

# Is the Election Commission toothless or is it refusing to bite?

PARLEY

On its powers and limitations in conducting free and fair elections

*The Election Commission (EC) has come under intense scrutiny over the last few weeks for its inability to take swift action against those violating the Model Code of Conduct (MCC). It took a rap on its knuckles by the Supreme Court for the EC to crack the whip. In a discussion moderated by Anuradha Raman, S.Y. Quraishi and Trilochan Sastry talk of the EC's powers in imposing the MCC, and the controversy over NaMo TV. Edited excerpts:*

**Mr. Quraishi, with the EC recently taking action against some politicians for violation of the MCC, do you think it has finally demonstrated that it can bite?**

**S.Y. Quraishi:** It is a pity that we needed the Supreme Court to remind the EC of powers that it always had. Even advisories for senior leaders is good enough because it leads to a lot of naming and shaming, which is effective. To say that the EC is toothless in ensuring that the MCC is followed is wrong. It probably needs a little more will power to act strongly, particularly against the ruling party, because the ruling party always has an advantage which has to be neutralised. I think the EC has enough teeth. Just polite advice to the Prime Minister is enough to cause ripples. To underestimate the power of advisories is wrong.

**But it took a long time for the EC to actually act. Is there reason to believe that the EC is compromised?**

**S.Y. Quraishi:** I wouldn't use such a harsh word. The EC has always been under observation. Not only does it have to be fair, it has to appear to be fair. Now that it has got a rap on its knuckles, I think it will be bolder than it has been so far.

**Does it worry you that the EC is taking its own time to act against the Prime Minister?**

**S.Y. Quraishi:** It is very unfortunate that instead of debating the conduct of politicians, we are debating the EC. The EC is partly responsible because of delays. Had it acted promptly, it would not be in the

dock.

**What are your thoughts on the Supreme Court interim order directing political parties to provide full information on each and every political donor in a sealed cover to the court? I recall a conversation where you had serious misgivings about electoral bonds.**

**S.Y. Quraishi:** I am partly disappointed and partly happy. I am happy that it has taken note and commented that there is no transparency [in the electoral bonds scheme]. But asking that the information be delivered in a sealed envelope is beyond my comprehension. It is a grave error and very unfair. Is it a state secret? Parties know who the donor is, the government knows, and the donor knows who he or she gave the bond to. It is only you and I who don't know. Another sad thing is that while the elections are in process, the Constitution has barred any intervention by the court. The fact that the court has to intervene again and again is a sad situation.

**Trilochan Sastry:** There is a procedural issue and a substantive issue. On the procedural issue of whether the court should have intervened during the election, I have no comments to offer, but on the substantive issue as to whether such actions should be taken against hate speeches and on the countering of elections in a constituency in Tamil Nadu where cash was seized, the EC's decision is welcome. How institutions become aware of their power is a work in process and a long one at that. The EC is still discovering its powers, and if it is being nudged and that helps, it is okay.

On the issue of giving information on electoral bonds in a sealed cover to the court, we are very patient. We would have preferred something faster. The court perhaps felt it did not want to interfere when the election process was underway. So, it found a compromise and directed parties to declare who gave how much funds in the form of electoral bonds in a sealed cover. We will see on May 30th what it does. But the best practice all over the world is complete transparency.



**Does the EC suffer from some inherent structural problems in the manner of the appointment of the Chief Election Commissioner (CEC) and Election Commissioners?**

**S.Y. Quraishi:** The appointment system to the EC must improve. Right now, the Election Commissioners are appointed by the government of the day and they might feel beholden to the government or the government might feel that they should be beholden. In any case, public perception is that if they have been appointed by a particular government, they will be soft. A collegium system of appointment should be considered.

