

The Rise in Electoral Violence:
The constitutional mandate observed in the state assembly elections of
West Bengal and its impact on the COVID-19 Pandemic

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Abstract

Electoral violence is a contemporary political, social and legal issue that has gained prominence and attention owing to the gruesome violence that took place during the General election to the Legislative Assembly in the state of West Bengal. The said issue opened active and heated discussions regarding the constitutional mandates and legal provisions available for dealing with the said issue. The present article will throw light on the critical analysis of the said issue, its related cases and suggestions that may be applicable to mitigate the present issue at hand.

Keywords: Electoral violence, the state of West Bengal, constitutional mandates, legal provisions

Introduction

From the period between 27 March to 29 April 2021, the state of West Bengal witnessed the General election to the Legislative Assembly amid the COVID-19 Pandemic. The said elections attracted widespread media attention owing to the horrendous post-election violence that adversely impacted almost the entire state. The said news is one of the many cases of extreme electoral violence witnessed in India. The present issue of West Bengal called for the application of the President's rule in the state and the grey areas prevalent in Article 356 of the Constitution of India, 1949. Apart from the legal standpoint of the said issue, the detrimental impacts of electoral violence have been observed during the pandemic as it calls for mobs to be created and all other such activities that violate the rules established to contain the coronavirus.

History of the electoral violence in India

The history of electoral violence can be traced to the 1960s wherein a bountiful number of farmers and sharecroppers caused all kinds of havoc and upheaval in Naxalbari, West Bengal. The violence that took place in the 1960s could be attributed to reasons such as the economic and social resentment the farmers had towards the people belonging to the upper caste and class families. A period of significance in the post-electoral violence of West Bengal and other states is that of 1967-71 wherein there was a rise in street violence and rivalry in all parts of the state; developed urban areas along with the rural parts of the state. When the history of electoral violence is analysed, the Sainbari massacre mustn't be ignored. The main victims of the massacre included the Sain family who happened to be allies with the Congress Party. The eldest son of the family was gauged and murdered. It was held despite the numerous complaints filed against the top leaders of the Communist Party of India (Marxist) or CPI(M). Unfortunately, no action was taken against the said accused and furthermore, the said accused eventually formed the government in the year 1977 by representing the Left Front. In the year 1979, the Marichjhapi incident took place in West Bengal. The incident threw light upon the peculiar behaviour and upper-caste tendencies of the former party. It was held that the main motive behind electing the Left Front as opposed to the Congress was to support the plight of the Dalit refugees however, no significant change was observed in the treatment provided to the said refugees. Furthermore, the leaders present in the Left Front claimed that the Dalit refugees had destroyed a reserve forest to occupy it and settle in it, for themselves. Owing to the statements made by the Left Front party, there was a cut in medicines and essential supplies for the Dalit refugees.

The Dalits had to face oppression in various forms by various communities over the next few years and an incident to illustrate for the same will be that of June 14, 1979, wherein the police set ablaze the shelters of Dalit refugees. Owing to this unfortunate event, Several Dalit refugees died due to starvation and the gruesome forms of violence such as gunshots and so on. All that being said, the CPI(M) government ruled the State of West Bengal for the next thirty-two years up till the year 2011 wherein the power was transferred to All India Trinamool Congress (TMC). The decades of oppression and post-electoral violence was incapable of setting a positive example for the incumbent government given the excessive amount of violence that has taken place post the 2021 General election to the Legislative Assembly.

Critical Legal Analysis

“We will bring in the politics of change, not vengeance” was one of the first few promises made by Mamata Banerjee when her party, the All-India Trinamool Congress (TMC) came into power. Unfortunately, her promises regarding the stoppage of post-election violence are yet to be fulfilled. The state of West Bengal comprises of the West Bengal Legislative Assembly which happens to be the unicameral legislature of the state, the Legislative Council of the State of West Bengal has been abolished¹ and therefore, the elections that take place in West Bengal, Andhra Pradesh and so on take place at different intervals as compared to other states.

The post-electoral violence in West Bengal called for active measures by the government to curtail the same and therefore, the application of President’s Rule was considered. A plea was filed before the Supreme Court of India by one Ranjana Agnihotri to impose the President’s Rule in the state of West Bengal. ²It was argued by Ranjana Agnihotri along with Advocate Hari Shankar Jain that the President’s rule can be imposed in the State of West Bengal as under Article 355 and Article 356 of the Constitution of India, 1950³. The latter of the two articles states that the state may impose the president rule in situations that appear to be “cases of failure of constitutional machinery in the State.” Article 356 of the Constitution of India, 1949 deals with all such situations wherein the president may by proclamation assume all such powers and functions that are granted to the Government of the State, the said Governor and all such other authorities apart from the Legislature of the State. ⁴Furthermore, the president may perform the functions and take over the powers of the legislature by an official declaration. ⁵ According to the said article, the president is granted the power to make all such incidental and consequential provisions as may be deemed necessary for all such situations that may arise in regards to the objects of the Proclamation. That being said, the president is not permitted to assume such powers that are vested in or exercisable by a High Court.

