

# The Election Commission must act tough

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

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 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. Gopaldaswami 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.

## Election reform

### Why the need?

- Election of the World's seventh largest country and the second most populous country is a very complex task.
- In this process lakhs of voting personnel, police and security personnel are stationed in cities, towns, villages and settlements.
- There is still no equal representation of women in the parliament. Despite being half the population, their presence in the Lok Sabha is about 12 percent.
- In the last election, women had managed some polling booths. This time, the Commission's plan is to create a polling booth to motivate women voters whose management is in the hands of women officers only. They have been named Pink Booth.
- This time, there will be about 1.5 crore young voters who are in the election of Lok Sabha from 18 to 19 years old who will vote for the first time.
- This will be a new challenge before the Election Commission, as this class is more educated and equipped with the technology than the old voters.

### Challenges affecting politics

- Wealth power
- muscle power.
- Politicization of criminals
- Non-serious independent candidates
- Casteism.
- Sectarianism
- Lack of moral values in politics.

### Efforts by the government, the courts and the Election Commission

- Election Reforms and Committees
- Dinesh Goswami Committee - On Election Reform
- Vohra Committee - On the criminalization of politics
- Indrajit Gupta Committee - made on state financing of elections.
- MN Venkat Chalaiya Committee - National Commission Report for review of Law Commission, Election Commission the Constitution.
- Veerappa Moily Committee - Built on ethics in governance.
- AP Shah Committee - Report on the Law Commission.

### Election Commission

- The Election Commission is a permanent constitutional body.
- According to the Constitution, the Election

Commission was established on January 25, 1950.

- Initially, there was only one Chief Election Commissioner in the Commission. Currently it has one Chief Election Commissioner and two Election Commissioners.
- For the first time, two additional commissioners were appointed on October 16, 1989, but their tenure lasted till January 01, 1990.
- After that two additional election commissioners were appointed on 01 October 1993, since then the multi-member concept of the commission is in vogue, in which the decision is taken on a majority basis.
- The Commission has been given the power of the Election, Directing and Control of electoral rolls for the election of the President and the Vice President of India and Parliament and the State Legislatures and to control, observe and direct of elections, under Article 324 of the Constitution.

### Electoral law

- **Article-71 and 327**-The right to make laws for elections of President, Vice President and Parliament and State Legislatures has been given by Parliament.
- **Article 243K and 243ZA**-Constitutional authority has been constituted to conduct elections of municipalities, panchayats and other local bodies.
- Laws regarding elections of these are made by the state legislatures.
- **Article-329** -The right to settle all doubts and disputes related to the election of Parliament and State Legislatures is to the High Court of the respective State. They also have the right to appeal in the Supreme Court.
- The matters of dispute related to elections of municipalities etc. are determined by the lower courts according to the laws made by the State Governments.
- Article -71 -All doubts, disputes related to the election of President and Vice-President, are settled by the Supreme Court.
- The President and the Vice Presidential Elections Act, 1952 have been made by the Parliament related to elections for the post of President and Vice-President. The reimbursement of this Act has been done by the President and Vice Presidential Elections Rules, 1974 and further instructions are forwarded to all parties on the Election Commission.
- The provisions relating to the election of parliament and state legislatures are contained

in the Representation of the People Act, 1950 and the Representation of the People Act, 1951. The Representation of the People Act, 1950 is primarily related to the preparation and revision of the election lists, while all the subjects related to the actual operation of the elections are governed by the provisions of the Representation of the People Act, 1951.

#### What is NOTA?

- Electronic voting machine has been given the option of NOTA (None Of The Above) which you can use.

The NOTA button if you do not have your favorite candidate in the election.

- NOTA in India started in 2013 after an order given by the Supreme Court.
- In the case of the People's Union for Civil Liberties vs. Government of India, the Supreme Court has ordered that the public be given the option of NOTA for voting.
- India is the 14th country in the world to provide the option of NOTA.

#### Expected Questions (Prelims Exams)

##### 1. Consider the following statements-

1. According to article-324 of the Constitution, the Election Commission has the responsibility of conducting the election of the posts of the President, the Vice-President, Lok Sabha, State Legislature and Panchayats.
2. The President elects the Chief Election Commissioner and other Election Commissioners.
3. Election Commission delimitates the landmass of constituencies of whole India on the basis of the Delimitation Act.

Which of the above statements are correct?

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 3
- (d) 1, 2 and 3

#### Expected Questions (Mains Exams)

**Q. "Election Commission always adopts laggard nature towards taking action against the influential individuals." Critically examine the statement in the context of present events. (250 Words)**

**Q. There is a need of a committee to appoint Election Commissioners for conducting fair and independent election which should include Prime Minister, Leader of Opposition and the Chief Justice of India. Discuss. (250 Words)**

**Note:** Answer of Prelims Expected Question given on 6 May. is 1 (a)