**It is not as if the Supreme Court's manner of appointment of judges is free of problems. You appear to be suggesting that the collegium system is working fine.**

**S.Y. Quraishi:** Yes, there may be problems, but this is the best system possible. If you see the electoral system in the world, the shortest cut-off for appointment is in India. Everywhere in the world, such constitutional appointments are made by either a collegium or even by the parliamentary committees and there is a parliamentary endorsement. In some cases there is a live interview of the candidate so that the whole nation is privy to the appointment. It is only in India that the most powerful Commission in the world has the most defective system of appointment. Mind you, it also puts pressure on the incumbent. The Com-

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missioners, even if they're acting bona fide, if the public perception is, 'oh they must be soft on the government', as is happening just now, to insulate them from these kind of allegations and accusations, a neutral system of appointment is perhaps the answer.

**Should the MCC be enacted into a law?**

**TS:** I think good practice sometimes is better than a law. When we pass a law, we are unable to anticipate every contingency. I think we need to trust the EC to exercise its powers. The moment you make a law, some comma or some phrase somewhere will be interpreted this way or that way and it will end up in the courts. And there will be a legal tangle. The Supreme Court has kind of endorsed the idea of a MCC without giving it a legal status. I think we should just let it be like that.

**S.Y. Quraishi:** I am absolutely against making it a law. It is a clever trap. The MCC will be taken away from the EC's discretion and it will have to be given to the judiciary in which case it will take 20 years for you to know whether some act was committed. Now this MCC acts like a fire brigade

– if there is fire, it has to be extinguished right then and not after five or 10 years. Second, its moral authority should not be underestimated even if the ultimate punishment under the model code is advice, warning, censure or reprimand. Its contribution towards forming public opinion is firm. The moment a leader gets a notice, it becomes a newspaper headline. The moral authority of the model code is very strong and the leaders are actually scared of getting a notice under the model code. Third, anything which is in the model code is also part of different laws, and action is simultaneously taken under the laws also. The only difference is that the action will be known to you after 10 years, whereas, here, a notice is served even to the Prime Minister: you violated the model code, please reply why action should not be taken. And the reply comes in 23 hours. This kind of speedy compliance never happens even to a law of the land.

**The week before the announcement of election dates is when we usually see a flurry of advertisements from the government. This year was no exception. How is it that the week before the EC actually announces the dates, the government is prepared with its advertisements?**

**S.Y. Quraishi:** All I can say is that the dates are decided by the EC and governments are very curious to know what the dates are and we never let them out, so that the surprise element is not taken away. The incumbent government cannot plan its political moves accordingly.

**TS:** It's very tricky to distinguish between a genuine policy decision which is announced and an announcement which is for the sake of getting votes. I think everything cannot be legislated. Something has to be left to the good sense of the voters.

**What actually is the problem with the TV channel that was launched in the name of the Prime Minister a few weeks after the MCC kicked in?**

**S.Y. Quraishi:** I don't have the full facts, but *prima facie* there is no problem in a political party or a political leader owning a channel. We know that in the south every politician seems to

have a channel. So when we were formulating the guidelines for the expenditure monitoring division in 2010 and 2011, we came across many channels which are owned by political parties. What they were doing was that their appearance on their own channels was shown as nil expenditure. We said, nothing doing. After all, there is a notional value attached to the telecast on the channel, which will have to be counted and shown as expenditure incurred. NaMo TV, if it is owned by the party or Mr. Modi himself, there is no problem except that the expenditure on the publicity on the channel has to be accounted for.

**TS:** I want to add one point here. You know the framework in which we are discussing all this. It seems to me that we are convinced that wrongdoing will happen and we are trying to fix it by this rule or that rule. Then we are falling back on the MCC. I think the only long-term solution is voter awareness. If the three of us seem to feel that a certain practice may not violate a constitutional right but it violates a moral code, I think when the people of India largely realise that, these things will disappear and among a large section of politically aware voters this is already happening.

**Do both of you agree that the EC suffers from no limitations whatsoever?**

**TS:** It can exercise far more powers when it chooses to, but the one power it does not have is to de-register political parties and you know there are parties which never contest elections, which do not submit their accounts, which do not follow their own internal Constitution of holding elections on time. And the EC becomes powerless. I think with due caution they should be allowed to de-register. In any case, there is judicial oversight.

