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Addressing Election Delays in Local Governments

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Delaying local government elections for months or years-due to legal disputes, reservation issues, and political interests-undermines the foundations of our democracy. There are practical measures available to strengthen and improve the electoral process.

It is more than three decades since local government elections were first held in states after the notification of the 73rd and 74th Constitution Amendment Acts. In the statement of objects and reasons in the Constitution Amendment Bill related to urban local bodies, it was, among other things, stated,

"In many states, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government ... Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for … ensuring regular conduct of elections and ensuring timely elections in the case of supersession."

Regular conduct of local government elections was among the primary objectives of bringing in both the 73rd and 74th Constitution Amendment Acts.

Delay in Local Government Elections

However, data reveals that more than 60% of urban local government elections have been delayed over the years (CAG 2024: 31). The situation with rural local governments is only slightly better. The problem is not confined to any particular geography-north, south, east, or west. Nor is it linked to any particular political party or dispensation being in power.

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Consider the delay in holding elections to the largest and richest urban local government in India-the Brihan Mumbai Municipal Corporation (BMMC) in Maharashtra-or the Brihat Bengaluru Municipal Corporation (BBMC) in Karnataka. Elections to several block and zilla panchayats in both Maharashtra and Karnataka and more than 9,500 gram panchayats in Tamil Nadu have also been delayed. This is when states are losing 15th Central Finance Commission grants worth hundreds of crores of rupees per annum because of not having "duly constituted" rural local self governments in place.

Why is this so in the largest democracy in the world? After all, the periodic conduct of free and fair elections is a good barometer of how vibrant a democracy is. India has over 3.2 million elected representatives serving in more than 2.55 lakh gram panchayats, block panchayats, and zilla panchayats, as well as about 5,000 urban local governments. Their participation is a key reason why India is considered the world's largest democracy.

Constitutional Provisions

Before we attempt to understand the complex interplay of reasons for delayed local government elections (which is not the case with state legislative assembly and Lok Sabha elections), it would be useful to keep a few things in mind.

First, a five-year tenure has been prescribed for rural and urban local governments in Articles 243E and 243U of the Constitution, respectively. Elections are to be held before the expiry of the five-year tenure. The language of the provision in both Articles 243E (3)(a) and 243U (3)(a) is almost identical. There is no provision in the Constitution for administrator's rule in local governments, unlike the provision in Article 356 for president's rule in states. However, state panchayat and municipal laws do contain such provisions. If a local government is dissolved or superseded, the Constitution requires that elections must be held within six months. The newly elected body will serve for the remainder of the original five-year term.

Second, Articles 243K and 243ZA provide for the appointment of a state election commissioner with the rank and pay of a high court judge to oversee the election process of both rural and urban local governments. State election commissions have been constituted in all states and union territories covered under the 73rd and 74th Constitution Amendment Acts (Alok 2023).

Validation by Constitutional Courts

The constitutional validity of both Articles 243E and 243U has been upheld by the Supreme Court. In *Appeal (Civil) No. 5756 of 2005 - Kishan Singh Tomar V/s Municipal Corporation of Ahmedabad city (Gujarat State)*, the Supreme Court ruled that elections should be held within the prescribed time limit (before expiry of the five-year period). The court directed the state governments to provide funds, staff, and other assistance to the state election commissions for conducting elections to local bodies and panchayats.

> The Supreme Court went on to lay down that in case state governments did not respond positively or within time, the state election commissions could approach the high courts for remedial action.

In case delimitation of constituencies/wards was delayed by state governments or the electoral rolls were not updated, the constituencies/wards as they were on the eve of the election and the electoral rolls as they were at the time were to be used *but elections had to be held within the prescribed time limit* (emphasis mine). The Supreme Court went on to lay down that in case state governments did not respond positively or within time, the state election commissions could approach the high courts for remedial action. And if not successful, the Supreme Court. This decision has since been reiterated by the Supreme Court as well as several high courts.

State Election Commissioner

Coming to the role and functions of the state election commissioner, in an important judgment delivered on 12 March 2021 in *[2021] 2 S.C.R. 770, State of Goa & Anr. v. Fouziya Imtiaz Shaikh & Anr. (Civil Appeal No. 881 of 2021)*, the Supreme Court set aside the appointment of the Law Secretary of Goa as the State Election Commissioner on the grounds that Article 243K mandates that the "State Election Commissioner has to be a person who is independent of the State Government as he is an important constitutional functionary who is to oversee the entire election process in the state qua panchayats and municipalities … Giving an additional charge of such an important and independent constitutional office to an officer who is directly under the control of the State Government is, a mockery of the constitutional mandate.

> States have postponed elections for various reasons, including delays in delimitation, finalising seat reservations, updating electoral rolls, and responding to natural disasters or public health emergencies such as the pandemic.

