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PRIA

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Background Note of the National Consultation with State Election Commissioners

Article 243K and Article 243ZA in Part IX and IXA respectively of Indian Constitution provide for the conduct of elections to Panchayats and Municipalities. The Constitution requires that "the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor" (243K(l)).

Two rounds of elections to these local bodies have been conducted since these amendments to the Constitution nearly ten years ago. Third round of elections is beginning later this year. The experiences gained by PRIA and its partners during these previous rounds of elections have raised a number of issues that need to be debated and sorted out to ensure free and fair elections to the three tiers of Panchayats and Municipalities. This note outlines those issue for deliberations during the Conference on this theme.

1. Scale and Complexity

The system of Panchayati Raj elects nearly three million representatives throughout the country. This number is nearly a hundred-fold increase over the number of elected representatives to state assemblies and national parliament. The system of reservation provided for in the constitution elects nearly one million women, four lakhs Dalits, two lakhs OBCs and two and a half lakhs tribal. For each voter in Panchayat elections in most states, four different ballots are cast--ward panch, sarpanch, member panchayat samiti, and member zila parishad.

Thus, SECs have to make enormous arrangements for the conduct of these elections. In order to facilitate this process, several attempts have been made to simplify the process. Some states conduct panchayat and municipal elections by rotation--certain districts in the state go through the election at one time and their results declared; other districts are taken up some months later (like in Maharashtra). Likewise, some municipalities go through election at one time, others some months later (like in Rajasthan). Another method of rotation is to first conduct elections to Gram Panchayat and declare results; then elections to Panchayat Samiti and Zila Parishad are conducted several months later (like in Gujarat). In some states, Municipal Corporation elections are held separately, and nagarpalika and nagarpanchayat elections later on (like in Andhra Pradesh).

This raises the question of constitutional propriety. The spirit of the constitution treats the three tiers of PRIs as an integral whole, not as separate and independent tiers. Thus, does this rotational procedure adopted with respect to panchayats and municipalities truly conform to the spirit behind this constitutional amendment?

2. Timely Elections

There has been a tendency in several states for postponement of elections by executive action on account of 'supervening difficulties. For ensuring constitutional obligations placed upon state by Articles 243C and 243U, can this role (of notifying elections when due) be placed on SECs rather than the executive? Specific legislative support to specify SECs as authority to whose satisfaction the 'supervening difficulties' (in holding elections to local governments) need to be established.

Further there is a need for an agreement amongst State Governments that there would be a freeze (for one year prior to local government elections) on the reorganization of any Panchayat, Municipality or District so that electoral preparation is not affected.

3. Powers of Delimitation and Reservation

Notification of elections, delimitation and reservations are interrelated and composite elements of Article 243K (1) which places the responsibility of "superintendence", for the conduct of all elections to local governments on SECs. These powers should not be fractured and must be placed together in the SEC.

The process of Delimitation for Assembly /Parliamentary constituencies was frozen to maintain status between states, irrespective of population growth, till the 2001 census. Following the 2001 census, work for fresh delimitation has been undertaken following release of census from December 2003 onwards. The Delimitation Commission is headed by the CEC and two judges from Supreme/High Court.

Unlike at the national level, delimitation of seats in some states is being determined by the executive wing of the state govt, (e.g. in Andhra Pradesh, Haryana, Himachal Pradesh, Karnataka, Punjab, Rajasthan, Tamil Nadu and Uttar Pradesh) not by the SECs. As a result, pressing political considerations are used to change boundaries of different constituencies; and this change is made from one election to another. Absence of adequate census or other data for identifying SC/ST/OBC populations has been used to delay delimitation; thereby delaying panchayat elections in the past (the classic case is that of Jharkhand which is yet to conduct single panchayat elections). Should not the power of delimitation be exclusively vested in the SECs (as in the case of West Bengal and Maharashtra)?

A similar situation arises with respect to determination of reserved seats. In some states, the principle of rotation for the reservation of seats for women was applied from one election to another. So, at the time of second round of elections in states like Uttar Pradesh information about which seats were reserved for women was available only a few days before the nomination process began. There is also the question of changing reservation for women every time elections happen; some states like Tamil Nadu have allowed two terms for women's reservation in the same constituency. Is there a need for ensuring a transparent and common procedure for the reservations to seats of local bodies? Should this power not be vested in the SECs?

4. Electoral Rolls

The above quoted constitutional provision gives full powers to SECs for the preparation and control of electoral rolls. However, the rolls prepared by SECs are at times different and independent from those prepared by the Election Commission of India. Besides causing duplication, inconsistencies between two sets of rolls emerge quite often. Since the Indian citizen is the same voter, be it panchayat elections or assembly and parliament, does it not make sense to integrate the two sets of rolls into a single electoral roll?

In preparation of electoral rolls, it should be possible to adopt a building block approach by using the Panchayat/ Municipality ward as the basic unit and then aggregating them to prepare Assembly/Lok Sabha rolls. This would require amendment to the Representation of Peoples Act and close coordination with the ECI.

The process of verification of voters' lists at the Gram Sabha has been initiated in some states. This can ensure the authenticity of the electoral rolls. Voters' list prepared by ECI can also benefit from this process, if the two sets are integrated. Should this process of Gram/Ward Sabha checking of voters' list not be made a mandatory provision to ensure elimination of bogus voters?

