

# Model Code of Conduct

(For the guidance of political parties & candidates)

By

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# What is Model Code of Conduct

- Model Code of Conduct (MCC) for political parties and candidates is a set of norms evolved with the consensus of political parties and enforced by the Election Commission. The provisions of this Code have been, by and large, adhered to by political parties and it helps the Election Commission to conduct free and fair elections. The main objective of the Code is **to provide a level playing field for all parties and contesting candidates** during the elections.

# Key provisions of the Model Code of Conduct

The MCC contains eight provisions which are as follows -

- ***General Conduct:*** Criticism of political parties must be limited to their policies and programmes, past record and work. Activities such as:
  - ✓ Using caste and communal feelings to secure votes,
  - ✓ Criticising candidates on the basis of unverified reports,
  - ✓ Bribing or intimidation of voters, and
  - ✓ Organising demonstrations or picketing outside houses of persons to protest against their opinions, are prohibited.

- ***Meetings:*** Parties must inform the local police authorities of the venue and time of any meeting in time to enable the police to make adequate security arrangements.
- ***Processions:*** If two or more candidates plan processions along the same route, organisers must establish contact in advance to ensure that the processions do not clash. Carrying and burning effigies representing members of other political parties is not allowed.
- ***Polling day:*** All authorised party workers at polling booths should be given identity badges. These should not contain the party name, symbol or name of the candidate.

- ***Observers:*** The Election Commission will appoint observers to whom any candidates may report problems regarding the conduct of the election.
- ***Party in power:*** The MCC incorporated certain restrictions in 1979, regulating the conduct of the party in power. **Ministers must not combine official visits with election work or use official machinery for the same.** The party must **avoid advertising at the cost of the public exchequer** or using official mass media for publicity on achievements to improve chances of victory in the elections. Ministers and other authorities **must not announce any financial grants, or promise any construction of roads, provision of drinking water, etc.** Other parties must be allowed to use public spaces and rest houses and these must not be monopolised by the party in power.
- ***Election manifestos:*** Added in 2013, these guidelines prohibit parties from making promises that exert an undue influence on voters, and suggest that manifestos also **indicate the means to achieve promises.**

# Evolution of MCC

- For the first time Model Code of Conduct was adopted for Assembly Election of Kerala way back in 1960.
- In 1962, on the eve of third General Election, the Election Commission circulated that code amongst all recognised political parties and to State Governments with an advisory to discuss the code with political parties in their States for giving their consent and acceptance to it.
- Political parties generally accepted and followed the provisions of code in that General Election.
- In 1991, the code was consolidated by the Election Commission and from that time the Commission has been ensuring its strict compliance in letter and spirit for conduct of peaceful, free and fair election.

- An agreement was reached on 16<sup>th</sup> April, 2001 between the Election Commission and the Union Government that **Model Code would come into force from the date the Election Commission announces the schedule for election.**
- Though a rider was added that such announcement shall not ordinarily be made more than 3 weeks in advance of the date of notification of that election.
- It was also agreed that the inauguration of any completed projects or laying of foundation stones of new projects **may be done by civil servants instead of political functionaries.**
- Accordingly, Part – VII was suitably modified to expressly make provision to both the above effects.

- Until 2013 MCC had seven paragraphs which include general conduct for parties and candidates and also parties in power. In 2013, the Supreme Court in its judgment dated 5<sup>th</sup> July, 2013 in SLP(C) No. 21455 of 2008 (S. Subramaniam Balaji Vs Govt. of Tamil Nadu and Others) directed the Election Commission to include guidelines regarding election manifestos in MCC.
- Consequently, ECI framed guidelines on Election Manifesto after having consultation with political parties and included it in the MCC as eighth para in 2014.



# Rationale behind MCC

- MCC aims to **provide level playing field** to political parties and contesting candidates and comes into operation from the day ECI announces the program for election in your constituency and will be in force till the completion of the election
- Developed for **maintaining a healthy and peaceful atmosphere** conducive to the conduct of smooth elections.
- A visible and rigorous enforcement of Model Code of Conduct **enhances the credibility of the elections** and gives confidence to the stakeholders/voters.
- It ensures that official machinery for the electoral purposes is not misused.
- It ensures that electoral offences, malpractices and corrupt practices such as bribing and inducement of voters, threat and intimidation to the voters, are prevented by all means.

