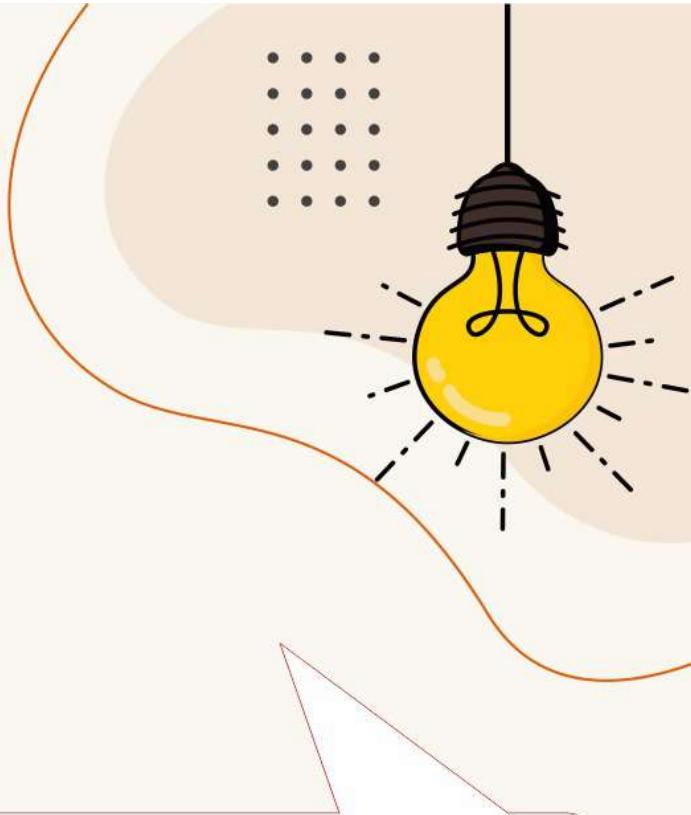




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INDIAN POLITY

6. Election Commission in India is constitutionally and legally oriented towards free, fair and just elections. Critically examine.
6. सभारत में चुनाव आयोग संवैधानिक और कानूनी रूप से स्वतंत्र, निष्पक्ष और न्यायपूर्ण चुनावों की ओर उन्मुख है।” इस कथन का समालोचनात्मक परीक्षण करें।

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67TH BPSC MAIN EXAM

Ques: 6. Election Commission in India is constitutionally and legally oriented towards free, fair and just elections. Critically examine.

The Election Commission of India (ECI) was set up on January 25, 1950, to govern and administer the elections across the country. It is an autonomous and permanent constitutional body responsible for organising free and fair elections in the Union and States of India. Its principal objective lies in overseeing elections at various levels for the state legislatures, the Parliament and the offices of the Vice-President and the President of the country as per article 324 of the Constitution. It is constitutionally under Article 324 and legally under Representation of People's Act, 1951 towards free, fair and just elections.

In recent times a group of retired bureaucrats and diplomats raised certain issues in this regard in a letter to the President of India and expressed concern over the EC's "weak kneed conduct" and the institution "suffering from a crisis of credibility today".

Role of Election Commission of India in organising free and fair elections in India :

1. Model code conduct:

- The Model Code of Conduct for guidance of political parties and candidates is a set of norms which has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said code and also binds them to respect and observe it in its letter and spirit.
- The main purpose of the Model Code of Conduct is to ensure that any political party must not misuse their power to take advantage during the election.
- There must not be any clash between the parties. Free and fair polls should be maintained.
- There must not be undue influence, compulsion, the threat of danger to body or property, or bribing the voters. Politicians should not deliver any hate speeches or advertisements. Facebook, tweeter need to be controlled for the promotion of any party.
- No political parties can campaign based on caste or communal defamation or influence on voters. All candidates are answerable for such conduct of acts. Ministers should not give unverified reports against opposition parties.

2. Deputation to Election Commission:

- The officers and the staff engaged in preparation, revision and correction of electoral rolls for elections are deemed to be on deputation to the Election Commission for the period of such employment.
- These personnel, during that period, would be under the control, superintendence and discipline of the Election Commission.
- They help in conducting free and fair elections without being biased towards any particular political parties.

