
**THE APATHY OF THE ELECTION COMMISSION AS THE CITIZEN
GASPS FOR BREATH**

- **Adab Singh Kapoor¹**

Abstract:

The power of “Judicial Review” on quite a few occasions is known in history to have saved our constitution from being hijacked. It is being put to test again, as India is standing face-to-face with a deadly Pandemic which unfortunately has transformed death into a mere figure that is often read in news and tabloids. This article strikes at the sheer high-headedness of the Election Commissions functioning in poll-bound states like West Bengal and Tamil Nadu with regards to its irresponsible actions, which have led to the surge in the number of cases of COVID 19. Further, the author hopes that the Courts exercise their power of Judicial Review to check the actions and inactions of the Commission, so that the guilty may be brought to justice.

The essence of any nation which claims itself to be democratic emanates from the fact that the people governing it are appointed in a democratic manner. The only democratic way by which a government can be appointed is by way of free and fair elections – which has the capability of reflecting the will of the people. This principle is enunciated under Article 21(3) of the Universal Declaration of Human Rights, which states “*the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*”

Also backed by the United Nations, as described above, it is an undisputed notion that regular elections are the only means which can assist in ensuring that the handful of people who are enshrined with the authority to rule the citizens are appointed by the citizens with their free will.

In India, which is perhaps the largest and the most complex democracy in the world, the task of holding free and fair elections has been cast upon an autonomous body – The Election Commission of India. The Election Commission is solely responsible for the planning and execution of elections not only of the Union, but also for all States and Union Territories across the nation. So much reliance and faith has been placed upon this autonomous body that the courts have been as a matter of rule been dismissing requests for stay or adjournment of elections for any reason once an election notification has been issued by the Election Commission. The most landmark pronouncement in this regard has been *N.P. Ponnuswami and Ors. v. Returning Officer, Namakkal Constituency and Ors.*² wherein the Hon'ble Supreme Court while placing emphasis over the importance of elections in democratic countries, held that elections shall be concluded as early as possible and all disputes and grievances therefrom shall be postponed till after the said elections are over. This judgment has since been used as the rule of thumb by all other courts in dismissing any plea made before them for the postponement of elections due to any reason whatsoever.

What is noteworthy, and perhaps the object of this article, is that the aforementioned judgment passed by the Hon'ble Supreme Court holds good in times when the world is not faced by exigencies such as a global Pandemic like COVID 19. It is extremely ironical to observe that the Election Commissions in most poll-bound states have turned a blind eye towards the health and safety concerns of the electorate in light of the deadly Pandemic.

It is pertinent to note that the Election Commission cannot and should not be absolved of all responsibilities in relation to its passiveness with regards to public health of which they are also responsible for, especially when our country is gripped by the deadly Pandemic. Legally speaking, the autonomous body has tremendous powers under Article 324³ of the Constitution of India

and Sections 57⁴ and 153⁵ of the Representation of Peoples Act, 1951 to postpone / adjourn elections, or even increase the timeline for the completion of elections. Further, as holding and managing elections come under the sole ambit of the authority of the Election Commission, the courts in various matters have placed faith upon the body to decide in the larger interest of the public, whether it should proceed with, or postpone elections. Recently, seized with a plea to direct the Election Commission to defer / postpone the legislative assembly elections in the State of Bihar, the Hon'ble High Court of Judicature at Patna in the matter of *Badri Narayan Singh & Ors. v. Ministry of Home Affairs (MHA) Government of India & Ors.*⁶ held, "*The Election Commission is the sole authority responsible for the conduct of elections, including the decision on the schedule of the election. The ultimate decision on when to hold elections lies with the Commission. It cannot be assumed that the Election Commission has taken/or would take its decision without considering the prevailing situation. The Commission cannot be directed to act in any-what-way by any authority.*". Similarly, the Hon'ble Supreme Court of India in *Election Commission of India v. State of Haryana*⁷, while dealing with the order of the High Court of Punjab and Haryana staying the notification issued by the Election Commission, while respecting its independence, placed utmost faith in the autonomous body by holding the following: "*But the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission, It is not suggested that the Election Commission can exercise its discretion in an arbitrary or mala fide manner. Arbitrariness and mala fide destroy the validity and efficacy of all orders passed by public authorities.*". Further, and more importantly, the Supreme Court directed that it shall be the duty of the Chief Election Commissioner to be constantly vigilant of the situation in the poll-bound areas and adjust his decision in relation to the date of elections with the "*realities of the situation*". Needless to mention, with such great power, authority and most importantly, the independence to exercise it freely without any hindrance whatsoever, a great duty is also cast upon the Election Commission not only by the courts, but also the Constitution of India as well as the Union Legislature – by way of the Representation of Peoples Act, 1951.