# Period of Enforcement

- Election Commission of India announces the schedule of election in a press conference a few days and sometimes few weeks before the formal process of election is set in motion by it. Thereafter, the Election Commission of India issues a notification for the election and thereby the actual process of election starts.
- **MCC comes into operation with immediate effect after announcement of election schedule by ECI.**
- The date of announcement of election schedule cannot be more than three weeks anterior to the date of notification, which has been settled by the Apex Court while disposing Special Leave Petition by Union of India against the judgement of Punjab and Haryana High Court in the case of Harbans Singh Jalal vs. Union of India and others pronounced by the latter on 27th May, 1997.

- The Apex Court, while disposing aforesaid Special Leave Petition, took note of the agreement reached by the Government of India and Election Commission of India to the effect that MCC shall be enforced from the date of announcement of election and the announcement of election will not ordinarily be more than three weeks before the date of notification.
- The MCC remains enforceable from the date of announcement of election till the completion of election process after announcement of election results.
- In general election to Lok Sabha, the MCC applies throughout the country and in the case of election to Legislative Assemblies/Councils, the code applies within the State concerned.
- During bye-elections MCC applies to whole district(s) consisting of the constituency where bye-election is being held. However, in case of State capital/metropolitan cities/cities having Municipal Corporations etc., it may be restricted to AC/PC only. It will cease to be in operation immediately after the formal declaration of the result of the bye-election by the RO concerned.

- **Whether ECI can take action under MCC before announcement of election-** Normally, ECI does not take cognizance of alleged violation of MCC before announcement of election. In Bahujan Samaj Party case, Delhi High Court requested the ECI to frame some guidelines to check the parties in power misusing public funds to promote their election symbol or their leaders.
- **Applicability of MCC in case of pre-mature dissolution of State Assembly followed by caretaker government-** the provisions of Part- VII shall apply.
- **Whether election related campaign activities undertaken by persons other than political parties and candidates are covered under MCC-** ECI has laid down the following in this context:

- ✓ Nobody should invoke, in any manner, religion or religious grounds in any manner, or any activities likely to create disharmony among different classes or groups of people, in his campaign. Such activities/ statements are prohibited being offences under various provisions of the law, like, Section 125 of the Representation of the People Act, 1951, Sections 153A, 153B, 171C, 295A and 505(2) of the Indian Penal Code and Religious Institutions (Prevention of Misuse) Act, 1988.
- ✓ Nobody should indulge in any activities or make any statements that would amount to attack on personal life of any person or statements that may be malicious or offending decency and morality.
- ✓ When persons and organizations seek permission to hold public programmes, they should be asked to give a declaration/undertaking to abide by the above guidelines.

- ✓ The public programmes of such persons and organizations should be closely monitored through videography and to take appropriate remedial and penal actions expeditiously in all cases of violation. Further, the District Administration shall ensure that such persons who violated the undertaking are not granted permission to hold any further programmes during the period of that election.
- ✓ If the programmes involve incurring expense and amounts to directly promoting the electoral prospects of any particular candidate or candidates, prior special authority from the candidate concerned for incurring the expense shall be obtained, in writing, as required under Section 171 H of the Indian Penal Code, and such authorization should be submitted to the District Election Officer within 48 hours. Any violation should result in action for prosecuting the person concerned.

# Legal status of MCC

- The MCC is not enforceable by law. However, certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Representation of the People Act, 1951.
- The following malpractices mentioned in Model Code are listed as 'corrupt practices' and 'electoral offences' in the IPC and the RPA, 1951:-
  - ✓ Indulgence in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic- a corrupt practice under Section 123 (3A) of the RPA,1951.

- ✓ Appeal to caste or communal feeling for securing votes and use of places of worship as forum for election propaganda- both a corrupt practice and an electoral offence under Section 123 (3) and Section 125 of the RPA ,1951, respectively.
- ✓ Bribery to voters- both a corrupt practice and an electoral offence under Section 123 (1) of the RPA, 1951 and Section 171B of the IPC, respectively.
- ✓ Intimidation of voters- an electoral offence under Section 135A (C) of RPA, 1951.
- ✓ Impersonation of voters- an electoral offence under Section 171D of the IPC.
- ✓ Canvassing within 100 meters of polling stations- an electoral offence under Section 130 of the RPA, 1951.