Considering the fact that the state of West Bengal had witnessed gruesome cases of violence against several groups of BJP supporters and the incompetence of the state government of West

¹ Art 4, The West Bengal Legislative Council (Abolition) Act, No. 20 of 1969, India Code (1969)

² India TV service, *President's rule in Bengal? SC seeks response from Centre, Mamata govt and EC*, India TV (1 July 2021, 19:05 IST), <https://www.indiatvnews.com/news/india/bengal-post-poll-violence-presidents-rule-supreme-court-plea-mamata-govt-election-commission-latest-updates-716143>.

³ INDIA CONST. art. 356.

⁴ INDIA CONST. art. 356, 1, cl. (a)

⁵ INDIA CONST. art. 356, 1, cl. (b)

Bengal to provide any such relief to the victims of such violence, the central government agreed upon hearing the plea an advocate, Vishnu Shankar Jain filed the PIL stating that the electoral violence in West Bengal could be deemed as extraordinary circumstances and furthermore, the plea was solely based on the plight of the petitioners by stating that, “The petitioners are espousing the cause of thousands of citizens of West Bengal who are mostly Hindus and are being targeted by Muslims to take revenge for supporting BJP as they want to crush Hindus so that for years to come the power may remain with the party of their choice.” The deciding bench comprised of Justices Dinesh Maheshwari and Vineet Saran. The said bench decided on sending notice to three respondents: Union of India, West Bengal government and Election Commission of India, respectively. The Chief Minister of the state, Mamata Banerjee was the fourth respondent however, she was sent no notice by the bench.⁶ Apart from the major complaints and accusations made against the first and second respondent, the Election Commission of India can be blamed for the mishaps of the General election to the Legislative Assembly. This is owing to the inability of the body to conduct fair and free elections. Section 123 of Representation of People Act, 1951 enlists and describes all such practices that fall within the purview of practices performed in fair and free elections. In the midst of the COVID-19 Pandemic, wherein the primary focus of the central government is to ensure that the deadly virus is contained and mitigate the issue of the rising cases in all the states, independent and constitutional bodies such as the Election Commission of India is expected to ensure that the democratic essence is not neglected in any election taking place in India.

Therefore, the issue of electoral violence can be understood as a concerning political and social issue faced in India, especially in the state of West Bengal. Furthermore, there are certain relevant and strict legal provisions as mentioned in the Constitution of India, Representation of People Act, 1951 and so on that provide for remedies to curtail and put a halt on such violence and oppression as faced by innocent citizens, more so prevalent in pressing times such as the COVID-19 Pandemic.

⁶ Express News Service, *Supreme Court to hear plea seeking President's Rule in Bengal*, The Indian Express, (August 7, 2021, 11:05PM), <https://indianexpress.com/article/india/supreme-court-to-hear-plea-seeking-presidents-rule-in-bengal-7385164/>

Relevant case laws

The issue of electoral violence has given rise to a bountiful number of landmarks as well as contemporary, recent cases. An overview and analysis of the cases provides insights as to how the issue of electoral violence is dealt with in India and how the future cases may be dealt with. The following include the same alongside the ratio of the said cases:

i. Gadakhyantrao Kankarrao vs Balasaheb Vikhe Patil (1993)⁷

In the said case, the appellant, Gadakhyantrao Kankarrao had been elected to the Lok Sabha, however, it was held that corrupt practices as explained under Section 123(4) of the Representation of People Act, 1951 were conducted. Owing to this reason, the respondent, Balasaheb Vikhe Patil was elected instead of the petitioner. The High court claimed that the election of Gadakhyantrao Kankarrao could be termed as void in accordance with the Section 123(4) of the Representation of People Act, 1951 along with Section 99 of the Representation of People Act, 1951.

The sitting judge in the said case made several salient observations regarding ethical practices to ensure that fair and free elections take place in India and stressed on its importance. Furthermore, it was held that the speeches made by the political leaders tend to promote violence amongst different groups of people; supporters of various parties. This violence leads to the criminalisation of politics which certainly mustn't be condoned by the state.

ii. Utpal Kumar Ray V vs CPIO, Election Commission of India (2019)⁸

The given case revolves around the Right to Information Act, 2005 and its importance in matters of violence during the election processes and proceedings. The appellant in the case had filed an application before the Election Commission of India and CPIO as under the Right to Information Act, 2005. The application was regarding the violence that took place in the midst of elections. The question posed by the appellant included the total number of legal voters that showed up for the voting procedure as registered by the Election Commission of India, the total

⁷ Gadakhyantrao Kankarrao vs Balasaheb Vikhe Patil, 1994 AIR 678

⁸ Utpal Kumar Ray Vs. CPIO, Election Commission of India, CIC/ ECOMM/ A/ 2018/164414

number of incidents and situations wherein there was an occurrence of violence between voters and members and so on.

