

**Disqualification of Parliamentarians under  
Constitution of Pakistan  
(Comparative and Critical Study)**



35 + 38  
10  
A

**Submitted by:**

**Sultan Sikandar**

**Registration no: 06381313050**

**Supervised by:**

**Dr. Arshad Quyyom**

**(Professor, School of Law)**

**School Of Law**

**Quaid-i-Azam University, Islamabad**

**Spring 2018**

## Acknowledgement

All the praises and thanks to Almighty Allah who bestowed me potentials and capabilities to carry out this research successfully.

I would like to express my sincere thanks and deepest gratitude to my Research Supervisor, Dr. Arshad Qayyum, who helped, assisted and guided me with his knowledge throughout my research work. I am very grateful to all the teachers of my department for their support and encouragement. I am also thankful to Allah that he has blessed this department with such great faculty members like, D Mr. Arshad Nawaz khan (Head of Department), Mr. Alamzaib Khan, Mr. Waqas Javed, and also the visiting faculty (Adv. Mr. Riasat Ali Azad Adv. Mr. Tariq Mehmood Jahangiri And Mr. Shaukat Hayat khan), with them everything was possible around. I would expound my special thanks to my Parents specially my father Mr. Muhammad Noor Miskanzai who not only helped and supported me in achieving every goal of my life but also made all possible sources, facilities and easements available for me to carry out this research. He stood as a role model before me and let me to follow him in the journey success. I am grateful to my family for their eternal prayers, love and emotional strength. And special thanks to the friends who encouraged me throughout this journey, without their assistance it would have been hard for me to fulfill my dreams and successfully complete my program.

## Declaration

“I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma of any university or institute of higher learning, except where due acknowledgement has been made in the text.”

Researcher:

Signature:

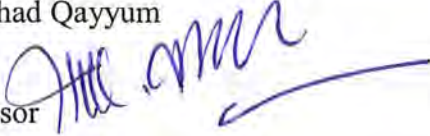
A handwritten signature in blue ink, appearing to be 'R. S. S. S.', written over a horizontal line.

## Certificate

This is to certify that I have read the research paper submitted by Mr. Sultan Sikandar, Registration No: 06381313050, it is my judgment that this research paper of sufficient standard to permit its acceptance by the Quaid-i-Azam University, Islamabad for the award of the degree of BALLB.

Dr. Arshad Qayyum

Supervisor



# Table of Contents

## Chapter 1

Introduction.....	3
1.1 Disqualification.....	5
1.2 Hypothesis.....	6
1.3 Research Objective.....	6
1.4 Research Methodology.....	6
1.5 Literature Review.....	7

## Chapter 2

Democracies across the World.....	9
2.1 Disqualification under United States Constitution.....	9
2.1.1 Constitutional Disqualifications.....	10
2.1.2 Historical Case.....	12
2.1.3 Holding Other Federal Office.....	13
2.1.4 Impeachment.....	14
2.1.5 Oath of Office.....	14
2.2 Disqualification under Constitution of India.....	15
2.2.1 Qualifications of Members under constitution and Representation of People Act 1951.....	16
2.2.2 Disqualifications under Representation of People Act 1951.....	20
2.2.3 Historical Case.....	23
2.3 Disqualification of Members of British Parliament.....	25

## Chapter 3

Qualifications and Disqualification for Parliamentarians Under constitution of Pakistan.....	28
3.1 The 'Sadiq And Ameen' Khaki Saviors.....	28
3.1.1 Article No.62.....	29
3.1.2 Article No.63.....	30

## Chapter 4

4.1 Criticism.....	33
4.2 Suggestions.....	34
4.3 Conclusion.....	36
List of References.....	39

## Abstract

In this research I have discussed the disqualification of parliamentarians under constitution of Pakistan and addressed the question that whether someone can be disqualified for life time and kept out of politics for whole of the life. Whether someone's political carrier can be finished due to any offence or mistake he makes deliberately or otherwise. The answer that I have got by studying other democracies of the world and comparing them with Pakistan is "of course NO" because someone can be punished for what he has offended not what he is interested to do in rest of life. They argue that if someone has been disqualified due to any offence he should be punished for that particular offence. In democracy once a person faces punishment and the due disqualification then it's the public to decide his political carrier by democratic and electoral process not the court or any other single institution. Contesting elections is another right of every citizen which cannot be infringed due to any offence for what he has been punished too.

We see disqualification clauses and laws in every country but there is not a single example where a citizen has been convicted and after the conviction the doors of parliament and assemblies have been closed for him. Political carrier and criminal behavior are two different aspects of life which to be dealt separately under law. By disqualifying a person lifetime not only violates that's person's basic right to contest but also infringes the right of another citizen's right to vote for his favorite candidate as law allows us all to elect the one who we think fit for system. As otherwise other than the philosophy of democracy but if we see such life time disqualification in Islamic lens we always find space for pardon in Islam. Hence as per all aspects no one can be disqualified lifetime. Our judicial system needs to interpret the laws with accordance of other world.



# Chapter 1

## Introduction

Democracy is an idea to choose rulers and legislators with the opinion of majority of population. Indirectly to command the political system of any state with public will. A democracy is a political framework, or an arrangement of basic leadership inside an organization or association or a nation, in which all individuals have an equivalent right to participate. Present day vote based systems are described by two abilities that separate them in a general sense from prior types of governments: the ability to mediate in their own particular social orders and the acknowledgment of their power by a global legalistic structure of likewise sovereign states. Democracy is otherwise in contrast with oligarchic and monarchic types of ruling, which are controlled by a minority and a sole ruler individually. Democracy influenced most of the nations of the earth as compared to any other system in the world. It gave the people the absolute fundamental right to elect their representatives by their own free will. It gave birth to many constitutions.

Democracy and its background are largely connected with the ancient Greeks and Romans. They were themselves viewed as the originators of Western human advancement. By the eighteenth century intellectuals and philosophers who endeavored to use these democratic tests into another layout for post-monarchical political association were Greeks and romans. The level to which these eighteenth century democratic evangelist turned down the beliefs of the old Greeks and Romans into the predominant political system for next three centuries is not really easy to refute. In any case, the basic chronicled point catalyzed by the revival of vote based beliefs on a very basic level changed the resulting hundreds of years. It has commanded the universal scene since the destroying of the last remnant of realm following the end of the World War II. (Daniel Ziblatt, 2018)

Today's representatives of democracies attempt to connect the bay between the Hobbesian 'state of nature' and the grasp of tyranny through social contract. A Contract that cherishes the privileges of the nationals, diminishes the energy of the state, and gives organization through the privilege to vote.

While they include people in decision making, they are defined by the premise of distrust in the ability of human populations to make a direct judgment about candidates or decisions on issues.

Yes, going back to history of democracy has a deep rooted relevancy with the title of this research. As we all know the constitutional setup which is under discussion, is the fruit of democracy. With the advancement of democracy the questions came on surface about the qualification of legislators. People knew only qualified and good reputed representatives can defend their rights well. Initially there were no such strict rules. But the time not only made the electoral process complex but also aware the people about their right to have honest representatives. The people with good reputation became the standard to rule. Democratic institutions began to restrict the people from the parliaments whom did not meet the qualification criteria. Even if someone waved the standard after the election, was thrown out of legislative institutions. This tradition has been repeated several times in history. Pakistan also adopted the same standards but with even more severe rules of qualifications.

