

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Decoding the Model Code of Conduct Time to Shift from Morality to Penalty

MOHAMMAD SALEEM¹

ABSTRACT

India is a country, divided in states and union territories, with a parliamentary system governed under the Constitution of India, which defines the power distribution among the central government and the states governments. The Prime Minister is the head of the Union Government while the Chief Ministers are the ruling persons in each of the states. To select persons who serve the people or rather who rule the people, there are Elections held on the front of the Union or Central Government and on the front of State Governments every five years.

Elections in India are synonymous to the festivals which are basically celebrated on a large scale and wide spectrum. The largest democracy of the world with highest number of political parties, candidates and voters chooses its leaders in a grand fashion all organised by the Election Commission of India and different State Election Commissions. To the entire world it seems to be a sophisticated “Dance of Democracy” but in reality it is no more than a vulgar dance practice which is controlled by Money, Muscle and power.

The election commission to save the elections from all forms of impurities and to maintain its sanctity applies the Model Code of Conduct with the notification of a particular election. Through this paper the author would attempt at understanding the MCC, its particulars and the procedure of its application. The author would also throw light on the legal enforceability of the MCC and the consequences when it is violated by a candidate and the political parties. The author would also attempt to look at the various rules of the MCC which helps the election commission in conducting fair elections in India and different states.

Keywords: *Election, Central Government, State Government, Election Commission, Model Code of Conduct.*

¹ Author is a LLM student at Faculty of Law, Aligarh Muslim University, Aligarh, India.

I. INTRODUCTION

India is the world's largest democracy and this democracy works within the framework of the Indian Constitution which was enacted in 1950. India is a country which is federal, parliamentary, democratic and a republic where the President is the ceremonial head of country and the Prime Minister is the head of government. The system of governance which India follows is that of dual polity, i.e. a system of double government (federal in character) that consists of the central or union government at the center and provincial governments of different states. The constitution of the country is considered the supreme law of the land and it provides the power of organization and authority to both central and state governments and subsequently keeps a check on all and every such action and events of both the central and state governments which may in any form prove to be hazardous for the proper functioning of the democracy .

India follows a system of bicameral legislature consisting of an upper house, the Rajya Sabha which is the Council of States, representing the states of the Indian federation, and a lower house, the Lok Sabha or the House of the People, representing the people of India. The membership of the Lok Sabha is limited to 545 members elected from as many constituencies and at present there are 542 members in the Lok Sabha² (the 17th Lok Sabha w.e.f. May, 2019) and the membership of the Rajya Sabha is limited to 250 and at present there are 245 members³, out of which 233 are elected by indirect elections by the MLAs (Member of Legislative Assembly) by the method of single transferable vote and the other 12 members of the Rajya Sabha are those members which are elected or nominated by the President of India for their outstanding contributions towards art, literature, science, and social services. The members of the upper house sits for a term of six years, and one-third of the members retire after every two years.

There are elections held after every five years for the Lok Sabha and the party which secures a majority of membership in their respective lower houses i.e. Lok Sabha at the central government and Vidhan Sabha at the states forms the Government. The first general election in India were held in 1951, which was won by the Indian National Congress. The introduction to this paper starts with the word "Democracy", so let us know what actually a democracy is?

² <<http://loksabhaph.nic.in/Members/AlphabeticalList.aspx>> accessed 25 April 2020

³ <https://rajyasabha.nic.in/member/lom_output.aspx> accessed 25 April 2020

II. THE INDIAN DEMOCRACY

Democracy is a system of government where the power is exercised by citizens of the country, directly or by electing representatives. It is also referred as “rule of the majority”. Here, there is no inheritance of power from one generation to other. The representatives stand in an election as a candidate and the citizens of the nation vote for their respective representatives. The candidate with the highest number of votes wins the election from a particular constituency. The term “democracy” first appeared in ancient Greek political and philosophical thought in the city-state of Athens during the classical antiquity. The word comes from Greek word *demos* which means “common people” and *Kratos* which means “strength”. It was established in 508–507 BC by the Athenians and it was led by Cleisthenes. Cleisthenes are also known as the “the father of Athenian democracy”.⁴

India is known to be the world’s largest democracy with five democratic principles – sovereign, socialist, secular, democratic and republic. After India gained independence in the year 1947 it became a democratic country and thereafter, the citizens were bestowed with their right to vote and elect leaders. In India, the constitution gives its citizens the right to vote irrespective of their caste, color, creed, religion, and gender. The Constitution of India gives each and every person who is a citizen of the country the right to vote on attaining the age of eighteen years⁵ i.e. on the basis of adult suffrage. The right to vote in India is a legal right and not a fundamental right.

