Posers on the code

In clearing PM Modi's speeches, the EC risks its reputation for even-handedness

In an election that lasts seven weeks, it is not only the task of conducting the polls that is humongous; policing the conduct of political parties and candidates can be equally demanding. The Opposition has been complaining frequently about what it believes is the Election Commission's leniency towards the ruling BJP, and Prime Minister Narendra Modi. The focus is now on the manner in which the EC is dealing with complaints against Mr. Modi for some of his controversial campaign speeches. While complaints against other leaders were promptly dealt with, there was an obvious delay in taking up those against Mr. Modi. Few would have failed to notice that he has been running an abrasive campaign. He has stoked fears over India's security, claimed credit for the performance of the armed forces and implicitly underscored that his party stands for the religious majority. It was only after the matter reached the Supreme Court that the three-member EC began to dispose of the complaints. It has found nothing wrong in most of the remarks about which complaints were made for possible violation of the Model Code of Conduct. What is disconcerting is the EC's finding that none of his remarks touching on the role of the armed forces under his rule violates the directive against the use of the armed forces for political propaganda. That some of these decisions were not unanimous, but marked by dissent from one of the Election Commissioners, points to the seriousness of the credibility crisis the institution is facing.

For instance, a remark Mr. Modi made in Wardha on April 1 – that Congress president Rahul Gandhi was contesting from a constituency "where the majority community is in a minority" – was deemed innocent, and it took four weeks for the EC to give this clean chit. The second one, for a speech at Latur on April 9, was even more astounding. There, the Prime Minister made a direct appeal to first-time voters that they should dedicate their votes to the Air Force team that struck at Balakot, and the martyrs of Pulwama. The technicality the EC used to absolve Mr. Modi was that he did not directly appeal for votes in the name of the armed forces. So far the EC has rejected six complaints. The prohibition against the use of the armed forces in election propaganda is to underscore their apolitical nature and to deny ruling parties the opportunity to project their performance as their own achievements. Yet, the EC has decided that none of the references to air strikes, the nuclear option and dealing with Pakistan attracted the bar under the MCC. It is difficult not to speculate that had the same remarks been made by other candidates, they may have attracted a ban on campaigning for a period. The EC has so far retained its well-founded reputation, although there have been occasional complaints in the past that questioned its impartiality. It is unfortunate that this reputation for independence and even-handedness is starkly under question in this election.

Deserved penalty

SEBI's order on the National Stock Exchange is a welcome regulatory action

A four-year-long investigation into a possible scam in an Indian securities exchange has finally come to an end. The Securities and Exchange Board of India (SEBI) last week ordered the National Stock Exchange of India (NSE) to pay a fine of about Rs.1,000 crore within 45 days for its supervisory laxity that led to some of its broker-clients gaining preferential access to certain market data. Two former NSE chiefs have been ordered to pay back a part of their past salaries as punishment for their failure to ensure that the exchange was fully compliant with all provisions of the norms governing securities exchanges. In its order, SEBI noted that the NSE's use of the tick-by-tick server protocol had allowed certain high-frequency trading firms using the exchange's secondary server to receive important market data before other market participants, who were thus put at a disadvantage. While it has not yet been proven decisively that the firms with preferential access to data from the exchange managed to profit from such data, the episode raised serious questions about market fairness. After all, millions of retail investors believe that stock exchanges provide a level playing field to all the players. SEBI ruled that it did not find sufficient evidence to conclude that the NSE committed a fraudulent act, but was unequivocal in ruling that the Exchange had failed to exercise the necessary due diligence to ensure that it served as a fair marketplace. The fact that the NSE had opted to switch to a new data transmission system, which relays data to all market participants at the same time, prior to a whistle-blower's complaint in 2015 may have worked in the NSE's favour.

Despite the sizeable fine that it imposes on the NSE, the SEBI verdict must surely come as a relief to the erring stock exchange for at least two reasons. First, the fact that it has not been found to have intentionally favoured certain market players over others should help it retain investor confidence. Also, the exchange, which had been barred from proceeding with its initial public offering during the pendency of the SEBI probe, will now finally be able to tap the capital markets to fund its growth, after a six-month moratorium. While there is bound to be debate about the magnitude of the fine, overall the financial penalty is a welcome regulatory action. Millions of investors choose to do their trading on market platforms like the NSE every year in the belief that the marketplace offers an equitable environment to carry out their trades. As the markets regulator, SEBI must deal with breaches of their supervisory brief by exchanges in an exemplary manner to ensure that small investors retain confidence in the fairness and soundness of key institutions that enable a market economy.