Just like the rest of the constitutions which were abrogated by the military dictators. The recent constitution also includes the chapter of qualification and disqualification of the representatives of public. The constituent assembly of that time discussed the conditions for qualification and disqualification which were amended later by another military ruler Gen. Zia ulhaq, who added even more severe conditions to be qualified as a member of parliament. These clauses were later proved to be a hanging sword upon the head of parliamentarians as well as other politicians. Even the clause for disqualification was so ambiguous that honorable judges of apex court admitted its ambiguity in their remarks. The proposers of such ambiguous part were so unfamiliar with law that they never determined the disqualification with true terms and its duration. They were working under Zia's Shadow. Thus interpretation of such article resulted in life time disqualification of members. It is a very rare example in the modern world.

This research intends to find out the philosophy of disqualification. How other world dealt with such laws and how Pakistani system is dealing with such laws.



## **1.1 Disqualification**

When some is disqualified, he or she is officially stopped, barred or disallowed to take part any particular event, activity, institution, political role or competition because they do not match the certain social, legal, cultural or constitutional standards any more.

Under the shadow of above given description of disqualification we reach to a conclusion. It makes it clear that disqualification is the further unfitness of a person regarding any religious, official or a political activity under some law or obligation. For instance someone has been performing at a position. But in the mean while a law creates an obstacle before his appointment due to reason of incompetency or in result of some violation is said to be disqualified by law. Such disqualification may be of any type. As mentioned it may be described by law, it may be a political or constitutional. For this research we need to discuss only two types of disqualifications as follow.

i) Constitutional Disqualification.

ii) Political Disqualification.

### **i) Constitutional Disqualification**

Constitution is the aim of the nation. It describes the national standards of the nation as well as the country. It depicts the moral values of the state. The constitution draws a sketch of policies, nature, political approach, social standards and official framework of the state. It draws the modified do's and don'ts'. Constitution draws a bold limitation between performance and non-performance, fitness and non-fitness of people who can hold official positions in state. Such fitness and unfitness is known as qualification or disqualification. Moreover qualification sets the criteria of requirement for the persons whom are eligible for the setup. Whereas disqualification means the list of conditions which could be prove to be a barrier. Such barriers may be for time being or even life time. In further chapters we will see how such constitutional clauses prove to be cruel when these are misused.

## **ii) Political Disqualification**

Some politicians are then disqualified politically. They are removed from main stream politics due to two reasons. There may take place a mishap by themselves or they are thrown out by any institution i.e judiciary or establishment. Firstly when politicians try to turn on a page which is unacceptable for this conservative nation on religious or moral grounds. They suffer from political disability. Secondly, when establishment begins to hate a face. Such faces are thrown out of political pond by hook or by crook. They become intolerable and are sent for a long or even life time vocation. (Daniel Ziblatt, 2018)

### **1.2 Hypothesis**

- i) Disqualification must be life time.
- ii) Disqualification must not be life time.

### **1.3 Research Objective**

The proposed study is intended to discuss the other legal systems of the world with respect to the disqualification of members of the parliament and the time span of such disqualification. This research intends to find out the philosophy of disqualification. How other world dealt with such laws and how Pakistani system is dealing with such laws. A comparative analysis shall be made as between legal system of Pakistan and states with similar jurisprudential norms.

### **1.4 Research Methodology**

In this research the Descriptive and Analytical methodology will be used in order to explain the opinion of writers, constitutionalists, experts, different scholars and officials to understand the aim and objective of research.

## 1.5 Literature Review

### a. Primary Sources

- I. Constitution of Islamic Republic of Pakistan
- II. Constitution of United States of America
- III. Constitution of India
- IV. Representation of Peoples Act 1951 (RPA Act 1951)
- V. Representation of the People Act 1981
- VI. Members of Parliament: Law and ethics by Gerard Carney

### b. Secondary Sources

- I. Distilling Eligibility and Virtue: Articles 62 and 63 of the Pakistani Constitution
- II. By Saad Rasool (LUMS LAW JOURNAL 2014)
- III. Dawn article Democratic rule by Moeed Yusuf on 25 July-2017
- IV. PLD 2014 Lahore 670 Before Ijaz-ul-Ahsan and Faisal Zaman Khan, JJ Gohar Nawaz Sindhu v Mian Muhammad Nawaz Sharif and Respondents
- V. PLD 2017 SC 265 Asif Saeed Khan Khosa, Ejaz Afzal Khan, Gulzar Ahmad, Sh. Azmat Saeed and Ijaz ul Ahsan, JJ Imran Khan Niazi v MIAN MUHAMMAD NAWAZ SHARIF, PRIME MINISTER OF PAKISTAN/MEMBER NATIONAL ASSEMBLY, PRIME MINISTER S HOUSE, ISLAMABAD and 9 others---Respondents (Panama Papers Scandal)
- VI. PLD 2017 SC 692 Ejaz Afzal Khan, Sh. Azmat Saeed and Ijaz ul Ahsan, JJ IMRAN AHMED KHAN and others---Applicants Versus Mian MUHAMMAD NAWAZ SHARIF, PRIME MINISTER OF PAKISTAN
- VII. PLD 2018 SC 1 Asif Saeed Khan Khosa, Ejaz Afzal Khan, Gulzar Ahmed, Sh. Azmat Saeed and Ijaz ul Ahsan, JJ Mian MUHAMMAD NAWAZ SHARIF and others Versus IMRAN AHMED KHAN NIAZI and others
- VIII. PLD 2018 SC 114 Mian Saqib Nisar, C.J., Umar Ata Bandial and Faisal Arab, JJ MUHAMMAD HANIF ABBASI Versus JAHANGIR KHAN TAREEN and others

IX. PLD 2018 SC 189 Mian Saqib Nisar, C.J., Umar Ata Bandial and Faisal Arab, JJ  
MUHAMMAD HANIF ABBASI Versus IMRAN KHAN NIAZI and others

## Chapter 2

### Democracies across the World

As discussed in the previous chapter that democracy gave birth to the constitution and constitution introduced qualifications and disqualifications on constitutional basis.

#### 2.1 Disqualification under Constitution of United States of America

First if we talk about the qualification of any congressman we find only three qualifications in the US constitution. Article 1, clause 2 of section 2 has discussed the house while senate has been discussed in the clause 3 of section 3 in the same article. American constitution requires minimum age 25 for house and 30 years of age for senate. Secondly he should be a citizen for last seven years for house and senate demand nine years of citizenship age. The last qualification, he or she should be a habitant at the time when he is contesting elections. Likewise The United States Supreme Court has reaffirmed the historical understanding of the United States Constitution that the Constitution, which defined only qualifications as a member of Congress, does not designate either a state or the Congress itself change such eligibilities to federal office, absent a constitutional amendment. The Constitution, in Article 1, Section 5, clause 1 has explicitly granted the authority to Congress to be the final decision maker for the qualifications of the Members, then by majority vote, the congress as a whole is limited only to judge the eligibilities or qualifications which are discussed In the constitution *Powell v. McCormack*, above. Federal units are not authorized to change the constitutional powers of the Convention Bureau, but States are responsible in accordance with Article 1, Section 4, Section 1 of the Times, Places and Principles section of the Constitution of the United States, which regulates the electoral process of the Federal Office. (Daniel Ziblatt, 2018)

Historically the adoption of provision for qualifications in the Constitution depicts a philosophical commitment of those who make the decisions with the minimum number of qualifications required for the Congress is foreseen in the Constitution of the United States as a



fundamental and fundamental principle of the Republican Government. As a warning against "the arbitrary authority over central government elections", either in some state legislatures or in the government itself, Alexander Hamilton said: "The qualifications of persons established and established in the Constitution are not subject to change".

