

Elections in India
Handout for foundation batch

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Issues associated with the functioning of ECI

- The present method of appointment is controlled solely by the executive which has raised questions about the independence of this body. This process needs reforms and changes and appointments should be made on the recommendation of a Multi-Member Body as in the case of CVC.
- Constitution does not bar retired commissioners from holding further government positions. which has severely compromised the functioning of the commission as an independent body.
- At present, the other election commissioners do not enjoy all the protections enjoyed by the CEC. This needs to be changed so as to ensure the independent functioning of the commission.
- The Election commission of India is dependent on the government for security arrangements and as well as human resources for conducting the elections.
- Usually, the commission receives staff on deputation from the central government who are more loyal to the central government diminishing the control of the Election commission. We may consider setting up a separate cadre of service under the control and supervision of the Election commission.
- It has been ineffective in controlling the influence of money and muscle power in elections.
- It does not have the power to disqualify the candidates on the ground of corrupt electoral practices as the entire process is dependent on orders from the HC.
- The commission does not have the power to even de-register or derecognize the political party. They can only register the political party.
- Even the Model code of conduct is not enough to provide punitive powers to the commission.
- The commission is dependent on the government for its expenses as they are not a charged expenditure on the CFI.

Model Code of Conduct

Successive court decisions have made Article 324 of the constitution – the source of the ECI's authority – a 'reservoir of powers', giving the ECI residuary powers in a variety of situations.

Within the framework of 'electoral integrity', the ECI is expected to ensure procedural certainty in order to affirm democratic outcomes. The MCC is an important mode through which procedural certainty and deliberative content of elections are assured.

MCC is a set of voluntary guidelines laid down by the EC to regulate the political parties, the candidates, and their agents so as to ensure free and fair Elections in

the country. It lists out the Do's and Don't for the Political parties and the candidates.

A 'firmed up' MCC authorised by the ECI came into force in 1979. Its antecedents can, however, be traced to the consensus over norms of behaviour during election time drawn up by the government of Kerala before the general elections of 1960. The ECI buttressed it in 1968 in consultation with political parties. The present form of MCC came into force in 1991

Modalities related to MCC

The MCC comes into effect upon the announcement of Election dates by the Election commission and continues to remain in force till the last vote is cast in the last constituency in the multi-phase elections. It has no statutory backing. The MCC is divided into **eight parts** dealing with general conduct, meetings, processions, conduct on polling day, conduct in polling booths, observers, regulation of the party in power and guidelines on election manifestos.

It includes the guidelines related to:

- Holding public meetings and processions
- Certain minimum standards of good behavior and conduct of political parties, candidates, and their workers and supporters during the election campaigns
- It exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission regarding the violation of MCC.
- The guidelines should be followed by the government and the ministers when MCC is in force. For example, No new schemes or announcements can be made once the MCC comes into force.
- Even implementation of an uninitiated scheme cannot begin after an MCC comes into force.
- Government cannot publish advertisements highlighting achievements.
- Ministers cannot combine official and election tours.
- The newly introduced Part VIII provides guidelines to the political parties for the promises to be made during the elections.

In the past, successive ECIs have elicited compliance by public censure and invoking sections of the IPC and the Representation of the Peoples Act.

T.N. Seshan, the most famous and colourful Chief Election Commissioner of India, came along. He was ruthless in implementing the MCC, even cancelling elections on grounds of MCC violations, such as the Kalka by-election in 1993. Polling was suspended in a constituency in Madhya Pradesh because a sitting governor campaigned for his son, in violation of the MCC.

Critically Analyse the idea of giving legal sanctity to the Model Code of Conduct

Arguments in favour of giving legal backing to MCC:

In 2013, a **parliamentary committee** recommended the same on the following grounds:

- i) Several parts of the MCC are already legally enforceable and therefore it would not make much difference to give the whole of it a legal sanctity. For Example: Inciting hatred through political speeches, Appealing to caste and community feelings of voters, Intimidating or bribing voters and distributing liquor or holding public meetings in the 48 hours preceding the close of polling, are all such offences for which candidates can be tried under the Indian Penal Code or the Representation of the People Act 1951.
- ii) It would provide more powers to the election commission of India to take action against those candidates who distort the level field.
- iii) It would further strengthen the electoral processes and ensure free and fair elections in the country.
- iv) Since the MCC itself does not have the force of law, it is enforced through executive decision-making. It remains, therefore, ambiguous and uneven as far as the modality of implementation and certainty of execution, are concerned.
- v) The absence of specific norms on exercising its powers can lead the EC to arbitrariness and individual bias. Mayawati was banned from public meetings by the EC for 48 hours, due to her appeal to Muslims to consolidate their votes to defeat the BJP, whereas Narendra Modi's speech about how Rahul Gandhi is afraid of Hindus and hence selected a seat where "the minority is majority" was given a clean chit by the EC.
- vi) There is merit in incorporating the MCC as a law, with clear procedures, clarity on the exact powers of the EC, classifying the punishments based on the severity of the violation, and placing a clear-cut time-bound procedure for following up on complaints. The Election Commission can still be kept in charge of implementing the MCC as a quasi-judicial body, so that one need not go to the courts in the first instance

Arguments against giving legal status to MCC:

The election commission itself opposed giving the legal status to MCC

- i) Elections are a short-lived process where time is of the essence and giving MCC legal status would entangle disciplinary action against the candidates and political parties with the judicial process, therefore, delaying the enforcement of the MCC. According to ECI, elections must be completed within a relatively short time or close to 45 days, and judicial proceedings typically take longer, therefore it is not feasible to make it enforceable by law.

ii) Providing it legal status would take the matters out of the hands of the Election Commission of India and place them with the judiciary. Therefore limiting the powers of the Commission.

The ECI appears to have become increasingly cautious and even diffident in the exercise of its constitutional powers. This is especially true for cases where firm and quick intervention is required. The ECI must guard against ceding the space which it has extracted and affirmed by innovatively enhancing the residuary powers given to it in Article 324 of the Constitution of India.

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