A miscarriage of justice

Will the honourable Justices stand up as the collective conscience of the Supreme Court?

DUSHYANT DAVE

Finally, the in-house committee has spoken: "No substance in the allegations contained in the Complaint dated 19th April, 2019 of a former Employee of the Supreme Court." In the absence of any known procedure, the non-observance of the principles of natural justice and the absence of effective representation of the victim, the report, even though not for the public, is *non-est* and *void ab initio*.

The story so far

The complaint made by the victim of sexual harassment to the judges of the Supreme Court had two equally serious facets. One related to sexual harassment, a very serious charge. The other related to the victimisation of the complainant and her family "at the hands of the Chief Justice of India [CJI]", as claimed by her. It is this latter charge to which the nation needs to pay equal, if not greater, attention. The charge on this count, as per her affidavit, involves the following: after the alleged incident on October 11, 2018, her transfer to the Centre for Research and Planning on October 22, change of position to "Admin, Material Section" on November 16, issuance of a memorandum on November 19 by Deepak Jain, Registrar, accusing the victim of violating conduct rules and seeking an explanation, her third transfer to the Library Division on November 22, the issuance of a memorandum on November 26 rejecting her explanation and proposing further action, her suspension on November 27, and the communication of December 18 from the Registrar that the charges against her stood proved. On December 21, she was dismissed from service.

Meanwhile, according to her affidavit, on November 27, her husband, a head constable with the Delhi Police, Crime Branch Division, was transferred to the Third Battalion. On December 8, her husband, and the latter's brother, also a constable with the Delhi Police, were suspended over telephone, and the orders followed the next day. On January 2, 2019, an inquiry was initiated by a Deputy Commissioner of Police against her husband on the ground that "unsolicited calls were made to the Office of the Hon'ble Chief Justice amounting to official misconduct". On January 11, the victim and her husband were summoned to Delhi's Tilak Marg police station by Station House Officer (SHO) Naresh Solanki. In their presence, the SHO called the Registrar, Mr. Jain, to discuss ways to reach the residence of CJI Ranjan Gogoi. The SHO, the victim and the husband went there, and in the presence of Mr. Jain, the victim was forced to fall at the feet of the CJI's wife.

Upon their return to the police station, the SHO had a long conversation with the victim and her husband. On January 14, the disabled brother-in-law of the victim, who had been appointed temporary Junior Court Attendant under the orders of the CJI himself on October 9, 2018, was removed from service. On March 3, an FIR was registered on a complaint by a person named Naveen Kumar at the Tilak Marg police station in respect of an alleged demand made by the victim in June 2017 for a bribe of ₹10 lakh for getting him a job in the Supreme Court and his payment of ₹50,000 as advance. Based on this FIR, the victim and her husband were arrested from their village in Rajasthan, handcuffed and subjected to cruel and inhuman treatment. The victim was remanded for a day on March 10. She was released on bail on March 12.

The affidavit in support of the complaint appears truthful and

SHIV KUMAR PUSHPAKAR

honest. The details are heart-rending and extremely troubling, and reflect a deep malaise that appears to have set in in high offices. These incidents are all corroborated by official records. Collectively, they establish beyond doubt the victimisation of the woman, her husband and other family members at the hands of the state machinery, including the Registry of the Supreme Court.

Violations of rights

Each of these actions is either unconstitutional or illegal or criminal in nature. Clearly, they establish a well-designed conspiracy to victimise the victim beyond redemption so as to ensure that neither she nor her husband and her family members could raise their heads again to seek justice in respect of the complaint made against the CJI. Together, they constitute gross violations of the constitutional and fundamental rights of the victim and her family members, including those guaranteed under Articles 14 and 21. Clearly, the motive behind ensuring grossly inhuman, illegal, unconstitutional and disproportionate punishment to the victim and her family members seems to be to suppress her will and spirit so that she does not raise any charge about the incident of October 11, 2018.

