



Centre for Information
Communication Technology and Law

NEWSLETTER
May 2019



CICTL at MNLU Mumbai

ELECTION CAMPAIGN, TECHNOLOGY AND LAW

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Legislations, Rules and Handbooks

Voluntary Code of Ethics for 2019 General Election:

The social media platform and Internet and Mobile Association of India (IAMAI), has presented a voluntary code of ethics to be followed by all the participating members such as Facebook, Twitter, Google etc. during upcoming general election. The code has been presented to chief election commissioner Mr. Sunil Arora and is drafted in consonance with recommendations of Sinha Committee. Through this code all participants (mostly large social media, and online service providers) accept that access to free, fair and reliable information through internet is essence of democracy. The code acknowledges their roles and model conduct in this regard. *Link: <https://eci.gov.in/files/file/9467-social-media-platforms-present-voluntary-code-of-ethics-for-the-2019-general-election-to-election-commission-of-india/>*

Election Commission Guideline on Social Media Account:

The election commission has issued its model code of conduct and guidelines for election campaigning with special attention on increasing trend of using social media and other related platforms for election campaigning. The commission has recognized impact of the social media in influencing voters and therefore by virtue of new guidelines the commission has asked all participants to disclose their social media accounts to the commission for upcoming elections. Further, as per the guidelines the behavior code of conduct for a candidate need to be followed on social media platforms. The guidelines also mandate to stop all campaigning activities on social media before 48 hours of actual voting.

Link: <https://economictimes.indiatimes.com/news/elections/lok-sabha/india/model-code-political-adrules-will-apply-to-social-media-too/articleshow/68350634.cms>

Understanding Importance of Section 126 (1) (b) of Representation of People Act, 1951:

While talking about laws applicable on electronic media during election campaigning, section 126 of RP Act, 1951 becomes most common and most discussed provision. The section prohibits display of 'any election matter' by means of television or any inter alia apparatus before 48 hours fixed for conclusion of election in that constituency. Election matter for this section refers to anything which can affect results of an election. The provision prohibits conduct of exit poll and dissemination of their results during the period mentioned there in. This section has come again in lime light because of Sinha committee recommendations and its incorporation in model code of conduct by the Election Commission.

Link:

<https://www.insightsonindia.com/2019/01/12/section-126-of-the-rp-act-1951/>

Compendium on Instruction on Media Related Matters:

The Election Commission of India has issued its compendium on laws pertaining to use of media in upcoming election. The present issue is second edition of election commission's initiative to provide consolidated account of all of its guidelines, rules and recommendation pertaining to use of media in state and general election. The compendium consists original copies of all important rules and orders made by election commission from 1996 to till this date. Some of the important highlights of the compendium are:

- Guidelines for Political Advertisement and Paid News
- Guidelines For allocation of broadcast time over Akashwani, All India Radio and Doordarshan.
- Guidelines for broadcasting films of actors participating in election.
- General Media Guidelines for 2019 Election.

Link: <https://eci.gov.in/files/file/9757-compendium-of-instructions-on-media-related-matters/>

Judicial Decisions

Secy., Ministry of Information & Broadcasting v. M/s Gemini TV Pvt. Ltd. & Ors.

The Supreme Court under article 142 of the Constitution of India passed an order binding all political parties, candidates, persons, group of persons or Trusts, who propose to insert advertisements which are wholly or mainly political in nature or directed towards a political end in the electronic media, including cable networks and/or television channels, to get certification from the Election Commission. The application of certification must contain details including the cost of production, cost of proposed telecast, statement containing whether the advertisement is for the benefit of the prospects of the parties' elections and if the advertisement is issued by a person other than a political party or a candidate, that person shall, in his/her oath, state the advertisement is neither for the benefit of a political party/candidate nor sponsored/paid/ commissioned by any political party/candidate. This order has created a censorship regime of all advertisements a political party or candidate wishes to telecast on cable. The Court said that the provisions of Section 126 of the Representation of Peoples' Act, 1951 which prohibits campaigning 48 hours prior to the hour fixed for conclusion of poll shall apply to the advertisements specified by the order.

