take up its appropriate position. There are half yearly departmental examination in every Secretariat, irrespective of centre and state. If it can be introduced I hope will be very significant. If any regulating authority can be introduced for checking a Minister’s efficiency and performance and it will have the power to take appropriate action and direction. Law making body can delegate those power to Lokpal and Lokayukta for review of the work of previously mentioned regulating authority. I want to say that the Minister who is aware and knowledgeable person of that particular department is suitable for heading of that department. A Minister who is illiterate or less educated how can be a Minister of science, law, technology, engineering etc. May be that person is hardworking but that will be not enough for speedy and efficient function. I feel if the provision can be introduced by which becoming a Member of Parliament or any Legislative Assembly minimum requirements should be at least H.S pass and Graduation should be the minimum qualification for becoming Minister. It will be very well and good.