One thing is clear: complainant Naveen Kumar, who alleged that the victim demanded a bribe and willingly offered, according to his own case, ₹50,000, has made himself an accomplice to the alleged bribery to secure public employment. He must therefore face the rigour of the law. The case on its own showing appears to be concocted and its timing raises serious questions about its authenticity. If the bribe was demanded in June 2017, it is a curious coincidence that the complainant from Jhajjar, Haryana surfaces in March 2019 and that too in Tilak Marg police station to make the complaint. It activates the entire police machinery against the victim and her family.

This was the final nail in the coffin, as the proverb goes, pushing the victim and her family to the wall and igniting in them the courage to stand up against the CJI and make the complaint on April 19. Those who have doubts about the so-called delay in the complaint must be prepared to put themselves in the shoes of the victim, a Class III employee pitted against the Chief Justice of India, one of the highest and the most powerful constitutional functionaries. Her approaching lawyers who are widely respected as human rights activists was natural and cannot be viewed with suspicion under any circumstances.

The Constitution Bench of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation* recognised procedural safeguards as necessary and said they have "historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities". In *Uma Shankar Sistani v. Commissioner of Police, Delhi* (1996), the Supreme Court ordered the Central Bureau of Investigation to investigate the circumstances under which a false complaint was registered against the petitioner, leading to his arrest. The FIR against the victim in this case needs the same treatment. Equally, the punishment of dismissal imposed on her is grossly disproportionate, even assuming that the charges against her were proved. The Supreme Court has consistently frowned upon such punishments. In *Ranjit Thakur v. UOI* (1987), the court interpreted the doctrine of proportionality "as part of the concept of judicial review" to ensure that if the sentence is an outrageous defiance of logic, then it can be corrected.

Grounds for judicial review

Irrationality and perversity are recognised grounds of judicial review. The court has held that if the punishment is outrageously disproportionate and the court considers it arbitrary in that it is wholly irrational or "a punishment is so excessive or disproportionate to the offence as to shock the conscience of the Court the same can be interfered with". On each one of these counts the punishment of dismissal imposed upon the victim is completely arbitrary and perverse. It must go.

Where can she and her family members get justice if the police at the highest level is pitted against them? Will they ever get a fair investigation and fair reports in the criminal cases? It is doubtful. Can she and her family get justice at all at the hands of the judiciary, considering the respondents would be the CJI and the Supreme Court? Only time will tell. But certainly for the present, the picture is dark for them.

All these raise extremely troubling and discomforting thoughts in the minds of many. Is it the Supreme Court as an institution that is responsible for what has happened, or is it the CJI? The dichotomy will emerge only when other Justices act independently, uphold the majesty of the law and steer the institution out of troubled waters. If they fail, the institution is doomed to serious loss of face and credibility. It is time the collective conscience of the Justices prevails.

Dushyant Dave is a senior advocate and the former President of the Supreme Court Bar Association

Conservation minus the people?

Unlike the rest of the world, India is stridently moving away from community-involved conservation models

MRIDULA MARY PAUL

In February this year, one of the world's 17 megadiverse countries issued a court order which stood to evict more than a million forest-dwelling people from their homes. More damningly, India, a state that supports about 8% of global species diversity and over 100 million forest-dwellers, did not even put up a legal defence before its top court. Although this order was subsequently stayed, though temporarily, it provides valuable insights into India's conservation objectives and approaches. Given the country's size and biodiversity-richness, a decision of this nature has consequences for global natural heritage.

Involving communities living in and around natural resource-rich areas in the management and use of these resources is an effective tool of conservation that has been recognised across the world. This was affirmed by the 1980 World Conservation Strategy of the International Union for Conservation of Nature (IUCN), and the Earth Summit's 1992 Statement of Forest Principles and the Convention on Biological Diversity. Further fillip came from the IUCN's Policy Statement on Sustainable Use of Wild Living Resources in 2000, and the Convention on Biological Diversity's 2004 Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity.

Poles apart

India has been a vocal member of these conventions. But at home, things operate rather differently. India's conservation legislation is separated into those that protect forests and its produce, and those that target wildlife conservation. Both the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972 create different types and grades of protected areas, and contain provisions to restrict or outlaw local use of natural resources and landscapes. From the 1980s, there were a number of policies that mirrored the global shift towards inclusive conservation, such as the 1988 National Forest Policy, the 1992 National Conservation Strategy, the National Environment Policy of 2006 and the 2007 Biosphere Reserves Guidelines.

