

The Election Commission must act tough

It is sad that the debate now is about the Commission rather than the appalling conduct of our leaders



S.Y. QURAISHI

The 2019 general election will long be remembered not just for the transgressions of the top political leadership, but also for the Election Commission (EC) itself being put in the dock. The EC has repeatedly found itself at the receiving end of scathing attacks from the Opposition, the public, the media and the judiciary. This is unprecedented for what was until now the most trusted institution in the country.

Trust deficit

Indeed, the trust deficit between the EC and the Opposition parties and the voters started with the EVM/VVPAT saga. The EC was accused of being on the defensive rather than being communicative. On April 8, in a letter to the President, a group of retired bureaucrats and diplomats expressed concern over the EC's "weak-kneed conduct" and said that the institution is "suffering from a crisis of credibility today".

The last two months have been a trying time for me as well. Ever since I demitted office in 2012, I have been a self-appointed spokesperson for the EC, defending every action of the body that needed to be defended. I must have refused at least a hundred requests by the media to comment on recent happenings. On the few occasions I was drawn into the debate, it was a painful struggle to find suitable words that would not sound like an indictment of the body of which I was proud to be a part. I noticed the same predicament on the faces of two former Chief Election Commissioners (CECs) who appeared on television recently. Then I remembered the words of Martin Luther King, Jr.: "Our lives begin to end the day we become silent about things that matter." And Plato, "I will put down your silence as consent."

It took repeated raps on its knuckles by the Supreme Court for the EC to crack the whip. It is a pity that we needed the Supreme Court to remind the EC of powers that it always had. Article 329 of the Constitution



"The Election Commission has got away with many mistakes largely because of its credibility and people's trust in the institution." The Election Commission office in New Delhi. •SUSHIL KUMAR VERMA

has barred courts from interfering in electoral matters after the election process has been set in motion. In a long chain of judgments, the Supreme Court has reiterated that provision and restrained all courts from intervening. It is therefore significant that in the last couple of months, the apex court itself had to jump in for course correction. This is more serious than is realised at present.

On April 15, a Supreme Court Bench headed by the Chief Justice of India pulled up the EC for not acting against hate speeches and statements on religious lines. It was reported that the EC told the apex court, "We are toothless, we are powerless, we issue notices, then advisory and on repeated violation, we file complaint." The Supreme Court was furious with this stand.

The Supreme Court had observed in 1977 that "where these [the existing laws] are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly, in a free and fair manner." This has been the EC's bible.

After the EC had not acted on complaints against Prime Minister Narendra Modi and BJP president

Amit Shah for almost a month, the Supreme Court ordered it to do so before May 6. The EC promptly disposed of several complaints, giving the two leaders a clean chit in each case. Just as the EC was being written off, we got the good news that at least one Election Commissioner had dissented on five decisions taken by the EC — one giving a clean chit to Mr. Shah and four to Mr. Modi. He thought that the Prime Minister had, in fact, invoked the armed forces in an election campaign in violation of the EC's guidelines instructing politicians to refrain from the same. His minority vote may not have changed the result, but dissent is a healthy sign of objective deliberation, and thus presents a ray of hope.

I can say from experience that the EC has got away with many mistakes largely because of its credibility and people's trust in the institution. But this trust cannot be taken for granted. The moment there is a deficit of credibility, problems begin.

Appointments and removal

The root of the problem lies in the flawed system of appointment of Election Commissioners. They are appointed unilaterally by the government of the day. There has been a demand for de-politicising appointments through a broad-based consultation, as is done in other countries. The uncertainty of elevation by seniority makes them vulnerable to government pressure. The government can control a defiant CEC through the majority voting power of

the two Election Commissioners.

In its 255th Report, the Law Commission of India recommended a collegium system for appointing Election Commissioners. Political stalwarts such as L.K. Advani and former CECs B.B. Tandon, N. Gopalaswami and I supported the idea even when in office. But successive ruling dispensations have ducked the issue, not wanting to let go of their power. It is obvious that political and electoral interests take precedence over national interest.

A public interest litigation was also filed in the Supreme Court in 2018. This has been referred to a Constitution Bench. I feel that on issues of such vital importance, even the Supreme Court, which I have always described as the guardian angel of democracy, has to act urgently. If democracy is derailed, its future too would be in jeopardy.

