

Educational Qualification for Contesting Elections

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1 Introduction

Recently, the State Assemblies of Haryana and Rajasthan have passed a Bill, fixing the minimum educational qualification for elections to the Panchayati Raj institutions besides laying down other conditions including making it mandatory for the candidates to have functional toilets.

Following are the qualifications which have to be met for contesting elections to the local bodies:

- (a) There should be no charge-sheet filed, which may lead to the imprisonment of up to ten years, against the candidate in any court in India. Or
- (b) He must not have not been failed to pay the arrears of any kind, like to any Co-operative Society, any bank, or electricity bills, etc.
- (c) If in case of men from general category, he must have passed matriculation or equivalent. In case of women from general category of men from SC/ST community, this qualification is Class VIII. And in case of women from SC/ST community, this qualification is Class V.
- (d) The candidate must have a functional toilet in his/her house.

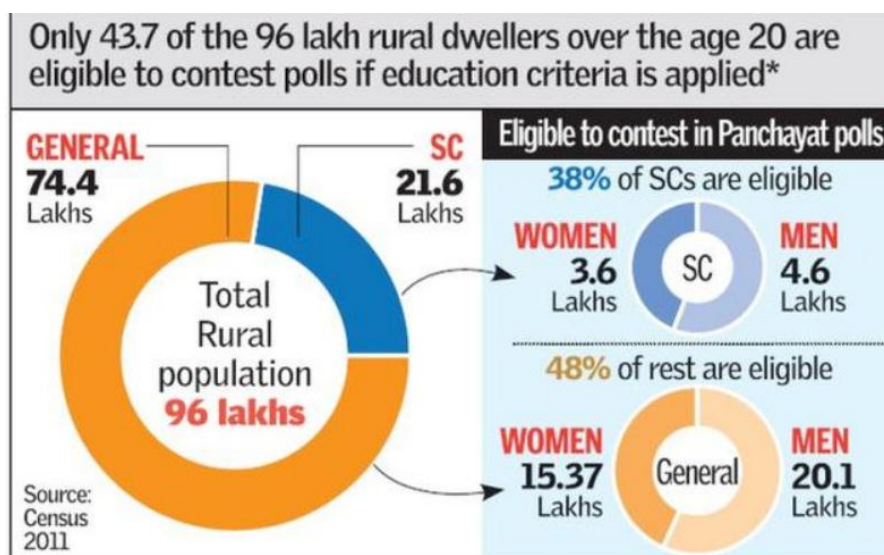
2 Need for such qualifications

- (a) Despite decades after, independence the socio-economic indicators in India, especially in rural areas, are dismal. Therefore, making such qualifications necessary for contesting elections would motivate the people to improve these indicators.
- (b) Further, it is believed that, education gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration, especially at the grass roots level. Thus, these qualifications are meant to improve the efficiency of governance.
- (c) Rural India is reeling under agrarian debts and farmers are committing suicide to escape the debt trap. Therefore, these qualifications would help reduce the debt burden.
- (d) Finally, those who aspire to get elected to those civic bodies and administer them must set an example for others.

3 What these qualifications mean for people of these states?

- The rural population in the State of Haryana is 1.65 crores out of which 96 lakh are above 20 years of age. With the passing of the Haryana Panchayati Raj (Amendment) Act, 2015, only 57 per cent of this population will be eligible to contest in Panchayati elections of Haryana.
- More than half the entire population of women in Haryana cannot contest in these local elections,
- while 68 per cent of the Scheduled Caste women and 41 per cent of the Scheduled Caste men will be ineligible to contest.
- In a country where about 60 percent people defecate in open, either preferentially or out of compulsion, such qualifications would make them ineligible to contest election to the local bodies.

This is pictorially represented as under:



Such systematic disenfranchisement is not new to either Haryana or the Supreme Court. The State has already passed laws that prevent those who have more than two living children from contesting for certain Panchayati posts. This law was upheld by the Supreme Court in the much criticized *Javed v. State of Haryana*, which the Court in *Rajbala Case, 2015* has significantly relied on.

Now that such laws have been judicially legitimized and even encouraged by India's highest court, there is the possibility that this trend of disenfranchisement will spread to other States. For instance, Rajasthan had passed an Ordinance which makes similar educational qualifications as prerequisite for contesting in the Panchayat elections of the State. Other State governments are likely to be motivated by these developments.

4 Supreme Court's order in Rajbala Case, 2015

In this case, the Supreme Court upheld the amendments to the Haryana Panchayati Raj Act, 1994. The amendment was challenged for violating right to equality. The Court upheld these amendments because of the following reasons:

- The Court observed that the illiteracy, lack of sanitation etc. are due to lack of requisite will, rather than only due to poverty.
- The court tried to link education with competence to effectively discharge duties of the Panchayats, by holding that, "It is only education which gives a human being the power to discriminate between right and wrong, good and bad."
- The Court further observed that, the law was meant to elect "model representatives for local self-government for better administrative efficiency."
- The court also observed that, the impoverished and the "indebted" may not be "genuinely interested" in contesting elections. Besides, the verdict points out, "Elections at any level in this country are expensive affairs. In such a case the possibility of a deeply indebted person seeking to contest elections should normally be rare as it would be beyond the economic capacity of such persons."
- The court also highlighted as to how open defecation is a "notorious fact" and a rampantly unhealthy practice in India. Though, the court acknowledged that poverty may be one reason for open defecation still continuing in the country, but this practice is not exclusive to the poor. For example, out of 8.5 lakh families, who live below the poverty line in Haryana, 7.2 lakh have constructed toilets at home with financial help from the State government. Therefore, the apex court agreed with the Haryana government that now "if people still do not have a toilet it is not because of their poverty but because of their lacking the requisite will."