While these people-friendly policy statements made their way into India's conservation docket, its earlier exclusionary conservation legislation continued to stay in place. Potentially, in an attempt to bridge this divide, the 1990 Joint

GETTY IMAGES/ISTOCKPHOTO

Forest Management Guidelines (JFM) created community institutions for co-management, in collaboration with the forest bureaucracy. Although it initially registered some success stories in certain parts of the country, JFM committees are widely critiqued as being bureaucracy-heavy, with little real devolution of powers to local communities.

A dramatic shift in the Indian conservation paradigm came in 2006 through the Forest Rights Act that went beyond sanctioning local usage, to conferring rights to local communities over forest land and produce. The Ministry of Tribal Affairs was mandated with operationalising the Act, while conservation remained under the domain of the Ministry of Environment, Forest and Climate Change. Given a hostile bureaucratic environment, the legislation faltered, except in certain pockets. Despite its limited realisation, the Forest Rights Act succeeded in raising the hackles of those within the forest bureaucracy and wildlife organisations, who challenged its constitutionality before the Supreme Court.

India's conservation policies and legislation over the years reveal a dichotomy of intent and action. Certain progressive policy documents are put in place checking off India's international commitments. However, a wholly different picture emerges during the course of its operation on the ground. If there was any uncertainty regarding India's stand on inclusive conservation, the past three years reveal that even the pretence of community involvement has largely been done away with.

Under the bureaucracy

The Third National Wildlife Action Plan, introduced in 2017, with the stated intent of complying with international commitments, is categorically of the view that locals hinder conservation. Where communities are to be involved, it distinctly avoids the attribution of rights and instead frames usage within a bureaucracy-controlled format. In 2018, there was a Draft National Forest Policy that emphasised the protected area model of conservation that leaves little room for communities. The Supreme Court's order in early 2019, currently held in abeyance, mandated the eviction of those forest-dwellers whose claims under the Forest Rights Act have been rejected, in disregard of the bureaucratic violations, lapses and technical constraints that have played a part in such rejections.

In March 2019, a comprehensive overhaul of the Indian Forest Act was proposed. This amendment introduces provisions for extinguishing rights granted under the Forest Rights Act. Further, it grants the forest bureaucracy unprecedented powers to enter and search the premises of forest-dwellers on suspicion, arrest without warrant and use firearms to meet conservation goals. State authority that is usually reserved to tackle terrorism, insurgency and organised crime is now to be deployed to safeguard biodiversity. An amendment to the Wildlife Protection Act is reportedly in the offing. India's conservation policies in recent years leave no doubt as to the model of conservation the country is intent on pursuing. While other countries are recognising the value of community-involved conservation models, India is stridently and steadfastly moving in the opposite direction.

Mridula Mary Paul, an environmental lawyer, is a Senior Policy Analyst with the Ashoka Trust for Research in Ecology and the Environment (ATREE), Bengaluru. The views expressed are personal

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

On the campaign trail

There seems to be no respite for the common man from the hate speeches of politicians. The Election Commission of India is ineffective as a moderator as the offenders are high-profile representatives such as the Prime Minister and key Opposition leaders (Page 1, "Battle is over, karma awaits you, Rahul tells PM", May 6). The only way out may be to have shorter rallies with tougher controls. People should be made to vote based on the performance of parties.

KSHIRASAGARA BALAJI RAO,
Hyderabad

■ It is the established practice that when it comes to the departed, it is *nil nisi bonum* (which means that of the dead nothing but good should be said). The Prime Minister could have been dignified as far as examples in his political speeches are concerned, the reference to Rajiv Gandhi being a case in point. Does he think that people are so ignorant not to understand his words?

N.A. MURAHARI,
Vellore, Tamil Nadu

Job and work

The article, "The difference between a job and work" (Editorial page, May 6), draws attention to one of the most pressing issues of modern society – the creeping de-personalisation of employment. The job-work dichotomy, however, is not a peculiar aberration of the 21st century. It entered public and academic discourses during the Industrial Revolution when the squalid conditions of factories used to be highlighted by writers and political thinkers alike. The wretchedness of factory jobs as a symbol of human degradation has now been replaced by the metaphor of the cog-in-the-machine monotony of automated office work. It is debatable, however, whether the state can be construed as a moral creature that is obliged to infuse employment with meaning and purpose. The modern political economy is not an ethical construct. It is an economic edifice that rests on the foundation of economic security by providing jobs to those who need it. The health of an economy is measured by the number of jobs it provides to citizens, whether full time or part-time, whether life-long or contractual, and not by the subjective satisfaction that people find in their jobs. The point is that finding dignity in the jobs is a task that belongs to the realm of individual enterprise.