N. Chandrababu Naidu & Ors. v. Union of India & Anr.

The Supreme Court bench comprising of the Chief Justice along with Deepak Gupta and Sanjiv Khanna JJ. ordered the Election Commission to increase the number of EVMs which are subject to manual verification from 1 to 5 per Assembly Constituency or Assembly segments in a Parliamentary Constituency. The writ petition filed by representatives of 21 political parties prayed before the Hon'ble SC to issue an order quashing Guideline 16.6 of the Manual on Electronic Voting Machine and VVPAT and increase the VVPAT paper slip verification to 50% of EVMs per constituency. VVPAT feature was introduced to verify that the vote polled by a voter goes to the correct candidate. When a voter presses the button on the Voter Verifiable Paper Audit Trail machine against the chosen candidate, a printed VVPAT slip is displayed for 7 seconds before it's automatically cut and delivered to a sealed ballot compartment. Guideline 16.6 of the Manual on EVM and VVPAT provides for the paper slip verification of 1 EVM per Constituency/Segment and the procedure of the draw of lots undertaken to select that 1 EVM. The petitioners contended that to ensure fool proof election results it is necessary for such increase to be implemented. The Election Commission responded claiming to have posed a query to the Indian Statistical Institute asking about the reasonable sample size required to ensure integrity of the electoral process. The ISI's report stated that the current procedure generates over 99% accuracy in election results. The ECI also pointed out to the inadequate infrastructure and manpower which would delay the results by 5-6 days if the verification of EVMs is increased to 50%. The Court was of the opinion that the exercise proposed by the petitioners would be a futile one and there was no doubt insofar as the fairness and integrity of the ECI and the system was concerned. However, the Court said that keeping in mind infrastructure and manpower difficulties, if the number of EVMs which are subject to verification can be increased to a reasonable number, the same should be done for greater satisfaction amongst not only the political parties but the entire electorate.

Use of Online platforms in political advertising (Canada)

Elections Canada has published elections guidelines according to which online platforms are required to follow certain procedures before publishing political advertisements for the upcoming federal elections in Canada. The move was made considering the fact that online advertisements reaches to huge number of people and can have significant influence on elections. Guidelines mandate that online platforms should publish special ad registers providing details about the political advertisements made on the platform. It's expected that guidelines will help in making electioneering process more transparent. It's interesting to note that despite new guidelines many online platforms have decided not to post election ad for the federal elections.

See more at: <https://www.cbc.ca/news/politics/online-election-advertising-canada-1.5116753>

Unsolicited Political messages a cause of concern in Australia

In the light of upcoming federal elections 2019 in Australia many persons are receiving unsolicited political messages from political parties. It's alleged that this has serious privacy concerns as people receiving such messages neither opted for it nor are they finding it easy to block the sender. One of the reasons that helped political parties send such messages was that they are exempted from Do Not Call Register.

See more - Link: <https://www.abc.net.au/news/2019-05-11/federal-election-2019-unsolicitedpoliticaltexts/11100398>

When technologies are bane for elections and eventually for democracy

Technology has played significant role in forming public opinion through discussions, criticisms, dialogues through online media. But certain tools for e.g. Bots can be used in creating fake profiles, spreading false agenda leading to hatred among people and many more. There are many such technologies the use of which surge during elections. They pose a serious threat to the manner in which elections are conducted. Counter technologies and stringent laws can be of great help to overcome this menace. It's also important that people remain aware of such technologies and don't fall prey for them.

See <https://economictimes.indiatimes.com/tech/internet/digital-tools-looking-like-democracys-nemesis/articleshow/68533787.cms?from=mdr> more at:

How blockchain could improve election transparency

The use of blockchain in the public sector reached another milestone this month when West Virginia became the first U.S. state to allow internet voting by blockchain in primary elections. While the voter participation through this platform was small, the intention of the administrators was to test the technology in a pilot project with no immediate plans to implement it at a larger scale. Mobile voting using a safe and tested interface could eliminate voter fraud and boost turnout. It will make it more convenient for citizens to vote while abroad, irrespective of the distance and time. It is also a beneficial tool for the election commission to maintain transparency in the electoral process, minimize the cost of conducting elections, streamline the process of counting votes and ensure that all votes are counted. Link: <https://www.brookings.edu/blog/techtank/2018/05/30/how-blockchain-could-improveelectiontransparency/>

CICTL at MNLU Mumbai

Mission

The Centre for Information Communication Technology and Law (CICTL) aims to be a centre for excellence in generating and disseminating the knowledge concerning the interrelationship between technology and law across the globe.