- ✓ Holding of public meetings during the period of 48 hours ending with the hour fixed for the close of the poll - an electoral offence under Section 126 (1) of the RPA, 1951.
- ✓ Transport and conveyance of voters to and from polling stations - both a corrupt practice and an electoral offence under S 123 (5) and S 133 of the RPA, 1951, respectively.
- ✓ Creating obstruction in or breaking up meetings and processions of one political party by workers of other parties OR creating disturbances at public meetings of one political party by workers or sympathizers of other political parties by putting questions orally or in writing or by distributing leaflets of their own party OR taking out processions by one party along places at which meetings are held by another party OR removing posters of one party by workers of another party is an electoral offence under S 127 of RPA, 1951.
- ✓ Serving or distributing liquor on polling day and during the forty eight hours preceding it- an electoral offence under S 135 (c) of the RPA, 1951.

- Any person/political party having a grievance in relation to any of the above malpractices may take legal recourse under the relevant laws mentioned above.
- As these provisions already exist in the statutes, no purpose would be served even if Model Code is given legal status and therefore, the Election Commission has argued against making the MCC legally binding; stating that elections must be completed within a relatively short time (close to 45 days), and judicial proceedings typically take longer, therefore it is not feasible to make it enforceable by law.
- On the other hand, in 2013, the Standing Committee on Personnel, Public Grievances, Law and Justice, recommended making the MCC legally binding. In a report on electoral reforms, the Standing Committee observed that most provisions of the MCC are already enforceable through corresponding provisions in other statutes, mentioned above. It recommended that the MCC be made a part of the Representation of the People Act, 1951.

- MCC is self-regulatory:
  - ✓ The general perception about the MCC is that the code is self-regulatory and given to themselves by the political parties but the fact is that its violation largely attracts penal action.
  - ✓ **Further, the Election Commission of India is empowered under para 16A of the Election Symbols (Reservation and Allotment) Order, 1968 either to suspend or withdraw the recognition of party after giving that party a reasonable opportunity to defend itself in the event of violation of Model Code of Conduct.**
  - ✓ **Most of the provisions of the code in parts - I, II, III and IV are relatable to provisions contained in one of the three Statutes - Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Representations of People Act, 1951. Only a few provisions in the Model Code of Conduct do not have statutory backing.**

# ECI's Jurisdiction on MCC

- ECI functions as a quasi-judicial body in the matter related to election and election disputes. However, its decision is subject to Judicial Review by High Courts and the Supreme Court while acting on election petitions.
- The jurisdiction of High Court under Article 226 and 227 is excluded during election period in view of Article 329 (b) of the Constitution.
- By judicial interpretation, the word 'election' under Article 329 (b) connotes the entire election process commencing with the issue of notification calling the electorate to elect their representatives and culminating with the declaration of election result.
- By necessary implication, the decision of ECI on the violation of MCC cannot be challenged in High Court and Supreme Court during subsistence of election process but can be challenged in election petition after declaration of election result.

# Supreme Court on MCC

- The Apex Court has also held that Article 324 gives plenary power to Election Commission of India but that constitutional provision is supplemented by laws enacted by Parliament.
- The Supreme Court has also consistently held ( in the cases - Mohinder Singh Gill Vs. Chief Election Commissioner (1978) 1 SCC 405: AIR 1978 SC 851), A.C. Jose Vs. Sivan Pillai and Ors (1984) 2 SCC 656) and Kanhiyalal Omar Vs. R.K. Trivedi and Ors (1985) 4 SCC 628: AIR 1986 SC 111) that **the ECI has residuary power under the Constitution to act in appropriate manner in the matter of conduct of election where the enacted laws are silent or insufficient to deal with a given situation.**
- In *S. Subramaniam Balaji case*, the Supreme Court held that 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 election process does not get vitiated, has been issuing instructions under Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections.

