



UTOPIA MODEL UNITED NATIONS '19

All India Political Parties Meet

*Agenda: Reviewing the functioning of
election commission during the 2019
general elections*





A WORD FROM THE EXECUTIVE BOARD

Greetings, delegates!

It is an honor to be serving as the Executive Board of All India Political Parties Meet at Utopia Model United Nation 2019.

The background guide has been prepared in order facilitate your research. This document should not by any means bind your research to its limits. This guide is just an introduction to the agenda and serves as the starting point for your research. The aim of this document is to structure your potential thoughts and ideas and to have a constructive debate. We expect you to be thoroughly researched about your portfolios as well as your party's stand on the agenda at large. Under no circumstances can this document be cited as a substantial proof for any argument put forth, when the committee is in session. Lastly, the facts and figured must be analyzed and interpreted on an intellectual so as to put forward a constructive argument.

Feel free to revert back to the executive board for any queries or for any form of assistance that you may require. Wishing you luck for the Conference.

Looking forward to meeting you all!

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INTRODUCTION TO THE AGENDA

India is a constitutional democracy with a parliamentary system of government. The Election Commission of India (ECI) was established under India's Constitution in 1950. The ECI's constitutional authority includes preparing electoral rolls and exercising control over elections to the national Parliament, to the offices of the president and vice-president and to state legislatures. The Constitution also provides for the appointment of commissioners, the conditions of their tenure and removal from office and the availability of staff for the ECI to carry out its functions. The Constitution establishes the primacy of the Chief Election Commissioner and provides the ECI with the authority needed to carry out its mandate. The Constitution also establishes voter entitlement on the basis of citizenship and age and bars the courts from interfering in electoral matters.

The Election Commission operates under the authority of Constitution per Article 324, and subsequently enacted Representation of the People Act. The commission has the powers under the Constitution, to act in an appropriate manner when the enacted laws make insufficient provisions to deal with a given situation in the conduct of an election. Being a constitutional authority, Election Commission is amongst the few institutions which function with both autonomy and freedom, along with the country's higher judiciary, the Union Public Service Commission and the Comptroller and Auditor General of India.

HISTORY OF ELECTION COMMISSION

Article 324 of the Constitution of India set up the Election Commission as the main body to control and hold elections as an all-India commission. However, it is also important to note that small elections within villages and towns aren't under the commission's mandate. Instead, they are under a separate State Election Commission.

The Chief Election Commissioner is the head of the body. The body was set up in 1950 with only one officer – The Chief Election Commissioner, appointed by the President. But, in 1993, it grew and included two more election commissioners. The Commissioners hold office for six years or the age of 65 years, whichever is earlier. However, they can step down from office or be removed from office anytime before that.

COMPOSITION OF THE ELECTION COMMISSION

Presently, the Election Commission comprises of a Chief Election Commissioner and two Election Commissioners. According to Article 324 of the Indian Constitution, the President appoints the Chief Election Commissioner and “such other Commissioners” as he may from time to time fix. The CEC and other Election Commissioners are appointed for a period of six years, or up to the age of 65 years. When an Election Commissioner is appointed, the CEC acts as the Chairman of the Commission.

Chief Election Commissioner can be removed from his office on the grounds of misconduct or incapacity by special majority in both the houses of the Parliament (i.e. when two-third members in both houses of the Parliament give their consent to the decision). The President can remove other Election Commissioners if it is being recommended by the CEC. Prior to the general elections or state elections, the President may also appoint Regional Commissioners to assist the Election Commission in performing its duties.

The Secretariat, which comprises about 300 officials, helps the Commission perform its executive functions. The secretariat is headed by two deputy election commissioners, who are selected by the Commission from the national civil service. On a state level, it's the chief electoral officer (CEO) who supervises the election work. The Commission selects the electoral officer from senior civil servants recommended by the state government.

FUNCTIONS AND DUTIES OF THE ELECTION COMMISSION

Key functions of the Election Commission of India are as under:

The Election Commission of India is considered the guardian of free and fair elections.

It issues the Model Code of Conduct in every election for political parties and candidates so that the decorum of democracy is maintained.

It regulates political parties and registers them for being eligible to contest elections.

It publishes the allowed limits of campaign expenditure per candidate to all the political parties, and also monitors the same.

The political parties must submit their annual reports to the ECI for getting tax benefit on contributions.

It guarantees that all the political parties regularly submit their audited financial reports.