It was held that the appellant had the right to ask for such information. Though there were certain grey areas and a lack of clarity in the numbers of violent incidents, the appellant was satisfied with the majority of the information provided by the Chief Electoral Officer.

iii. Iliash Miah &Ors. Vs. Raiganj Central Co-Operative Bank Ltd &Ors (2016)⁹

In the said case, a writ petition was filed owing to the lack of local administration to prevent the violence that usually took place during the elections. The violence was initiated by hooligans that were protected by a particular party. The contentions made by the petitioners was that owing to the presence of violence during the elections, the elections must be deemed as illegal and void. That being said, the petition was ultimately declined; the subject matter of the present issue was to be posed before the Cooperative Election Commission.

iv. SMT Sushma Chauhan vs Joint Secretary State Election Commissioner &Ors (2009)¹⁰

The present case revolves around the insurance coverage expected for all such employees that died owing to electoral violence. The petitioner is the late employee's widow. Her husband was a guard who had been posted for election duty. It was initially assumed that he passed away owing to an allergy or a health issue however, upon investigation, the truth prevailed. The District Magistrate asked the insurance company to pay the petitioner the sufficient amount on account of her husband's death.

⁹ Iliash Miah &Ors. Vs. Raiganj Central Co-Operative Bank Ltd &Ors, W.P 9102(W) of 2016

¹⁰ SMT Sushma Chauhan vs Joint Secretary State Election Commissioner &Ors, W.P. (M/S) No. 390 of 2009.

Suggestions

While the issue of electoral violence appears to be widespread and gruesome, there are certain measures that can be applied in order to mitigate the rise in the number of cases related to post-election violence as well as violence that occurs during the elections. The following include some of the effective suggestions that can be applied by the relevant authorities:

- i. Develop Effective and efficient Conflict-mitigation and mediation measures.
The main reason that causes party members and supporters to indulge in acts of violence during the elections is the feelings of animosity or aggression towards one another. While that will not fade during the election time, conflict-mitigation measures can be applied for all such conflicts that have the ability of getting resolved by applying the legal route.
- ii. Developing Security measures and protocols in ‘hotspots.’
During the election time, the concerned authorities ought to create hotspots; areas that witness the maximum amount of violence based on prior experiences and situations. ¹¹Once all such hotspots have been identified, the authorities should increase the security not only during the days of the election but also on certain days post the election.
- iii. Introduce stricter legal provisions that primarily deal with electoral violence.
While it may be argued that there are certain provisions such as the Representation of People Act, 1951 that deal with the requirements of a free and fair election, the need of the hour is to implement effective and strict provisions that solely deal with the gruesome offences arising from the election campaign period of time to a certain number of days post the election and its necessary punishments.
- iv. Implementation of practices that propagated ‘peaceful messaging’ during the election time.
To lay low or keep matters light during the election time and a couple of weeks prior is an essential practice that must be adopted in India, especially in the state of

¹¹ Charles Taylor, *Shared Security, Shared Elections: Best practices for the prevention of electoral violence*, American Friends Service Committee (AFSC) (July 2018), <https://reliefweb.int/sites/reliefweb.int/files/resources/Electoral-violence-report-web-version.pdf>.

West Bengal. This practice may be adopted by warning the parties against exploiting the social media platforms to spread hate against their fellow competing parties and its members.

Conclusion

The March-April elections in the state of West Bengal opened gateways to discuss the seriousness and grave concern of the violence that takes place owing to elections. The COVID-19 Pandemic has adversely impacted all sectors of life along with all areas of the Indian Economy; the elections being no exception. Furthermore, the pandemic can be used as an excuse by certain political parties to torment innocent citizens who are unable to register, vote and so on.¹²

Therefore, the need of the hour is to implement measures that will not only facilitate free and fair elections thereby, supporting the democratic essence of the Indian Government but furthermore, ensure that the citizens of India do not feel threatened by the periodic elections in the midst of the pandemic.

¹² Kevin Casas-Zamora, Sarah Cliffe, and Nendirmwa Noel, *COVID-19, Election Governance, and Preventing Electoral Violence*, Center for International Cooperation, IDEA, 4-6, (2020)