By throwing a glance upon the qualifications of members of Congress under the United States Constitution, we need to move towards the subject of discussion i.e disqualification of congressmen under the American constitution.

### **2.1.1 Constitutional Disqualifications**

As above mentioned three "positive" qualifications to hold a political office in congress under the Constitution of the United States that is the age, citizenship and housing in the former state of election. Similarly there are certain clauses of disqualification as well.

Insurrection or Rebellion, financial support or facilitating Enemies, the Fourteenth Amendment to the United States, section III (3), obstruction or any public office, including the Office of Congress, a person who previously supported the Constitution of the United States, but who was "involved in the rebellion or rebellion "against the United States" or financial aid or aid to their enemies. " Congress can eliminate the deficit by two-thirds of the votes in each house. The text of the constitutional provision states:

*Section 3 also provides that no person may be a member of the Senate, a representative of Congress, a Vice President, a Vice President or any director of the Office, whether civilian or military, or under any department or state or state member of Congress. , as an official in the United States, as member of state legislature, or an executive or judicial authority of a state, to support the Constitution of the United States. In rebellion or rebellion against yourself, or to help, rest your enemies. But Congress can vote for two thirds of each council and eliminate this disability. (Oxford Press, 2013)*





The provision was brought in congress through 1866 and it was ratified by required number of member states ratified and made an amendment to the Constitution in just in next two years. It was a step towards dealing with those who were rebels or supported the rebellion while civil war was fought. Though it was adopted in relation to civil war, but the wording of the provision is clear and broad enough to cover situations of rebellion, insurrection or aid or luxury for enemies. The congress has passed laws several times and pardoned specified persons. The congress has adopted legislation two times in the history and declared general amnesty for all those who have been a part of such rebellious activities.

This is not comprehensively made clear in the The constitutional provision makes all attempts, actions or actions that cause "rebellion or rebellion" or "help or relief" in terms of funding and escape from the enemy (where definitions exist in the Constitution) or what would be required to provide inadmissibility. 93 Preliminary examples from Congress indicate that, in 1867, Congress challenged the mandate of the Fourteenth Amendment, 14 while the elected members of the State of Kentucky who presented the credentials were elected and accused. Give rebels "money or face"[94] Several of the Commission's reports to the House of Representatives on the election of John de Young, who were excluded from the vote, concluded that:" On the adequacy of the laws with respect to the lack of loyalty to the implementation "during an active uprising against the US:

While just want government support or soft passive corner for rebellion, which is not enough to exclude someone who is chosen from your home. Until now, whenever it is highlighted by evidence that the claimant has provided implicit or implicit help, support or support for the rebellion, that member should not be able to list an oath and such an act or speech need not be. To cause treason, the technical means, but they must have been so transparent and public, what must have been done and spoken in such conditions, as to unequivocally show that they were specially designed, and in their intention were the cause of the rebellion to promote.

In addition, constitution had not specified the mechanism for application or enforcement of the provision, but one can argue that if someone is already a part of the government and the laws that apply to incompetence are passed by Congress to eliminate this authority if it shows that their loyalty is not loyal. For members, the conference requires that such action be taken to "eliminate" a challenge to a particular person. In one case in Congress, in other cases such as the Civil War, the constitutional provision was used as inadmissible to prevent the meeting of a de facto elected member (this was functional on the same person twice in consecutive terms), the congress formally voted against the member to "exclude" Member-elect namely Victor Berger from the house of representatives, who had already been sentenced for Violation of the espionage law of 1917, 97, but his appeal against the decision is pending. It was Victor L. Berger essentially socialist through ideology. He belongs to Wisconsin. He was elected to the House of Representatives in a month November in 1910, but unfortunately Berger was defeated for re-election just after two years in 1912. He served till March 4, 1913 the end of the term. Berger got an emphatic position in the Socialist Party, the editorial newspapers and eleven men against the American invasion of the First World were the idea of communion or the writing of the rhetoric against the war, the opposition and the opposition. During this time Berger and the other four were convicted on February 2, 1918 under the Act of 1917 publically shared.

### **2.1.2 Historical Case**

In 1918, the Socialist Party participated in the election of the hamburger tragedy and won in its constituency. In November 1918, I received a certificate as top scorer in Wisconsin election from the fifth congressional district to the House of Representatives. By that time Berger came and presented himself for membership in the House of Representatives in the 66th Congress in the month of May in 1919, Berger was convicted under the Espionage Act and the decided punishment was twenty years' imprisonment in Fort Leavenworth, but his pending appeal against the judgment helped him to get out of prison on bail. Another member objected there and Berger was told to stand away during the oath ceremony of office when the rest of the Wisconsin delegation was ready for

oath. The question is that "whether Berger is eligible on the empty seat?" The Special Committee joined, but they did not think it was related to the attack on Berger's attack. (where Berger has appealed against the conviction), and made an independent finding, the facts of the case revealed that, according to Fourteenth (14<sup>th</sup>) Amendment, Section 3, Berger was declared disqualified from the House of representatives for disloyalty and he (Berger) cannot hold the seat.<sup>100</sup> The House of Representatives required majority of the members vote to "exclude" Berger from the House, (As it was a matter of an "exclusion" of an elected member for not being qualified, it is not the case of the "disqualification" of a disqualified member, the resolution was adopted at a rate of 377-1 votes. This position was vacant as we followed a story of the house with a long history.

The "American Rule did not allow the second largest voter scorer to fill the seat. The governor of Wisconsin called special election for the vacant seat. Berger was again elected on the same seat. The House of Representatives again under the same procedure with same legal criteria excluded Mr. Berger, and did not allow him to be Fourteenth (14<sup>th</sup>), Section III, and October 10, 1920. There was none in Wisconsin. In the near future, Berger lost the planned elections regulation congress, which was held in month November 1920. The interesting point to know is, after two years in November of 1922, the conviction of Berger After the spy law, the Supreme Court of the United States (1921) had the Supreme Court deemed it the apparent biasness of the trial court judge, 104 Berger again became qualified for the House of Representatives and made his way clear to Congress. He contested and won the Election. This time, Berger was sitting in the House of Representatives unopposed.

### **2.1.3 Holding Other Federal Office**

The Section 2, Section 6 of the United States Constitution states that "no person who holds a position in the United States may be a member of one of the two chambers during his term of office." This requirement of the bilateral office contract confirms and implements the theory of separation of powers. This Constitutional Commission is directed to the United States of America, which currently

operates in the House of Representatives or in the Senate. For example, a member of the Civil Service Council might have military commission without vacating his/her seat in congress.

#### **2.1.4 Impeachment**

The Constitutional provisions of the United States with regards to The House dismissal and the Senate trial or conviction will apply to "all US officials." Article I, Section 3, Section 7, of the United States. The constitution states that the decision in a Senate conviction or trial "cannot go beyond dismissal, the inability to enjoy any honor, trust, or achievement under any US state office." In the case of dismissal, which must be rejected or isolated due to sensitization material in the Senate, it cannot be removed from office, but this exclusion or obstacle of the Federal Office has become part of the export provision and must be agreed.