The main duties of the Election Commission are:

- To supervise, direct, control and conduct all elections to Parliament and State Legislatures as also to the office of the President and Vice- President of India.
- To set down general rules for election.
- To determine constituencies and to prepare electoral rolls.
- To give credit to political parties.
- To allot election symbols to different political parties and individual contestants.
- To appoint tribunals for the decision of doubts and disputes arising out of or in connection with election to parliament and State Legislatures.

CHALLENGES

The following are challenges that the ECI recognizes it needs to continue to address. Its major challenges have been dubbed the "three M's" – muscle power, misuse of government resources and "black" money.

- Muscle power is closely connected to a practice known as "booth capturing". Booth Capturing is a type of electoral fraud in which party supporters "capture" a polling booth by intimidating election officers, filling the polling station with party loyalists, preventing legitimate electors from entering and illegally voting in their place, thus ensuring victory for the party they support. Legal sanctions for this offence, coupled with the introduction of electronic voting machines with features introduced by the ECI, such as a time delay between entering each vote and a deactivation device, have helped to curb this serious voter suppression tactic.
- Misuse of government resources, in the form of personnel, funds, program advertising, vehicles and aircraft, was once rampant in India's elections. The ECI's response to this abuse of incumbency has been to include prohibitions in its "Model Code of Conduct" against the use of the government's official machinery during election campaigns. While the prospect of detection, sanction by the ECI and the resulting negative publicity has not ended this abuse, the ECI thinks that the practice has now been severely curtailed.
- "Black money" usually refers to funds earned on the black market, on which taxes have not been paid. In the context of Indian elections, it refers more generally to funds that are difficult to trace and that enter election campaigns in the form of prohibited donations and illegal spending. The funds are used to circumvent the contribution and spending limits imposed on candidates and political parties. The ECI has been trying to come to grips with the problem by imposing more stringent accounting and reporting requirements on parties and candidates, ordering the co-operation of banks and deploying more financial observers. Unfortunately, these measures do not seem to have brought the problem under control, and legislative changes and stiffer punishments may be needed to deter this type of electoral corruption.
- Finally, there is the ongoing challenge of trying to keep India's electoral rolls up to date. With such a vast electorate, encompassing nearly 825 million people, and greater internal movement within the country in recent years, the ECI has been unable to keep its electoral rolls current. It estimates that there is at least a 10 percent error rate in the rolls, although critics have estimated it to be much higher. Part of the problem is the incomplete coverage in the distribution of national identity cards, which were introduced to control fraudulent voting and which are required for voter registration. The ECI is now scrutinizing its electoral rolls to improve their integrity by using electronic data-matching tools to identify missing and duplicate electors.

CONSTITUTIONAL PROVISIONS

- Art. 324: broadly speaks of the functions of EC and its composition.
- Art. 325: there shall be one general electoral roll for every territorial constituency for election to either Houses of Parliament and State legislature. It establishes equality among citizens by affirming that no person shall be ineligible for inclusion in the electoral roll on the grounds of religion, race, caste or sex.
- Art. 326: lays down adult suffrage as the basis of elections to the Lok Sabha and to the Legislative Assemblies of States.
- Art. 327: confers on Parliament the power to make provisions with respect to elections to federal and State Legislatures
- Art. 328: confers on State Legislature the power to make laws with respect to elections to such legislature
- Art. 329: bars interference by courts in electoral matters. Notwithstanding anything said in the constitution i.e. validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court

No election to either House of Parliament or either House of the Legislature of a State shall be called in question except by an election petition. Any elector or candidate can file an election petition on grounds of malpractice during the election. In respect of elections to the Parliament and State Legislatures, they can only be filed before the High Court and in respect of elections for the offices of President and Vice President, such petitions can only be filed before the Supreme Court.

Independence of the Election Commission

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the election commission:

- The CEC is provided with the security of tenure. He holds office for a term of 6 years from the date he assumes office or till he attains the age of 65 years, whichever is earlier
- Art. 324(5) says that the CEC cannot be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court i.e. he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity
- Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the CEC
- The service conditions of the CEC cannot be varied to his disadvantage after his appointment

CONSTITUTIONAL PROVISIONS

Flaws

- The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
- The Constitution has not debarred the retiring election commissioners from any further appointment by the government.
- The administrative expenses of the EC or the salaries, allowances, and pensions of the CEC and ECs are not charged on the Consolidated Fund of India.