III. ELECTIONS IN INDIA – THE DANCE OF DEMOCRACY

(A) Meaning

Elections are an essential and inseparable part of the democracy. If there is elections, the will of the people cannot be ascertained. It is the through the elections that the people get a chance to elect their representatives.

The Merriam-Webster's defines election as “a means or an act or a process of choosing a person for an official position or membership by voting”⁶. In the **Representation of the People Act, 1951**, the word "election" is defined as follows: "Election means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State"⁷. Thus, the word "Election" connotes an “Act of choosing”.

A question arrived before the Hon’ble Supreme Court of India regarding the meaning of the

⁴ <<https://www.toppr.com/guides/civics/what-is-democracy-why-democracy/democracy/>> accessed 25 April 2020

⁵ Constitution of India 1950, art 326

⁶ <<https://www.merriam-webster.com/>> accessed 25 April 2020

⁷ The Representation of People Act 1951, s 2(d)

word "Election" in *N.P. Ponnuswami v. Returning officer, Namakkal Constituency*⁸. The Hon'ble Supreme Court accepted the opinion so expressed by the learned judges of the Madras High Court, in *Srinivasalu v. Kuppaswamy*⁹ that the term "Election may be taken to embrace the whole procedure whereby an elected member is returned whether or not it be found necessary to take a poll". "The word election has been used in Part XV of the Constitution of India in the wide sense that is to say to connote the entire procedure to be gone through to return a candidate to the legislature".

The above case is regarded as a landmark case pertaining to the Election Laws in India. The ratio of this case has been consistently followed in several rulings by the same courts. Further in, *Mohinder Singh Gill v. Chief Election Commissioner*,¹⁰ Krishna Iyer J. giving the majority decision observed: "The rainbow of operations covered by the compendious expression election thus commences from the initial notification and culminates in the declaration of the return of a candidate". Therefore, it becomes evident that the word election is used in wide sense in India i.e. "the expression "election" which is used in the Constitution of India intends to cover comprehensively, all the diverse steps involved in the process of selecting a representative, from the notification, holding up the election up to the declaration of the results".

(B) Importance of Election

Elections are the instrument of democratic and peaceful transfer of power with the consent and will of the people. Therefore, it is regarded as a basic human rights the right to vote and participate in the process of elections. Human rights and democratic principles are valued globally and are enshrined in the Universal Declaration of Human Rights¹¹ in 1948 i.e. the UDHR and International Convention on Civil and Political Rights¹² in 1966 i.e. ICCPR. This includes the "freedom of opinion and expression, freedom of peaceful assembly and association, the right to take part in the government of one's country through freely elected representatives, the right of equal access to public service in one's country, and the recognition that the authority of government derives from the will of the people, expressed in genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot"

Elections must be conducted with integrity with an aim of strengthening the democracy,

⁸ A I R 1952 SC 64

⁹ A I R 1928 Mad 253

¹⁰ A I R 1978 SC 851

¹¹ <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 25 April 2020

¹² <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 25 April 2020

furthering development, and for social and individual security. Where the elections are held and integrity is not compromised, the bedrock of democratic principles are honored. The citizens select their leader and hold them accountable. Where the elections loses its integrity and are compromised, the politicians, leaders, officials and institutions become non-accountable, then the public is denied of “equal opportunity to participate in and influence the political process”.¹³

Where there is malpractice in electoral processes, the public loses its interest and faith in the election and its outcome and the government formed would remain weak and generally far away from public. In such a case, the institutions would render into empty shells which would be deprived of ethos, and the principles and the spirit of democracy would be further dampened.

IV. MODEL CODE OF CONDUCT

Before every election, the election commission makes the Model Code of Conduct to into force which is to be obeyed by all the political parties¹⁴. The model code is a set of guidelines that drives the conduct and behavior of all the political parties and their respective candidates. Through the enforcement and proper implementation of the model code, the election commission aims to maintain the peace and public order during the entire process of election i.e. starting from the notification to the campaigning and finally to the declaration of the results. The election commission also aims to avoid any conflicts and clashes among the different supporters and workers of the various political parties and to conduct the entire election on healthy and democratic lines. The rules set forth in the model code also guide the ruling party either at the center or at the state to make sure that they maintain the level field for the election and do not use their official position to gain any undue advantage in the electoral process.¹⁵

(A) Historical Background and Evolution¹⁶

The history of the model code of conduct takes us back to the State Legislative Assembly polls of the State of Kerala in February 1960, where for the first time a model code was adopted for the observation of the political parties during the election. In that election the representatives of the political voluntarily approved a draft model code which was proposed

¹³ <<https://agora-parl.org/interact/blog/role-elections-strengthening-democracy-principles-and-values>> accessed 6 May 2020

¹⁴ <<https://digitalcommons.ilr.cornell.edu/codes/3>> accessed 29 April 2020

¹⁵ <<https://eci.gov.in/about/about-eci/the-functions-electoral-system-of-india-r2/>> accessed 6 May 2020

¹⁶ Manual on MCC March 2019 Document 21 Edition 1

by the State Government. The proposed code envisaged within itself all the important aspects of an election process like the speeches, meetings, processions, rallies in a detailed manner¹⁷.