3. Use of Electronic Voting Machines

- In 1989, a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections.
- EVM helps in many ways like just one vote can be cast by one person, so the EVM reduces the possibilities of the fake votes.
- After conducting the election, the EVM saves the votes in its memory so it reduces any possibility of the fake vote when voting is finally closed.
- They are not connected to the internet so there is no chance of getting hacked.
- An Indian EVM can be used because EVMs are very cost effective as it lasts around 15 years. So the total cost of an election gets reduced.

4. Countermanding of elections in case of booth capturing:

- A provision was made for adjournment of poll or countermanding of elections in case of booth capturing.
- Booth capturing includes: (i) seizure of a polling station and making polling authorities surrender ballot papers or voting machines (ii) taking possession of polling station and allowing only one's own supporters to exercise their franchise (iii) threatening and preventing any elector from going to polling station and (iv) seizure of the place being used for counting of votes.
- This prevents the use of money and muscle power by the political party and give equal chance for all the candidates to contest elections.

5. Electronic Elector's Photo Identity Card (e-EPIC):

- The use of electors' photo identity cards by the Election Commission is surely making the electoral process simple, smoother and quicker.
- It checks bogus voting and impersonation of electors at elections.



- Speaking of its advantages, the document is non-editable and hence, cannot be tampered with . The PDF version that can be saved on our phone is valid both as an identity and address proof.

6. Prohibition of Arms:

- Entering into the neighbourhood of a polling station with any kindof arms is to be considered a cognizable offence. Such an act is punishable with imprisonment of up to two years or with fine or with both.
- Further, the arms found in possession of the offender are to be confiscated and the related licence is to be cancelled.
- This reduces the chances of booth capturing ,reduces the use of money and muscle power , prevents electors from voting by force to any particular party.
- The election officer involved in conducting elections are free to work without any fear and getting threatened.

7. Declaration of Criminal Antecedents, Assets, etc by Candidates:

The election Commission issued an order directing every candidate seeking election to the Parliament or a State Legislature to furnish on his nomination paper the information on the following matters. This bars the corrupt person to contest elections i.e. helps in decriminalisation of politics .

8. Restrictions Imposed on Exit Polls:

- According to a 2009 provision , conducting exit polls and publishing results of exit polls would be prohibited during the election to Lok Sabha and State Legislative Assemblies.
- They are prone to political manipulation: According to former chief election commissioner SY Quraishi, “All parties have been seeking a ban on them since pollsters came to them promising to fudge. They were ready to manipulate margin of error, increase the number of seats, manipulate the sample size, facilitate publishing of opinion polls and give two reports — one honest and the other fudged.”
- They directly or indirectly influence the behaviour of the electors which undermine the very concept of free and fair election.

9. Introduction of NOTA Option:

- According to the directions of Supreme Court, the Election Commission made provision in the ballot papers / EVMs for None of the Above (NOTA) option so that the voters who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote for such candidates while maintaining the secrecy of their ballot.
- The best feature of the NOTA policy is the maintenance of privacy of vote casters. Due to political dominance in a particular region, people might be affected or worried about privacy while voting. NOTA allows them to vote free of worry. The policy allows citizens to have the right to heresy for any particular party. Rejecting all parties is also a suitable choice that people should respect.

10. Introduction of VVPAT:

The Voter Verifiable Paper Audit Trail is an independent system attached with the EVMs that allows the voters to verify that their votes are cast as intended. The system allows a voter to challenge his/her vote on the basis of the paper receipt. As per rules, the Presiding Officer of the polling booth will have to record the dissent of the voter, which would have to be taken into account at the time of counting, if the challenge is found to be false.

11. Introduction of Electoral Bonds:

In 2018, the central government notified the Electoral Bond Scheme. It is touted as an alternative to cash donations made to the political parties. It is aimed at bringing clean money and substantial transparency into the system of political funding.

12. Prohibition on the Sale of Liquor:

No liquor or other intoxicants are to be sold or given or distributed at any shop, eating place, hotel or any other place whether public or private within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll. This way the voters are not lured merely for petty things like liquor, money etc. This ensures that the voters are free and also the person contesting elections has an equal chance of winning the elections.