The Supreme Court in exercise of its power under Article 142 of the Constitution went on to mandate, "It is also made clear that henceforth, all State Election Commissioners appointed under Article 243K in the length and breadth of India have to be independent persons who cannot be persons who are occupying a post or office under the Central or any State Government. If there are any such persons holding the post of State Election Commissioner in any other state, such persons must be asked forthwith to step down from such office and the State Government concerned be bound to fulfil the constitutional mandate of Article 243K by appointing only independent persons to this high constitutional office."

Thus, the constitutional validity of both the five-year tenure of local governments as well as the provision for conducting elections before the expiry of the five-year term have been consistently upheld by the Supreme Court and high courts. The courts have also clarified unequivocally that the state election commissioner is a constitutional authority and enjoys the same powers as the Election Commission of India.

Reasons for Delay

Nevertheless, things do not seem to have changed on the ground. Studies reveal that there have been frequent delays in holding elections to local governments-both rural and urban -ranging from a few months to a few years in several states (Alok 2023: 22). States have postponed elections for various reasons, including delays in delimitation, finalising seat reservations (especially for Other Backward Classes [OBC]), updating electoral rolls, and responding to natural disasters like floods or public health emergencies such as the pandemic.

In Andhra Pradesh, elections were delayed because of a running battle between the state government led by the Yuvajana Sramika Rythu Congress Party (YSRCP) and the then state election commissioner who had been appointed by the previous Telugu Desam Party (TDP) government. The state government curtailed the tenure of the state election commissioner from five years to three years through an ordinance on 10 April 2020. This was challenged by State Election Commissioner Ramesh Kumar, and the high court quashed the ordinance on 29 May 2020 on the ground that it was brought only to get rid of him (Jain 2020).

At the height of the pandemic, in April-May 2021, the government of Uttar Pradesh went ahead and completed the gram panchayat elections on schedule. But the Uttar Pradesh Shikshak Mahasangh claimed more than 700 polling personnel lost their lives while state government sources admitted around 700 deaths.

It can thus be seen that the working of the state election commissioners across states may, at best, be described as "uneven". The constitutional position is clear. In several states, senior retired bureaucrats have been appointed as state election commissioners. In a few cases, their conduct has been biased and has drawn strong criticism from constitutional courts. In several others, the state governments have interfered to prevent them from carrying out their duties independently.

Appointment of State Election Commissioner

The present method of appointing state election commissioners does not generate much public confidence. The state election commissioner is widely regarded as one beholden to the state government for an "after-retirement sinecure".

> The tenure of the state election commissioner varies from state to state, from two years to six years. A uniform tenure of five years should be provided in all states.

Ensuring the independence of constitutional functionaries is of paramount importance in a functioning and vibrant democracy. The recommendation of the Second Administrative Reforms Commission to have a three-member committee comprising the chief minister, the leader of opposition (or the largest opposition party) in the legislative assembly, and the speaker of the assembly to select the state election commissioner appears workable.

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Strengthening State Election Commission

The state election commission needs to be provided with a sufficient number of staff and officers to assist it. Several state election commissions have reported lack of funds for hiring lawyers to defend them in constitutional courts as well as for buying electronic voting machines (EVMs). In several states, election bills get paid from the budget of the panchayati raj and urban development departments.

It would be ideal if a budgetary provision for conducting elections is made in the grant of the state election commission and the budgetary provision is treated as a "charged" expenditure (as is done in Bihar and the union territories) (SEC-M 2019: 3). There should also be no requirement to obtain administrative approval from the finance department before spending funds, as is currently the practice in Goa and Mizoram.

Delimitation and Reservation

Various studies show that state governments have significant control over key aspects of local elections. They decide when elections are held, how ward boundaries are drawn, and how seats are reserved and rotated among different groups. Sharp differences between the state election commission and the Andhra Pradesh government in early 2020 on election dates escalated into a major political crisis. Delays in delimitation and the reservation of seats is the major reason elections are delayed and it fosters litigation.

In both Maharashtra and Karnataka, the state government has taken over the powers of the state election commission to redraw electoral wards. When the Maharashtra state election commission informed the Supreme Court on 4 March 2022 that elections to 2,486 local governments had not been held for more than two years, the state legislative assembly passed two bills to amend two legislations passed in the 1960s to govern urban and rural local elections. Through these amendments, the Maharashtra government made itself responsible for the delimitation process-and took over the state election commission's power to redraw electoral wards. The same story

has been repeated in Karnataka, where the Karnataka Gram Swaraj and Panchayat Raj (Amendment) Act, 2021 was notified in September 2021.

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Both state governments have used every possible tactic-including issuing ordinances and passing new laws-to obstruct the Supreme Court and the state election commission's efforts to hold long-delayed elections to the BMMC and BBMC. Even an oral observation by a Supreme Court bench in May 2022 that Maharashtra was on the verge of a "rule of law breakdown" has not made elections to the BMMC happen. It appears that both state governments are determined to ensure a 27% reservation for OBCs before allowing the elections to take place. They are using legal measures to delay the process and to meet the requirements of the "triple test" for reservations in local governments.