Vision

- To explore the opportunities and challenges in the information society and provide legal and policy solutions
- To serve as a platform to bring together experts, leaders and researchers from the technical and legal domain
- To undertake, promote and disseminate core law and policy research in the techno-legal field
- To work in collaboration with national and international research centres, global academia, international, governmental organizations and the tech industry
- To offer consultancy service to a variety of sectors including the legal professionals, private industry, non-profit and public agencies in the techno-legal field

E Voting and Inter governmental standards

There should be certain standards for E voting. Council of Europe is the only organization which has prescribed certain recommendations of e voting for inter governmental standards. It prescribes for electronic voting machines, ballot scanners, digital pens etc.

See more at <https://www.coe.int/en/web/electoral-assistance/e-voting>

Finer Technology in Democracy

Hart Inter Civic is an American Company which provides services related to electronic voting. It has come out with a device by named Verity Duo which has eased the process of voting and has made it more viable. The device has touch screen ballot and voter verifiable printed record. The technology is being called as user friendly and can be customized for different needs. Verity Duo has been certified by Pennsylvania State for its election purposes. Earlier version of the device i.e. Verity has been successfully used in U.S elections. The technology provides solution to States across the World which are looking forward to conduct elections electronically. The technology may soon become popular considering its benefits of user interface and paper trail security.

For more information: <https://www.businesswire.com/news/home/20190508005756/en/Pennsylvania-CertifiesHartInterCivic's-Newest-Election-Technology>

Internet Shutdowns during election period in India

It has been reported that at several places Indian Government has shut internet down. These included places in the State of Rajasthan, Kashmir and West Bengal. When reached to appropriate authorities it was told that the same has been done for the purposes of maintenance of law and order. Decision to shut internet is not new and the government has been doing it frequently for past few years. One of the major reasons was misinformation spread through Whatsapp and Facebook leading to mob attacks and violence. Move by government to suspend internet during elections is being viewed with suspicion as internet enables sharing of information enables means to freedom of speech its suspension is not healthy for democracy.

See more at-

<https://edition.cnn.com/2019/05/08/tech/india-election-internet-shutdowns/index.html>

(Logo of Election Commission of India taken from Google images)



India's Electoral Laws are Ill-Equipped to Deal with Digital Propaganda 'Fake news', online abuse and weaponised algorithms are now routine hallmarks of elections all over the world.

With four major state elections and India's general elections around the corner, it is an apt time to examine whether our laws and institutions are equipped to deal with the fallout of such digital propaganda. Firstly, our data protection laws have limited applicability to political parties, which may lead to broking of citizens' personal information on a massive scale. Secondly, the Election Commission relies on online platforms like Facebook to censor fake news and election related information. There is also a legal vacuum when it comes to dealing with paid political propaganda. Uncovering empirical evidence of deliberate 'electoral manipulation' as a result of online propaganda may be difficult, particularly in comparison to the effects of traditional forms of propaganda and mass media. Indeed, various studies have reached conflicting conclusions on the impact of online disinformation on civic participation and elections. Nevertheless, its effects are palpable in how it shapes online communities and political discourse.

Link: <https://thewire.in/politics/indias-electoral-laws-are-ill-equipped-to-deal-with-digitalpropaganda>

Whatsapp new feature to tackle fake news

WhatsApp beta 2.19.73 update has a feature which recognizes fake news. Sender has to send an image about which he is suspicious. WhatsApp then reverts back by stating whether the image is real or fake depending upon the source of origin etc. Shortcoming of this feature is that it only takes images and not any other formats of information like videos.