IMPORTANCE OF ELECTION COMMISSION IN DEMOCRACY

In a democracy like India, with heavy politicization and ever-expanding power of political parties, the need for institutional protection of democratic norms has not declined, but, on the other hand, has assumed crucial importance. To understand why, one has to look at the nature of politicization along with the additional burden of recognizing the target group of such politicization. In India, primordial politicization (caste or community based) is way ahead of any other kind of politicization (say class or gender).

What this means is that people are getting politicized as members of primordial communities—religious, sectoral, caste (or jati) and are therefore entering political and administrative offices as members of these communities. Incidentally, a large section of women who are entering the political arena are also entering it as members of a community (primordial that is) rather than as "women" or as individual leaders. People who were previously outside the public arena are entering it not as self-conscious "atomized" individuals but as members of these communities. They are coming into political life as mochis, malas, madigas, yadavs, julahas, dhobis, kasais etc. In one sense, it can also be argued that communities are coming into public life as political individuals, unified as in individual-beings in relation to the others" and entering into a political contest to assert their place in the social and national hierarchies.

Here, what also needs to be said is that the primordial communities that are coming into the public arena are also the communities which have lacked prior assets. It is the social groups who have lived their lives in the most inhuman circumstances, who stand as so socially and economically discriminated for much of known history that are asserting themselves in democratic politics. They have lacked the ownership of any productive resources except for the small household implements and artisan-skills which make only for tiny-scale production. They have not had the opportunities of personal accomplishment and achievements which bring some level of personal confidence.

Thus, these deprived and underprivileged social groups who are finding a political voice try to enter the public arena through the opportunities provided by the working of the democratic processes in India. Democracy has brought to them a sense of self-worth and self-dignity. It has given them a voice of assertiveness. Or, in other words, the functioning of democracy in India over the years has led to a "loosening of social structures" and has led to an assertion of the urge for more self-respect and the ability to better yourself.

IMPORTANCE OF ELECTION COMMISSION IN DEMOCRACY

It is here that institutions and institutional safeguards come into the picture and have to play a role to fortify democratic norms. The EC has to ensure that electoral processes do not get clogged by malpractices. It has to see that social hatred (of any kind) is not whipped up to win elections. It has to ensure that criminalization is not resorted to for defeating political opponents. It has to implement the electoral rules firmly and ensure a disciplined adherence to norms. It has to ensure that elections take place in a non-coercive and fair manner.

However, the EC also has to be sensitive towards this democratization that is taking place. It has to be patient with the brash and unruly ways of today's politics. It has to approach the problem more politically than administratively and take into account the specificities of the Indian case rather than viewing things from the perspective of a European democracy. The brazen-ways of Seshan or the contemptuous approaches of Lyngdoh are perhaps not the best ways of handling a polity whose matureness is undergoing such a multilayered transition. I must mention two instances here to clarify my point, one, Seshan's stubborn insistence on voter identity cards within deadlines to the entire Indian electorate, and two, Lyngdoh's equally stubborn opinion that politicians are a "cancer" for which there was no cure at the moment".

Both these chief election commissioners tried to bring about some adherence to norms (for instance, Seshan's attempts to enforce spending limits and Lyngdoh commendable efforts in Kashmir and Gujarat elections in 2002), but with attitudes of utter contempt towards the political class as well as the masses. Their ways reflect a lack of understanding about the changes which are going on in the Indian democracy.

ELECTORAL REFORMS

Computerization

One of the major developments brought about by the poll panel was the introduction of EVM – Electronic Voting Machines. The fundamental reason behind this initiative was to reduce malpractices and bring in more transparency in the electoral process.

Electoral Photo Identity Cards (EPICs) were issued for the first time in 1993 in a bid to ensure transparency. The Commission came up with its website in 1998 and in the same year it took the call of computerizing electoral rolls.

Model Code of Conduct

EC first issued a Model Code of Conduct for political parties at the time of the fifth general elections, held in 1971. Since then, the Code has been revised from time to time and lays down guidelines as to how political parties and candidates should conduct themselves during elections.

A provision was made under the Code that from the time the elections are announced by the Commission, Ministers and other authorities cannot announce any financial grant, make promises of construction of roads, carry out any appointments in government and public undertakings which may have the effect of influencing the voters in favor of the ruling party.

Despite the acceptance of the Code of Conduct by political parties, cases of violation of the Code have been on the rise. It is a general complaint that the party in power at the time of elections misuses the official machinery to further the electoral prospects of its candidates.

The misuse of official machinery takes different forms, such as issue of advertisements at the cost of public exchequer, misuse of official mass media during election period for partisan coverage of political news and publicity regarding their achievements, misuse of government transport including aircraft/helicopter, vehicles.