V.N. MUKUNDARAJAN,
Thiruvananthapuram

Growing up years

The article, "Mothering across generations" ('Open Page', May 5), took me down memory lane. When I was a schoolboy two decades ago, my grandmother doted on me as I was under her care until my working mother returned late in the evening. My grandmother would permit me to play with my friends and caution me to run back home before my mother's return. In turn, my mother was sharp enough to realise what was happening and would often scold my grandmother for being too liberal. During my boyhood, I was more under the guidance and care of my grandmother than my parents. It was Shakespeare who said, "A grandma's name is little less in love, than is the doting title of a mother."

S. ARJUN PRASANNA,
Bengaluru

Mentor

S. Krishnan was a gentleman to the core ('Sport' page, "Former Sports Editor Krishnan passes away", May 5). Soft-spoken and unassuming, he always had a kind word for everyone and preferred to look at the positive side of things and the positive nature of the person he was interacting with. It was his far-sighted approach which opened the doors for numerous sports reporters of *The Hindu* by sending them for important international assignments, as so many have acknowledged. Thoughtful and meticulous, as sports editor he was also instrumental in the many welcome policy changes in the sports pages. Playing under his captaincy in the annual J.K. Bose trophy tournament for journalists was a lesson in practical cricketing knowledge.

PARTAB RAMCHAND,
Chennai

MORE LETTERS ONLINE:
www.hindu.com/opinion/letters/

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 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

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. 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 given 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 of 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

REUTERS

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

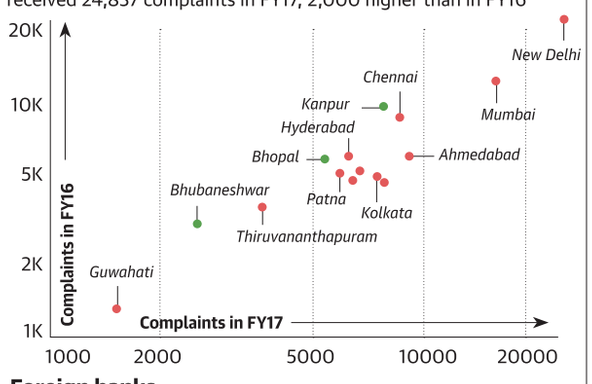
Banking peeves

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

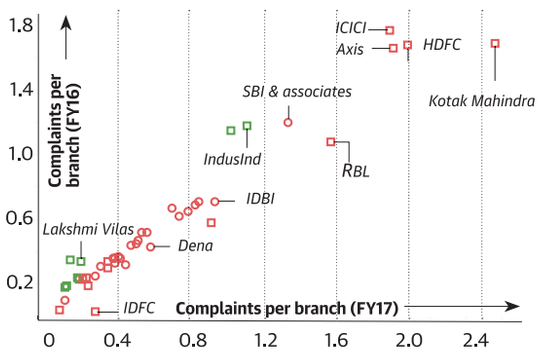
City splits

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



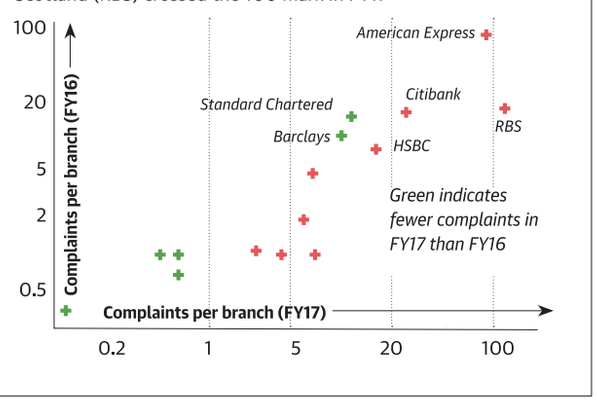
Public vs private

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



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



Source: Reserve Bank of India

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 Lalapet 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.

MORE ON THE WEB

Watch: Tamil Nadu's Biryani binge

http://bit.ly/biryanibinge