After the taste of success, the election commission further circulated the model code in the General election in 1962 and the simultaneous state assembly elections. The circulation and the implementation of the model code proved to be effective in conducting the election in an orderly and peaceful manner. At that time all the political parties followed the model code.

A conference of the political parties was held in December, 1966 i.e. before the general election of 1967 and this code was adopted again. At the same time, the then Chief Minister of Tamil Nadu, Mr. M Bhakthavatsalam of the INC, during a meeting evolved a 10 point code for the guidance of political parties during the election.

During the election to various state assemblies in the period of 1968-1969, the election commission, prepared a document on minimum standard of behavior and conduct, which was entitled as *“Role and Responsibilities of Political Parties during Elections: An Appeal to Political Parties for the Observance of a Minimum Code of Conduct during Election Propaganda and Campaign”* and the same was placed before the political parties in the meetings held in each state¹⁸.

The same set of guidelines were followed till 1971-1972 for the election to the Lok Sabha and various elections of the state assemblies. In January 1974, the election commission came up with a revised model code of conduct. According to this model code, there was a need to constitute a standing committee on district level, which would be done by the Chief Electoral Officers. The District Collectors would be the Chairman of such district level standing committee and they shall monitor the cases of violations of the model code. The district level standing committee should consist of the representatives from the recognized and registered political parties.

In September, 1979, a conference was held by the Election Commission to bring in more comprehensive and effective model code of conduct. The role of the ruling party was brought under the purview of the model code and it was subsequently revised to bring in provision for restricting the ruling party to use its official resources and machinery to gain undue advantage during the polls. In October 1979, the model code of conduct was revised and was further divided into 7 parts in which one full part i.e. Part VII was devoted to the role of ruling party at the center or the states.

¹⁷ <<https://www.thehindu.com/opinion/op-ed/laying-down-the-dos-and-donts-of-elections/article26449376.ece>> accessed 30 April 2020

¹⁸ <<https://www.livelaw.in/columns/evolution-of-the-model-code-of-conduct-144085>> accessed 30 April 2020

This present model code was being used since the last 20 years with certain modifications and revision but there was no provision for any punitive action being taken by the election commission, in any event of breach or violation of any guidelines of the model code. In 1980, the election commission came up with a view that the model code, and particularly the Part VII, should be provided with statutory sanctions and should be brought on the statute book. After some positive discussion in the parliament over this, it was sent to the cold bags and no concrete steps were taken regarding it.

A watershed event in the course of evolution of the model code came during the general election of 1991. The election commission became proactive to ensure the proper implementation and observance of the model code and brought about some significant changes to Part VII.

There was a disagreement which developed between the political parties and the election commission, when the election commission took the stand that the model code of conduct would come into operation as soon as the election schedule was announced. To this the political parties and the government were of the view that the model code should become operational only when a formal notification to the election was issued by the election commission.¹⁹

The issue reached the High Court of Punjab & Haryana where the Hon'ble High Court provided a definite view in *Harbans Singh Jalal v/s Union of India & Others*²⁰, in a writ petition filed against the Election Commission. The High Court upheld the direction of the election commission and passed its order on 27 May 1997, holding the view that the election commission was having full authority and entitlement to take all necessary steps for the conduct of free and fair election even prior to the date of issuance of notification. The aggrieved parties approached the apex court, but no concrete view was received regarding the matter.

After a series of meetings which took place between the election commission and the aggrieved parties, finally an agreement was reached in April 2001, by which the model code of conduct would come into force with the election commission announcing the schedule for any election but such an announcement would not be made more than three weeks in advance of the day of the notification.

¹⁹ <<https://www.firstpost.com/politics/model-code-of-conduct-takes-effect-after-ec-announces-maharashtra-haryana-assembly-poll-dates-rules-for-parties-candidates-during-campaign-6231921.html>> accessed 5 May 2020

²⁰ (1997) 116 PLR 778

From a passive document which was drafted back in 1960, the model code of conduct has come a long way and it has evolved into a powerful and effective tool in the hands of the Election Commission of India. The modern model code now covers not only covers the political parties and contesting candidates but also the public servants involved in the electoral process within its ambit. The Election Commission has turned up to be more assertive and vigilant thus ensuring observance of Model Code in its true letter and spirit by all the stakeholders. The repeated steps and measures taken by the Election Commission has helped to maintain high standards of public morality during election in a true democratic spirit.