Further, it is the duty of the Commission to ensure maximum participation of the electorate in any given election. With the Pandemic at its new peak, a vast majority of voters who are physically vulnerable to the virus have been advised not to step out of their “bio-bubbles”, shall not be able to exercise their democratic right despite the will to do so. By simply ignoring innumerable pleas to postpone / defer elections until the surge in the number of cases stops, the Commission has caused grave injustice to the part of the electorate, which is willing to cast vote, but cannot for the sake of their health and life. In light of the above-mentioned, from the point of view of the assembly elections that are underway in the States of West Bengal and Tamil Nadu, is it at all incorrect to infer that the Election Commission has miserably failed to adhere to the great duty cast upon it?

Having understood the wide ambit of the powers of the Election Commission, let us take a look at some of the latest figures emerging from the poll-bound states of West Bengal and Tamil Nadu. In the last 24 hours (as per the data available on the Aarogya Setu Application on 28.04.2021) the state of West Bengal has witnessed 16,403 new cases of COVID 19, whereas the number of new cases in the State of Tamil Nadu in the last 24 hours is 15,830.

It is no news that despite clear directions from the courts, the Election Commission, which is vested with the sole duty and authority to control the manner in which election rallies take place, has for reasons best known to itself, chose to close its eyes to the millions of supporters who have time and again gathered with little to no precautions with respect to COVID 19. No evidence is required to be induced to showcase that these election rallies were "super-spreader" events and have caused unprecedented spread of the deadly virus to thousands of people across these two states.

Upon no action whatsoever from the Election Commission, the respective High Courts of both the poll-bound states – West Bengal and Tamil Nadu have now questioned the body on its culpability in the new and deadly wave of the virus that has now engulfed the states. Most recently, the Hon'ble Madras High Court in its order dated 26.04.2021⁸ came down heavily on the Election Commission for its role in the spread of the virus across the state, to say the

least. While recording the inactivity of the autonomous body, the Court held, *“Public health is of paramount importance and it is distressing that Constitutional authorities have to be reminded in such regard. It is only when the citizen survives that he enjoys the other rights that this democratic republic guarantees unto him. The situation is now one of survival and protection and, everything else comes thereafter.”* Apart from the recorded observations, the Court has been reported⁹ to mention the following to the counsel of the Election Commission, *“Your institution is singularly responsible for the second wave of COVID-19. Your officers should be booked on murder charges probably.”* while discussing the culpability of the Election Commission in the increase in the number of deaths in the State due to the spread COVID 19.

Similarly, the Hon’ble Calcutta High Court in its order dated 22.04.2021¹⁰ called upon the Election Commission to explain as to what steps had it taken to enforce the circulars issued by it in relation to COVID Protocols to be adopted by inter alia, political parties and their workers in their election campaigns. While recording its dissatisfaction with the inactivity of the Election Commission in this regard, the court held, *“We are unable to reconcile with the fact that the Election Commission of India is not able to update us as to what action by way of enforcement of the circulars has been obtained. Issuance of circulars and holding of meetings by themselves do not discharge the onerous responsibility of the Election Commission of India and officers under its command in due performance of not only the statutory power and authority under the Representation of People Act, 1950 and the Representation of People Act, 1951 but the confidence that the Indian polity would have in it to carry forward the mechanism of upholding the democracy by use of requisite facilities even in pandemic times like heightened challenge by COVID-19 virus and its variants.”*

