



## Challenges Before Election Commission of India

This editorial is based on the article 'The Election Commission must act tough' which appeared in "The Hindu" on 7<sup>th</sup> April, 2019. The article talks about how the Election Commission can overcome its limitations and turn into a truly representative institution of the country.

**Election Commission of India (EC)** is a formidable institution which has led the world in electoral efficiency since its inception. But in the 2019 general election, it has come under the scanner like never before in the wake of **incidents involving a breach of the Model Code of Conduct, particularly those by the ruling party.**

- Recently, in a letter to the President of India, a group of retired bureaucrats and diplomats, in the context of recent incidents, expressed concern over the EC's "weak kneed conduct" and the institution "suffering from a crisis of credibility today".

### Recent Issues

In the above mentioned letter, the **Prime Minister's announcement of India's first anti-satellite (ASAT) test is described as a "serious breach of propriety [which] amounts to giving unfair publicity to the party in power"**. [Because this could sway voters towards a particular party when announced during elections, as voters might associate this technological feat with successes of the government (which is not the case)].

### Questions were also raised on the following

- Launch of **NaMo TV (along with Biopic and web series)** without licence: **Section 126 of the Representation of the People Act** "prohibits" display of any "election matter" by means of "cinematograph, television or other similar apparatus", 48 hours before the hour fixed for conclusion of poll in a particular constituency.
  - **This phase is called the 'silence period' as it allows a voter to make up his or her mind on whom to vote without being influenced by political campaigning.**
  - Moreover, these free publicity campaign were not included in election expenditure.
  - Note that **Section 126 is not applicable on the print media.**
- **Hate speech by various leaders like Mayawati, Yogi Adityanath were only barred after the intervention of Supreme Court.**
  - **Election commission in all the above cases contended that it is a toothless tiger.**
  - **Only after notice and advisory , it can take any action against any politician.**
- Apart from many issues like sexist remarks by Azam Khan, transfer and appointment of Chief Electoral Officer, verifiable paper audit trail (**VVPAT**) audits, **violations of the MCC**, are raising a question over institutional autonomy of the Election Commission.

### Analysis of the stand of Election Commission

**In all the above cases Election commission was hesitant to take swift action.**

- **The assertion by the Election Commission in the Supreme Court that it is now aware of**

**its powers after the court ordered the commission to act decisively against offenders, reduces the status of the poll panel to that of a minor in need of guardianship.**

- It took less than 24 hours for the commission to change from **intransigence** [*stubbornly refusing to compromise*] **into decisive action** after the SC questioning.
- This means that the problem was not with the commission or its powers, but with those who were in charge of its affairs. The Constitution has given the commission all the powers that it requires for the smooth discharge of its responsibilities. The problem lies only in the exercise of such powers.

## **A case for resurrection**

- The Election Commissioners are appointed by the government of the day and they might feel obliged to the government or the government might feel that they should be beholden. In any case, public perception is that if they have been appointed by a particular government, they will be soft towards it.
- **A collegium system of appointment (As suggested by Tarkunde Committee, 1975 and the Goswami Committee, 1990) should be considered.**
  - This will weaken the influence of the government over the President's choice of Election Commissioners.
  - **Additionally, removal of other two ECs does not require such process of impeachment and can be removed simply by the government in power, making them vulnerable, and affecting their ability to act independently.**

## **A case of politicisation of the Election Commission**

The issue of partisan influence over appointment emerged in a blaze of controversy in January 2009, when the Chief Election Commissioner Gopalswami wrote a letter to the President recommending the removal of Election Commissioner Navin Chawla.

Gopalswami accused Chawla of partisanship. The President, Pratibha Patil, declined to act on the recommendation.

## **The controversy highlighted two institutional weaknesses in the structure of the Election Commission**

- The potential for **partisan appointments** by a government;
- Difference in **security of tenure** for the Chief Election Commissioner and Election Commissioners;

## **A Missed opportunity**

The relative weakness of tenure for Election Commissioners, who legally could be seen to be serving at the behest of the Chief Election Commissioner, had been raised by the Election Commission in 2004, when a proposal was made to entrench the Election Commissioners in the same way as the Chief Election Commissioner. However, no action was taken over it.

## **Best practices from other countries in appointing of Election Commissions**

- **South Africa:** Election Commissioners are appointed by the President on the recommendations of the National Assembly, following nominations by a National Assembly inter-party committee, which receives a list of at least eight candidates.
- **Canada:** The Chief Electoral Officer of “Elections Canada” is appointed by a House of Commons resolution for a non-renewable ten-year term, and to protect their independence from the government, he/she reports directly to Parliament.
- **United States:** The six Federal Election Commissioners are appointed by the President with the advice and consent of the Senate.

## **The legality of Model Code of Conduct (MCC)**

Questions are being raised on the efficacy of the present MCC including suggestions to make it a legal document in order to make it more effective. However, experts are of the view that MCC has been a comprehensive set of guidelines and had been effective in past.

