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Rajasthan and Haryana Panchayat Amendments strike at the heart of Universal Adult Suffrage

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The amendments to the Panchayati Raj Acts in Haryana and Rajasthan violate the basic tenet of Universal Adult Suffrage and it exclude a sizable section of people from the lower strata of society. File Photo: Akhilesh Kumar

*The right to vote and the right to contest are central to the concept of citizenship in an electoral democracy. Individuals can be disqualified from contesting elections on grounds of personal culpability. However, debarring "classes of people" because they do not meet some arbitrary qualifications militates against the very concept of democracy, especially where the disqualifications are a consequence of inadequate State capacity, says **Ruchi Gupta**.*

The Bharatiya Janata Party-led Governments of Rajasthan and Haryana have amended their Panchayati Raj Acts to bar citizens without middle and secondary school education from contesting elections. The amendments, which disqualify about half of the rural population with Dalits, tribals, minorities and women being the worst hit, were upheld by the Supreme Court last month.

The Judges considered the question whether “a provision which disqualifies a large number of persons who would otherwise be eligible to contest the elections is unconstitutional” but dismissed it by arguing that “every person who is entitled to vote is not automatically entitled to contest for every office under the Constitution” and thus if it is “constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion, should make no difference for determining whether prescription of such disqualification is constitutionally permissible”. The Judges added one caveat to the above: “unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible.”

In other words, the disqualifications will be treated as constitutionally untenable only if the conduct of election itself becomes impossible. This raises a number of issues that go to the heart of what it means to be an electoral democracy. The universal right of the citizen to be involved in the conduct of public affairs either directly or through a representative of her choice is at the heart of electoral democracy. The right to vote and the right to contest are central to the concept of citizenship in an electoral democracy. Therefore, these rights cannot be made contingent on qualifications which are extraneous to the concept of citizenship merely to meet some policy imperative of the State. While individuals may be disqualified from contesting for public office for personal culpability in such acts as crime and corruption or because of unsuitability due to unsoundness of mind, key citizenship rights cannot be made contingent on secondary criteria such as education and toilets at home. Debarring “classes of people” because they do not meet some arbitrary secondary qualifications militates against the very concept of democracy, especially where the disqualifications are a consequence of inadequate state capacity to ensure universal access to formal schooling and sanitation facilities. Second, if elections imply a plurality of representative choice, then does the election of an unopposed candidate due to forced exclusion of others desirous of contesting not “frustrate the constitutional scheme [...] of] holding elections?

In the panchayat elections in Haryana, which concluded on January 24, more than half of the *panches* were elected unopposed. The numbers of unopposed candidates at panchayat, block and district level, too, have increased in both Rajasthan and Haryana. Even more shockingly, more than 5,000 (that is, more than eight per cent of the total) posts of *panch* remain vacant in Haryana because no one was eligible to contest! As per the numbers available for the 2010 elections, more than three nominations were received for each post of *panch* with an average of two contesting for each post.

The post of *Sarpanch* is central to the idea of local self-governance and is fiercely contested (about six persons contested for each post in the last Haryana election). However, due to the draconian exclusionary educational requirements, 13 panchayats in Rajasthan and 22 panchayats in Haryana could not elect a *Sarpanch* at all! While data is not available for Haryana, all of the 13 vacant panchayats in Rajasthan are those reserved for SC, ST and women showing the disproportionate impact on the very groups that were sought to be empowered in local self-governance by the 73rd Constitutional Amendment Act. Five of these 13 Panchayats are in one district and show the regional political exclusion of backward areas through these amendments. In Rajasthan, the State Election Commission has held two by-elections in the last one year for these vacant panchayats; however, despite three election cycles, nine panchayats remain vacant and are being administered by the bureaucracy (four were filled through marriage or educated minor coming of age in the next election). These vacant posts militate against both the citizen's right to contest for public office and her right to choose her own public representative.

Can it be anybody's case that these vacant panchayats have democracy? If democracy is the bedrock of our Constitution, then each of these vacant panchayats is a rebuke and negation of our assertion that India is a democratic republic. These vacant panchayats alone constitute grounds for a review petition against the Supreme Court order.

In 2014, Hong Kong was wracked by mass sit-in protests led by students. The students were protesting against a decision of the Standing Committee of the National People's Congress to pre-screen candidates that could be selected through universal suffrage for the post of Hong Kong's Chief Executive. The students deemed this proposal inherently undemocratic since it restricted their right to choose their own representative even though the election was to be through popular vote. Following weeks of protests, the United Nations Human Rights Committee too urged China to allow elections in Hong Kong without restrictions on who could contest elections. The UN Committee referred to the International Covenant on Civil and Political Rights which was ratified by Hong Kong before it was returned to China, and said, "Hong Kong, China should take all necessary measures to implement universal and equal suffrage in conformity with the covenant, as a matter of priority for all future elections." Article 25 of the Covenant holds that "every citizen shall have the right and the opportunity [...] without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage [...] guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country".

India is party to the Covenant and we must ask if the restrictions in force by these Panchayati Raj Act amendments in Rajasthan and Haryana are reasonable and consistent with the principle of "freely chosen representative". Do the amendments fulfil the right to "be elected" through "equal suffrage" and to have "access, on general terms of equality, to public service in his country"? There can be no quarrel that our public representatives should ideally be educated but that determination should be left to the citizenry instead of top-down exclusion by those in power (many of whom themselves do not possess the qualifications they have sought to impose on Panchayat candidates). If the citizen wants to prioritise education over all other attributes in her public representative, she is free to vote for the educated candidate. Many of us may not care about the goings-on in local governments in rural India. However, if these amendments remain unchallenged, they could set a normative precedent for eligibility — not just for candidates at the panchayat level but for those contesting assembly and parliamentary elections, thus undermining the concept of participatory democracy. Indeed, there is no bar on Parliament applying similar restrictions on elections to state legislatures or Parliament itself through mere amendments to the Representation of the People Act.

There can be no democracy — a system of Government of, by and for the people — if we exclude 50 per cent of the population at the lowest tier from contesting for public office. As Indian citizens — rightly proud of our democratic traditions — are we going to allow those in power to abridge our citizenship and exclude us from our right to self-determination?

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