Disclosure of Antecedents by Candidates

In June 2002, the EC on the direction of the Supreme Court, issued an order under Article 324 that each candidate must submit an affidavit regarding the information of his/her criminal antecedents; assets (both movable and immovable) of self and those of spouses and dependents as well; and qualifications at the time of filing his/her nomination papers for election to the Lok Sabha, the Rajya Sabha and the State Legislative Assemblies.

ELECTORAL REFORMS

But political parties believed that the EC and the judiciary were overstepping their powers. At the all-party meeting, held on July 8, 2002, representatives of 21 political parties decided that the EC's order should not be allowed to be implemented. The Supreme Court again came out as a guardian of the citizen's right to information.

The Supreme Court made it clear that failing to furnish the relevant affidavit shall be considered as a violation of the Supreme Court's order and as such the nomination papers shall be liable to be rejected by the Returning Officer.

Furnishing of wrong or incomplete information shall result in the rejection of nomination papers, apart from inviting penal consequences under the Indian Penal Code. The 2004 General Elections were conducted under these rules.

The above order is an effective step to make democracy healthy and unpolluted. Citizens have every right to know about the persons whom they prefer as their representatives. The EC has directed all Returning Officers to display the copies of nomination papers and affidavits filed by candidates to the general public and representatives of print and electronic media, free of cost.

Registration of Political Parties

The party system is an essential feature of parliamentary democracy. However, there is no direct reference to political parties in the Constitution of India. The statutory law relating to registration of political parties was enacted in 1989 which was quite liberal.

As a result, a large number of non-serious parties mushroomed and got registered with the Commission. Many of them did not contest elections at all after their registration. It led to confusion among electors as to whom to vote. To eliminate the mushrooming of parties, the EC had to take some rigorous steps:

- The Commission now registers a party which has at least 100 registered electors as its members and is also charging a nominal processing fee of Rs 10,000 to cover the administrative expenses which it will have to incur on correspondence with the parties after their registration.
- In order to ensure that the registered political parties practice democracy in their internal functioning, the Commission requires them to hold their organizational elections regularly in accordance with their constitutions.

The measures taken by the EC to streamline the registration of political parties have shown effective results.

ELECTORAL REFORMS

Checking Criminalization of Politics

The EC has expressed its serious concern over the entry of anti-social and criminal persons into the electoral arena. It has set down norms and made recommendations to the government to curb the menace of criminalization of politics.

- The Commission has urged all political parties to reach a consensus that no person with a criminal background will be given the party ticket.
- The candidates to an election are also obliged to submit an affidavit in a prescribed form declaring their criminal records, including convictions, charges pending and cases initiated against them. The information so furnished by the candidates is disseminated to the public, and to the print and electronic media.

Limits on Poll Expenses

To get rid of the growing influence and vulgar show of money during elections, the EC has fixed legal limits on the amount of money which a candidate can spend during the election campaign. These limits are revised from time to time.

The EC, by appointing expenditure observers keeps an eye on the individual accounts of election expenditure made by a candidate during election campaign. The contestants are also required to give details of expenditure within 30 days of the declaration of the election results.

Apart from this, the EC is also in favor of holding the Lok Sabha and the Assembly elections simultaneously, and to reduce the campaign period from 21 to 14 days. This, they feel, will lead to trim down the election expenditure.

2019 GENERAL ELECTIONS

The 2019 General Elections have brought in a storm with regards to the credibility of the Indian Election commission.

The body, which “administers elections to the Lok Sabha, Rajya Sabha, state legislative assemblies in India, and the offices of the president and vice-president,” as its website says, is facing a barrage of problems chipping away at its aura of impartiality. Founded in 1950, the election commission has traditionally been highly respected for its institutional integrity and impeccable handling of such as a massive exercise as the Indian election.

However, right from holding the 2019 elections in seven phases during peak summer to allegedly extending a series of waivers to the ruling Bharatiya Janata Party (BJP), many of its decisions have baffled observers. The delay in prompt action taken against the politicians breaching the model code of conduct (MCC) had also got people concerned on social media.

Meanwhile, here are the five major issues that have put the spotlight on the poll body headed by chief election commissioner Sunil Arora over the past few months:

Errors in voter enrollment

Right in the first phase of elections on April 11, many eligible voters could not find their names on the voting list, depriving them of their democratic right.

One such voter was RC Bhargava, chairman of Maruti Suzuki, India’s largest car maker. “My name was there in the list but across it, somebody had stamped deleted. Somebody decided to delete me from the list,” Bhargava told the news agency IANS.