The Federal Government's facility for action to take a very active action and I invite you to invite it and invite it to express its oath, Senate, the basis of the deliberation. The difficulty is one of the conferences, accounts or fundraising events to see exercises that are not exercises that are inappropriate. Register for crimes and defend the people and people who work in Victoria's office regarding your eligibility to qualify to receive them. Elections 5 United States § 7323 (a) (3). The Hatch Law is not the president. (Oxford Press, 2013)

#### **2.1.5 Oath of Office**

The Article 6 (3) of the Constitution of the United States provides that every member of house is the representative or Senate, have appointed any other federal or state offices such as the executive, legislation, and judiciary branches, are there by required to swear "by Oath to support, protect and obey The section or approval of this Constitution, to be taken by elected members of the Congress and other federal or civil service officials, has been formally codified in federal law paper above that anelected Member or a designated senator is not yet a formal Member of either houses of Congress unlessHe or She has not taken oath that is proposed and required by the constitution. The



oath when taken, shall officially rename the office by the name of that respective member elect. In any case if the oath of a member elect congress can wait temporarily and permanently until the time comes member becomes able to take the oath in permanent means, on in any unusual matter or instance the administration shall visit the elected member Member-elect in order to meet and administer the oath. In some other circumstances, however, when an Elected Member is absolutely not able to take oath required for holding the office, or his own intention he falls or refuses to take office, the House of Representatives or the Senate may also announce the seat "vacant" through passing a resolution with even simple majority vote. This has happened in the history. When an elected member of the house was lost in a plane crash incident, where he was on campaign with a colleague, just some days before the date of election. As his name was on the ballot and in the end he got the number of votes in these elections. Congress waited for him but at a stage they presumed him dead as there was no response from the member-elect. They declared the seat vacant by majority vote. (Oxford Press, 2013)

## **2.2 Disqualification under Constitution of India**

Indian Parliament and its membership is governed by the constitution of India, rules framed there under for the conduct of business in Parliament and Representation of People's Act to regulate the election, vacation, eviction, termination and disqualification of members.

What you are asking cannot be jot down here as the wisdom, intellect and foresight of the Indian Constitution envisages various situations under which a member can be disqualified from the house. But as of today there's is no life term disqualification because political participation is a democratic right which is a cornerstone of Indian democracy. You can disqualify a member for certain number of years in the name of protecting democracy but can't be precluded for eternity for this would be assuming that he can never be a good representative again refer to Representation of People's Act 1951, prevention of disqualification Act 1959, model code for candidates. See things are interspersed and each of the above acts deals with the specific aspects of disqualification. While

the constitution delineates the situations in which a member can be disqualified, the other acts are an extension of what is written in the constitution. The constitution makers have taken into account like for conduct of free and fair elections, a parliamentarian holding Office of profit, corruption among others when a member can be disqualified. So the related provisions are spread through the acts and are placed with a background envisaging such situations.

Constitution of India endorses all those ratings and disqualifications for members part of any assembly that may be (Provincial assembly, state assembly or the Lok Sabah the parliament of India) in the Representation of People Act 1951.

### **2.2.1 Qualifications of Members under constitution and Representation of People Act 1951**

In the Representation of People Act 1951 of India the qualifications of members have been discussed in chapter No.2, section 3, 4, 5,5A of the act. The text of the Representation of People Act 1951 which has discussed the qualification is given below.

*3. Qualification to be Member of the Council of States. - No person has the right to be a member any of the five states or union territory until and unless he is a registered voter of the Parliamentary constituency No.6 of India.*

*4. Constitutional Qualifications to be a member of The House of the People – No person is elected to vote for the House of Representatives, though not. (a) If it is a reserved for a caste discussed in schedule and the candidate is also a member of any the Scheduled Castes, whether of the same State or of some other State, and He or She is registered voter for a Parliamentary constituency.*

*(b) in any case such as the accommodate was decided set aside any tribe or caste discussed in the schedule (except those in the Independent vicinities of Assam), He or She belong to the tribes mentioned in the schedule, whether belonging from the same Week or other state (without Assam are excluded) in addition to he has a registered vote in any of the parliamentary constituencies.*



*(c) Where as in case if the seat is Reserve for the tribe in the Free State of Assam., regardless of whether or not they visit an independent province. cc) If a tribe mentioned in the Union Lakshadweep program has been given a seat, it is not only a member of the planned tribe, but also a tribal voter for the district election district for this area.*

*[(ccc) In the case of reserved seats assigned to seats, he or she must be a registered voter of the state of sikkim for the Parliamentary constituency for Sikkim.*

*(d) In case, it is the matter of any other seat He or She must have a registered vote at any of the constituencies of the parliament.*

*5. Qualification to be a member of Legislative Assembly.- A person may not be elected at the seat elected against a vacant seat in the legislature of a state unless, (a) in the case where the seat is reserved for any tribe mentioned therein in schedule, he must be a member of any of particular tribe or of those mentioned castes. The candidate must hold a registered elector status in the assembly constituency of that state where he or she wants to contest.*

*(B) In the case of a seat assigned to an independent area of Assam or an Autonomous Region, it shall be a member of the General Assembly in which it holds a seat or another seat for that particular area. (c) In case, it is the matter of any other seat He or She must have a registered vote at any of the constituencies of the assembly.*

*[But here it is Provided that the term mentioned in paragraph 2 of Article 371A does not have the right to be elected to a vacant post for the Twansang Center in the Legislative Assembly of that particular region.*

*5A. Qualifications of a person to be a member of Legislative Assembly of state of Sikkim.*

*(1) Notwithstanding with anything mentioned in section 5 of Representation of People Act, a person would not be eligible to be elected against a vacant seat of the Legislative Assembly of state of Sikkim*

*(deemed to be Legislative Assembly of that particular autonomous State duly formed under the Constitution) unless,*

*(a) if the case is that the seat is reserved for the duly locals of the state of Sikkim that Bhutia-Lepcha origin, he or she is a biological root with either of Bhutia or*

*Lepcha origin and also voter for any constituency of the Assembly in the State otherwise than the constituency which is reserved for the Sanghas;*

*(b) in case of the seat which is reserved for Sikkimese those are of Nepali origin, he or she is a person of Nepali origin by forefathers and is an voter for any constituency of Assembly in the State.*

*(c) In the case where a seat which is reserved for castes mentioned therein in the schedule, he or she belong to any of the castes or tribe specifically mentioned in the Representation of Sikkim Subjects Act, 1974 and is a voter for any constituency of assembly in the State, and*

*(d) Whereas in the case of seat which is reserved for Sanghas, he or she must be a voter of the Sangha constituency.*

*[(2) Notwithstanding the provisions of Section 5, a person may not be elected to a vacant position in the Legislative Assembly of the State of Sikkim, at any time after the execution of the Law of the People's Representative (amendment), 1980 (8 1980) to and without.*

*(a) In the case where a seat is held reserved for Sikkimese of Bhutia-Lepcha origin or ethnicity, he or she belong from Bhutia or Lepcha and is a voter registered for any constituency of assembly in the State except the constituencies reserved for the Sanghas.*

*(b) In the case of the seat reserved for the particular castes in the list, he or she belongs to any of those castes mentioned in the state of Sikkim, and is a registered voter for every constitution of the assembly in the state;*

*(c) in the case where it is decided that a seat is reserved for sanghas, he or she must be a voter of the Sangha constituency; and*

*(d) in the case of another seat, it must be a voter who can attend the meeting in that State.*

*6. Qualification for a person to be a member of a Legislative Council.—(1) A person would not be qualified to be elected to a vacant seat in the Legislative Council of a State by election unless he is an elector for any of the constituencies of Assembly in that State.*

*Article 84- Qualification for a person to be a member of Parliament.-A person would not qualify to be chosen to contest for a seat in Parliament unless he or she*

*(a) is a citizen and citizen of India, and shall keep and sign an authority empowered by the Electoral Commission on this matter to make an oath or declaration in accordance with the form set out for this purpose in Annex III*

*b) The seat of the Council of States is at least once a year and at least twenty-five years old*

*(c) He has other qualifications that Parliament requires by law in this name.*

According to all above given sections of People Act representation, and Indian constitution we come to conclusion that if a person is simply a citizen and a registered voter of the particular constituency and he has attained the age prescribed by the constitution of India, is eligible to contest elections. He or she can hold the office in case of victory . There is nothing contained therein above mentioned sections of law which explain any other criteria for being Qualified to contest election. It is as simple as the plain text is. The only restriction if there is that's only the case of reserved seats.

