

The largest democracy globally, elections were recently conducted in India to the Union government, Rajya Sabha, the state assemblies of four states, and by-elections. With the Election Commission under scrutiny for going ahead with the elections despite the worsening pandemic, thousands of people have cited non-compliance with the Model Code of Conduct (MCC) as the reason for the increase in Covid-19 cases post the elections. There were extravagant displays of money, technology, and power. It is undeniably challenging to undo the damage that has been caused so far, and the MCC not having a legally binding status only contributes to the situation. Reflecting on the grim reality that we live in, the elections are just one of the many events that have added to the struggle for life amidst the pandemic.

To appreciate the importance of the MCC, one must first understand what the MCC is, including its objectives. The Model of Conduct is a set of guidelines issued by the EC for candidates and political parties to follow during elections and deals primarily with speeches, polling booths, conduct on the polling day, election manifestos, processions, and other general conduct. The MCC comes into effect as soon as the schedule for the elections is announced and raised after the election results are announced. It contains eight parts that deal with various aspects of the elections. Kerala was the first state in India to implement an MCC in 1960 during the assembly elections. The MCC is a crucial method to ensure the deliberative content of elections and certainty in the procedures.

Enforcing the MCC not just in letter but also in spirit could have mitigated the covid crisis significantly. However, to take such an action, the EC must take the initiative and allow the MCC to be made into a law. To implement the MCC properly, the EC must be given the power to intervene in unforeseen circumstances. However, according to the powers given under Article 324 of the Indian Constitution, the EC can only hope for voluntary obedience of the MCC on the part of the states. To register a complaint about non-compliance with any political candidate, a person must wait until the election results are announced, even to approach a court. Such a wait means a massive delay in administrative action is being taken against such candidates who may have already come into power.

A unique product of India's election machinery, the MCC was framed to ensure a level playing field for all candidates and conducting the

elections in a free and fair manner. The EC has opposed the conversion of the MCC into a statute because the interpretation of laws by the courts takes much time. In contrast, the EC would prefer dealing with the violations of the MCC swiftly using its discretionary executive powers and retaining Article 324 of the Constitution as its source of powers rather than the MCC. In addition, the MCC does not specify a time for the enforcement of penalties, nor does it specify the penalties themselves. Thus, the EC can sit on a complaint as long as it wishes to without consequences. Such an absence of norms relating to the exercise of its powers can lead to the arbitrary use of powers by the EC. This possibility is only increased by the absence of a specified time frame to make a decision.

It is undeniable that some merits come with turning the MCC into a law, including clarity on the exact powers of the EC, clear procedures, proper classification of punishments based on the severity of the violation, and a precise time-bound procedure for following up on complaints. Being agreed to put into practice by a group of politicians, the MCC does not yet have legal backing in India. However, in extreme situations where the EC deems fit, it may file a case under the relevant sections of the Income Tax Act, the Representation of the Peoples Act or even the Indian Penal Code.

According a legal status to the MCC sure would reduce many of the problems currently faced by the public during elections, but that does not mean that these issues will completely disappear. There will still be people who exploit the loopholes for votes and try to evade the statute itself. However, with legal backing, one can be sure that they have a right to call out violative behaviour indulged in by such politicians.

A robust institution to deal with the abuse of power by people who will potentially govern us is the least the people can be provided in a democracy. The credibility of the EC is dependent on how it ensures that democracy is upheld in the country. Although we have an electoral code of conduct, an improved set of rules and regulations with a legally binding effect would greatly help India.