(B) Essential Elements of MCC²¹

As explained above in detail the Model Code of Conduct refers to the set of norms laid down by the Election Commission of India, with the unanimous consensus of all the political parties. Though it is not statutory in nature, it puts up a set of guidelines for the elections. All the political parties and their candidates, the independent candidates, the polling agents and other officials involved in the electoral process are expected to adhere to the norms and follow them on different matters ranging from the contents of an election manifesto to the speeches during the rallies and campaigns to general conduct, in such a manner that free and fair election should be organised.²² Some of the key elements of a model code can be summarized as ²³

1. Part I – Code Regarding General Conduc

There are some general conduct and behavior which is been expected from the political parties and the candidates such as there should be no activities which creates communal differences or which leads to tensions between different caste and communities and nobody's caste or communal feeling should be incited for the purpose of securing votes. Any places of worship such mandir, masjid or church should not be used as a place for election propaganda. The political parties and the candidates shall not target the personal lives of other candidates while criticizing each other. The criticism should be based on the past track record of policy making, decisions and programmes. Such criticism shall be avoided which are partly or wholly based on the unverified facts.

²¹ <<https://eci.gov.in/mcc/>> accessed 29 April 2020

²² <<https://www.thehindu.com/opinion/op-ed/laying-down-the-dos-and-donts-of-elections/article26449376.ece>> accessed 6 May 2020

²³ <<http://www.newsonair.com/General-Election-2019/Manual-on-Model-Code-of-Conduct.pdf>> accessed 6 May 2020

The candidates and parties should not indulge in any corrupt practices and offences related to the election laws. They should not bribe the voters or intimidate them to secure their votes. No canvassing should take place within 100 meters of polling station and all such meetings and processions should end 48 hours prior to the elections. Meetings and procession of each political parties should be organised in such a way that it does not create any chaos or havoc and supporters from rival parties should be kept separated from each other

2. Part II – Code Regarding Meetings

The local police authorities shall be informed in advance by the candidates and the parties regarding the time and place of their meeting proposed by them so that the police can make necessary arrangements for them. The use of loudspeakers and other such amplifying instruments shall only be used after obtaining prior permission from the concerned authorities. The organisers of any meetings shall not take the law in their own hands to tackle and take actions against such persons who is disturbing the meeting or attempting to create disorder. All such actions and other proper action shall be taken by the competent local authority i.e. the police.

3. Part III – Code Regarding Processions

If any political party or a candidate is organizing any procession, then the time and venue of the procession shall be decided in advance and there shall be no deviation after words regarding the time and venue and a prior permission shall also be taken up by the local police authorities for the needful arrangements. If there is any order which restrict the movement or large gatherings, the organisers shall comply with such orders. Any blockage of the roads and unnecessary hindrance to the traffic shall be avoided. Long procession should be segmented and organised in such a manner that unnecessary heavy traffic congestion should not take place.

Procession of two rival political parties should not take place at the same route and at the same time. To avoid this prior information should be given to the authorities and steps shall be taken accordingly. Burning of effigies which represents the member or candidate of other political party shall be strictly prohibited.

4. Part IV – Code Regarding Polling Day

On the day of the polling all the parties and candidates shall provide full cooperation to the officials at the election duty. The voters shall not be subjected to any obstruction in casting their votes and a free will shall be exercised by each and every voter. Suitable badges and identity card should be made available to the workers of the parties. The identity slip of the

voters shall be on a plain white paper and shall not bear the symbol or name of any party.

There should be strict prohibition on serving or distributing of liquor on the polling day or during 48 hours preceding the poll. The camps of the candidates and political parties shall not display any poster, flags, symbols or propaganda materials and shall be simple and there shall be no unnecessary crowd near such camps.

5. Part V – Code Regarding Polling Booth

On the day of the polling, no person except the voter shall be allowed to enter the polling booth. Other persons may be allowed only if they possess a valid pass issued by the election commission.

6. Part VI – Code Regarding Observers

The appointing authority for an observer to any election is the Election Commission of India. The observer shall be informed of each and every complaint, if there is any, during the election and voting, by the candidates or their agents. The observer are duly appointed for such purposes.

7. Part VII – Code Regarding Party in Power

The ruling party, either at the center or at the state shall not use its official position for any purpose of election campaign. Any Minister of the ruling party shall not use her/his official post or the official machinery for any work related to the election. There shall be complete prohibition on the use of government transport such as aircrafts or other vehicles for taking any undue advantage.