But we are curious to know about the laws that disqualify a member to be elected as a public representative in India under the constitution of India. The disqualification laws both under the Indian constitution as well as the Representation of People Act 1951. (Westland Publications, 2015)

## 2.2.2 Disqualifications under Representation of People Act 1951

In this Act disqualifications are discussed in the section 8, 8A, 9, 9A, 10, 10A in chapter three. These articles are discussed below.

8. *Disqualification if convicted for certain offences.*

*[(1) A person convicted of an open punishable offense*

*(A) Section 153A) A crime of publication between different groups on the basis of religion, race, birth, language, place of residence, etc., and acts leading to disorder (Section 171E)*

*Bribery or Section 171F (influence of indestructible conservation or Choice at the time of the election) or subsection (1) or Subsection (2) of Sections 376 or 376A or Section 376B of Section 376C or Section 376D (Related Offenses) with rapeseed ) or Sec. 498 A (2) or sub-clause (3) of Section 505 (including declaration, binding force, death penalty or death penalty among different producers) classes or such statement in any worship site or congregation dedicated to religious worship or ceremonies) of the Indian Penal Code (45 since 1860); Egypt*

*(b) The Civil Rights Protection Act, 1955 (22 of 1955) that punishes education*

*And the practice of "untouchability," and for the knowledge of any disability that exists there; or*

*(c) Section 11 (crime of importing or exporting goods that are illegal) in accordance with the Customs Act of 1962 (52 of 1962); (d) Section 10-12 (Violation of the illegal association, crime, regarding*

*Deal by means of the financing of illegal involvement otherwise crime Law on Illegal Activities (Prevention), 1967 (37 of 1967); O*

*(g) Section 3 (Terror Offenses) or Section 4 (Offense against Disintegration activities) Law on terrorist and disruptive activities (Prevention), 1987 (28 of 1987); and*

*h) Section 7 (Violation of the provisions of section 3 to 6) of Law on religious institutions (Prevention of Abuse), 1988 or*

*(i) Section 125 (offence of spreading enmity between classes with connection to the election) or section No.135*

*(Offense of expelling of ticket papers from the surveying stations) or area 135A (offense catching of stall) of provision (a) sub-segment (2) of section No. 136 (offense of mutilating with misrepresentation or deceitfully pulverization any designation papers) of this Act;*

*[and]*

*[(j) Section 6 (offence of converting of places religious worship) the Places of worship (Special provision) Act, [or]*

*(k) Section No.2 (insulting offence or degrading the Indian national flag or the constitution) or section 3 (offence of stopping or prohibiting singing of national anthem) of prevention of insult to national honor Act, 1971 (69 of 1971)]*

*(l) The Commission of Satti (Prevention) Act, 1987 (3 of 1988); or*

*(m) The Prevention of Corruption Act, 1988 (49 of 1988); or*

*(n) The Prevention of Terrorism Act, 2002 (15 of 2002),*

*Shall be disqualified, where the convicted person is sentenced to —*

*(i) Only fine, for six years from the date of such conviction;*

*(ii) Imprisonment, from the date of such conviction and remain to be disqualified for a period of six years since his release.*

*(2) A man sentenced for the repudiation of—*

*(a) Any law accommodating the counteractive action of profiteering; or*



*9A. Disqualification on behalf of government contracts, etc. - If a person is disqualified if a contract has been signed by the same person for whom it was signed and executed in the relevant government, the contract should only be based on the actuality that the legislature does not satisfy its piece of the agreement out and out has executed or part.*

*10. Disqualification for the position under the government company. - A person wants to be disqualified if acting as an authoritative specialist, supervisor or secretary of an organization or organization in the capital whose administration has at least (one third) share of twenty five percent.*

*10 A. Disqualification for being fails to submit to report on eligibility costs. When the election commission is satisfied over one person*

*(a) That he or she has neglected to stop a record of race costs inside the prescribed time and in the required path proposed under this Act*

*(b) Such person does not have a good reason to justify the failure,*

*The Electoral Commission declares, with immediate notice published in the Official Gazette, that it has been disqualified and that each person is precluded for a time of three years from the date of the request. (Westland Publications, 2015)*

### **2.2.3 Historical Case**

Indira Gandhi, India's first prime minister was convicted of corruption. Despite requests for his resignation, Gandhi was reluctant to withdraw from India's main office, and martial law was declared in the country where public demonstrations threatened to topple his government.

Indira Gandhi was the beloved daughter of Jawaharlal Nehru, the Prime Minister of the Autonomous Republic of India. She became a national political figure in 1955 when she was elected to the official body of the Congress Party. In 1959 she was delegated as party leader and in 1964 in an imperative



position in the government of Prime Minister Lal Bahadur Shastri. In January 1966, LalBahadur kicked Shastri and Gandhi became the leader of the Congress Party and Prime Minister of India. Gandhi was tested through Conservative Party of Congress, and in the 1967 election he won the elections with Deputy Prime Minister.

In 1971, she won re-election by the resistance and turned into the undisputed pioneer of India. That year, they requested the intrusion of India into neighboring Pakistan in help of the production of Bangladesh, which led to a victory in the country.

Amid following couple of years she directed expanding common agitation expedited by sustenance deficiencies, expansion, and territorial debate. Her party was condemned for its solid arm strategies in managing these issues. In the meantime, The Socialist Party accuses her of cheating on the national indignation provoked by the 1971 election. In 1975, the Allahabad High Court sentenced the police to a minor offense and banned them for six years in legislative matters. Accordingly, she announced highly sensitive situation all through India, detained many political adversaries, and limited individual opportunities in the nation. Among a few questionable projects amid this period was the constrained cleansing of people as methods for controlling populace development.

In 1977, the long national elections were postponed, and Gandhi and his party were dismissed. The following year, the followers of Gandhi, the Congress Party and the Congress Party (I), with the remaining "me" for "Indira". Later in 1978, she was quickly arrested for misconduct. In 1979, with the decision, Janata Party calmed the case of his administration. New elections were held in January 1980, and the Congress Party (I), led by Indira, returns to the Indian Parliament in a surprising reversal of its political destiny. Gandhi, tireless for the Indians, who are against the prime minister the cases against him were in this manner were rejected.

In the mid-1980s, a few local states heightened their call for more prominent independence from New Delhi, and the Sikh Secession Movement in Punjab depended on brutality and psychological warfare. In 1984, the Sikh pioneers founded their sacred temple in Amritsar. Gandhi

responded by deploying the Indian forces, and several Sikhs were executed in the ambush administration. In exchange, she was shot to death on October 31, 1984 by Sikhs of Gandhi's own protector on the grounds of his home. His son Rajiv Gandhi took over the succession. (Inder Malhotra, 1991)

### **2.3 Disqualification of Members of British Parliament**

The United Kingdom has a constitution which is different from rest of the entire democratic powers on earth. It is different in terms of codification as every other recognized democratic country has a codified constitution but the UK lacks the codification. The kingdom is the most influential democratic rule of the era. It has influenced any country by ruling it or by its mature legislative system. Being the oldest parliamentary system it has given birth almost to all laws or ideas of law framing. The UK also formed the laws to decide whether with what caliber people can rule the kingdom. And what consequences they may face if they could not coup with the expectations of the electors. The disqualification criteria are discussed below.