Apart from the manner of appointment, the provision for the removal of Election Commissioners also needs correction. At present, only the CEC is protected from being removed (except through impeachment). One has to remember that the Constitution enabled protection to the CEC as it was a one-man Commission initially. This must now be extended to other Commissioners, who were added in 1993, as they collectively represent the EC.

In the rich history of democratic India, all institutions of the state have come under pressure at one point or another. But the strength and credibility of an institution is tested when it buckles under political influence.

It is unfortunate that the topic of debate now is the EC rather than the appalling and unconstitutional conduct of our leaders. Over 40 electoral reforms remain pending for two decades. While it seems futile to have any hope from the political leadership, it is imperative that the EC asserts the ample authority that it already possesses constitutionally. It has the full support of the Supreme Court. It must act tough. This is not a mere question of its discretion, but a constitutional duty. Governments come and go, but the reputation of the EC stays for good.

S.Y. Quraishi is a former Chief Election Commissioner and the author of 'An Undocumented Wonder: The Making of the Great Indian Election'

The Supreme Court belongs to everyone

The independence of the judiciary rests on public trust, and public trust is not maintained by one-sided inquiries



SANJAY HEGDE

I had been quietly watching the Supreme Court's latest crisis play out despite young lawyers and law students asking me to speak up. Watching because I did not want any premature adjudication to hurt the prestige of the court that I so dearly love. Each time I climb its massive stairs, I am reminded of a client who used to bend down and touch the top stair, as an act of worship and devotion, whenever he had a hearing due.

I have seen people go away happy from here, I have seen them go shattered, but I never had reason to doubt the institution as a fair arbiter. I never doubted the institution's fairness, because proceedings were always conducted in courts open to all parties, where trained lawyers presented their sides of the cause. Despite aberrations, most judges here are determined to fully hear whatever relevant submissions parties to the cause have to offer. All these requirements of procedural fairness seem to have been suspended in l'affaire Chief Justice of India (CJI).

An open and fair inquiry

I am agnostic on the question of whether there was an act or two on the part of the CJI or by the woman who complained against him. It may boil down to a 'he said, she said' situation, where the standard of proof beyond reasonable doubt cannot be met. An impartial arbiter might rightly conclude that the presumption of innocence requires the benefit of the doubt to be given to the accused. But he or she must arrive at this conclusion only after an open and fair inquiry. The inquiry in this case, which has now concluded, did not meet the open and fair standard. And so I feel compelled to speak.

The complainant had walked out of the inquiry saying that she "found the atmosphere of the committee very frightening". She said, "I was very nervous because of being confronted and questioned by three Supreme Court Judges and without even the presence of my lawyer/support person. Also because of my impaired hearing I was at times unable to follow what was being dictated as my statement. I was also not shown what was being recorded and no copy of my statement recorded on 26th and 29th April has been gi-

ven to me till date."

The complainant walked out and the inquiry proceeded ex parte. The inquiry committee could not have compelled her to participate. Yet, by proceeding further and rendering an ex-parte finding, its report, while legally defensible, will still remain wanting in public perception. The inquiry could well have paused to consider whether the complainant's concerns could be addressed. It could have also broad-based itself to bring on board an independent amicus curiae to stand for the complainant's interest. The independence of the judiciary rests on public trust, and public trust is not maintained by one-sided inquiries.

Justice needs to be seen as done

It matters not that the respondent is the head of the judiciary. He or she must be held to the same standard that is used in all other such cases. The independence of the judiciary and constitutional protections given to judges do not transform into an immunity shield. If the accusation was not of sexual harassment, but of any other grave charge like violence, would a confidential, in-house inquiry have been resorted to? Such an inquiry, if it had proceeded ex parte after the complainant's withdrawal, would not have been deemed sufficiently fair. Justice needs not only to be done, but needs to be seen as manifestly done.

The inquiry committee was headed by a person who in all probability will be the next CJI. Two of his immediate predecessors have come under public scrutiny in an unwelcome kind. The court has now chosen a status quoist denial over a serious exploration of the truth, regardless of risk. How will its actions be seen?

I ask this because of a little incident in my chamber. A one-time junior of mine was arguing before a consumer tribunal. The presiding member was a former senior bureaucrat. At some point in the hearing, the member lost his temper and shouted at the lawyer, "Get out of my court!" It is a matter of pride for me that my pupil responded, "It is my court too." That is the only message that I have for the Supreme Court judges — those involved in the inquiry and those away from it. Members of the Bar, the staff of the court registry and the general public have enough of a stake in an independent judicial system to say, "It is my court too."

