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Conducting Elections during COVID-19: New Policy Guidelines Issued by the Election Commission of India³

Bipin Kumar Thakur⁴

Abstract

The Election Commission of India (ECI) as per Article 324(1) of the Constitution of India has been vested with the power of superintendence, direction and conduct of all elections for the Parliament; State Legislatures and elections for the offices of the President and Vice-President. It had recently issued the Broad Guidelines for Conduct of General/Bye Elections during COVID-19. These Guidelines looked impressive to read but to implement them remained a difficult task; a lot depended on how the Election Commission, State administration including the police and health personnel conducted and fulfilled their due responsibilities. Their co-operation in a synchronized way has resulted in a successful exercise of conducting election in a difficult time and fulfilling a necessary prerequisite for a democratic government enshrined in our Constitution.

Keywords: Election Commission of India; Political Parties; COVID-19; Electoral Campaigning; Duty of Voters and Contestants during Election; Role of local administration during election; Electoral Behaviour; Free, Fair and Safe Election; Continuity of Democracy; Election as a Constitutional Right

Introduction

The Election Commission of India (ECI) as per Article 324(1) of the Constitution of India has been vested with the power of superintendence, direction and conduct of all elections for the Parliament; State Legislatures and elections for the offices of the President and Vice-President. It had recently issued *Broad Guidelines for Conduct of General/Bye Elections during COVID-19*. According to the ECI, the Commission on 17th July, 2020 had sought views/suggestions of National/State Political Parties till 31st July 2020 and had further extended the period till 11th August, 2020 on request of the Political Parties. The Commission had considered the views/suggestions received from various Political Parties and Chief Electoral Officers of States/Union Territories on election campaign and public meetings (ECI, 2020a).

1. Main Guidelines

Some important *Guidelines* in brief are as given below:

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1.1 General Guidelines to be followed during entire Election Process for all persons

Among the ‘General Guidelines’, five essential directions were proposed: i. every person should wear face mask during every election related activity; ii. at the entry of hall/room/premises used for election purposes, thermal scanning of all persons should be carried out a sanitizer, soap and water should be made available; iii. social distancing shall be maintained as per the extant *COVID-19 Guidelines* of the State Government and Ministry of Home Affairs, Government of India; iv. as far as practicable, large halls should be identified and utilized to ensure social distancing norms; v. adequate number of vehicles shall be mobilized for movement of polling personnel, security of personnel to ensure compliance of *COVID-19 Guidelines* (ECI, 2020b).

1.2 Nomination Process

Regarding the nomination process, the ECI has revised the norms of persons accompanying the candidates and number of vehicles at the time of nomination. It has also created optional facility to fill the nomination form and affidavit online and submission of the same, after taking print outs, before the Returning Officer (RO) concerned. For the first time, the candidates will have the option to deposit security amount for contesting the elections online (ECI, 2020c).

Furthermore, the Election Commission has directed that the candidate may have the option to seek his/her elector certification for the purpose of nomination online. In supersession of the existing guidelines mentioned in Para 5.8.1 of *Returning Officer’s Handbook, 2019*, the Commission has directed that number of persons to accompany candidate for submission of nomination is restricted to two and the number of vehicles for the purpose of nomination is restricted to two.

Among others, *Guidelines* to be followed at the time of nomination are: returning officer’s chamber should have sufficient space to perform the functions of nomination, scrutiny and symbol allocation following the norms of social distancing; prospective candidates to get the staggered time schedule; large space for waiting for candidates etc. It is worth mentioning here that all steps required to be taken for the submission of nomination form and affidavit shall continue to operate as per the provisions contained in the ‘*Representation of the People Act, 1951*’ (ECI, 2020c).

1.3 Campaign by the Political Parties/Contesting Candidates

Under this, three types of activities have been addressed: Firstly, ‘door-to-door campaign’ in which a group of five persons including candidates and excluding security personnel, if any, is allowed to do the campaigning; Secondly, ‘road shows’ in which the new *Guidelines* replacing the para 5.8.1 of

Returning Officer's Handbook 2019, provides that the convoy of vehicles should be broken after every five vehicles instead of ten vehicles (excluding the security vehicles, if any). The interval between two sets of convoys of vehicles should be half an hour instead of gap of hundred meters (ECI, 2020b).