See more at – <https://www.businessinsider.in/whatsapp-new-feature-curb-fake-news-general-elections-2019/articleshow/68425830.cms>

Reports and Journal Articles

“The Mind-Rigging by media: Electoral offences and corrupt practices”

By Madabhushi Sridhar

This article analyses the new practice, its ethical problems and the legal provisions which could be used to curb it besides seeking active participation by civil society in exposing falling media also. *Read more at: [https://www.nalsar.ac.in/pdf/Journals/Media%20Law%20Review 2010.pdf](https://www.nalsar.ac.in/pdf/Journals/Media%20Law%20Review%202010.pdf)*

“The role of digital marketing in political campaigns”

By Jeff Chester, Center for Digital Democracy, Washington, DC, United States of America and Kathryn C. Montgomery, School of Communication, American University, Washington, DC, United States of America

This paper examines the digital strategies and technologies of today’s political operations, explaining how they were employed during the most recent US election cycle, and exploring the implications of their continued use in the civic context. The paper concludes with a discussion of recent policy proposals designed to increase transparency and accountability in digital politics.

Read more at: <https://policyreview.info/articles/analysis/role-digital-marketing-political-campaigns>

“Elections and Technology”

By Ace Project: The Electoral Knowledge Network

The extensively articulated article focuses on the technological improvements in the administration of elections, its substantial ability, the gains and the subsequent potential for new vulnerabilities and problems. Various case studies, guiding principles and considerable steps in the technological upgradation of the electoral field have been incorporated in the article as well. *Read more at: <http://aceproject.org/ace-en/topics/et/onePage>*

“Report of the Committee on Section 126 of the Representation of the People Act, 1951”

- By Election Commission of India, 10th January 2019 The Committee constituted by the Election Commission served the purpose of providing any amendments that the Section 126 of the Representation of the People Act, 1951 required with the changing times. Some of the recommendations were put forward keeping in mind the technological developments and the advent of social media generations. The law of the State requires constant transformation with the societies needs. *Read more at: <https://eci.gov.in/files/file/9276-report-of-the-committee-on-section-126-of-the-representation-of-the-people-act-1951/>*

“Desh Ka Mahatyohar – Lok Sabha Election 2019”

Topic- Information Technology/Information & Communication Technology in addition to any other media pertaining to the discourse of election campaigning and ICT, the above is a discussion on the same in the backdrop of 2019 Lok Sabha Elections.

The panel includes the following dignitaries:

- Shree. Sandeep Saxena, Dy Election Commissioner, Election Commission of India,
- Shree. Ranbir Singh, Chief Electoral Officer, Delhi
- Shree. Kushal Pathak, Director, ICT, Election Commission of India,
- Shree. V N Shukla, Director, IT, Election Commission of India,
- Ms Tanvi Garg, District Election Officer, District North, Delhi

View the discussion at: <https://eci.gov.in/videogallery/desh-ka-mahatyohar-%E2%80%93-lok-sabha-election-2019information-technology-communication-technology-r5/>

Acknowledgments

“In India, Facebook’s WhatsApp Plays Central Role in Elections” -

By Vindu Goel, The New York Times, 14th May 2018

This submission in the foreign newspaper talks about the increasing toll of elections and it’s prior campaigning on social media, particularly on WhatsApp, a messaging application. India and all other developing nations, especially with the population we currently cater to, requires large scale platform to discuss as well as campaign their views, and social media serves the purpose in its true sense. The article pictures the role of these media tools in the electoral process. *Read more at:* <https://www.nytimes.com/2018/05/14/technology/whatsapp-india-elections.html>

“The New Media’s Role in Politics” - The Age of Perplexity: Rethinking the World We Knew, 2018

Computing and the greater availability of information bring to our perceptions and understanding of our world at a different pace in the 21st century. The dynamics and roles of the tools of media have changed drastically and served various audiences, fulfilling various purposes. Politics and its arena have touched the web of media and the article discusses on the same issue.

Read more at: <https://www.bbvaopenmind.com/en/articles/the-new-media-s-role-in-politics/>

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