

Introduction

The recent concern expressed by multiple political parties about conducting elections in Bihar amidst the outbreak of the Covid-19 pandemic has sparked a debate. The main suggestion from these political entities is postponing the elections due to the enhanced risk it presents to the public.

Election Commission Mandate

Under existing Indian law, the Election Commission (EC) holds clear directives to hold elections within a six-month period before the expiration of a Lok Sabha or a Legislative Assembly's five-year term. This arrangement guarantees the presence of a new Assembly or Lok Sabha on the termination day of the outgoing House. For example, in Bihar, the ordinarily scheduled Legislative Assembly elections should occur before November 29th, 2020.

Should an early dissolution transpire, the EC must assure a new Lok Sabha or Assembly is established within six months, based on Article 85(1) and Article 174(1) of the Constitution. In essence, this six-month period is the constitutionally approved limit between two House/Assembly sessions.

Postponement of Election

Ordinarily, once an election is initiated, it proceeds according to schedule. However, under exceptional circumstances, such as the current pandemic, the process can be halted or even annulled post-announcement. As per Section 153 of the Representation of the People Act, 1951, in conjunction with Article 324 of the Indian Constitution, the EC is legally entitled to extend an election's completion date. The extension, though, should not exceed six months or surpass the usual time of Lok Sabha or Assembly's dissolution.

Precedents for Election Postponement

Historically speaking, the EC postponed the ongoing parliamentary elections for three weeks following the assassination of Rajiv Gandhi in 1991. Similarly, in March 2020, the EC postponed elections for 18 Rajya Sabha seats due to the Covid-19 outbreak.

Grounds for Election Postponement

Article 172(1) affirms that a state of Emergency can warrant an election's deferral for one year and an additional six months from lifting the Emergency. However, there is no concrete legal provision specifying the circumstances under which elections may be deferred in non-Emergency situations. Nevertheless, any compelling situations beyond the EC's control such as law and order disruption, natural calamities, or other exceptional circumstances, can justify an extension.

Legal Aspects Associated

The powers under Section 153 can only be put into action after an election schedule has been officially announced. Should the EC decide to postpone the Bihar elections, it would occur via its extraordinary powers under Article 324. The EC will then inform the government about its inability to conduct elections on

time.

The government would then choose the subsequent course of action — whether to implement President’s Rule or allow the incumbent Chief Minister to serve for another six months.

A Coping Strategy Going Forward

As part of a coping strategy, the EC ought to consider successful examples such as South Korea, who implemented a well-crafted plan to hold elections amid the pandemic. South Korea managed its elections by sanitizing polling centres, mandating physical distancing, use of gloves, masks, and hand sanitizers for voters, and conducting temperature checks at the polling booths. Covid-19 positive persons were given the option to vote via mail, while self-quarantined voters cast their votes post 6 p.m.

With experts predicting the pandemic’s effect to last for at least two years, deferring the election for such a lengthy period could undermine the democratic spirit. Therefore, adopting appropriate safety measures during the elections may be the best way forward.