Thirdly, Public gatherings/rallies may be conducted subject to adherence to extant COVID-19 guidelines. The *Guidelines* provide further that the District Election Officer (DEO) will identify dedicated grounds for public gathering with clear 'entry' & 'exit' points and put marks to ensure social distancing norms by the attendees. It will be the duty of the Nodal District Health Officer to ensure the adherence by all to COVID-19 related guidelines in the district. Further, the DEO and the district Superintendence of Police (SP) should ensure that the number of attendees does not exceed the limit prescribed by the State Disaster Management Authority (SDMA) for public gatherings.

Moreover, the political parties and candidates concerned should ensure that all COVID-19 related requirements like face masks, sanitizers, thermal scanning etc. are fulfilled during each of these activities, stipulates *the Guidelines*. Those violating instructions on COVID-19 measures will be liable to be punished under relevant sections of the '*Disaster Management Act, 2005*'; '*Indian Penal Code*' (IPC) and other legal provisions as specified in order No. 40-3/2020-DM-1(A) dated 29th July, 2020 of the Ministry of Home Affairs. It will be the duty of DEO to bring this to the notice of all concerned.

1.4 Polling Station Arrangements

The Commission has issued detailed instructions for 'assured minimum facilities' at each polling station. The ECI norms prescribe mandatory sanitization of polling stations, preferably a day before the poll. All voters will be subject to thermal scanning at entry points of polling stations. If they show high temperature, their reading will be taken again and if it is still high, they shall be provided a token / certificate to come back for voting in the last hour of polling. Similarly, quarantined COVID-19 patients can vote in the last hour of voting. The Commission has asked for gloves to be provided to every voter for signing the voter register and pressing the Electronic Voting Machine (EVM) button. In addition, soap, water and sanitizer will be arranged adequately and social distancing will be followed strictly. Separate guidelines will be applicable for those voters living in the specified containment zones. Adequate number of polling officials/staff/ personnel are to be arranged. The number of electors in polling station has been fixed at one thousand instead of one thousand five hundred as per Commission's Instruction No. 23/SEC/2020-ERS, dated 23rd July, 2020.

1.5 Postal Ballot

As a welcome step *the Guidelines* stipulate that Covid-positive patients and suspected cases under home or institutional quarantine will also have the option of voting via postal ballot. As of now, postal ballots can be used by disabled voters, senior citizens above eighty years and those engaged in essential services.

1.6 Counting of Votes

In supersession of the earlier ECI instruction dated 30th April, 2014 the new *Guidelines* provide that the counting of votes of a constituency may be considered at three-four halls by appointing additional Returning Officers (RO) and not more than seven counting tables will be allowed in a counting hall. The counting centres will be disinfected before, during and after the counting. Postal ballots may also be counted in a separate hall. Display of result from the control units may be displayed on a large screen to avoid accommodation of large number of counting agents.

1.7 Miscellaneous provisions

The Commission has also provided for various other guidelines e.g. provision of a Nodal Health Officer; EVMs/VVPATs specifications; Training and Capacity Building; Distribution and Collection of Election Material; Timing of third Randomization of Polling Staff to avoid the rush; Kit for Polling Officers containing mask, sanitizer, face shield and gloves etc. *The Guidelines* has broadly speculated every aspect related with the conduct of polling and has come with the possible solution for its smooth operation.

2. Policy Recommendations

ECI *Guidelines* on Elections looked impressive to read but to implement them remained a difficult task. It is believed that these *Guidelines* had been issued for the *Bihar* Assembly election (which was held in three phases during October-November, 2020) and other bye-elections (in *Gujarat*, *Madhya Pradesh* and *Uttar Pradesh*). In the *Bihar* Assembly election, approximately forty million voters participated with an impressive overall voter turnout of 57.05 percent out of which male and female voter turnout remained at 54.60 percent and 59.70 percent respectively (ECI, 2020a).