#### **The Law**

The main statutory provisions dealing with disqualification of members of British Parliament is prescribed under Representation of the People Act 1981, Electoral Administration Act 2006 and Forfeiture Act 1980.

There are essentially five mechanisms under which a member is deemed to be disqualified from holding an office as a Member of the Parliament.

These are:

1. **Persons under the Age of 18:** A person cannot stand for Parliament whilst under the age of 18 on the day on which he is nominated as a candidate [Section 17(1), Electoral Administration Act 2006]. Once, he attains the age of 18, he is eligible as a candidate.

2. Corrupt Electoral Practices: Persons discovered blameworthy of degenerate or illicit practices when all is said in done general elections are not members of the lower house varying periods according to the nature of the offence. Again, no lifetime bar.

3. Criminal Convictions: Two types:

I. Treason: Persons who have been convicted of treason cannot be elected or sit or vote until they have completed their sentence for treason or have been pardoned [Forfeiture Act 1870 s 2]. No lifetime bar.

II. Criminal Convictions: A person convicted of one or more countries, in the United Kingdom or elsewhere, and detained for one or more year prison [Representation of the People Act 1981 s 1].

If he is a sitting member and commits a criminal offence, his seat must be vacated by virtue of criminal offence [Representation of the People Act 1981 s 2(2)]. Once he spent his prison sentence, he is eligible to stand again for Member of Parliament.

If convicted of a lesser offence (that is less than one year prison sentence), then it is up the Parliament to determine as to whether the member should be disqualified and his seat should be vacated. In most cases, where the prison sentence is less than one year, either the member resigned himself or Parliament does not take any disqualification action against him. The normal practice is suspend him for few months or few sessions of the Parliamentary Proceedings.

4. Bankrupts: A person held by a court to be bankrupt. He is disqualified from membership of the Parliament [The Insolvency Act 1986 s 426A(1)(a), (c)]. If a sitting MP, becomes vacant, his seat would be vacated [The Insolvency Act 1986 s 426A(2)]

However, the crucial point is once his bankruptcy is elapsed, he is again eligible to be a Member of Parliament.

5. Disqualification by Office or Service: These related to persons in civil service or military. Once, they are retired or leave the service, they are eligible. Every service has different code and practices

on restriction after retirement or leaving the service. It ranges from 1 year to 3 years as per prescription of House of Commons Disqualification Act 1975. (Gerard Carney, 2013)

## Chapter 3

### **Qualifications and Disqualification for Parliamentarians Under constitution of Pakistan**

In this chapter we will analyze laws with respect to the qualifications and a disqualification for Parliamentarians set out in the constitution of Pakistan, and their progress over the years. In the past, the description of the purpose of this provision has been designed so that the moralizing persons approach the general elections of 2013 and these regulations are generally open to subjective paths with unspeakable subjective standards for the capacity and exclusion of members. Fundamental rights demand that public office, and the important rights of the citizens, who correspond to the citizens who elect their own representatives, cannot be achieved because of these inaccuracies. However, it is not necessarily the case that there should be no basic standards that fit the legislation; Rather, it is desirable to comply with the applicable standards. experience the ill effects of genuine imperfections which should be helped.

The date of the provisions of the Constitution regarding the eligibility and eligibility of the legislature

In the past, the factors that influenced and excluded members of the two most recent constitutions in Pakistan (1956 and 1962) were the nature of the objectives, the briefest issues, and decisions about age, support, birth, and mental performance. In addition, the previous constitution allows the legislator to add additional conditions to the basic requirements. This letter and the idea of the last version are published in the original text of the 1973 Constitution, without controlling the identity and ethics of today. All changes, like the "ship" of the ship.

#### **3.1 The 'Sadiq And Ameen' Khaki Saviors**

Articles 62 and 63 of the 1973 Constitution contain the conditions of the participation and disqualification of the Parliament. Similar benchmarks apply due to registration in provincial

assemblies. In 1985, articles 62 and 63 were agreed upon under the authority of the "honest and honest" Pakistani general Zia-ul-Haq to add five new conditions to the previous and the new, twelve new provisions of the last arrangement. Zia, mindful of his mixed up feeling of good summon and good virtue, incorporates into the capabilities of a parliamentarian the necessities of individual character and reputation, including "great character", "satisfactory learning of Islamic teaching", "wise, upright " not reprehensible and legitimate and love" the non-condemnation of misconduct, including" moral depravity. "Therefore, disqualifications due to spreading a sentiment 'biased to the Ideology of Pakistan' or being indicted an offense including 'moral turpitude. (Saad Rasool, 2014)

The constitution states that,

### **3.1.1 Article No.62.**

*Qualifications to be a member of Majlis-e-Shoora (Parliament) under Constitution of Pakistan:*

- (1) *A man would not be fit the bill to be chosen an individual from parliament except if-*
  - (a) *he or she is a citizen of Pakistan;*
  - (b) *he has attained age of 25 and a registered voter*
  - (c) *he or she must be of 30 years in case of senate;*
  - (d) *he or she should not have a record to violate Islamic injunctions.*
  - (e) *he or she must have enough knowledge of islam and must know about major and minor sins ;*
  - (f) *he must be righteous ameen and honest.*
  - (g) *he has not worked against the integrity of Pakistan and never opposed the ideology of Pakistan. (Federal Law House, 2012)*



### 3.1.2 Article No.63.

*Disqualifications for membership of Majlis-e-Shoora (Parliament) under Constitution of Pakistan*

- (1) *A man would be precluded from being chosen for Parliament, if:-*
- (a) *he is not of sound mind; or*
  - (b) *he is declared insolvent; or*
  - (c) *he ceases citizenship of Pakistan or acquires two nationalities*
  - (d) *he holds an office of profit in Pakistan which he must not hold; or*
  - (e) *he must not be in such government body which controls the government; or*
  - (f) *he is disqualified under any law enforced in azadjammu and kashmir; or*
  - (g) *he has been convicted by any court of law for propaganda against Pakistan or working to disintegrate Pakistan.*
  - (h) *he has been convicted on moral grounds for more than two years and has not yet completed 5 years after such date of conviction.*
  - (i) *he has been rejected from federal services of Pakistan and still 5 years not elapsed from such dismissal.*
  - (j) *he has been retired or removed from office of government and 3 years have not been elapsed such retirement.*
  - (k) *he has been in statutory service of Pakistan which is controlled by government and he has ceased from such office and period of two years has elapsed.*
  - (m) *he holds any office of advantage in the organization of Pakistan other than the going with working environments, to be particular:-*



- (i) *an office which is not whole time office remunerated either by salary or by fee;*
- (ii) *the workplace of Lumbardar, regardless of whether called by this or some other title;*
- (iii) *the Qaumi Razakars;*
- (iv) *any office the holder whereof, by prudence of such office, is at risk to be called up for military preparing or military administration under any law accommodating the constitution or raising of a Force; or*
- (n) *he has got loan of 2 million rupees on the name of any independent from any financial institution and not paid it when it has been one year elapsed from such date of issuance of loan.*
- (o) *he or on the other hand any of his wards has defaulted in government bill or utilities for more than six month at the time of submission of nominations.*
- (p) *he declared ineligible under any law enforced for time being. (Federal Law House, 2012)*