Sanjay Hegde is a senior advocate of the Supreme Court

SINGLE FILE

A missile dispute

Why Turkey is reluctant to abandon the Russian S-400 deal despite U.S. opposition

GARIMELLA SUBRAMANIAM



Turkey's defiance of the U.S. over its Russian defence deal is an instance of the strains in strategic ties between the two NATO allies. It is equally a reflection of the proximate relations between Russian President Vladimir Putin and Turkish President Recep Tayyip Erdoğan since their entanglement in the Syrian conflict.

In 2017, Ankara and Moscow reached an agreement on Turkey's installation of the S-400 defence system, the anti-aircraft weapon that launches surface-to-air missiles. The sophisticated radars it relies on are believed to compromise the secrecy of the U.S.'s F-35 stealth fighter jet programme that many NATO member states, including Turkey, have signed on to acquire. Ankara's move has thus prompted a multi-pronged response from Washington to wean away NATO's eastern ally, which is critical in the counter-terrorism efforts in Syria and to stem the flow of refugees into Europe.

The U.S. has threatened to eject Turkey from the F-35 aircraft programme and impose more sanctions. Last year, the State Department approved the supply of the Patriot air defence system to discourage Turkey from the S-400 acquisition. The Patriots are separate from similar NATO installations in the southeast of Turkey earlier in the decade, during the onset of the Syrian civil war. At that time, NATO was at pains to emphasise that the Patriot missiles were meant to defend Turkey, rather than be used to target Syria. That clarification was meant to assuage Russian concerns that the U.S. was escalating the Syrian conflict.

But this year, the U.S. and Turkey, and NATO by implication, are divided over the Syrian Kurdish militia — the People's Protection Units (YPG). A key U.S. ally in the fight against the Islamic state, the YPG is seen by Turkey as an extension of the country's decades-old insurgent Kurdistan Workers' Party (PKK). Moreover, Ankara's invasion of the Kurdish enclave of Afrin last year and its overall intervention in Syria enjoys broad Russian backing.

Further, the West's persistent attacks on the Turkish regime's human rights record has hardened Mr. Erdogan's authoritarian stand. U.S. President Donald Trump's erratic foreign policy approach has helped Mr. Erdogan expand his regional influence.

It thus stands to reason that Turkey should be reluctant to abandon the Russian S-400 deal, and see no grounds to reject the latest Patriot missile offer. If anything, government officials in Turkey sound optimistic that President Trump will intervene to secure the waiver of sanctions arising from the Russian deal. Turkey's Foreign Minister asserted before NATO's 70th anniversary gathering in April that his country valued the security it enjoyed remaining within the military umbrella. Yet, he was equally categorical on the importance of Russian cooperation.

Garimella Subramaniam is Deputy Editor, The Hindu



DATA POINT

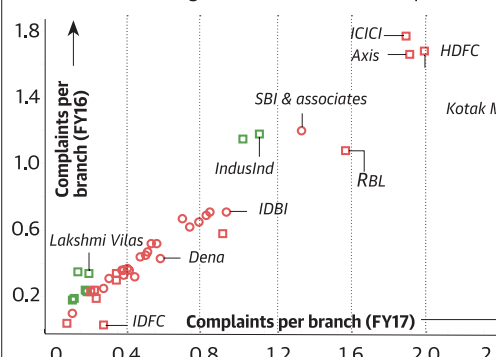
Banking peeves

The Offices of the Banking Ombudsman (OBO) — a cost-free grievance redressal platform for bank customers — received more than 1.3 lakh complaints in financial year 2017, a 28% increase from FY16. Most of the complaints were registered in New Delhi. Private banks received more complaints compared to public sector banks. Complaints about foreign banks were more. The grievances related mostly to "failure to meet commitments/non-observance of Fair Practice Code" (33.9%), "ATM/debit cards/credit cards" (21.2%) among others.