The party in power shall not establish monopoly on public places such as parks or maidans etc. for holding any meeting, procession or rallies. All other contesting candidates and parties shall be provided with equal chance to use such public places. The ruling party shall not misuse the mass media for the partisan coverage and propagation of its own political views agenda and shall not gain any publicity through the same.

The Minister and high post bearers of the ruling party along with the local authorities under the government shall refrain from sanctioning any grants or payments out of the discretionary funds after the election has been announced. Further, the Ministers and authorities shall not announce any development projects or schemes or lay the foundation stone to any such projects or scheme or make any appointment to any recruitment under the government. The Ministers and other high post bearers of the central government or the state government shall not be allowed to enter any area or places where there is polling being conducted or the

counting of votes is done, except in their capacity as a voter or a candidate or an authorized agent.

8. Part VIII – Codes Regarding Election Manifesto

The Hon'ble Supreme Court in the case of *S. Subramaniam Balaji Vs Govt. of Tamil Nadu and Others*²⁴ has “directed the Election Commission to frame guidelines with regard to the contents of election manifestos in consultation with all the recognized political parties”. The guiding principles from the above judgment are quoted below:-

- “Although, the law is obvious that the promises in the election manifesto cannot be construed as ‘corrupt practice’ under Section 123 of RP Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree”.
- “The Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution which mandates the Commission to hold free and fair elections.”
- “We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process”.

The election commission taking note of the guidelines of the Supreme Court, held a meeting with the national and regional political parties discussing the matter of election manifesto and the conflicting views of the political parties. While some of the parties supported the guidelines related to the manifesto, other considered it their right and as well as their duty towards the voters to make promises before an election. The election commission agreed with the view that framing of election manifesto and making promises was the right of the political parties but it was at the same time anxious over the undesirable impact of few of the promises and offers, which are made by the parties.

²⁴ (2013) 9 SCC 659

The Indian Constitution through Article 324 provides the mandate to the Election Commission of India to conduct elections to the Lok Sabha i.e. the union parliament and the various state assemblies. Also, the Hon'ble Supreme Court after having a discussion with the election commission and the various political parties, has directed that the election manifesto for any election shall be released keeping few points in mind.

- The promises, offers and contents of the election manifesto shall not contain anything which is extremely distasteful to the ideals and principles of the Constitution and further that the manifesto shall be in harmony with the letter and spirit of the other provisions of Model Code of Conduct.
- The Directive Principles of State Policy (DPSP) contained in Part IV of the Constitution puts an obligation towards the State to form various welfare measures for the development and betterment of the people and therefore it is absolutely correct to make such promise of welfare measures in election manifestos. However, the political parties should abstain from making such promises which are likely to vitiate the purity of the election process or put a question mark on the entire process or exert undue influence and impact the voters in exercising their franchise and casting their votes.
- Keeping all the factors in mind, a level playing field should be maintained and it is expected that the election manifesto should contain such promises which provides credibility and reflects a rationale in making them. They should not mean simply a “Jumla”, which are said in the haste of securing votes during an election with no intentions of fulfillment after the election are over or won.

V. ASSAULT ON THE MCC

We can surely deduce that the election commission's guidelines in the form of a model code is a detailed document through which a practice of free and fair elections can be done. The provisions and guidelines in the model code are so exhaustive, comprehensive and crystal clear that if it is followed, then there can be absolute sanctity maintained and the democracy through its electoral process can have its head High.

But the reality is somewhat disturbing and annoying when it comes to the proper implementation of the model code. It can be better said that, “the provisions of the model code are best implemented with their presence in the code itself” because as soon as the authorities try to implement it, there can be seen widespread violations of the code left, right and center. The political atmosphere of the country is such that an election is not just an

election, it is something beyond it, something more than the theories and philosophy of democracy and representatives and candidature. It becomes a matter of pride, strength, muscle, money and power. Each and every party and their candidates leave no stone unturned in winning the elections by putting all their right and might. The game is simple that “No one wants to loose and everyone wants to win” no matter what the cost it takes or what amount and in what number laws should be broken and how many times there have been violation of the model code. Everything else becomes meaningless and only a Win is all, what it matters.

(A) Limitations of the Model Code of Conduct

Since the model code of conduct has no statutory or legal provisions to back it up – it becomes very difficult for the election commission to charge the violators of the guidelines of the model code. The code is comprehensive and cover all the aspects of an election, yet it lacks such prohibitory impact on the stakeholders. In any incident of violation of the model code, the election commission has got limited powers of only issuing notices and asking for a reply from the people who are involved in violating the code.it can also take up suo-moto cognizance of any violation or issue notices to the parties when it receives a complaint against any person for alleged breach of the model code.

