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Case Comment

A Critical Evaluation of the Principle of Constitutional Equity: Ruling in Rajbala v. State of Haryana

Unanza Gulzar*

1. Introduction

Section 175 of the Haryana Panchayati Act, 1994, states that any person who falls within the criteria laid down under this Section will be disqualified from contesting elections, further, those falling within the ambit of Section 175, will have to resign if they already hold office. Additionally, the Haryana Panchayati Raj (Amendment) Act, 2015 added five more grounds of disqualification, these are:

1. Persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years
2. Persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or District Central Cooperative Bank or District Primary Agricultural Rural Development Bank
3. Persons who have arrears of electricity bills
4. Persons who do not possess the specified educational qualification and lastly
5. Persons not having a functional toilet at their place of residence.

* Jamia Milia Islamia, New Delhi, India; unanzagulzar@gmail.com

The petitioners in the present case were individuals interested in contesting in the local panchayat elections but would be unable to do so now as they fall within the grounds stated under Section 175.They approached the honourable Supreme Court claiming infringement of Section 14 of the Constitution of India, as the amendment created an artificial classification among voters. Further, they stated that the imposition of the Amendment Act, 2015 was arbitrary and served no legitimate purpose.

The hallmark of a vibrant democracy is the participation of majority of the people, as voters as well as candidates, In the elections to the Parliament, State Legislatures, Municipalities or Panchayats. Such involvement is an elementary right based on rule of law that is available to legal residents of a democracy. Law makers cannot introduce additional disqualifications that curtail the scope of involvement of the common people as such a determination is precarious to the very existence of democracy. It is for this reason that the power of the Parliament or the State Legislature to add disqualifications not included in the Constitution, was strongly opposed in the Constituent Assembly Debates. However, eventually it was asserted that for elections to the State Legislatures, the power to create additional disqualifications should only rest with the Parliament and not with the State Legislature. Therefore, Article 84 and Article 102 of the Constitution provide qualifications and disqualifications correspondingly for members of Parliament in the Lok Sabha and Rajya Sabha. Similarly, Article 173 and Article 191 provide qualifications and disqualifications for State Legislatures.

The Constitution of India under Article 243 F (1) provides for disqualifications from membership of the Panchayat. Additionally, under Article 243 F(1)(b),the State Legislature has enacted the Haryana Panchayati Raj Act, 1994.Section 175 of this Act provides for disqualifications from membership in the Panchayat. These disqualifications were further extended by the Haryana Panchayati Raj (Amendment) Act, 2015, and was subsequently challenged in *Rajbala v. State of Haryana*.[1] By the Amendment Act, 2015, five categories of persons were disallowed from contesting in the

[1]Rajbala v. State of Haryana, (2016) 1 S.C.C. 463.

elections to the Panchayat. These categories are "(a) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (b) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or a District Central Cooperative Bank or a District Primary Agricultural Rural Development Bank, (c)persons who have arrears of electricity bills, (d) persons who do not possess the specified educational qualification and lastly (e) persons not having a functional toilet at their place of residence."[2]

2. Panchayati Raj: Conception and Misconception

The objectives behind bringing in the 73rd and 74th Amendments[3] of the Constitution were to involve participation of people at the grass root level, in the development of the country. The main focus of these amendments was to emphasize on issues like shelter, poverty unemployment, illiteracy at the ground level, and further to enable redressal of such matters by the masses themselves. Certainly, an individual who is elected as a representative of the Gram Sabha at Panchayat level must be one who is conscious of these difficulties so that he can contribute to the decision making at the Panchayat level and execute such arrangements and guidelines which are mentioned in Schedule XI of the Indian Constitution. In order to realise this, there should be broad decentralization of powers by the State Legislatures, by sanctioning the Gram Sabha/ Panchayat as entities of self-governance. Representation at the Panchayat level is essential and imposing blocks based on financial capacity, living standard, literacy and other similar factors will ruin adult suffrage by disallowing a large portion of the population from contesting elections. Moreover, one of the objectives of the 73rd amendment is to reduce the "inadequate representation of weaker sections of the society like Women, Scheduled Tribes and Scheduled Castes." A statutory amendment has to be consistent

[2]Ninni Susan Thomas, *Rajbalav. State of Haryana: A critique*, 2.4 Comparative Constitutional and Administrative Law Quarterly 29, 30 (2015).

[3] The Constitution (73rd Amendment) Act, 1992; The Constitution (74th Amendment) Act, 1992

with the objectives of the Constitutional Amendment or a provision authorising such a statute should be in connection with the objectives. It has now been established by cases that it should be left to the voters to decide the significance of educational qualifications of a candidate.[4] Therefore, it is the decision of the voter that is significant[5] and the Legislature cannot introduce qualifications that curb their right to expression, guaranteed under Article 19(1)(a) of Indian Constitution.