Along with other disqualification clauses the constitution of Pakistan contains some provisions which were proven to be more severe than any other law of disqualification. The qualification clauses are as simple as that of any other country. But when it comes to the disqualification it differs. The differences are result of the interference of non-democratic powers of Pakistan in the democratic processes. Non democratic institutions such as army when even interfered they abrogated the constitution or made another constitution of their own choice to favor themselves or brought amendments to constitution for just special purpose. Such amendments were made in order to give any constitutional shelter to their regime or to keep away the arising opponents out of the political setup. Same thing was done by the then dictator Gen. Zia ulhaq. He suspended the fundamental rights of citizens instead of abrogating the constitution. He brought severe and hard to fall in, clauses in the qualification provisions just to get the confidence of people regarding his so called idea of Islamization. When he got nothing to cover up his blunder of toppling a civil elected government and the hanging the most charismatic prime minister of Pakistan, Mr. Zulfiqar Ali

Bhutto he started the dramatic Islamization to counter the anger of public. The Islamization that was propagated by Gen. Zia was never the true Islamic setup but just to get a strong religious safeguard to rule the country. As he knew no one would be there to stand up against this idea and he ruled for 11 years. He ended up by gifting Kalashnikov culture to Pakistan by clashing with USSR and the eighth amendment in the constitution. He gave the powers of prime minister to the president and added qualification and disqualification clauses influenced by Islam but those clauses such as 'Sadiq and Amin' were never interpreted nor were their boundaries explained. Those who added these provisions and left them vague for rest of all; they never thought what consequences would be there if these provisions began to effect. Not too early but after forty years of Zia's demise in plane crash, his changes in constitution began to affect the political system badly. The worse example is not the disqualification of Nawaz Sharif but the life time ban on him to enter in the politics. Especially where the filed case was the Panama paper but Nawaz was disqualified for Aqama, another story.

(Imran Khan Niazi Vs Mian Muhammad Nawaz Sharif, 2017)

## Chapter 4

### 4.1 Criticism

With the passage of time the people around the globe progressed and became mature politically but we were losing at all fronts especially in politics. They made mistakes and then corrected everything but we did things right and then turned over it to spoil it. When the first constitution was framed in 1956 that was abrogated by a military ruler and the dictator brought his own constitution which was supra presidential and the president was deemed to be the shadow of God according to the constitution of 1961-1962.

Everything thing which seems diverted from the topic but actually is reminder about history to let the reader know how we met the laws which provide punishments in two terms one directly and second indirectly. Directly a person suffers by facing the prescribed punishment for the offence which made him disqualified and indirectly to be away from politics rest of the whole life. As we studied in the second chapter of this research different democracies of the world along with their qualification and disqualification laws regarding Parliamentarians. We studied that all the other greatest democracies of the world such as India, United Kingdom and America have the disqualification laws which discuss whether who cannot be a part of the Parliament and for how much time. Where we found one think common in all those mature democratic political systems that there is no law that disqualifies someone for lifetime like Pakistan. There are offences which result disqualifications for certain time but nothing can stop someone to be part of politics for whole life whatsoever it may be. There is no concept of lifetime disqualification like the example set by the honorable Supreme Court of Pakistan in the Nawaz Sharif case. We saw that there were people who were convicted and after the due punishment they were back to politics and no one could stop them unless the people rejected them at the end. They are striving for such a fair democracy where if someone caught guilty the nation is there to accountable him and to close the doors of Parliament for him not the courts or the establishment. They have a very unique logic for not to disqualify anyone



for lifetime. As per their philosophy if by law you stop someone to be a part of parliament your nation shall never grow mature to choose the best for them but the worse will be elected by sympathy. Similarly the state creates hurdles for public to elect their representatives of their choice and in this way state would be interfering in a way that may lead to a controlled democracy. By putting a full stop on political career of politicians curtails and infringes two very basic and fundamental rights. One those who want to vote cannot vote for one who they want to elect because that candidate is not eligible anymore. Secondly the one who wants to contest but cannot even after receiving the punishment and following all due process of law. State cannot enter into injustice where state start to violate two basic rights at the same time. The state has to let the nation grow and elect the best in best interest of them.

## **4.2 Suggestions**

No nation on earth has become politically strong and mature on earth in one day. Everything requires a due time to be processed and completed. But where it comes to the nations it take centuries to reach at the level where the world could start copying you in terms of maturity, political setup, state affairs, policies and legislation etc. in this phase from which Pakistan is passing now, Pakistan must keep a close eye on the countries which are developed and those as well which are in competition against Pakistan but progressing well than her. By keeping an eye on developed and prosperous countries, Pakistan will have an idea how to be benefitted from their struggle of centuries in moments. Whereas by observing the under developed countries like India which are competing with Pakistan in the race of prosperity we will come to know how they are idealizing the world. But unfortunately we are doing nothing except generating a system which neither suitable for Pakistan in long term nor acceptable for rest of the world. We never considered the Britishers to be our ideal from where we got not only our democratic parliamentary setup, judicial setup, civil administration but also we adopted all the western jurisprudence. Furthermore we never observed India which is not only our competitor in this region but also got independence at the same night when Pakistan got, but they developed a very mature democracy as compare to Pakistan with zero military toppled



government but also went ahead one step in legislation and international affairs. Pakistan stood behind because of immature setups where there was no respect for the laws made by civilians. This created a trust deficit between then institutions which were used to be the pillars of state. Though it is late but the need of the hour is to understand the international politics and do as the demand of the globe is. Pakistan requires more effective legislation in order to make the democracy strong. It has to do what is acceptable in rest of the world. The laws such as lifetime disqualifications are to be amended and there should be a fix time span. The people of Pakistan must be open to everyone when it comes to election. This is the only way of getting rid of black sheep. If there would be disqualification for lifetime there would be always a soft corner for those who have been convicted which turn into charisma. We must let the time unveil the evils of the system.

### 4.3 Conclusion

In this research I have discussed the disqualification of parliamentarians under constitution of Pakistan and addressed the question that whether someone can be disqualified for life time and kept out of politics for whole of the life. Whether someone's political carrier can be finished due to any offence or mistake he makes deliberately or otherwise. The answer that I have got by studying other democracies of the world and comparing them with Pakistan is "of course NO" because someone can be punished for what he has offended not what he is interested to do in rest of life. They argue that if someone has been disqualified due to any offence he should be punished for that particular offence. In democracy once a person faces punishment and the due disqualification then it's the public to decide his political carrier by democratic and electoral process not the court or any other single institution. Contesting elections is another right of every citizen which cannot be infringed due to any offence for what he has been punished too. We see disqualification clauses and laws in every country but there is not a single example where a citizen has been convicted and after the conviction the doors of parliament and assemblies have been closed for him. Political carrier and criminal behavior are two different aspects of life which to be dealt separately under law. By disqualifying a person lifetime not only violates that's person's basic right to contest but also infringes the right of another citizen's right to vote for his favorite candidate as law allows us all to elect the one who we think fit for system. As otherwise other than the philosophy of democracy but if we see such life time disqualification in Islamic lens we always find space for pardon in Islam. Hence as per all aspects no one can be disqualified lifetime. Our judicial system needs to interpret the laws with accordance of other world.

Basically we never looked at the secret of prosperity of the world but we made Pakistan a conservative traditional state where all the institutions came not to run the state but in competition to have control on affairs of state than any other institution which resulted legislation with no means an effect, judiciary with controversial historical political decisions and the executive body became a service institution for armed forces. What does this all really mean? It means we are on declivity.

