

Differences between Election Commissioners: No Cause for Alarm but Need for Transparency

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Summary

The election body in India has suddenly come in for adverse attention. There have been delays in taking decisions in complaints against India's Prime Minister Narendra Modi and president of the ruling party, Bharatiya Janata Party, Amit Shah. The Supreme Court had to nudge the Election Commission (EC) into taking decisions. The decision, when taken, seems to favour the Prime Minister. There are also reports of divided opinions within the EC. There is no cause for any disquiet in such differences. All that is required in the best traditions of such constitutional bodies is for the opinions expressed by Election Commissioners to be made public. This will serve to preserve the transparency and independence of the institution.

The 2019 general election is underway in India. The expectations are that it will be a closely fought poll. No pollster has been able to confidently predict the outcome. The election was expected to be acrimonious and it has proven to be so. It is an election where the Election Commission (EC) has come under cross fire. There always has been a certain degree of heat or controversy during election time. This time, the issues are around the independence of the EC and its ability to caution or censure political functionaries whose actions or utterances have been in violation of the Model Code of Conduct (MCC). Since the person involved is Prime Minister Narendra Modi, the focus on the EC has been more intense.

As is well known, the MCC has no statutory backing. It is a code evolved by consensus among political parties. The code has been effective in maintaining decorum in the utterances and actions of political leaders. However, the present perception has been that where the speeches of the Prime Minister making references to the armed forces or having communal overtones, there was not only internal dissensions within the EC, but also some prevarication in timely decisions. One such alleged transgression by the Prime Minister, as per a complaint filed by the Congress party, was in his speech delivered in Wardha on 1 April 2019 where he is reported to have told the gathering not to forgive the Congress who insulted the Hindus in coining the term "Hindu Terror". In the speech, he was allegedly exhorting the voters not to vote for the party as it had supposedly insulted the Hindu religion. The issue that the Congress highlighted in its complaint before the EC alluding to the speech was that the Prime Minister infringed on Section 1.3 of the MCC which states, "There shall be no appeal to caste or communal feelings for securing votes". The complaint was also that Section 123 (3A) of the Representation of the People Act (RPA) was transgressed as it states, "...attempt to promote feelings of enmity or hatred on the grounds of religion". There were some such other transgressions such as the communal overtones in the speeches of the Bharatiya Janata Party President, Amit Shah, and the Prime Minister on why the Congress President, Rahul Gandhi, was contesting from Wayanad in Kerala (alleging that he is being forced to contest from places where the Hindus are a minority). There have

also been allegations of the Prime Minister talking about the Pulwama blasts and the Indian air force strike on Balakot despite an advisory having been issued by the EC not to politicise the Pulwama blast and the Indian attack on a terror camp.

The MCC came into operation on 12 March 2019 when the general election schedule was announced by the EC. Political leaders began addressing election rallies soon thereafter. Invariably, there were transgressions of the Code. Complaints were filed before the EC. It took strong action and leaders like Mayawati (Bahujan Samaj Party), Yogi Adityanath (BJP) and Azam Khan (Samajwadi Party) were banned from campaigning from between 48 and 72 hours. Complaints however, against transgressions by the Prime Minister remained were not acted upon by the EC on the ground that facts were being collected from the state electoral officers. The Congress then approached the Supreme Court and, in its verdict on 2 May 2019, the Supreme Court directed the EC to pass orders on pending complaints before 6 May 2019. The EC has since passed orders exonerating the Prime Minister of any infringement of the MCC.

While different parties, depending on where they stand of the political divide, have questioned the verdict of the EC, claiming that it has been lenient with the Prime Minister, news is trickling out that there was a difference of opinion among the three Election Commissioners. It has emerged that one Election Commissioner was of the view that communal overtones in the Prime Minister's speech was against the spirit of the MCC and the RPA, which disallow candidates to invoke religion as a means to seek votes. It is also revealed that, in regard to the Prime Minister alluding to the Pulwama blast, an Election Commissioner desired that a formal communication be sent to the Prime Minister seeking his cooperation with the MCC. This suggestion was set aside by the other two, thereby giving the Prime Minister a clean chit by a majority opinion.

A wide variety of opinions have emerged on the handling of the complaints against the utterances of the Prime Minister. Differences of opinion among the three Election Commissioners are bound to occur. Not all three of them will see any issue through the same prism. There are differing judgments from a court hearing any case. However, to maintain the independence of the EC and in keeping with the tradition in courts, it will be a healthy practice to put all such observations by the Election Commissioners out in public domain. Confidentiality in decisions of the EC over such transgressions will only dent its credibility. Considering that differences will occur and it is a majority opinion that ultimately prevails, it is in fitness of things, which will add to the independence of the EC to put the different opinions out on the website of the EC.

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