3. Educational Qualifications to Contest Elections

The educational qualification provided by the impugned Amendment Act, 2015 is that a male candidate should be a graduate of class XII, a candidate who is a woman or belonging to a Scheduled Caste should have passed middle school. Further, Scheduled Caste women candidates should be a graduate of class V. Keeping in view that "the rural population in the State of Haryana is 1.65 crores out of which 96 lakhs 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."[6] A court of law is required to give due importance to legislative intent while analyzing a law[7]. The Court and the State admitted that the number of persons who will be disenfranchised by this Amendment Act is not clear. As the provision cannot be taken to mean that the condition for all contestants is passing class V, the whole provision is liable to be struck down. Thus, the provision is not only capricious and irrational, but is also discriminatory, there by encroaching Article 14 of the Constitution.

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[4] Union of India v. Association of Democratic Reforms, (2002) 5 S.C.C. 294.

[5]Mohinder Singh Gill v. Chief Election Commissioner,(1978) 1 S.C.C. 405.

[6]Rajagopal Saikumar, *Uprooted From Democracy: Rajbala v. State of Haryana*, the HINDU CENTRE FOR POLITICS AND PUBLIC POLICY(New Delhi, 12/12/2015).

[7]U.S. v. Harvey, 814 F.2d 905 (4th Cir. 1987)

Justice Chelameshwar affirmed that, "It is only education which gives a human being the power to discriminate between right and wrong, good and bad" and it is disheartening to note that the Justice sees only education as a rational connection to sustain the Amendment. Referring to the Constituent Assembly Debate on whether education is an essential criterion for contesting elections, the following observation outlines the intention of the Constitution makers:

> Alladi Krishnaswamy Iyer: "Firstly, in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no light-hearted mood but with the full realisations of its implications. If democracy is to be broad based and the system of governments that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy. If any such qualifications were introduced, that would have disfranchised a large number of the labouring classes and a large number of women-folk. It cannot after all be assumed that a person with a poor elementary education and with a knowledge of the three Rupees is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large-scale universal suffrage may also have the effect of rooting out corruption what may

> turn out incidental to democratic election. This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken. The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges, the electoral colleges being elected on the basis of adult suffrage. That was not found feasible."[8]

The amendment leaves one with a troubling question, "Whether the State of Haryana, when more than half the adult population is systematically and structurally disenfranchised, continues to be a democratic or not?"[9] Such organized disenfranchisement is not novel to either the State or the Apex Court. Haryana has previously passed laws that stop those who have living children exceeding two years of age from contesting for definite Panchayati posts. These laws were upheld by the Supreme Court in *Javed v. State of Haryana*,[10] which the Court in the present case has significantly relied on. "Now that such laws have been judicially legitimized and even encouraged by India's Apex Court, there is the possibility that this trend of disenfranchisement will spread to other States. For instance, Rajasthan had passed an Ordinance (approved by the Governor in December, 2014) which makes similar educational qualifications as a prerequisite for contesting in the Panchayat elections of the State. Other State governments are likely to be motivated by these developments."[11]

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[8] Constituent Assembly Debates, Book No.5, Volume No. X-XII, (23/11/1949).

[9]Appadurai, *Deep Democracy: Urban Governmentality and the Horizon of Politics*,14.1 PUBLIC CULTURE, 21, 41 (2002).

[10]Javed v. State of Haryana,A.I.R. 2003 S.C. 3057.

[11]RajagopalSaikumar, *Uprooted From Democracy: Rajbala v. State of Haryana*, The Hindu Centre for Politics and Public Policy 9 (New Delhi, 12/12/2015).

The Supreme Court again in *People's Union for Civil Liberties v. Union of India,*[12] considered whether education should be a part of the declaration made by a candidate.

Rejecting such a proposition, the Hon'ble Court observed that,

> Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being a Member of the House of the People or Legislative Assembly. That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well-known fact that barring a few exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly educated even if they are not Graduates or Post-Graduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well-educated persons such as those having graduate and post- graduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in public life and the Legislatures have demonstrated that the dividing line between the well-educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well-educated persons.[13]

A complete Bench of the Supreme Court of Pakistan examined whether education should be obligatory as a disqualification in contesting elections to the Parliament or Provincial Assembly. The

[12]People's Union for Civil Liberties v. Union of India,(2013) 10 S.C.C. 1.

[13] People's Union for Civil Liberties v. Union of India, (2003)4 S.C.C. 399.

