

With its press note, the Election Commission makes the case against itself

The two-page note is a sound legal basis to impeach the CEC. And also to remove the other two Election Commissioners who have approved this note

Yogendra Yadav



The ECI's press note of September 26 is a formal admission of guilt. (Illustration: C R Sasikumar)

What more must the CEC do to deserve impeachment?" I had asked in this column ('The move to impeach the CEC, though symbolic, matters', IE, March 17), supporting an Opposition-led motion of impeachment against Gyanesh Kumar.

I was wrong. The exposé by The Indian Express, among the finest pieces of investigative journalism in recent times, shows that the Chief Election Commissioner could do much more than anyone had imagined. And if there was any room for doubt, the Election Commission's own statement has officially removed it.

The ECI's press note of September 26 is a formal admission of guilt. The two-page note is a sound legal basis to impeach the CEC. And also to remove the other two Election Commissioners who have approved this note.

Just to recap: The Constitution (Article 324(5), read with Article 124 (4)) does not allow the removal of the CEC except through impeachment on grounds of "proved misbehaviour or incapacity". So, while impeachment does not require proving "criminality", "misbehaviour or incapacity" does not apply to any kind of misconduct, ordinary error or a mistaken interpretation in good faith. Impeachment should kick in only in cases of gross misconduct involving the wilful breach of fundamental norms of such an office.

The Supreme Court, in Anoop Baranwal, has formulated the norms expected of the Election Commissioners. There are also the six internationally recognised “Bangalore Principles of Judicial Conduct”: Independence, impartiality, integrity, propriety, equality, and competence and diligence. Can anyone accuse Gyanesh Kumar of any of these virtues? In the last article, I had built a case around normative principles and substantive consequences: Blatant partisanship, impropriety and abuse of office for mass disenfranchisement. Now, we can add multiple and wilful gross violations of law to make a robust legal case against the CEC and the other ECs.

Read paragraph 1(vi) of the press note issued by the Election Commission: “For all Commission’s meeting (sic), agenda will be circulated in advance and minutes will be issued.” This is an astounding statement, especially when read in the light of The Indian Express exposé that the absence of any agenda or minutes for the past year was indeed one of the objections raised on April 16 this year by Vivek Joshi, one of the ECs. Thus, this is a formal admission that this constitutional authority has been carrying out its business without the minimum procedures required of any committee or society, or even a local club.

Unless the Commission comes out with minutes of those meetings, we must assume that there is no paper to back up the series of momentous decisions taken in the name of the Election Commission, especially those regarding the SIR. This presumption of illegality must apply to even the three SIR orders, which all the ECs now present as “unanimous”. The question is not whether the three Commissioners, then or now, agree on those orders but whether the decision was proposed, deliberated upon, agreed to and recorded as such by the entire Commission before these orders were announced and implemented. In the absence of any proof to the contrary, we must assume that this gross lapse proves both incapacity and grave dereliction of constitutional duties.

Next, turn to paragraph 1(iii) and 3(iii), which relate to the much-debated issue of changes to Form 6. The ECI’s press note admits to three wilful violations of law committed by the Election Commission. First, it misrepresents the apex court order to say, “The declaration attached to Form 6 for SIR has been upheld by the Hon’ble Supreme Court.” As several legal commentators have pointed out, the Court didn’t quite do so. Second, the decision to revert to the original Form 6 for the non-SIR period, clearly in response to the objection of the two ECs that this change in the statutory form was “unauthorised and illegal”, is an admission that the modified form being used by the ECI so far was gross violation of law, especially after it was put on notice by no less than the Commission members. Third, the claim that the 97 wrongfully deleted voters in Goa have been helped to become voters by filling in Form 6 is another proof of wilful violation of law. The ECI is asking voters who it knows existed on pre-SIR rolls, but were found to be wrongfully deleted, to sign a false statement. They have to pretend that they are “new” voters and undertake: “I am applying for inclusion in Electoral Roll for the first time.” They are also made to sign affirming that a false statement carries a punishment of imprisonment of up to one year. Over the past year, the ECI has forced millions of voters to commit this illegality, for it failed to evolve any procedure to rectify its own error of wrongful exclusions.

Paragraph 1(iv) of the note proposes to set up a committee of experts, again in response to objections by Commission members, to “review ECINET to double-check that it complies with the provisions of the Acts and Rules”. This is another breathtaking admission: The ECI is now not sure whether the online portal and software already used to delete more than 13 crore names from the electoral rolls was in accordance with law. As per The Indian

Express report, two Commissioners were sure that it was not. Besides, the note promises “further flexibility” to “field officers”, who include the EROs, the sole legal authority responsible for any inclusion or exclusion in electoral rolls, who had repeatedly complained of being shut out from this system. Now they will enjoy some “flexibility”, not the authority given to them by law.

Finally, let us note what the ECI still does not mention: Who authorised the 16 lakh-plus appeals filed against the voters who had managed to get their names back on the rolls in Bengal? Perhaps the note found this breach of law too scandalous to be mentioned.

All you now need to know is Section 32(1) of the Representation of the People Act, 1950, which holds that it is a criminal offence for any election official to do anything in the preparation of electoral rolls that is “without reasonable cause, guilty of any act or omission in breach of such official duty”. And ask yourself if the entire Election Commission is not guilty of this criminal offence.