

ELECTING THE WOES OF COVID-19

A democracy is a form of government in which the people of the country bear the burden of decision-making in all matters, whether minor or major. If the entire population descends on the ground to execute this function, chaos and confusion will ensue. As a result, a country's people elect someone among themselves who can comprehend their requirements and provide whatever is required for their progress and flourishing. This process of choosing the worthiest leader who can shoulder such responsibility is done through a process called elections.

India is the world's largest democracy, with elections for various seats in the country's legislature occurring after every five years. The election process did not emerge overnight; rather, it was a penance that began with Lord Canning's introduction of the portfolio system through the Indian Council Act, 1861, and continued through the Indian Council Act, 1892, the Government of India Act, 1909, and 1919, to the final craftsmanship of the constitution makers from 1946 to 1949, which culminated in the creation of the process that gave people of a long suppressed land, the power to choose their government for the first time in 1951 and since then elections have been treated as nothing less than a festival.

With the recent onset of the infamous pandemic caused by Covid-19 virus, there were restrictions on each and every festival in the country with limits on the number of hours of celebrations, locations of celebrations, number of people allowed to assemble in order to celebrate, etc. but the electoral festival of celebration of democracy did not stop and was made to be continued with the same cheer and enthusiasm and this discrimination between celebrations met with criticism.

GOVERNMENT'S BROAD COVID GUIDELINES

The Ministry of Home Affairs and the Ministry of Health and Family Welfare released a circular with necessary rules for all concerned individuals to follow. The requirements were general ones such as wearing masks at all times, using sanitizers, and maintaining social distance, larger polling booth halls than usual, and a sufficient number of cars to be mobilised for polling officials and security employees, along with the appointment of a Nodal officer to oversee the strict observation of Covid safety measures and a training process to be developed for all the personnel through apps and portals.

The circular then contained guidelines unique to each step of the election process
NOMINATION: Providing an option of online candidate nomination process, restricting the

number of people accompanying the candidate to two and large spaces for the nomination process as well as for the waiting candidates.

CAMPAIGNING: Door-to-door campaigning with a maximum of five people, excluding security personnel under strict adherence of Covid protocol. In road shows, instead of 10 trucks, the convoy should be broken up after every 5 (five) vehicles (excluding the security vehicles, if any). Instead of a 100-meter gap, the time between two convoys of vehicles should be half an hour. Public gatherings and rallies would be subject to strict Covid guidelines and under vigilance of the District Election Officer. Allocation of a space for same would be done through suvidha app in the manner prescribed by the commission.

POLLING: Election material to be sanitized and distributed in a decentralised manner in large halls. To minimise huge gatherings of polling employees at dispatch centres, the timing for the third randomization of polling personnel increased from 24 to 72 hours. Instead of 1500 electors, a voting station to have a maximum of 1000 electors. Various arrangements related to the polling process were announced all of which revolved around sanitizing premises, social distancing, mandatory use of masks and gloves by all, usage of booth app as much as possible, thermal screening at every point, etc. A kit containing face masks, face shields, sanitizer and gloves would be made available to each polling officer. Electors in the following categories now have the option of using a postal ballot: Persons with Disabilities (PwD), Electors who are over the age of 80, Electors who work in essential services, COVID- 19 positive/suspected voters who are in quarantine (at home or in a facility).

COUNTING: A maximum of seven counting tables would be allowed in a hall and that increases the number of halls per constituency to three to four. Before, during, and after the counting, the counting centres would be disinfected. To avoid having to accommodate a large number of counting agents, the results from the Control Units may be displayed on a huge screen, etc.

THE IMPACT OF ELECTIONS DESPITE OF GUIDELINES BEING AT PLACE

India's Covid cases started rising sharply at the end of February, 2021 and the country saw a surge in the number of cases from mid-March, 2021. While the nation was struggling with this crisis, Legislative assembly general elections were held in Assam, Kerela, Tamil Nadu, West Bengal and Puducherry along with Parliamentary by-elections, Legislative assembly by-elections and local body elections being held in various constituencies around the country. The

daily case toll increased from 68,020 cases on March 29th (highest in five months) to around 3,50,000 cases in April to around 4,00,000 cases in the month of May.