Pakistan Supreme Court in *Muhammad Nasir Mahmood and Another v. Federation of Pakistan,*[14] looked into the legislative provisions of almost thirty developing/developed countries including Argentina, Japan, Australia, Bangladesh, Iran, Italy, etc. where education is not a disqualification. In most of these countries, a person who is qualified to vote is also entitled to contest. The Pakistan Supreme Court noted that the qualification ran afoul since it did not consider the social and economic conditions of Pakistan and the impact it had on the people while disentitling them from exercising the universal right of suffrage. It also noted that educational qualification as a condition for contesting elections is not present in other countries and such an inclusion would be against the spirit of democracy as enshrined in different instruments of the United Nations. It was further held that denial of the right of voters to contest elections is against the spirit of democracy. The Supreme Court also mentioned that the attainment of a qualification is dependent upon physical conditions and the milieu in which a person may find himself. For instance, the urban population has an upper hand in the sphere of education. It also noted that the State has failed in fulfilling its obligation of imparting education to all the citizens as required by Article 37 of the Pakistan Constitution. It concluded by holding that rendering a vast majority of population ineligible to contest by imposing the requirement of educational qualification is unjust and unconstitutional; it is neither a reasonable restriction nor a reasonable classification and therefore it is void."[15]

A simple understanding of the subsequent passage in *Rajbala* is sufficient to comprehend the confusion of the law that has been highlighted in the judgment:

> If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such

[14] Muhammad Nasir Mahmood and another. v. Federation of Pakistan, (2009) P.L.D S.C.107.

[15]Ninni Susan Thomas, *Rajbala v. State of Haryana: A critique,*2.4 Comparative Constitutional and Administrative Law Quarterly 29, 31 (2015).

> classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible 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.

Due to inaccessibility and poverty, people are unable to provide schooling to their families. According to a UNICEF report, it was observed that out of the 120 million children who are out of schools, most of them belong to poor families or are minorities.[16] Education as a goal for a welfare state is commendable, but education as a qualification for contesting elections cannot be made mandatory as such a field has a direct connection to democratic participation. Therefore, the argument of the State that these days Members of Parliament and Members of Legislative Assembly are educated, notwithstanding education not being a condition, is a self-beating contention. If the welfare State makes an attempt to ensure that everyone is educated, the condition is satisfied without having to announce it as a debarment. Thus, education as a qualification should not be made mandatory when it takes away the rights of citizens in a democracy. Consequently, the whole methodology by the State of Haryana is defective and lawfully unmaintainable.

Additionally, the state has not shown any material before the Court to establish that the Act is based on the notion that educated members of the Panchayat are better suited to fulfil their responsibilities. Such an action of the State is capricious, irrational and violates Article 14 of the Indian Constitution, which stipulates that the State shall not deny to any person equality before the law or equal protection of the law. In the present instance, it is observed that the state is denying the uneducated members of the Panchayat the equal opportunity of contesting elections. The grounds laid

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[16]UNICEF, Education for All Assessment 2000, https:// www.unicef.org/ specialsession/about/sgreport-pdf/sgrep_adapt_part2b_eng.pdf (last visited 24 March ,2018)

down by the amendment are arbitrary, hence the bar created through the amendment violates Article 14.

The only contention which has been put forth by the State is that representatives of the Panchayat have to discharge definite responsibilities for which it is essential that they are educated. However, no rationalization has been put forth as to why there is no educational qualification either for Members of Parliament, Members of Legislative Assembly, Vice-President and President, who have to discharge profound tasks of state significance. The fact is that all these significant statutory representatives have been satisfactorily performing their tasks without the imposition of educational conditions as a disqualification. The fact that a candidate contesting elections at the grass root level has to be more educated than a candidate contesting to be a Member of Parliament or a Member of Legislative Assembly is irrational.

4. Right to Vote and Contest Elections

The Supreme Court relying on *People's Union for Civil Liberties (PUCL) & Another v. Union of India & Another*[17] and the dissenting opinion of Justice Chelameshwar in *Desiya Murpokku Dravida Kazhagam & Another v. Election Commission of India*,[18] inferred that the right to vote and right to contest are both constitutional rights and not statutory rights. After deciding that the right to contest is a constitutional right, the level of exploration that had to be engaged by the Court would have to be amply advanced, as the State cannot be permitted to take away rights guaranteed by the Constitution without a compelling interest. Though this compelling interest or a rational nexus was not shown by the State, the Court went on to validate the legislation.

The two-judge bench in *Rajbala* has overlooked the five-judge bench decision of *Kuldip Nayyar v. Union of India*[19] which positively specified that the right to vote in an election and the right to contest

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[17]People's Union for Civil Liberties (PUCL) & Another v. Union of India & Another,(2013) 10 S.C.C. 1.

[18]Desiya Murpokku Dravida Kazhagam & Another v. Election Commission of India, (2010) 7 S.C.C. 202.