# SPL Measures taken by ECI to enforce MCC

- Transfer/posting of election related officers who are posted in their home district and also those officers who have completed/completing 3 years tenure in that district during last 4 years period.
- A clear cut protocol of communication between ECI and Union/State Government on Model Code:
  - ✓ Model Code related **direction shall be issued only by ECI.**
  - ✓ Cabinet Secretary or Committee of Cabinet shall coordinate references from various departments of Union Governments.
  - ✓ Subordinate offices/PSUs to make references through their main Ministry.
  - ✓ Directions to State Governments:-

- **Constitution of Screening Committee headed by Chief Secretary** and consisted of Secretary/Principal Secretary of Co-ordination Department/General Administration Department and Secretary/Principal Secretary of the Department for sending the proposal for approval of the Election Commission.
- **CEO shall forward only such proposal which have been cleared by Screening Committee**, with his specific comments to the Election Commission. The concerned department shall not send the original file to office of the Chief Electoral Officer but only a self-contained reference be sent through Screening Committee. Chief Electoral Officers shall not send any reference to the Election Commission in cases where clear cut instructions exist to deal with.
- Advisory to Political parties and candidates and do's and don't's for electioneering to be followed by them.

# Broad areas of application of MCC in bye-elections

- MCC on Government Officials

- ✓ Transfer/Posting

- Ban on transfer of officials involved in election work in any capacity without Commission's prior approval

- **Officers not allowed to continue in present posting within the Assembly Constituency limits if –**

- (i) If she/he is posted in her/his home Assembly Constituency limit;

- (ii) If she/he has completed three years during last four years or would be completing 3 years on or before **the last day of the sixth month from the date of occurrence of the casual vacancy.**



- ❖ These instructions cover Returning Officers and Assistant Returning Officers of the Assembly Constituencies going for bye-elections. These instructions will also cover other officers viz. Deputy/Assistant Collectors, Sub-Divisional Magistrates, Tehsildars and Block Development Officer located in Assembly Constituency Limits.
- ❖ Officers appointed as Sector Officers, though directly involved in election duties will not be covered under these instructions as their duties are such that they are deployed in field duties where their knowledge of the area/terrain is crucial to their effective performance.
- ❖ As far as officer in the Police Department are concerned, these instructions shall be applicable to the Sub-Divisional Head of Police, Dy.SPs/Circle Officers, Inspectors, Sub-Inspectors or equivalent ranks posted in the field within the Assembly Constituency Limit.

- ✓ Any officer who is due to retire within coming six months will be exempted from the purview of the above-mentioned directions of the Commission. Further officers falling in category (home/3+ criteria) shall not be engaged for performing election duties during the elections, if they are due to retire within 6 months.
- ✓ No officer shall be associated with election related work if a criminal case is pending in any Court of Law or against whom Commission has recommended disciplinary action or who have been charged for any lapse in any election or election related work in past.
- ✓ The DEO/RO should take care that in case of deployment of any officer from outside the constituency for any election related duty, shall also conform to the transfer policy of the Commission.

# MCC on Ministers/Chairmen/Members of Commission

- ✓ In case where a Minister travelling on official work transits through the district(s) where the bye-election is being held en route to any other district on official visit, he shall not halt and attend to any political work in the district(s) where MCC is in force.
- ✓ No official of any rank of the district (s) where bye-election is being held shall be called to attend any meeting by any Minister in any district, that is to say, even in the other districts where election is not being held.
- ✓ The Ministers have been permitted to take one non-gazetted official to accompany them during their private visits to attend to urgent official work.
- ✓ The CEO of the state shall be kept informed, in advance, of visits proposed to be undertaken by any minister(s) of the State or Central government to the district where bye-election is being held, by the DEO. CEO shall communicate it to the Commission.

- ✓ No arrangements on private meetings by Government servant.
- ✓ Expenses on private meetings/journeys will be borne privately.
- ✓ No honours at any Republic Day function.
- ✓ Ban on use of official vehicles/pilot car for campaigning.
- ✓ PM is exempted from above restrictions.
- ✓ Meetings/Tours on emergent situations in Constituency allowed
- ✓ No sanction of grant/payment out of discretionary fund.

## MCC for Political Parties/Candidates

- ✓ Criticism of other parties/candidates shall be confined to policies/programmes/past record.
- ✓ No criticism of private life/unverified allegation
- ✓ No appeal to caste/communal feelings
- ✓ Corrupt practices like bribery, intimidation, impersonation, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours, transport/conveyance of voters to and fro polling stations should be avoided

- ✓ No picketing/demonstration in front of houses of individuals
- ✓ No obstruction in meetings/processions organized by other parties.
- As soon as Bye- election(s) to any Assembly Constituency/Parliamentary Constituency is announced in a State/UT, the CEO concerned shall issue an advisory to all the recognized political parties in the State/UT to request their Ministers and sitting MPs/MLAs not to make promises or statements on religious or communal ground even in areas where MCC is not in force and during the Bye-elections period so that the purity of election process is maintained and no ill feeling is generated among the general public.