The danger of an infectious virus spreading increases when thousands of people gather on the streets to cheer for their favourite candidate during campaigning. Although the odds of the virus spreading are reduced in the open air because the virus is suspended in the atmosphere, there is an increased risk of the virus spreading when a large crowd gathers in close quarters in poorly ventilated facilities such as tents and mandaps set up for events. The added woes of not using masks and sanitizers and social distancing being tossed downhill, aggravate the situation.

NEW YEAR-ANOTHER ROUND OF ELECTIONS-NEW WAVE?

When around 80 countries around the world postponed elections, the Indian masters of destiny went on with them and saw the lethal second wave.

The country is being protective of its people on the onset of Omicron variant of the virus, there are lockdowns imposed on weekends and during night time in most of the states and simultaneously some states are preparing for another round of elections.

Recently a petition seeking postponement of elections in Goa, Manipur, Uttarakhand, Punjab and Uttar Pradesh was filed by Kanwariya Sena Sangathan before the Supreme Court. When the High Courts of Uttarakhand and Uttar Pradesh refused to act in the direction of postponement or even banning the physical rallies stating that postponement of elections is not a job of court, this plea comes as a necessity.

The plea said that, “The health of people cannot be protected by causing uncompensated miseries to individuals, thus, there is grave violation of the Article 21 of the Constitution,”

An order by The High Court of Calcutta in Bimal Bhattacharya v. The State of West Bengal was also cited. In this, The High Court urged the State Election Commission to consider postponing elections due to a spike in Covid positive cases.

As a result, the appeal argued, publicising the polls was in contravention of well-established arrangements stipulated under the rules of the Disaster Management Act.

WHAT DOES THE CONSTITUTION OFFER IN THIS LIGHT?

Part XV of the constitution governs the working of elections in India. Article 329 of the constitution provides for bar to interference by courts in electoral matters Notwithstanding anything in this Constitution. Clause(b) of the same article provides that no election to either

House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

The present plea has been filed in the light of **article 21** of the constitution.

ARTICLE 21

Article 21 states that “**No person shall be deprived of his life or personal liberty except according to a procedure established by law.**”

The article establishes protection of life and liberty of the citizens as well as non-citizens. The right to life and personal liberty among various aspects like right to live with human dignity, right against sexual harassment at workplace, right to reputation, right to livelihood, right to shelter, etc., covers right to health as a part of right to life. The Hon’ble Supreme Court in the case of *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 812, held that dignity and health fall within the ambit of life and liberty under article 21.

When millions of people are exposed to the prospect of a fatal infectious disease during election campaigning or polling, there is an immediate risk of large-scale transmission, and the most potential result is what India faced during the second wave. Now there are two options left, either the masses choose to stay safe and don’t take part in this democratic process for which they fought for centuries and earned their rights which is an absurd solution to the problem. The other option is that the Supreme Court through the power of judicial activism under article 142 of the Indian constitution, takes suo moto action to prevent the fundamental right of right to health of the people under article 21. The Supreme Court can issue writs like habeas corpus, mandamus, certiorari, quo warranto under article 32 to safeguard the fundamental rights of the people.

CONCLUSION

The festival of democracy will not succeed if the very essence of it, the people participate in hesitation or suffer from after effects of participation. Therefore, the plea filed in the case *Kanwariya Sena Sangathan v. Union of India* should be acted upon and the circumstances where fundamental right to health and constitutional right to vote are in tussle should be avoided for a healthy democracy to exist. The third wave of corona’s new variant, Omicron has made its presence felt with number of active cases rising every day. While the government is being cautious with the safety guidelines and the vaccination drive being started for ages

15+, there is still no action taken on election schedule. If the same circumstances that occurred in 2021, take place due to elections scheduled in heavily populated states, all the safety measures would go in vain and the health and well-being of the nation will be at stake once again.