[19]Kuldip Nayyar v. Union of India, A.I.R. 2006 S.C. 3127.

an election are both statutory rights and not constitutional rights. *Stare decisis* and judicial decency requires that the two-judge bench when questioning the judgement made by a bench of a greater strength or if differing from it, must refer this significant query to a greater bench so that the query may be answered. It has been established in the matter of *Central Board of Dawoodi Bohra Community v. State of Maharashtra*[20] that the law laid by the Supreme Court in a judgment brought by a bench of greater strength is mandatory on any succeeding bench of smaller or co-equal strength and that a bench of smaller quorum cannot question the exactness of the opinion of law taken by a bench of greater quorum. Thus, it is disquieting that the two-judge Bench in *Rajbala* was ignorant of the judgment in *Kuldip Nayyar*.

5. Impact of the Judgment

The effect of the judgment is that it will prevent many people in the State from contesting elections and will affect people's right to vote. After the Supreme Court upheld the Haryana Panchayati Raj (Amendment) Act, 2015, elections were successfully conducted in Haryana in 2016. This election defeated the objectives of the73rd and 74th Constitutional Amendment Acts, which were enacted to involve participation of people at grass root level in the process of the country's development. By going against the envisioned objective of the 73rd and 74th Constitutional Amendment Acts, the Haryana Panchayati Raj Amendment Act, 2015 has put the oppressed and downtrodden sections of the society back to the position that they were in earlier. Disenfranchisement is not a new abstraction as the said State had earlier passed a law that prevents a person from contesting for Panchayat elections, if they have two children, which was upheld by the Supreme Court in the much-disapproved case of *Javed v. State of Haryana.*[21] Such regulations have been judicially legitimized and even fortified by India's Apex Court as was done in the state of Rajasthan. The Rajasthan Government passed an ordinance mandating requirement of

[20] Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 S.C.C. 673.

[21] Javed v. State of Haryana, A.I.R. 2003 S.C. 3057.

educational qualification for contesting election which was approved by the Governor in 2014, December. Similarly, the Bihar Assembly also inserted a clause through an amendment to the Bihar Panchayat Raj Act, 2006 making it compulsory for the candidates contesting elections in August 2015 to have toilets at home. However, the Bihar Cabinet withdrew this clause later. There is a likelihood that this tendency of disfranchisement will spread to other states too, which will seek such qualifications for contesting in the Panchayat elections. Moreover, to run a democratic country, there must be a choice given to the voter to decide the relevance of education of a candidate. Further, the deprived and troubled cannot afford to be educated because of economic and social reasons. It is imperative that the issue is considered by a larger bench of the Supreme Court and must also be looked into by the government, as it runs contrary to the spirit of the Constitution.

6. Conclusion

The most significant feature of the case is that the Court has overlooked affected individuals at the grass root level. When the State has not efficiently proceeded to develop the areas of illiteracy and sanitation, it is unfair to shift the burden to the oppressed and penalize them by taking away their democratic right of contesting elections. Paradoxically, what the Court has done is take away the prospect of empowered persons in the inferior classes of society to give the upcoming generations an opportunity of being educated. By this, the inferior classes and castes get repressed further, as they have no representation and their voices are never heard. If their involvement is obstructed by the legislature at the ground level, change that could have been affected would never arise and would end in an infinite cycle of hopelessness.

The Supreme Court in *Lily Thomas v. Union of India*[22], held that "the other facet of Article 14 is that the reasonableness of a statute is to be judged on the basis of whether the State has sufficient material to support the rationale of the impugned legislation. If the reason given for the impugned legislation is not supported by any

[22] Lily Thomas v. Union of India, (2007) 7 S.C.C. 653.

material, such legislation can be struck down as arbitrary and violates Article 14 of the Constitution."It is against the background of this settled precedent mandating presence of clear material on record that we must look at the remarks made by the Court in this case. In several instances where the State has provided data regarding education and the number of toilets, the Court acknowledged the fact that the data is not clear or that it has not been made available. In a serious situation such as this, where individuals are disenfranchised, the State must bear the burden of proving without any doubt that the legislation not only has a reasonable nexus with the objective sought to be achieved, but also sufficient material must be placed on record to adjudge the rationale. In this case, the Court acted carelessly while treating the available data. In the author's opinion, it was of utmost importance that the Court analyzed the exact percentage of people getting excluded from practicing their right to contest due to the amendment before deciding that the educational criteria constitutes a valid disqualification.

Taking into account the other provisions like the mandate to have a toilet, the percentage of disenfranchised individuals will keep rising steadily. Education under Article 21A and a toilet with drainage and sewage capability are responsibilities of the State. Yet, the government has transformed its own failures into a burden that excludes the nation from contesting in elections.