Delay in holding local government elections, both rural and urban, may also be a pointer to the now visible trend of centralisation of power through increased use of digital technology in both the union and the states. This needs to be avoided at all cost as it is fundamentally undemocratic and anti-people.

Suggested Measures

State delimitation commission: Kerala, Karnataka and Maharashtra legally provide for a delimitation commission (separate from the state election commission) for demarcating wards and reserving seats for Scheduled Castes, Scheduled Tribes, and Other Backward Classes, and women. However, the working of the state delimitation commission would evoke greater public confidence if it is modelled on the provisions on demarcating assembly and Lok Sabha constituencies.

State governments should establish delimitation commissions after every census. These commissions should be chaired by a retired high court judge. Their responsibilities would include carrying out a fresh delimitation of local government constituencies, determining reservations, and recommending the merger-either in part or in full-of rural gram panchayats with existing urban local governments. They could also suggest the creation of new urban local government units where necessary.

The report of the state delimitation commission should be binding on the government and the state assembly should be authorised to either accept it or reject it, but not amend it. The provision for state delimitation commissions should be included in Parts IX and IXA of the Constitution.

Caste census as part of decadal census operation: Keeping the "triple test" requirement for OBC reservation in local governments in mind, it seems logical that a caste census be made a part of the Census operation (Rao 2025). Given the expertise of the Registrar General of Census in handling large volumes of data, this would ensure uniformity and good quality.

Timely elections sole responsibility of state election commission: The responsibility for fixing the election dates and reservation of seats by rotation (after every 10 years and not five, as is the case in most states) should be entrusted to the state election commission. The responsibility for conducting local government elections before the end of their term should rest solely with the state election commission. All state governments must provide full support to it, just as they do for the Election Commission of India (ECI) during assembly and Lok Sabha elections.

Use ECI electoral roll for local government elections: All citizens above the age of 18 are eligible to vote in local government, assembly, and Lok Sabha elections. More than 22 state election commissions already use the ECI's electoral roll, with only minor adjustments. Therefore, it makes great sense to use the ECI electoral roll for local government elections in all states and union territories.

Because every vote is important in local government elections, there is considerable political sensitivity around using the most up-to-date electoral rolls. It is essential to revise these rolls regularly-ideally more than once a year-to ensure accuracy and fairness. This has now become possible after digitisation of electoral rolls and amendments carried out to the Registration of Electoral Rules, 1960. So there appears to be no problem as such with synchronisation of wards and polling booths. This would reduce the burden on state election commission resources and its personnel.

Entrust all elections in local government to state election commissions: Further, it is important that even in cases where indirect elections of the heads of rural and urban local governments take place, they should be entrusted to the state election commission. This would avoid the fiasco that played out in the election of the Mayor of Chandigarh Municipal Corporation in early 2024 where the presiding officer was found guilty of electoral mis-conduct by the Supreme Court. Given that elections to standing committees also get unduly delayed, these could also be entrusted to the state election commission.

Single ministry of local government: It is also high time to establish a single ministry of local government in New Delhi for both rural and urban local governments. It would be responsible for coordinating the best practices of state election commissions and advocating the inclusion of uniform provisions in state panchayati raj and municipal laws on state election commissions and state delimitation commissions.

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This may also be the right time to replicate the Kerala experience of having a department of local government in the states too. It would help focus attention on governance issues in rural and urban local governments, and that would include, among other things, holding timely elections.

Electoral contest at heart of democracy: Before concluding, a word on the necessity to have free and fair elections in a functioning and vibrant democracy. The promotion of "*samras panchayats*", where gram panchayats are incentivised by state government if villagers choose their elected representatives without elections, can be a double-edged sword. The victors and the vanquished can live with free, fair, and peaceful elections. But it would be very undemocratic if elite groups or politically powerful people seek to impose their will over the weak in the name of samras panchayats.

The state should keep away from providing financial incentives to gram panchayats where no elections are held. Recently, in some union territories, a large number of candidates withdrew their candidature and the candidate promoted by the ruling party won unopposed. This is unhealthy. Using money and muscle power to ensure forced unanimity would be a tragedy for a large and diverse country like India.

Conclusions

Local government elections are at the heart of democracy and "free and fair elections are a part of the basic structure of the Constitution", as the then Chief Justice of India, D.Y. Chandrachud, put it (*Kuldeep Kumar vs. U.T. of Chandigarh, 2024*). By delaying the holding of local government elections for months and years through legal wrangling, reservation issues, and political expediency, we are weakening the roots of the democratic structure in our country.

What happens at the local government level today may get repeated at the state and national level tomorrow. Let us not forget what happened in Surat during the Lok Sabha election in 2024. The Bharatiya Janata Party's Mukesh Dalal was declared winner on the last day of withdrawal of nominations after the Congress candidate's nomination was rejected by the returning officer and the other candidates withdrew their names.

It is worth remembering, "Elections at the local participatory level act as a microcosm of the larger democratic structure in the country … Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy" (*Kuldeep Kumar vs. U.T. of Chandigarh, 2024*).

The views expressed here are personal.

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