The new *Guidelines* restricting the number of people and vehicles accompanying the candidates; provision of online facility for nomination and deposition of security money and certification etc. are welcoming steps and should become a permanent feature of the electoral process. These are going

to strengthen the constitutional and political set up of our country. In the words of *Rajni Kothari*, “in a country where politicization is given a free course and becomes the principal medium of modernization, it tends to break the autonomy of economic and social institutions and to subject the latter to intense pressurizing from both within and without. Its capacity to render its established supremacy over these institutions functional and efficient would, however, depend upon the degree to which the performance of a particular political system has itself shown competence in meeting the needs and aspirations of individuals and groups” (Kothari, 2014).

The ECI has provided the guidelines for public rallies and crowd management, its effective implementation rests with the State administration and police. It is a known fact that our police does not have the required proper skills for the effective and peaceful crowd handling and management. It becomes a testing time for the police to do so during election, when the situation remains highly charged politically and it is recommended that the police plays its role effectively.

The *Guidelines* did not mention anything on virtual rallies and digital campaigns for the upcoming assembly elections. Furthermore, it was provided that political parties and candidates concerned should ensure all COVID-19 related requirements such as face masks, sanitizers, thermal scanning etc. during political activities and those violating instructions on COVID-19 measures will be liable to be punished under relevant sections of the ‘*Disaster Management Act, 2005*’; ‘*Indian Penal Code*’ (IPC) and other legal provisions as specified in order No. 40-3/2020-DM-1(A) dated 29th July, 2020 of the Ministry of Home Affairs (ECI, 2020b).

Given the nature and way of functioning of political parties in the country, the above mentioned responsibilities regarding maintenance of COVID related guidelines given to them and their candidates are very difficult to implement. No political parties would be strict to their own supporters and they will ignore violations on their part. As per a report in *The Times of India*, though COVID-19 situation in *Bihar* has so far remained under control, despite large-scale campaign and public events in in the state in the run-up to the polls, a visiting central government team found that adherence to COVID-19 norms such as wearing masks, maintaining physical distance and hand hygiene was less than satisfactory outside the urban centres (Dey, 2020). At the same time, citing the smooth conduct of the *Bihar* Assembly polls, the Karnataka High Court, Bengaluru has directed the State Election Commission to finalize the schedule for *gram panchayat* (units of local self-government in the rural areas) election within three weeks and asked the State Government to provide funds for the polls (Indian Express, 2020a,b).

Thus, it may be noted that the *ECI Guidelines 2020* are well formulated keeping the Indian conditions in mind, but a lot has to be achieved in the field of the technique of digital interface to make elections, free, fair and full of ease for the stakeholders involved. Definitely, a change in the habits and behaviour of electorates regarding strict compliance of COVID-19 related rules during the elections is the foremost requirement. This may be achieved through massive public awareness in advance at one hand and equally important by increasing the required human and material resources at the local levels in a sustained manner.

Conclusion

Due credit may be given to the Election Commission of India for framing the Guidelines for conducting election during COVID-19 and the same was thoroughly tested during the recently concluded *Bihar* Assembly Elections and other by-polls. We may agree with S.Y. Quraishi, the former Chief Election Commissioner of India who maintained that the ECI after initial doubts, was inspired by the successful experiences of many countries (approximately thirty four countries have conducted elections to their national assembly or presidential post while being engaged in the battle against the novel coronavirus), especially South Korea, which conducted its national elections in the midst of the pandemic with great success and highest- ever turnout. At a time when all countries are looking at each other for lessons, *Bihar* could be a leading example of how to successfully conduct elections in difficult times (Quraishi, 2020). Time and again, ECI has silently proved its success and worth as an election conducting agency by formulating necessary emerging guidelines and by taking appropriate steps to organize free, fair and safe elections in one of the states of India, the largest democracy in the world.

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