## Publication of Advertisements

➤ In a case where Govts. publishes advertisements of various kinds including the ones on accomplishments and achievements on special occasions like Republic Day, Independence day, etc., it is not technically possible to block such advertisements, especially in the print media, in the specific areas covered under Model Code of Conduct during bye-elections while publishing it in the other places. Such advertisements shall be regulated as follows:-

- Advertisement of general nature in connection with specific occasions of importance may be published. However, such publishing shall be restricted to the dates coinciding with the special occasion only, and it shall not be published on other days. The advertisement shall not bear photographs of any Minister and other political functionaries.

- No advertisement having any specific/pointed reference or connotation to the areas covered by the bye-election constituencies shall be released/published on any date during the period.
  - No new schemes should be advertised in the districts where the bye-election is being conducted.
- The Commission's instructions relating to general election provide that during period when MCC is in force, all references to Ministers, Politicians or Political Parties available on such State Government /Central Government 's official websites, shall be taken off/ purged of. During bye-elections, these instructions may be confined to only those Politicians/Ministers, etc. who themselves are contesting such bye- elections.



## MCC for use of official vehicles

- ✓ Restriction on use of official vehicles for campaigning
- ✓ Only two vehicles will be allowed within periphery of 100 meters of RO/ARO office.
- ✓ Each contesting candidates will be permitted only three vehicles on the poll day.
- ✓ No limit for own vehicles which a candidate may use for electioneering purpose though, he has to furnish details of all such vehicles to DEO, to enable expenditure observer to check expenditure.
- ✓ Vehicles deployed for election campaigning by candidate should not be requisitioned by district administration.
- ✓ Recognized political parties may be given permission for one vehicle per 25 ACs for distribution of publicity materials to their offices.

## MCC for State/Central Government

- ✓ Announcement of new project/programme/financial grant which have effect of influencing the voters is prohibited.
- ✓ Commission's prior approval needed for announcement of relief programmes.
- ✓ Works already started on the ground are allowed.
- ✓ Emergency relief work can be taken.
- ✓ Regular recruitment/promotion through UPSC/SSC allowed.
- ✓ No hoarding/advertisement at the coast of public exchequer, though there is no objection to publication of photographs/messages related to departed leaders.

# Modification in instructions on campaigning in wake of Covid-19

1) Door to Door Campaign- Subject to any other restriction(s) including extant COVID-19 guidelines, a group of 5 (five) persons including candidates, excluding security personnel, if any, is allowed to do door to door campaigning.

2) Road Shows - The convoy of vehicles should be broken after every 5 (five) vehicles instead of 10 vehicles (excluding the security vehicles, if any). The interval between two sets of convoy of vehicles should be half an hour instead of gap of 100 meters.

3) Election Meetings - Public gatherings/ rallies may be conducted subject to adherence to extant COVID-19 guidelines. District Election Officer should take following steps for this purpose:

(a) District Election Officer should, in advance, identify dedicated grounds for public gathering with clearly marked Entry/Exit points.

(b) In all such identified grounds, the District Election Officer should, in advance, put markers to ensure social distancing norms by the attendees.

(c) Nodal District Health Officer should be involved in the process to ensure that all COVID-19 related guidelines are adhered to by all concerned in the district.

(d) District Election Officer and District Superintendent of Police should ensure that the number of attendees does not exceed the limit prescribed by State Disaster Management Authority for public gatherings.

(e) DEO should depute Sector Health Regulators to oversee that COVID-19 instructions/guidelines are being followed during these meetings.

(f) The political parties and candidates concerned should ensure that all COVID-19 related requirement like face masks, sanitizers, thermal scanning etc. are fulfilled during each of these activities.

(g) Non-compliance of Instructions – Anybody violating instructions on COVID-19 measures will be liable to proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section 188 of the IPC, and other legal provisions as applicable, as specified in Order No. 40-3/2020-DM-I(A) dated 29th July, 2020 of Ministry of Home Affairs. District Election Officer should bring this to the notice of all concerned.

4) Allocation of public spaces must be done using Suvidha app in the manner already prescribed by Commission.

Thank you