Our institutions have no understanding and trust between them and we are not moving towards prosperous future as if we have a glance on the history just to know about elected Prime Ministers we find;

Name of Prime Minister	From – to	How term Ended
Liaquat Ali Khan	1947-1951	Murdered
Khuaja Nazim udd Din	1951-1953	Was asked to step down (Dismissed)
Muhammad Ali Bogra	1953-1955	Was asked to resign forcefully
Ch. Muhammad Ali	1955-1956	Was asked to resign
Hussain Shaheed Sohrwardi	1956-1957	Resigned
I I Chundrigar	1957-1957	Resigned
Feroz Khan Noon	1957-1958	Martial Law imposed
Zulfiqar Ali Bhutto	1973-1977	Martial Law imposed. (Hanged)
Muhammad Khan Junejo	1985-1988	Dismissed
Benazir Bhutto	1988-1990	Dismissed
Nawaz Sharif	1990-1993	Dismissed then asked to resign
Benazir Bhutto	1993-1996	Dismissed,(murdered in 2007)
Nawaz Sharif	1997-1999	Martial Law Imposed
Zafar Ullah Jamali	2000-2004	Asked to resign
Yousuf Raza Gillani	2008-2012	Judicial Dismissal
Nawaz Sharif	2013-2017	Judicial Dismissal

This is what which shows Pakistan different from every other democratic setup of the world. Not a single Prime Minister of Pakistan has completed his term of Five years from the independence till date. Every one of the after being elected has been sent out of services by any means. Initially the

political crisis then the military interruption for more than three decades collectively and finally the judicial interpretations of laws for life time disqualification has resulted to end several political carriers. But the judicial disqualification stands different from rest of the derailing techniques. Judicial disqualification has an effect which will prevail and be practiced lifelong. It is not affecting the present scenario but the future of Pakistan as well. Till date every politician that had to be eliminated by the power of vote still demanding their vote from public. They all put their burden of political failure upon the institutions and institutional interruption in their term. The institutions need to work in their constitutional limit to make Pakistan prosperous.

## List of References

- Ahmed Gulzar, Saeed Sh. Azmat and Ahsan Ijaz ul JJ, Mian Muhammad Nawaz Sharif and others  
Versus Imran Khan Niazi and others, PLD 2018 SC 1
- Malothra Inder.(1991). A Personal and Political Biography Hardcover: Northeastern. Mumbai
- Ahsan Ijaz ul JJ, Imran Ahmed Khan and others---Applicants Versus Mian Muhammad Nawaz  
Sharif, PLD 2017 SC 692
- Articles 62 & 63, Constitution of Islamic Republic of Pakistan 1973, (2012), Federal Law House,  
Rawalpindi
- Ambiguous Observes Supreme Court, geotv, 8-7-2018 retrieved from  
<https://www.geo.tv/latest/180866-article-621f-ambiguous-observes-supreme-court>
- Constitution of Islamic Republic of Pakistan 1973, (2012), Federal Law House, Rawalpindi
- Constitution of United States of America 1787, (2013), Oxford Press, London, UK
- Constitution of India 1950, (2015), Westland Publications, Madras, India
- Discussion on Article 62, defense, 23-6-2018 retrieved from <https://defence.pk/pdf/threads/a-discussion-about-article-62-63.245259/>
- English Disqualification, collinsdictionary, 10-7-2018 retrieved from  
<https://www.collinsdictionary.com/dictionary/english/disqualify>
- Gerard Carney, (2013), Members of Parliament: Law and ethics, Chicago Press, Chicago, USA
- Khan Faisal Zaman JJ, PLD 2014 Lahore 670 Before Gohar Nawaz Sindhu v Mian Muhammad  
Nawaz Sharif and Respondents, PLD 2014 Lahore 670
- Khosa Asif Saeed Khan JJ, Imran Khan Niazi v Mian Muhammad Nawaz Sharif, PLD 2017 SC 265



Menace of Article 62, courtinthelaw, 12-6-2018 retrieved from

<http://courtingthelaw.com/2017/08/08/commentary/menace-of-articles-62-and-63-of-the-constitution-of-islamic-republic-of-pakistan-1973/>

Nisar Mian Saqib JJ, Muhammad Hanif Abbasi Versus Jahangir Khan Tareen and others, PLD 2018 SC 114

Nisar Mian Saqib JJ, Muhammad Hanif Abbasi Versus Imran Khan Niazi and others, PLD 2018 SC 189

Representation of the People Act 1981, (2010), Oxford Press, Bombay, India

Representation of Peoples Act 1951, (2013), Westland Publications, Madras, India

Representation of Peoples Act, clearias, 7-7-2018 retrieved from <https://www.clearias.com/salient-features-of-the-representation-of-peoples-act/>

Pakistani Constitution, lums, 20-6-2018 retrieved from <https://sahsol.lums.edu.pk/law-journal/distilling-eligibility-and-virtue-articles-62-and-63-pakistani-constitution>

Saad Rasool, (2014), Disqualification of members of Parliament, Lums Law Journal, Lahore


UK Parliament, researchbriefing, 23-6-2018 retrieved from

[http://researchbriefings.files.parliament.uk/documents/SN03221/SN03221 .pdf](http://researchbriefings.files.parliament.uk/documents/SN03221/SN03221.pdf)

Ziblatt Daniel, (2018). How Democracies Die. New York: Crown Publishing Group



## Turnitin Originality Report

Disqualification of Parliamentarians under Constitution of Pakistan (Comparative and Critical study) by Sultan Sikandar 

From Theses (QAU theses)

- Processed on 10-Jul-2018 09:01 PKT
- ID: 981575634
- Word Count: 9287

## Similarity Index

13%

## Similarity by Source

## Internet Sources:

11%

## Publications:

8%

## Student Papers:

8%

**sources:**

- 1 3% match (Internet from 22-Dec-2014)  
[http://164.100.150.3/Lokshabha14/electionbooks/ManualofElectionLawVolume%201\\_english.pdf](http://164.100.150.3/Lokshabha14/electionbooks/ManualofElectionLawVolume%201_english.pdf)
- 2 2% match (student papers from 14-Mar-2015)  
[Submitted to Christ University on 2015-03-14](#)
- 3 1% match (Internet from 18-Feb-2018)  
<http://onchair.blogspot.com/2010/04/>
- 4 1% match (Internet from 30-Jun-2018)  
[https://en.wikipedia.org/wiki/History\\_of\\_democracy](https://en.wikipedia.org/wiki/History_of_democracy)
- 5 1% match (Internet from 29-Oct-2015)  
<http://indiankanoon.org/doc/320017/>
- 6 1% match (publications)  
[Charles Wallace Collins. "The Fourteenth Amendment and the States", Springer Nature, 1974](#)
- 7 1% match (Internet from 16-Aug-2009)  
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>
- 8 1% match (Internet from 12-Apr-2016)  
[http://ceotelangana.nic.in/GE\\_2014/INSTRUCTIONS/Forms%20and%20information%20related%20with%20Nomination.pdf](http://ceotelangana.nic.in/GE_2014/INSTRUCTIONS/Forms%20and%20information%20related%20with%20Nomination.pdf)
- 9 < 1% match (Internet from 22-Jul-2015)  
<http://jsslawcollege.in/wp-content/uploads/2013/05/Decriminalization-of-Politics-in-India.pdf>
- 10 < 1% match (student papers from 17-Dec-2014)