5 Critical analysis of the order

Quite apart from the arbitrariness of such a law—for instance, why require only a toilet, why not a washing machine— it is a corrosive anti-democratic impulse. The very essence of direct democracy in the context of a parliamentary system such as ours is that every citizen, regardless of his or her educational qualifications, material possessions, whether he or she is a good or poor debtor, and so forth, has an inalienable right to vote and an equally inalienable right to stand for political office (in the latter case, assuming that entirely reasonable requirements such as nationality, residency in a constituency or assembly district, and so forth are met). These fundamental rights are simply not open to legislative tampering, or they ought not to be.

It is to India's abiding credit that the members of the Constituent Assembly— itself, ironically, constituted on the basis of a very limited franchise—resisted the siren call of those practical men of affairs who argued that a largely illiterate, poor, communally divided and caste-ridden society could not be trusted with the vote. Rather, the framers of our Constitution chose to entrust their faith in the Indian people, and to affirm their belief in the twin principles of liberalism and democracy.

The Haryana law, and a similar one in Rajasthan, contravene this fundamental principle—opening, perhaps, a crack through which our cherished democratic values may eventually seep away. That would be a tragedy.

In more specific terms, following are the criticisms of the amendment and the Court order upholding it:

- (a) The judgment goes against Article 14 of the constitution. The article permits classification only if it is reasonable, but the amendment would unduly discriminate against the disadvantaged sections.
- (b) The Court ignores the fact that the amendment ends up punishing those who are the victims of state failure to provide education and sanitation in the first place. The poor state of socio-economic indicators has been due to lack of adequate provision by the state, of basic services to the poor and disadvantage sections. Therefore, these amendments would end up punishing the people for wrongs committed by the state.
- (c) The judgement, which debars at least two-thirds of electorate from contesting Panchayat elections, disproportionately affects the most marginalized and vulnerable citizens.
- (d) Constitution makes it clear that additional qualification to contest for membership of parliament or the legislative assembly can only be prescribed by the parliament. The state legislature does not have the power to prescribe any qualification, nor is there any power to prescribe a qualification in Article 243F, which articulates the grounds for “disqualification” of membership to serve on the Panchayat.

It is because, Article 243-F (1) (a) mandate that the disqualifications for an MLA and a Panchayat member should be the same under the Constitution and the Representation of the People Act, 1951. Therefore, these amendments do not stand the legal rigor.

- (a) The judgement goes against the stated objectives of the 73rd Amendment, to remedy the “insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women.”
- (b) The issue of proxy candidates effectively nullifies these amendments. But they would cripple one of the key characteristics of a representative democracy: anyone's ability to run for election, without regard to income, gender or social status.

- (c) Further, in those state which have large gaps between male and female literacy, these amendments would discriminate against women. They would effectively make the proposed amendments to increase women's reservation in Panchayats meaningless.

Finally, if there is no such qualification for state assembly or parliament elections, then such a qualification only for Panchayats is arbitrary, unreasonable and biased.

6 Need for such similar qualifications for other tiers

The underlying assumption is that prescribing this criterion would promote social good, on the one hand. While on the other, it is a well-established fact that education helps us better understand this world, which is a pre-requisite for better decision making.

To elaborate, these qualifications would motivate people to take measures for improving their life chances, like promoting education, sanitation, etc. Further, education makes people aware citizens who are capable of better understanding and analyzing different issues comprehensively. Therefore, it may be advisable to prescribe similar qualifications for the members of the Parliament and the state legislatures.

However, there is no reason to consider only literacy as the supreme achievement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person? For example, Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering their States very well.

In contrast to this, one our former Prime Ministers, regarded to be the most educated and qualified head of the government in the world, is allegedly held responsible for poor governance and weak leadership. Therefore, we should not attach too much importance to literacy when it comes to governance.

7 Conclusion

A republican and democratic form of government is the basic structure of the Indian Constitution. The right to be chosen is enshrined in Articles 84 (Parliament), 173 (Legislative Assembly) and 243 (C) (Composition of Panchayats). Increasing literacy cannot be a rational justification for introducing educational disqualification in the matter of exercising one's civil and political rights.

Perhaps, we can have a middle path balancing the issues of upholding democratic values and promoting socio-economic development. This may be done by incentivizing the people, in the form of some reservation of seats, who have made *considerable improvement based on objective criteria* in the concerned indicators, given the state help, rather than fixing a *static criterion*.

Though, these must be the ultimate concerns of the state to pursue but they shouldn't be made the criteria to restrict the civil and political liberties of people, especially of the disadvantaged.

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