By Vignesh Radhakrishnan

Public vs private

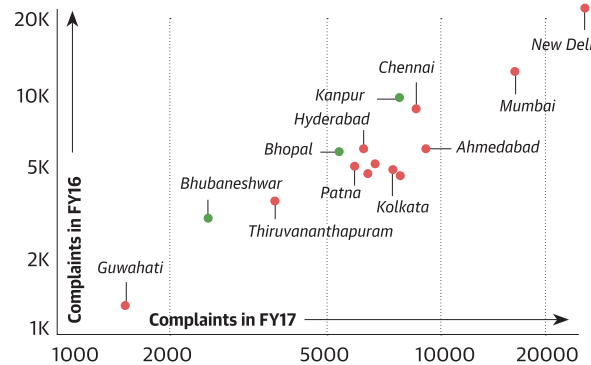
Graph shows complaints per branch received across private (■) and public (●) sector banks. Red indicates that more complaints per branch were recorded in FY17 than in FY16 and green indicates fewer complaints



Source: Reserve Bank of India

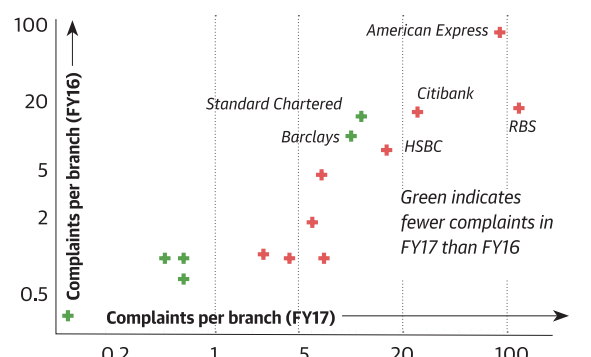
City splits

Graph shows complaints received across various OBOs in FY17 and FY16. Circles marked in red indicate more complaints were recorded in FY17 than in FY16, while green indicates fewer. New Delhi received 24,837 complaints in FY17, 2,000 higher than in FY16



Foreign banks

Complaints per branch peaked for foreign banks. The American Express Banking Corporation received more than 100 complaints per branch in FY16. Complaints against the Royal Bank of Scotland (RBS) crossed the 100 mark in FY17



FROM The Hindu ARCHIVES

FIFTY YEARS AGO MAY 7, 1969

Kosygin meets Mrs Gandhi

Mr. Alexei Kosygin, Soviet Prime Minister, after a 100-minute discussion with Mrs. Indira Gandhi here [New Delhi] this afternoon [May 6], told Pressmen: "I wish no one encroaches upon Indian interests. We want India to be strong economically, politically, and militarily." It is understood that the entire gamut of Indo-Soviet relations figured in the talks between the two Prime Ministers. No advisers were present during the discussions which were held in Parliament House. Originally, it was thought that the talks would last just an hour, but they went on for 100 minutes. Asked how the talks proceeded, Mr. Kosygin, whose replies were translated into English by an interpreter, said: "We had very good talks indeed, especially because we have not met for a long time, and we had so much to talk about."

A HUNDRED YEARS AGO MAY 7, 1919.

A Sensational Railway Theft.

A most sensational Railway theft that occurred nearly 6 months ago in the Olavakkot junction of the South Indian Railway Co., has just been detected. Two of the Railway Police constables doing duty at the above junction were placed under arrest by Inspector Mr. Shaik Abdul Quader on Monday last, and one of the Police constables suspected of the crime has since committed suicide by placing his neck over the rails when a Goods train passed over him during the night. The details of the case are as follows: Early in November last a cloth bundle containing 37 Brahmin Ladies' Saries were consigned by railway parcel by one N.T. Govindasamy Chetty, Cloth Merchant at Lalapat to the address of a Palghat Merchant named Ramakrishna Ayyar. In the ordinary course, the said parcel should have reached its destination, Palghat via Olavakkot on the following day. It was reported as missing and then the Railway authorities at Olavakkot took no prompt steps in tracing the bundle and no complaint was made to the Police.

POLL CALL

Returning officer

A Returning Officer is responsible for overseeing the election in a constituency, or sometimes in two constituencies, as directed by the Election Commission (EC). The EC appoints the Returning Officer and Assistant Returning Officer for a constituency in consultation with the governments of the State or Union Territory as the case may be. The Returning Officer's duties include accepting and scrutinising nomination forms, publishing the affidavits of candidates, allotting symbols to the contesting candidates, preparing the list of contesting candidates, preparing the EVMs and VVPATs, training polling personnel, designating counting centres, and counting the votes and declaring the result.

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