**S.Y. Quraishi:** This has been pending for 20 years. We have been demanding that. The power to register does not include the power to de-register, according to a Supreme Court judgment. We went to the government and asked them to empower us. We have nearly 2,000 parties. Most of them are bogus; they are there only for money-laundering. We cannot do anything. To that extent, the EC is toothless, yes.



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



**Trilochan Sastry** is the chairperson of the Association of Democratic Reforms and former Dean at the Indian Institute of Management, Bangalore



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## SINGLE FILE

### A struggle to breathe

In this election season, it is imperative for political parties to talk about pollution

ARMIN ROSENCRANZ & NITISH RAJ



The National Capital Region's pollution levels make it to the headlines every year. Every October to December, stubble burning in Punjab and Haryana, smog arising from industries, and motor vehicle emissions increase the air quality index (AQI) of Delhi to the hazardous level of 450. In the remaining months, the AQI goes back to the level of 101-200 (unhealthy for sensitive groups). The economic loss for India in the last five years due to the exposure to crop burning is about 1.7% of the country's GDP. Annually, this exposure to pollution costs Delhi, Haryana and Punjab around ₹2 lakh crore.

Despite this alarming level of pollution, neither the Union government nor the Delhi government has taken significant steps to plan out a long-term solution. Even the interim Budget took no significant step to tackle this issue. The odd-even scheme, which was launched some years ago to curb pollution, failed to achieve its objective. A study by the Council on Energy, Environment and Water found that the average number of vehicles plying on the roads daily increased by 10% during the odd-even period in January 2016 compared to the last week of December 2015. This increase was mainly due to a 17% increase in two-wheelers, 12% increase in three-wheelers, 22% increase in taxis and 138% rise in the number of private buses. Another study published in *Current Science* found that the odd-even scheme led to an increase in emissions as the median concentration of 13 out of the 16 gases measured were higher in the morning hours and afternoon hours on days when the scheme was enforced.

Clearly, the government needs to take more radical steps to curb pollution. It should: find alternatives to stubble burning and impose strict sanctions in case of contravention of any ban on the practice; impose a blanket ban on firecrackers; impose a blanket ban on all vehicles exceeding prescribed tailgate emission standards; legislate stricter norms for fuels; open toll roads where trucks should be excluded and high-occupancy vehicles exempted from the toll; provide separate bus lanes to reduce congestion; create a separate fund in the Budget to specifically deal with this crisis; provide agricultural subsidies to farmers to disincentivise crop burning; improve the drainage system; and incentivise the use of renewable energy.

Apart from the courts, none of the other organs of the state has shown any readiness to deal with the pollution crisis. Meanwhile, until the government responds, NGOs and social workers should step in to tackle this issue through their own programmes and campaigns. In this election season, it is imperative for political parties to make this issue a priority, for pollution doesn't only affect us but our children, the generations to come, and our planet.

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## NOTEBOOK

### The many roads to development in Chhattisgarh

In the heart of Bastar, which is peaceful only on the surface

JACOB KOSHY

They may be remote and disconnected from electricity, dispensaries and schools, but several villages in Chhattisgarh's Bastar region abutting large tracts of forest boast of well-maintained roads. An activist who works to boost awareness among the Adivasis about their traditional rights to forest land attributes the quality of these roads in the conflict region to the influence of Naxalites.

Several villages and administrative blocks in Kanker district (about 150 km from Raipur), such as Narayanpur, Antagarh and Abujhmad, are considered part of the 'Red corridor', a zone where Naxalite influence is considered pervasive. Keshav Shori, co-founder of DISHA, says: "In their efforts to reach deeper into the State and counter the Naxalites, the go-

vernment and security forces have invested in building pucca, all weather roads. Where you see great roads, you also see military men and their camps. That brings about its own set of problems."

