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A house for Smriti Irani in Amethi: Why the House doesn't ask for it

Domicile has never been a criterion for Lok Sabha candidates, who are allowed to contest from multiple seats; the requirement in case of Rajya Sabha is also gone now

Written by **Damini Nath**

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NewsGuard

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Decode politics

Simplifying a buzzword everyday

Union Minister and BJP leader Smriti Irani being garlanded during an election campaign rally in support of the party's candidate from Chennai North constituency. (PTI)

Union Minister for Women and Child Development Smriti Irani recently became an elector from her Lok Sabha constituency, Amethi. While the BJP is trying to make a big point of this, as well as the fact that Irani now owns a house in Amethi, a candidate is not required to be a voter or a resident of a constituency from where he or she is contesting under election rules.

Irani first contested from Amethi in 2014, but lost. In 2019, she won, defeating Congress leader [Rahul Gandhi](#).

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What are the requirements for a parliamentary candidate?

As per Article 84 of the Constitution, both Lok Sabha and [Rajya Sabha](#) candidates must be citizens of India. While for the Lok Sabha, they need to be at least 25 years of age, the minimum age limit for the Upper House is 30. The Article also says that the candidates should possess "such other qualifications as may be prescribed in that behalf by or under any law made by Parliament".

nomination papers that candidates fill out require them to attach the extract of the electoral roll where they are enrolled.

Article 84 also says that on being elected, the MPs must take an oath or affirmation as per the Third Schedule, which prescribes the format of the oath.

For election to state Assemblies too, the candidates must be citizens, aged at least 25 years and be enrolled as electors.

Was being a domicile of the constituency ever considered a condition for candidates?

While the Constituent Assembly discussed the issue of age and educational qualifications for MPs, it eventually left the matter for Parliament to deliberate on in the future. This was despite some members of the Assembly raising concern over a future Parliament passing a law to prescribe qualifications that might help the party in power.

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Given that candidates can contest from two seats, and cannot be residents of both constituencies, a domicile condition was not on the table.



Smriti Irani's house in Amethi. (Express photo by Manoj CG)

Did Rajya Sabha once have a domicile criterion?

Originally, Rajya Sabha candidates from a state or Union territory had to "ordinarily reside" there.

In 1994, then Chief Election Commissioner T N Seshan suggested that non-resident candidates be prevented from contesting then imminent elections to 59 Rajya Sabha seats that were falling vacant.

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But in 2003, the Atal Bihari Vajpayee-led NDA government brought in an amendment to the RP Act, 1951, removing the domicile requirement for Rajya

address issues at the national level”; “limit the candidate pool”, potentially excluding individuals with valuable expertise; and encourage “local-centric politics”.

Those who argued against removing the domiciliary requirements said it would “dilute” the federal character of India, and encourage defections and horse-trading and cross-voting in Rajya Sabha elections as well.

The amended Section 3 of the RP Act now says: “A person shall not be qualified to be chosen as a representative of any state or Union territory in the Council of States unless he is an elector for a Parliamentary constituency (in India).” Hence, the candidate can be a voter anywhere in the country, and need not be of that state or UT which he or she represents in the Upper House.

The 2003 amendment also changed the system of voting for the Rajya Sabha elections from ‘secret’ to ‘open’ ballot.

Was there a challenge to the amendment?

The 2003 amendment was challenged by journalist and former Rajya Sabha MP Kuldeep Nayar, among others.

Lawyers for Nayar argued that the domicile requirement was an intrinsic part and removal of it would affect the federal structure, which is one of the basic features of the Constitution. Appearing in the case, Fali Nariman argued that the amendment had destroyed the essential characteristic of the Council of States because someone who lives in any constituency in India could be chosen to represent a state in the Rajya Sabha only by virtue of being elected by the MLAs of the state. Nariman was recorded as saying that the need for a Second Chamber, that is, the Council of States had become “redundant” due to this amendment, as it now “merely duplicated the House of the People”.

Nariman said the expression “representatives of the state” in Articles 80(1) (b) Article 80 (2), and the expression “representatives of each state” in Article 80(4), are

In 2006, the Supreme Court rejected the arguments regarding both the removal of domicile requirement and 'open ballot'. Ruling that the amendments did not infringe on any Constitutional provision, the court said that Article 80(4) says representatives of each state shall be elected by the MLAs of the state in accordance with the system of proportional representation, by means of a single transferable vote. "Apart from this, the Constitution does not put any restrictions on the legislative powers of Parliament in this regard," it ruled.

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