The Hon’ble Allahabad High Court on 27.04.2021 taking cognisance of the death of 135 election workers involved in the “Panchayat Election Duty” due to COVID, issued show-cause notice to the State Election Commission calling upon them to explain as to why action should not be taken against the officers thereof for their failure to enforce the guidelines issued to curb the spread of

the virus. Coming down heavily on both, the Commission as well as the State Government, the court observed, *“We, make it clear that we will not tolerate any paperwork or public announcements to show account of the steps taken and its sufficiency as it is now an open secret that government had gone complacent due to weakening of virus impact by the end of 2020 in the state and the government got more involved in other activities including Panchayat elections. Had it been constantly vigilant, it would have prepared itself to face the onslaught of the pandemic in its second wave. Posterity would never forgive us if we remain oblivious to the real public health issues and let the people die for want of adequate health care.”*¹¹

It is but pertinent to note that the Hon’ble Madras High Court has travelled to the extent of stating that it will stop the counting – which is scheduled to take place on 02.05.2021 – if a proper “blueprint” is not tabled before it on 30.05.2021. This observation by the Court reflects the disappointment of the Hon’ble Court with the continuous insensitivity shown by the Election Commission towards the life and health of the common man – who ironically, in theory, is the centre of the entire complex exercise of election. Another reason for which the aforementioned oral direction of the court – and perhaps it is the most important one – is that the court which giving this direction has had to threaten the Election Commission to reach out of its judicial domain and enter that of the executive, despite clear faith placed by courts¹² across the country, including the Hon’ble Supreme Court¹³, on the body to take each and every decision in relation to elections.

The larger question which needs to be answered here, is that should the Election Commission be held liable for the spread of COVID 19 in the election-bound states of West Bengal and Tamil Nadu, where there is clear data depicting that the number of cases have drastically increased post the rampant campaigning and election rallies conducted by political parties and candidates – due to the failure of the Commission to enforce its guidelines issued in the wake of the Pandemic. A common man, if found to violate the protocols put in place by the State, is prosecuted mercilessly. Should the same standards not apply to constitutional bodies vested with such

unfettered and unabridged powers to carry the beacon of democracy, if they fail (actively) to carry out their functions for reasons best known to themselves? Now that the Hon'ble Supreme Court has taken *suo moto* cognisance of all matters pertaining to COVID 19, the stage is set for the apex court to take stringent action against the Election Commission not only for the ends of justice to meet, but also so that a clear message is sent to all autonomous bodies of our country that their doings and undoing shall not go unnoticed and unaccounted. It is perhaps time the Doctrine of Checks and Balances takes a practical *avatar* so that trust of the common man remains placed in the judiciary. What we as a people of the world's largest democracy need to understand and appreciate is that the existence of the ones governing us emanates from us, and not the other way round. Until the life and health of the weakest section of the society does not become the top-most priority of the government – be it State or Centre – it has no right to rule. It about time, we, and more importantly, the constitutional bodies with power to 'govern' us understand that elections are only means to an end, and not the end itself.

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 2. AIR 1952 SC 64.
 3. **324. Superintendence, direction and control of elections to be vested in an Election Commission**
[\(1\)](#) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
 4. **Section 57 - Adjournment of poll in emergencies**
 (1) If at an election the proceedings at any polling station provided under section 25m or at the place fixed under sub-section (1) of section 29 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause the presiding officer for such polling station or the returning officer presiding over such place, as the case may be, shall announce an adjournment

of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the returning officer concerned.

5. **Section 153. Extension of time for completion of election.** -
It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39.]
6. 2020 (4) PLJR 776.
7. AIR 1984 SC 1406.
8. W.P. No. 10441 of 2021.
9. <https://www.ndtv.com/india-news/madras-high-court-shreds-election-commission-should-be-booked-for-murder-probably-2422056>, last accessed on 27.04.2021 at 1540 hours.
10. *Nitish Debnath v. Election Commission of India & Ors.*, WPA (P) 117 of 2021.
11. *In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive v. State of U.P.*, PIL No. 574 of 2020.
12. Supra Note 6.
13. Supra Note 7.