Upon receiving any such notice from the election commission, the candidate sends a reply in writing in which he admits or refutes the allegation levelled against him. If the candidate or the party admits the allegations, the election commission can make further orders of banning them from campaigning for a specified period of time and can take such actions as it deems fit.

In any circumstances, if the allegations made against any person is serious or grave in nature, the election commission has the option of filing a criminal complaint under the relevant sections of the Indian penal code and other election laws of India.

(B) Violation of the Model Code of Conduct

During the election season, it comes tom us as no surprise when we find that most prominent politicians and public figures of the country are pulled up by the election commission for their blatant violation of the model code, but they escape any action and are being handed over clean chits.²⁵

If we look at the instances of the violation of the model code in the recent years then all the big names of the national parties have faced such allegation of breaching the model code.

²⁵ <<https://theprint.in/theprint-essential/why-model-code-of-conduct-for-elections-cannot-act-against-offending-politicians/202528/>> accessed 25 April 2020

From the ministers holding the highest offices to the party presidents, from Narendra Modi to Rahul Gandhi and other prominent faces of the elections like Amit Shah, Sonia Gandhi, Yogi Adityanath, Maneka Gandhi and many others have been facing allegations of violating the model code of conduct either through their speeches, acts or other means²⁶.

One such high profile allegation came during the Lok Sabha election in 2014 when the Prime Ministerial candidate of the BJP, Mr. Narendra Modi, was sent a notice by the election commission for flashing the symbol of his party outside the polling booth on the day of the voting.²⁷ Taking the advantage of the ineffectiveness of the model code, he again in 2017 Gujarat state assembly election, flashed his inked finger outside the polling booth, even though the model code clearly forbids any canvassing within the 100 meters of a polling booth on the day of the voting.

The very same year, in the same election, a prominent face of the Congress, the then Vice President of the party, Rahul Gandhi was pulled up by the election commission for indulging in a TV interview one day before the polls.

VI. WHETHER MCC EXISTED IN 2019 GENERAL ELECTIONS

The 2019 Lok Sabha election was humongous with almost 900 million eligible voters and 2293 registered political parties out of which seven are designated as national parties and the elections were conducted in seven phases starting with the first phase on 11 April and ending on 19 May, 2019 with the seventh and last phase. The Model Code of Conduct came into force on March 10 with the announcement of the election. The Model Code of Conduct was violated on a large scale whole heartedly by almost all the political parties including the prominent national parties as well as the regional parties

It has been an off-repeated strategy of few of the political parties in India to give hate speeches which divides the voters on their communal lines thus resulting in the polarization of the votes. The parties and their candidates are also caught neglecting and even threatening the minorities which is extremely dangerous for India and its diverse citizenry. One of such incident took place on 11th April, 2019, when the BJP candidate, Maneka Gandhi warned the Muslim voters they did not vote for her, they will have to face consequences. The election commission found her violating the model code and charged her under the RPA, 1951, banning her from campaigning for 48 hours. The very same day the election commission also banned the CM of Uttar Pradesh Yogi Adityanath from campaigning on his remarks of

²⁶ <<https://feminisminindia.com/2019/04/23/indian-elections-mcc-violations/>> accessed 29 April 2020

²⁷ <<https://thewire.in/politics/is-the-model-code-of-conduct-a-moral-code-of-conduct>> accessed 9 May 2020

Hazrat Ali and Bajrang Bali as it was purely on communal lines dividing the voters on their religion²⁸.

In the same election, Sambit Patra, a BJP candidate from Puri was seen holding up a Jagannath idol²⁹ during his election rally. After receiving complaints from Odisha Pradesh Congress the election commission slapped him with a show-cause notice for clear violation of the MCC. In other such case of violation the election commission also requested the President of India to take appropriate action against the then Governor of Rajasthan, Kalyan Singh for referring himself as a *karyakarta* of the BJP³⁰ while holding a constitutional post.

Azam Khan, a Samajwadi Candidate from Rampur came under the fire of the election commission following his derogatory and indecent *underwear remarks* against his rival candidate, Jaya Prada. The election commission did an outstanding job by banning his campaign for 72 hours³¹ and also an F.I.R. was registered by him under **Section 509 of the Indian Penal Code, 1860**³² and **Section 125 of the Representation of People Act, 1951**³³.

Apart from the above mentioned incidents of the violation of the model code, there are hundreds of more such violations of which the election commission took a little notice or took no notice at all. At times the election commission follows a strict pattern of taking notices of the incidents which breach or violate the model code but most of the times the, the lack of stringent laws and statutory backing to the model code of conduct proves to be a hindrance in combating such cases of violation and at the same time it becomes an opportunity for the defaulters as they get a free passage and do not have to face harsh punishments for their acts. Hence at some point of time the question which arises is, weather the model code is enough to prevent the misuse and violation of laws during an election or the model code acts only as closed book to the political players with a very little or no sanctions³⁴.