Indeed, no settlement of the forest villages in Kanker or Narayanpur district is too far away from a camp site. A soldier from the Sashastra Seema Bal (SSB) says he has already spent four years in the Antagarh forest. A photographer colleague and I were in the district for a story about the forest rights of the Adivasis. When my colleague took some innocuous photographs of the majestic sal and mahua trees, a barrage of Army men approached us and demanded that the photographs be deleted.

The SSB is tasked with guarding the various infrastructure projects coming up in the region, particularly the 235-km railway line

that will connect Jagdalpur district with the Rowghat mines. Though the project was commissioned more than two decades ago, the Maoist insurgency and the general intractability of the region had considerably delayed the railway line's progress. "Even if everything looks peaceful on the surface, there's always uncertainty. Anything can happen any time over here. Half a kilometre from here, some months ago, an improvised explosive device went off," the soldier says. "If any adverse report from this area reaches our superiors, we're hauled up and get into trouble."

The solid roads bring the Army men closer to the villages, but without dispelling the mutual suspicion that seems ever-present among the tribals and the security personnel. It's hard to tell if a particular villager is a Naxalite, an informant or a courier,

another soldier says.

The passive friction plays out even among the stray dogs in the villages. Several camps have their police dogs who accompany the soldiers when they are out patrolling. The dogs are well fed and well nourished, and several times, says Mr. Shori, the local strays tag along with the Army dogs and attack the domestic fowl in the villages. "When the villagers demand compensation from the Army men, they refuse to pay saying that it wasn't their dogs that devoured the fowl," he says.

With India's cities incessantly hungry for the coal and minerals that abound in Chhattisgarh's forests, governments – whether Congress or the BJP – are unlikely to ever stop building roads that will reach deeper into the heart of the forests. But how effectively they win hearts is still a story in the making.

## FROM The Hindu ARCHIVES

FIFTY YEARS AGO APRIL 19, 1969

### Czech party drops liberals

Mr. Gustav Husak, the tough Slovak leader, who urged compromise with the Kremlin, replaced reformist champion Mr. Alexander Dubcek as Czechoslovakia's Communist leader last night [April 17] and declared "there will be no changes in policy." Mr. Husak, 56, was named First Secretary of the party at a crucial Central Committee session in Prague Castle following the worst crisis in Prague-Moscow relations since the Soviet-led invasion last August. Prague Radio, in reporting the change in the party leadership, which drops leading progressives Joseph Smrkovsky and Josef Spacek from the presidium, also announced that the progressive Editor of the party newspaper, Rude Pravo, Mr. Jiri Sekera, had resigned. Mr. Dubcek, President Ludvik Svoboda and the Federal Prime Minister, Mr. Oldrich Cernik, had been retained in a smaller 11-man Presidium.

A HUNDRED YEARS AGO APRIL 19, 1919.

### Indian Cotton Committee Report.

The Report of the Indian Cotton Committee [as available in Simla] says: We have divided our Report into two parts, the first of which deals with the agricultural and irrigational aspect of cotton cultivation and the second with the commercial aspect. But in conclusion we wish to emphasize as strongly as possible that the recommendations in both parts must be treated as an organic whole. It is of little avail if the agricultural department involves pure or improved strains of cotton, increases the outturn by the introduction of improvements in agricultural practices and ensures cleaner methods of picking or in the irrigation department provides facilities for the extension of the cultivation of cotton unless the cotton produced is marketed in a condition which enables it to secure its proper price and unless the cotton trade pays that price for it.

## POLL CALL

### Electoral roll

An electoral roll is a list of persons who are eligible to vote. Every Indian citizen who has attained the age of 18 years on the qualifying date (the first day of January of the year of revision of the electoral roll), unless otherwise disqualified, is eligible to be registered as a voter in the roll of the polling area of the constituency where she is ordinarily a resident. The roll helps streamline voting on election day. Voter registration helps combat electoral fraud by enabling authorities to verify an applicant's identity and ensure that no voter casts her ballot more than once. Publishing and updating the electoral roll is the responsibility of the Election Commission of India. The electoral roll is updated every year in September-October and published in the first week of January.

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