

The Governor of Gujarat, after consideration of the Gujarat Local Authorities (Amendment) Bill, 2009, has returned the Bill to the Gujarat Legislative assembly with her following message dated 5th April, 2010.

“MESSAGE

The State Government in Legislative and Parliamentary Affairs Department has forwarded the ***Gujarat Local Authorities Laws (Amendment) Bill, 2009 (Gujarat Bill No.23 of 2009)*** for my assent vide its letter dated 24th December, 2009.

While the above Bill was under my consideration, I received some representations from the political parties, non-governmental organizations and people's representatives, wherein, they had drawn my attention to some of the issues which the introduction of the said Bill has raised.

I have considered the provisions of the Bill under reference carefully. I have also considered the representations mentioned above and the issues raised therein. After consideration of all these, I have taken a view on the whole issue as enumerated below:-

The Gujarat Local Authorities Laws (Amendment) Bill, 2009 (Gujarat Bill No.23 of 2009) suffers from the following drawbacks:-

1. The Bill has a provision of reservation for women and it provides for 50% reservation for women. This is desirable and is a welcome provision. However, this important matter has un-necessarily been clubbed with the controversial issues of compulsory voting. A separate Bill for this purpose could have been more welcome and should have been brought in the recently concluded session of the Assembly itself.

2. The Bill seems to have been hurriedly introduced and passed in the Assembly without serious debate either in the House or in public forums or academic circles. No full-fledged discussions have been held with political parties, social activists, academicians and other opinion makers on such an important issue like that of the compulsory voting. A Bill having far-reaching consequences like this one should have been introduced only after full-fledged debates from all corners.
3. Right to vote means "right to exercise the right in favour or against the candidate." Such right implies right to remain neutral as well. Besides freedom of voting as distinguished from right to vote is facet of the fundamental right i.e. freedom of expression enshrined in Article 19(1) (a) of the Constitution of India. Freedom of expression implies that the voter can also refrain from expressing himself and remain neutral. The concept of democracy provides that freedom of expression also implies freedom not to express one's views. Thus when a qualified voter decides not to vote in favour of any of the candidates by refraining to express himself and remaining neutral, he would be exercising his fundamental right as part of freedom of expression. This is the freedom which a citizen may not like to exercise and he cannot be compelled to express his views as regards the candidates at the polling booth. It is his freedom not to go out of his house and not to enter the polling booth. The voters have a freedom not to vote. To force them to vote is against the principles of an individual liberty. The present Bill violates this freedom which a citizen is entitled to enjoy under Article 21 of the Constitution. Government should not have entered into a controversy to compel voters to act against their conscience by means of coercion.

4. No provisions have been made in the Bill regarding Government's own duty to incorporate names of all eligible voters in the voters' list or timely distribution of voters' identity cards to all individuals. The Bill does not mention how the Government will ensure that all the eligible voters shall reach to the polling booths and vote without any difficulty. In other words, there is no mention how missing links would be taken care of. No provisions have been made in the Bill for making the whole system foolproof. As such, introduction of this Bill without adequate safeguards and foolproof arrangements is not desirable.
5. **Dinesh Goswami Committee on Electoral Reforms** appointed on 12th January, 1990 by the Government of India considered the issue of compulsory voting in the country. It also did not find the idea practicable or compatible with the democratic frame-work of the Constitution of India.
6. Issue of compulsory voting has multiple dimensions and even our Parliament has not made any legislation in such matters.
7. Article 51 A provides for fundamental duties. For the breach of or non-performance of the duties there is no provision under Article-51A to make it obligatory on the citizen to perform those duties.
8. The proposed Bill provides that the State Election Commission would appoint appellate officers. However, the Bill does not lay down any criteria/objectives on the basis of which such appellate officers would be appointed. The Bill should have made provision of a separate mechanism like an authority or a tribunal or a statutory body having an independent set-up which could deal with such matters objectively

and impartially without any interference from the Government. Besides, the Bill provides that the order of the appellate officer would be final and binding under Sub-section 2 of Section 16 E of the Bill. From the above, it appears that the State Government has not taken into consideration the competence and impartiality of the local administration to fulfill its obligations in enforcement of the proposed amendment..

9. Even where voting has been made compulsory, its effective enforcement has remained doubtful. A few foreign countries like Austria, Venezuela, Netherlands, Spain and Italy have experimented with the concept of the compulsory voting, but did not find impractical and ultimately withdrew it.
10. Measures to impose compulsory voting would add to the harassment of the common men at the hands of the local officers for no fault of theirs. Many of the voters are un-educated and nothing concrete has been done to educate them adequately even after lapse of six decades.
11. Migratory workers in tribal areas who leave their villages in search of employment will have to return to their villages at the time of elections to give votes. Many of them might not be able to come at the time of elections for casting their votes for one reason or the other. This should not deprive them of their right to vote in the subsequent elections. The Bill has not thrown any light on this aspect. Besides the provision of compulsory voting will cause not only a great deal of hardship to them but would also compel them to incur expenses on their journeys to and fro from their workplace.

12. A similar Bill was introduced in the Parliament in December, 2004 by the Lok Sabha Member of Parliament **Shri Bachchisingh Rawat (B.J.P.)** elected from Almora (Uttaranchal). The same did not find any favour and was rejected by the Lok Sabha after a detailed discussion by a voice vote on 29/04/2005.
13. The Present Bill provides wide discretionary powers to the election officers to consider and decide the reasons for not voting and have also powers under Sub-section (1) of Section 16 B, Sub-section (1) of Section 15 B and Sub-section (1) of Section 34 B to declare a voter to be defaulter by considering the reasons given by him or her. Thus, the matter of declaring non-voters as defaulters has been left to the discretion of the Government officials at the local level.
14. If the qualified voter does not comply with the mandatory obligation to cast his vote as required under Section 16 A (1) and (2), he will be declared a defaulter voter and will face penal consequences. These penal consequences to be suffered by the defaulter voters are not provided in the Bill and are left to the State Government for which Rules are yet to be framed. This cannot be left to the rule making authority and therefore, this provision is both alarming and serious. The bill is incomplete. It cannot be supplemented by providing the details thereof in the Rules proposed to be framed. The bill does not disclose any legislative policy for providing punishment for defaulting voter and the consequences that may follow from breach of the obligation to vote. It is an essential legislative function and it cannot be left to the Rule making authority as no norms have been prescribed under the Act.

15. Sub-Section 3 of Section 16 C in the proposed Bill is very broad, general and without any guidelines. This is capable of abuse or misuse of powers.

In view of the above, I am of the view that it would be more appropriate if the Gujarat Legislative Assembly reconsiders the above points carefully. I am also of the view that it would be more appropriate if the Government through the Assembly introduces a separate Bill granting reservation to the women in the local body elections instead of clubbing it together with the Compulsory Voting Bill.

Therefore, after consideration of all the aspects of the matter in all fairness and justice, I am of the view that the Amendment Bill under reference requires re-consideration for such suitable amendments as mentioned above.

Accordingly, I hereby return the **Gujarat Local Authorities Laws (Amendment) Bill, 2009 (Gujarat Bill No. 23 of 2009)** with my message recommending that the provisions of the Bill under reference are re-considered for suitable amendments by the House.

Dr. Shrimati Kamla
Governor of Gujarat"

Assembly Hall,
Gandhinagar.

Ashok Bhatt
Speaker,

Dated the 16th August, 2010. Gujarat Legislative Assembly.