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Is the Election Commission of India Free?

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This article is based on **“The Election Commission of India cannot be a super-government”** which was published in The Hindu on 19/04/2021. It talks about the issues and ambiguous provisions that affect the functioning of the Election Commission of India.

The **Election Commission of India (ECI)** is a creation of the Constitution. Article 324 says the superintendence, direction, and control of all elections to Parliament, the State legislatures, and the offices of the President and Vice-President shall be vested in the ECI.

The article has been interpreted by courts and by orders of the ECI from time to time to mean that the power vested in it is plenary in nature. It is seen as unlimited and unconditional in the matter of holding elections.

However, there are many issues and ambiguous provisions that affect the functioning of ECI.

Source of Power of ECI

- **Constitution:** ECI derives its power and functions from Article 324 of the Constitution.
- **Supreme Court Judgement:** The Supreme Court held in Mohinder Singh Gill vs Chief Election Commissioner 1978 that Article 324 contains plenary powers to ensure free and fair elections and these are vested in the ECI which can take all necessary steps to achieve this constitutional object.
- **Model Code of Conduct:** The **model code of conduct** issued by the ECI is a set of guidelines meant for political parties, candidates, and governments to adhere to during an election.
 - This code is based on consensus among political parties. Its origin can be traced to a code of conduct for political parties prepared by the Kerala government in 1960 for the Assembly elections.
 - It was adopted and refined and enlarged by the ECI in later years and was enforced strictly from 1991 onwards.

- **Independence of ECI:** The independence of the ECI is preserved by clauses in the Constitution that say the Chief Election Commissioner cannot be removed from office except in the manner provided for the removal of a Supreme Court judge.
Also, the conditions of his service cannot be varied to the incumbent's disadvantage after appointment.

Associated Issues With The ECI

- **Undefined Scope of Powers:** Besides the MCC, the ECI issues from time to time directions, instructions, and clarifications on a host of issues that crop up in the course of an election.
 - The code does not say what the ECI can do; it contains only guidelines for the candidates, political parties, and the governments.
 - Thus, there exists a considerable amount of confusion about the extent and nature of the powers which are available to the ECI in enforcing the code as well as its other decisions in relation to an election.
- **No Legal Backing of MCC:** MCC is framed on the basis of a consensus among political parties, it has not been given any legal backing.
However, it does not have statutory value, and it is enforced only by the moral and constitutional authority of the EC.

Note:

- Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 says that the commission may suspend or withdraw recognition of a recognized political party if it refuses to observe the model code of conduct.
- However, the issue is when the code is legally not enforceable, how can the ECI resort to a punitive action such as withdrawal of recognition.
- **Transfer of Officials:** Another issue that pertains to the functioning of the ECI, is the abrupt transfer of senior officials working under State governments by an order of the commission.
 - In Mohinder Singh Gill's case, the Court had made it clear that the ECI can draw power from Article 324 only when no law exists which governs a particular matter.
 - However, the transfer of officials, etc is governed by rules made under Article 309 of the Constitution which cannot be bypassed by the ECI under the purported exercise of the power conferred by Article 324.
- **Conflict With the Law:** According to the MCC, Ministers cannot announce any financial grants in any form, make any promise of construction of roads, provision of drinking water facilities, etc or make any ad hoc appointments in the government.
Section 123 (2)(b) of the Representation of the People Act, 1951 says that the declaration of a public policy or the exercise of a legal right will not be regarded as interfering with the free exercise of the electoral right.

- **Lack of Enforceability:** The EC does not have the power to disqualify candidates who commit electoral malpractices. At best, it may direct the registration of a case.
That is why, in the 2019 general election, ECI admitted to the Supreme Court that it was “toothless”, and did not have enough powers to deal with inflammatory or divisive speeches in the election campaign.

Conclusion

The role played by the ECI has bestowed a very high level of confidence in the minds of Indian citizens in ensuring the purity of the elected legislative bodies in the country. However, the grey areas in the legal sphere must be rectified, so that ECI can ensure the proper functioning of the democracy via free and fair election.

Drishti Mains Question

The role played by the Election Commission of India not only ensures free and fair elections but also the proper functioning of democracy. Examine.