The miffed resident of Uttar Pradesh’s Noida then said he will seek clarification on the deletion from concerned authorities.

Many voters across India had similar complaints. The ruling outfit in Delhi, Aam Aadmi Party, alleged that hundreds of thousands of voter names had been deleted without any reason. However, the election commission has rejected these allegations.

The problem of deletion was reported much before the election began. In November 2018, an investigation by various media houses suggested that millions of voters’ name, especially in Andhra Pradesh and Telangana, were left out of the electoral process due to the linkage of election photo identity card and Aadhaar taken up by the election commission in 2015. Documents showed that the poll commission itself was worried about issues like coercion and wrongful deletion of voter names.

2019 GENERAL ELECTIONS

Clean Chits to PM Modi

Voters weren't the only ones to express dissatisfaction with the poll panel.

The opposition alleged that it was favoring the Narendra Modi-led National Democratic Alliance (NDA). They mainly questioned the basis for a series of "clean chits" extended to Modi despite his provocative campaign tactics that pushed the boundaries of the election commission's model code of conduct, which is a set of guidelines that political parties must follow to ensure a level playing field and a credible electoral process.

For instance, at a rally in the western state of Maharashtra, Modi invoked the armed forces in his speech while making an appeal to first-time voters. "Can your first vote be dedicated to those who carried out the airstrike? I want to tell the first-time voters: can your first vote be dedicated to the veer jawans (brave soldiers) who carried out the air strike in Pakistan. Can your first vote be dedicated to the veer shaheed (brave martyrs) of Pulwama (terror attack)," he had said.

The local electoral officers found Modi's appeal to be "inconsistent" with the poll watchdog's instructions, according to the Indian Express newspaper. Yet, to everybody's surprise, though, he was exonerated by the election commission.

Earlier, the poll panel cleared Modi over another of his speeches in Maharashtra in which he invoked religion.

The problem got so acute that on May 04 election commissioner Ashok Lavasa recused himself from meetings on poll code violations. He disagreed with the panel's decisions to clear Modi and Bharatiya Janata Party (BJP) president Amit Shah of charges of violating the model code.

Suspension of a Government Officer

Another incident that created a furor and indicated uncalled for flexibility on the constitutional body's part involved the suspension of a senior government officer for doing his duty. Mohammed Mohsin, a 1996-batch Indian administrative service officer, was suspended for checking the prime minister's chopper in Odisha's Sambalpur when Modi reached there to address a rally on April 17. The inspection by a team of poll officials, which included Mohsin, had allegedly delayed the PM's arrival at the rally venue by 15 minutes.

According to the electoral guidelines, those under the cover of India's special protection group are exempt from such checks. "The commission has considered the material available before it and, prima facie found dereliction of duty. It found Mohsin's action was contrary to its instruction concerning SPG protectees," the poll panel said. However, on April 25, his suspension was revoked but he was barred from election duty in future.

2019 GENERAL ELECTIONS

Curtailing campaigning hours in Bengal

For the first time ever, the election commission on May 15 decided to cut short the campaign period by 19 hours for the eastern state of West Bengal. The unprecedented move followed the eruption of violence during BJP president Shah's roadshow in Kolkata, the state capital.

The panel decided to advance the commencement of the mandatory silent period. Yet, Modi's campaigning schedule in the state remained unaffected as he had two rallies planned before the 10 pm deadline.

State chief minister's Mamata Banerjee's Trinamool Congress, along with the Congress and the Communist Party of India (Marxist), alleged that the commission's decision intentionally left the window open for Modi.

Reports of EVMs being transported without security

The latest doubts over the election commission's integrity came amidst reports of the electronic voting machines (EVMs) being transported without the appropriate level of security as per the mandatory guidelines.

Many on social media, including former election commissioner SY Quraishi, questioned the alleged lapse. They expressed fears that in the absence of proper security arrangements the counting process could be manipulated.

The poll panel, though, dismissed these claims stating the EVMs that were used to register votes were all under 24-hour security.

CREDIBLE SOURCES

- ANI
- Parliamentary Reports
- Government Reports
- Newspaper Reports which can be backed with other evidence

QUESTIONS TO CONSIDER

1. Was there a lapse by the Commission in enforcing the Model Code of Conduct during the 2019 General Elections?
2. Was there a misuse of political power by the Ruling Party?
3. Should EVM Machines be replaced with Ballot Papers?
4. What are the ways to increase the accountability of the Commission?