### **If MCC is made a legal document**

- **The MCC will be taken away from the EC's discretion and it will have to be given to the judiciary**, which in most cases work at snail's pace, and therefore would be against the corrective ethos of MCC.
- **The MCC's moral authority should not be underestimated even if the ultimate punishment under the model code is advice, warning, censure or reprimand.**
  - The moral authority of the MCC code is very strong and offenders generally hate to be on the wrong side of it.
- The purpose of a model law, a sub law, is to ensure speedy compliance, unlike major laws whose purpose is to recommend punitive measures.

### **The origin of MCC**

**A model code of conduct for parties and candidates contesting elections was first used in Kerala prior to the Assembly Elections of February 1960**, and circulated nationally in 1968 on the eve of State Assembly elections.

- It provided general rules for electoral conduct; setting norms regarding the notification and conduct of public meetings, standards of decency and decorum in political debate, and condemning campaigning based on appeals to violence or communal hostility.
- The code was publicized by the Election Commission prior to the Lok Sabha elections in 1971, and over the years has been revised and extended. [An attempt to give such a code a legislative basis was made following the Goswami Committee Report, when it was included in the Representation of the People (Amendment) Bill of 1990. However, the National Front government collapsed before the Bill could be passed.]

### **The historic high of MCC**

**The Chief Election Commissioner, T.N. Seshan, used the model code of conduct as a weapon in his crusade against electoral malpractice**, backed up by the threat of postponement of elections and the countermanding of results. Such measure was seen as patent abuse of power, but it ensured fair polls.

- The Election Commission under Seshan also clamped down on the use of excessive money for elections, putting an enforceable sealing on the amount parties and candidates can spend in each constituency.
- It put the fear of law in the mind of politicians and political parties.

This means that when the EC setup was under **conscientious officers**, the law took its course and everyone played ball. But at other times, things went back to square one, and that is a potentially dangerous situation.

### **Transfer and appointment**

At the time of the formation of the Election Commission, it was recognized that the temporary nature of this attachment could lead to a conflict of interest amongst the staff, but Dr Ambedkar felt that it would be administratively complex and wasteful to set up an elaborate machinery on a permanent basis. This was solved by the **power of co-option** by the Election Commission.

**However, the right of the Election Commissioner to censure government officials who have been co-opted to carry out election duties has been a source of controversy.**

- For example, in 1992, the Commission cancelled the appointment of the Chief Electoral Officer in West Bengal, and in 1993 a number of officials deputed from the Tripura government to administer

the Vidhan Sabha elections were accused by the Commission of being 'contaminated'.

**However, it should be noted that the Election Commission has asserted the right to prevent the transfers of officials during an election campaign, if it feels that such transfers are likely to impede the fairness of the elections.**

## **The limitations of Election Commission**

- The EC's reputation suffers when it is unable to tame recalcitrant political parties, especially the ruling party.
  - **This is because despite being the registering authority under Section 29A of the Representation of the People Act, 1951, it has no power to de-register them even for the gravest of violations.**
  - The EC has been seeking the power to de-register political parties, among many other reforms, which the EC has been wanting.
  - This reform was first suggested by the CEC in 1998 and reiterated several times.
  - **The EC had submitted an affidavit to the Supreme Court last February saying it wanted to be empowered "to de-register a political party, particularly in view of its constitutional mandate".**

## **Way Forward**

### **Re-inventing consistently**

- EC should continuously reinvent its powers given to it under the Indian Constitution as done by many previous CECs like T. N. Seshan.

### **Recognize the diversification of campaign media**

- Recognising the diversification of campaign media is the first step towards addressing the rampant flouting of the MCC.
- **The framework for understanding and addressing the various forms of voter manipulation must be fundamentally reimaged by the ECI.**

### **Voters awareness**

- **Voter Awareness is an ultimate and effective solution**, which makes candidates more accountable to their voters and stops the flouting the MCC every now and then.
  - The EC has launched voter awareness campaigns like SVEEP (Systematic Voters' Education and Electoral Participation program).
  - **It has also helped turn people into election-participants who remain vigilant in polling processes through the cVigil App where anyone can report election malpractices.**

## **Amending the appointment and removal process of ECs**

**Government should consider the recommendations by Administrative Reform Commission-II and Law Commission reports regarding the changes required in appointment and removal of ECs and make the institution stronger.**

## **Conclusion**

**The existing position cannot sustain itself for long** as the governments from time to time will try to influence the constitutional office of the Election Commission.

**It is time that instead of mere rhetoric over independence of the EC some substantial change**

**is brought forward** for protection of the constitutional body.

Additionally, **the Commission has to reinvent its approach** so, that bedrock of democracy doesn't shake at its foundations.

***Drishti Input:***

Practice this Mains question: "The strength and independence of the Election Commission is crucial but has to b

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