Current the issues associated with ECI:**1. No legal backing for MCC(Model Code of Conduct)**

Model Code of Conduct, is a set of strict rules that evolved over a period of the past six decades and has been laid down by the Election Commission of India.

MCC is not admissible in the court of law as a wholesome rule book with penalties accorded. It is not a law. CEC or the EC is empowered under Article 324 of the Indian Constitution to formulate MCC and call upon any party or candidate, against



whom a complaint has been lodged and investigated. So violations of MCC are seen to be blatantly done right under the nose of the EC, and very less has been done in terms of punishing the violators.

Example : Controversies related with NaMo Tv

2. Confusion regarding enforceability:

Code of conduct was framed on the basis of a consensus among political parties. It has not been given any legal backing. Although a committee of Parliament recommended that the code should be made a part of the Representation of the People Act 1951, the ECI did not agree to it on the ground that once it becomes a part of law, all matters connected with the enforcement of the code will be taken to court, which would delay elections.

Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 says that the commission may suspend or withdraw recognition of a recognised political party if it refuses to observe the model code of conduct.

The withdrawal of the recognition of a party recognised under these orders seriously affects the functioning of political parties.

3. Abrupt transfer of officials:

As Per MCC the EC can take action against state government machinery ranging from suspending senior officials to attaching them to Headquarters, pulling out officials from all election duty to seeking ‘immediate disciplinary action’ against some officers.

In Mohinder Singh Gill’s case (supra), the Court had made it abundantly clear that the ECI can draw power from Article 324 only when no law exists which governs a particular matter.

Transfer of officials, etc is governed by rules made under Article 309 of the Constitution which cannot be bypassed by the ECI under the purported exercise of power conferred by Article 324.

Example : A large number of officials were transferred during State election of West Bengal and Tamil Nadu which led to the controversy in the working of ECI.

4. Intervention in administrative decisions of Government:

According to the model code, Ministers cannot announce any financial grants in any form, make any promise of construction of roads, provision of drinking water facilities, etc or make any ad hoc appointments in the government department or public undertakings.

The Supreme Court had in S. Subramaniam Balaji vs Govt. of T. Nadu & Ors (2013) held that the distribution of colour TVs, computers, cycles, goats, cows, etc, done or promised by the government is in the nature of welfare measures and is in accordance with the directive principles of state policy, and therefore, it is permissible during an election. Further, Section 123 (2)(b) of the Representation of the People Act, 1951 says that declaration of a public policy or the exercise of a legal right will not be regarded as interfering with the free exercise of the electoral right.

5. Issues Related with the Appointment of Chief Election Commissioner and Election Commissioners:

As per Article 324(2), the President shall make the appointment till the time there is no law being made by the Parliament for this purpose.

Under the Transaction of Business rules, the President shall appoint the CEC and EC based on the recommendations made by the Prime Minister. So there is the issue of political bias which is seen while the conduct of during the elections.

6. Lack of transparency in the procedure for the removal of EC:

Article 324 (5) of the Constitution safeguards the Chief Election Commissioner (CEC) from arbitrary removal. The CEC can be removed from office only by the order of the President, just like a judge of the Supreme Court. However, the same constitutional provision is silent about the procedure for removal of the two Election Commissioners. It only provides that they cannot be removed from office except on the recommendation of the CEC. This led to the undermining the independence of the commission. Even SC in a plea said that ‘Procedure to remove Election Commissioners is vague’.

Conclusion:

There is no doubt that the ECI, through the conduct of free and fair elections in an extremely complex country, has restored the purity of the legislative bodies. However, no constitutional body is vested with unguided and absolute powers. The need of the hour is to discover the hidden power of the Election Commissioners as it was done by T.N. Seshan, which was then used to discipline recalcitrant political parties, who considered rigging the election as their birthright. There is a need to look into the Judicial backing like that of in Mohinder Singh Gill vs Chief Election Commissioner case where Supreme court held that Article 324 contains plenary powers to ensure free and fair elections, and ECI can take all necessary steps to achieve this constitutional objective and more importantly judicious use of The Model Code of Conduct (MCC) equally for all the parties without any bias.