²⁸ <<https://thelogicalindian.com/news/parties-violated-mcc/>> accessed 8 May 2020

²⁹ <https://www.business-standard.com/article/news-ani/mcc-violation-complaint-lodged-against-sambit-patra-for-holding-jagannath-idol-during-election-rally-119032700085_1.html> accessed 8 May 2020

³⁰ <<https://qrius.com/bjp-aap-congress-scramble-to-file-election-misconduct-complaints-a-low-down-of-the-mcc-violation-watch/>> accessed 5 May 2020

³¹ <<https://www.deccanherald.com/national/national-politics/eci-shuts-up-netas-after-sc-rebuke-728745.html>> accessed 6 May 2020

³² Section 509 of IPC reads as Word, gesture or act intended to insult the modesty of a woman

³³ Section 125 of the RPA reads as Promoting enmity between classes in connection with election

³⁴ <<https://zeenews.india.com/lok-sabha-general-elections-2019/ec-acts-tough-bans-campaigns-by-azam-khan-adityanath-maneka-and-mayawati-for-mcc-violation-2195894.html>> accessed 8 May 2020

VII. THE ELECTION COMMISSION – A TOOTHLESS TIGER

As it has been earlier stated that at times the election commission does a splendid job in providing for the mechanism of enforcement of the model code of conduct and at times it simply raises its hands in air in front of the high offices and the popular candidates especially those who belong to the party in power. After observing the series of events related to the complaints regarding the violation of the model code by few very prominent candidates and the election commission paying no attention to such complaints and putting them in cold bags, further to take no action.

This care, love and affection towards few prominent candidates leads to loss of faith in the general democratic and electoral process of the country by the common people. During the 2019 general election several such incidents happened when the prime ministerial candidate of the BJP, Mr. Narendra Modi directly or indirectly was seen indulging in the violation of the model code of conduct.

In one of his campaign speech, Mr. Modi said that Rahul Gandhi, a candidate from the Congress Party in Amethi and Wayanad, has chosen to contest polls from Wayanad (a constituency in Kerala) because the Congress Party is afraid of the verdict of the Hindu-Majority constituency of Amethi. During a rally of Mr. Rahul Gandhi in Wayanad, the supporters of the Indian Union Muslim League (IUML) hosted their party flags of green colour to which the BJP candidate from Gandhinagar, Mr. Amit Shah compared Wayanad to a mini Pakistan. These speeches and conducts are a clear violation of the model code but the election commission till today has taken no action in this regard.³⁵

Others incidents of selective administration of election commission came during the launch of Namo TV ON 31st March, 2019 when the model code of conduct was in force and the first phase of the polls were only 11 days away and still the election commission took no notice of the same. The Congress and the Aam Aadmi Party complained to the ECI but not to avail any relief. Later the Delhi Chief Election Officer took up the case and Namo TV was asked to observe a period of silence for 48 hours³⁶.

A biopic on the Prime Minister³⁷ titled PM Narendra Modi was slated to release on 11th April, 2019, the day of the voting of the first phase of the general election. Amidst the hue and cry

³⁵ <<https://www.youtube.com/watch?v=5cvWRLjZ878&t=102s>> accessed 5 May 2020

³⁶ <<https://timesofindia.indiatimes.com/elections/news/namo-tv-will-have-to-follow-silence-period-as-per-election-law-ec/articleshow/68921359.cms>> accessed 8 May 2020

³⁷ <<https://www.aljazeera.com/news/2019/04/india-election-commission-bans-modi-biopic-poll-190410092908487.html>> accessed 8 May 2020

from other political parties the ECI only on 10th April banned the film from release till further orders.³⁸

Further, during the model code was in force, the Indian Railways printed rail tickets carrying the photograph of Narendra Modi and the boarding passes of Air India had also similar photographs which proves to be a clear violation of the model code. The politicization of the Indian Army³⁹ was also seen during this election where the surgical strikes carried out by the Indian Army in Pakistan's Balakot⁴⁰ region was used again and again during the rallies and campaigns by the BJP. Uttar Pradesh Chief Minister Yogi Adityanath went on to say that it was *modiji ki sena* that provided the terrorists with bullets while the Congress party served them biryani⁴¹. To this comment, the ECI took a strict action against the UP's CM and only issued a show cause notice to him.