5. Nominations Procedure

When the elections are announced, the process of nomination for panchayat elections is seen to be particularly cumbersome for certain candidates. The candidates belonging to SC/ST and women, particularly from constituencies away from the block headquarters, find it extremely difficult to acquire forms, attach various affidavits and submit the same in time to the Returning Officers at some distance. This process needs to be simplified and made more accessible to such candidates so that "dummy" candidates are reduced and genuine contestants from the weaker sections are encouraged.

A related issue is the eligibility criteria for candidates. Article 243F of the Constitution uses the reference of criteria applicable to candidates in the state legislature. But several states, during the last panchayat elections, adopted two-child norm as an additional criterion. Despite Supreme Court ruling in this matter, is it consistent with the spirit of the constitution and democratic equity that such a criterion is only applicable to elected representatives of local bodies and not to state assemblies and national parliament?

Some states are planning to use literacy as eligibility criterion in forthcoming panchayat elections; some states have tried to introduce additional requirements of bringing in a certificate to show that a regular toilet is built in the candidate's house. In the spirit of the constitutional principle of universal franchise, should there not be a uniform set of norms applicable in all states?

Following the directives of the Supreme Court, the ECI adopted the concept of affidavit of self-disclosure by each candidate on three matters: educational qualification, assets owned and pendency of criminal cases. Some SECs have already adopted this procedure for elections to panchayats and municipalities. Should this not be applied across all states, as a commonly agreed practice?

6. Conduct of Elections

Several practical issues arise in the actual conduct of elections to local bodies. These relate to allotment of symbols, number of polling booths, security, separate booths for women in certain areas and declaration of results. India's democratic practices in conduct of free and fair elections have been acknowledged as excellent. The norms and traditions evolved by ECI in respect of these were not universally implemented in local body elections during previous rounds. Should there not be some common agreement towards this common set of already evolved norms and practices?

There is no proper system of public recognition of elected representatives in panchayats- elected representatives do not receive any individual document to this effect immediately after declaration of results (in some cases, even the declaration of results is not based on any fixed timeline); formal oath-taking by elected representatives is also not organized following the elections.

During previous panchayat elections, some state governments made announcements contrary to the model code of conduct applicable to assembly and parliament elections. Some state governments (like AP and Gujarat) tried to "by pass" the electoral process by announcing cash incentives to those panchayats where "unanimous" candidates were put-up; such an approach to "manufactured consensus"(as former Chief Election Commissioner of India Shri Lyngdoh called) undermines the possibility of weaker sections from contesting elections.

Is there not a need for systematizing some of these practices, based on the experiences of good practices evolved in assembly and parliamentary elections?

7. Public Education

The complexity of elections to local bodies and the requirements of reservation necessitate widespread public education of all citizens. Though these constitutional provisions became operative more than a decade ago, most rural and tribal communities do not yet know the significant constitutional provisions related to the roles of these bodies and the responsibilities of elected representatives. Women and other weaker sections remain largely uninformed; in some cases, urban dwellers and govt functionaries are also not fully informed. Thus, elections to local bodies provide an opportunity for mounting major public education campaigns.

During the previous round of panchayat elections, PRIA and its partners ran Pre-Election Voter's Awareness Campaign (PEVAC) in 13 states, covering about 54,000 Gram Panchayats. The use of folk media, radio, pamphlets and posters provided information to the voters as well as the candidates; the campaign also enabled candidates from the weaker sections and women to file their nominations in time; it promoted a discussion of types of leadership to be elected to local bodies; it galvanized other civil society organizations (nearly one thousand were involved in these campaigns in 13 states) to get interested in strengthening panchayats and municipalities as institutions of local governance.

In all these states, SECs took active interest in the PEVAC and provided help in many ways. The Campaign was also able to provide on-line feedback to SECs about the difficulties being faced at different stages of the election process. The then Ministry of Rural Development, Govt of India also provided support to this campaign.

This time around, PRIA and its partners intend to launch this campaign in all the states where panchayat elections are coming up on an even larger scale. It is also planned to cover municipal elections under the campaign. This important public education function as a contribution to strengthen the process of conducting free and fair elections needs to be recognized so that its practice of involving citizen associations and civil society is institutionalized beyond current champions within individual SECs and PRIA and its networks. Can Ministry of

Panchayati Raj, Ministry of Urban Development, Government of India and SECs commit to support such a non-partisan, transparent and holistic public education campaign for ensuring free and fair elections of panchayats and municipalities?

8. Capacity of SECs

The most serious underlying issue with respect to several of the above matters relates to the inadequate capacity of SECs. Many SECs have had very limited staff; funds for printing of ballot papers have been scarce in some states, delaying elections; SECs have had very uneven and limited capacity for updating of electoral rolls, surveying SC/ST /OBC populations for reservation and delimitation etc.

The terms of appointments of SECs also vary greatly across states. Filling of vacancies and provision of needed staff support and budgets are entirely in the hands of the executive of the state governments.

There is an urgent need to evolve common standards, based on the best practices being followed by the ECI, for ensuring adequate capacity of SECs. The key issue here is the requirement of ensuring autonomous functioning of SECs, independent of the whims and fancies of the political leadership of the ruling regime in the state governments. Effective checks and balances, and established norms of non-interference in the constitutional authority of SECs, are needed if timely, free and fair elections to panchayats and municipalities are to become an integral part of India's democratic traditions.

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