At some instances the party in power directly violates the model code while at other instances it has often used government facilities and money of the tax-payers for swaying votes in its favour. As per a RTI, which was filed by Anil Galgali, a Mumbai-based RTI activist, the Centre's Bureau of Outreach and Communication (BOC) replied stating the expenditure on the advertisement and publicity in mass media by the BJP government since it assumed office in May 2014. The reply to the RTI tells us that the BJP government has so far (2014-2018) spent a whopping amount Rs. 4,343.26 crore only for the purpose of advertisements and publicity through different media including print and digital media⁴². This amount used by BJP is double the amount spent by the previous UPA government in 10 years from 2004 to 2014. During the run-up to the elections, the political advertisements by the BJP led government have appeared on television channels 22,099 times⁴³. If this is not counted as a direct infringement of the model code, it is still a gross misuse of public funds for personal electoral gains.

VIII. CONCLUSION

It is not the case that the ECI is sitting back with its arms folded and is enjoying every

³⁸ <<https://www.thehindu.com/elections/lok-sabha-2019/election-commission-bans-narendra-modi-biopic-during-poll-period/article26791830.ece>> accessed 7 May 2020

³⁹ <<https://www.indiatoday.in/elections/lok-sabha-2019/story/bjp-dragging-army-into-politics-for-electoral-gains-akhilesh-yadav-1474586-2019-03-10>> accessed 7 May 2020

⁴⁰ <<https://www.news18.com/news/politics/ec-issues-notice-to-yogi-adityanath-for-modi-ji-ki-sena-remark-see-s-response-by-april-5-2088061.html>> accessed 8 May 2020

⁴¹ <<https://www.youtube.com/watch?v=50SCL-SLhlg>> accessed 6 May 2020

⁴² <<https://economictimes.indiatimes.com/news/politics-and-nation/modi-government-splurges-over-rs-4300cr-in-publicity-rti/articleshow/64158090.cms>> accessed 9 May 2020

⁴³ <<https://www.newsclick.in/bjp-spends-more-netflix-colgate-or-dettol-tv-ads-elections-looming-large>> accessed 9 May

such incident of breach and violation of model code of Conduct. In the modern day democratic set up, the public institutions have not lived up to their spirit in front of the mighty and all powerful Governments. And this happens with each and every government when it is in power. The government in power tends to abuse its power by taking full control of the democratic institutions like the ECI for its own purposes. No matter which government comes to power, it continuously gives us the impression of “Power corrupts and absolute power corrupts absolutely”.

It is also evident that at some point of time the ECI is so strict that it does some exemplary works which is recorded in the history books with golden words. The works of the ECI during 1990 to 1996 when late Mr. T.N. Seshan⁴⁴, was the Chief Election Commissioner. He was known as a man responsible for ushering the electoral reforms. He is popularly known for enforcing the Model Code of Conduct in its true letter and spirit. Mr. Seshan waged war against the tendency of politicians to flout the model code of conduct, which should be followed by them. In an incident in Madhya Pradesh, the polling was suspended in a constituency because a serving Governor took part in a political campaign and himself campaigned for his son, ultimately leading to his resignation. The model code were followed in such a strict manner that in Uttar Pradesh, a minister was forced to quit the dais in a rally as the campaign period had just ended and he was still busy in his speech⁴⁵

But the general the notion is that the ECI would not take any stringent action against any of the defaulters. The maximum it can do is to register FIR or file a criminal complaint as per the provisions of the Indian Penal Code or the Representation of the People’s Act or any other election law present in India. However, such observations also raise some questions - going by the institution of FIR and criminal complaint and the final conviction rate in the cases of violation of model code, are cases filed by the ECI with regard to the MCC purely symbolic?

An important observation here comes up that – can the cases stemming from such FIRs will gain more strength if the MCC becomes a legal document per se? Does it now mean that we have arrived at a time when it becomes obligatory to give a statutory status to all the stipulations of the MCC, which was suggested by the Parliamentary Standing Committee (PAC) on Personnel, Public Grievances, Law and Justice in 2013?

As of now, the experts are of the view that, the model code which is followed by the

⁴⁴ Tirunellai Narayanan Iyer (TN) Seshan the 10th Chief Election Commissioner from 12th December 1990 to 11th December 1996

⁴⁵ <<https://economictimes.indiatimes.com/news/politics-and-nation/former-chief-election-commissioner-tn-seshan-passes-away/articleshow/71997573.cms>> accessed 12 May 2020

politicians is purely hinged on their personal moral character and there is no fear of law. When we see the recent trend of the elections in India, we find that the poll campaigns are turning out to be more ugly, it has become a war of words which is more combative and is personal, the moral obligation entailed in the model code can really bear down heavily on candidates at a time when they are trying show to the voters how upright and competent they are for the job. Hence, till the Model Code of Conduct and the Election Commission of India are not provided with their “tooth” we only have to bank upon the moral and ethical capability of the political parties and the candidates which is as of now, on an all-time high in the political history of India.
