

## India's elite institutions are facing a credibility crisis

The realities of India's institutions are captured most evocatively by Lant Pritchett's notion of a "flailing" state. Pritchett's term refers to the fact that India's public institutions have a Jekyll and Hyde quality to them: an exclusive set of elite agencies that are high-functioning and a patchwork of lower-level institutions that are not. As Pritchett wrote: "the head, that is the elite institutions at the national (and in some states) level remain sound and functional but this head is no longer reliably connected via nerves and sinews to its own limbs."

If one were to ask a reasonably well-informed Indian to name which of the country's apex institutions—the proverbial "head"—they held in high esteem, three would invariably appear near the top of the heap: the Election Commission (EC), the Reserve Bank of India (RBI), and the Supreme Court. Indeed, these federal institutions are not only well regarded by many Indians, but are also considered by many developing democracies as models to be emulated.

Against this backdrop, one cannot help but reflect on recent events and wonder whether India's elite institutions are as healthy as we had once thought. In the last 12 months, each of the aforementioned institutions has experienced a crisis of credibility. These events—and the systemic infirmities they point to—suggest that we should no longer take the health of these apex institutions for granted.

Start with EC, which is one of the world's most respected elections agencies. It has historically benefitted from a robust constitutional mandate, which granted the body wide powers and significant independence from the executive. Whereas some developed democracies struggle to implement even rudimentary improvements to their electoral machinery, the EC routinely executes logistically complex elections for millions of voters while relying exclusively on electronic voting machines. But within the past one year, the EC's judgement has been called into question on several occasions. Consider two examples.

In October, the EC broke from convention by announcing dates for elections in Himachal Pradesh while staying mum on Gujarat, despite the fact that these two states have followed nearly identical electoral calendars since 1998 (with the exception of 2002, when the assembly polls in Gujarat were delayed on account of riots). Typically, the EC holds elections together in states where the terms of the incumbent governments coincide. The chief election commissioner (CEC) A.K. Joti's stated excuse for the delay was a desire not to disrupt flood relief work underway in the state. Several former CECs, men not eager to speak against their former agency, swiftly criticized the move. Former CEC T.S. Krishnamurthy called the delay an "avoidable controversy". The Model Conduct of Code, which prohibits the government from announcing new public schemes on the eve of elections, "does not stand in the way of any emergency relief work", he reasoned. Former CEC S.Y. Quraishi was similarly puzzled, stating that the EC's delay raised "serious questions". The reason for the strong reaction had to do with the perception that the EC was giving the Bharatiya Janata Party (BJP) government in Gandhinagar an advantage by ceding it more time to announce populist schemes designed to woo voters, which is precisely what transpired.

A second questionable act was the EC's about-face on the Narendra Modi government's creation of a new political funding vehicle known as "electoral bonds". These bonds create a mechanism for private actors to fund political parties through the banking system rather than cash (a good thing), but without the actor or the political party having to disclose a single rupee (a very bad thing). The EC, which has been agitating for greater transparency in political finance for decades, told a parliamentary panel in May 2017 that the scheme was a "retrograde step" because transparency would be "compromised". Former CEC Syed Nasim Ahmad Zaidi demanded that the Indian people "have a right to know who has contributed to political parties". Yet, Joti proclaimed in

mid-January that the scheme was a “step in the right direction”. This was a disturbing flip-flop absent any change in the underlying material facts.

Next, we come to RBI, an agency with a respected track record on monetary policy, banking and finance. While the RBI has often tussled with the executive when it comes to the central bank’s independence, it has maintained high standards of competence and professionalism. Unfortunately, the bank’s credibility has taken a hit in the wake of the Modi government’s demonetisation exercise. The ruling party has maintained that *notebandi* was a call taken by RBI, although the facts suggest an alternative narrative. On 7 November 2016, the government advised the RBI Central Board that it ought to consider withdrawing Rs500 and Rs1,000 notes to mitigate the triple threat of counterfeiting, terror funding and black money. The very next day, RBI accepted the advice and that same evening Modi went on national television to announce the move.

So, either the RBI was used by the government or it genuinely backed the half-baked measure. Either way, the institution’s stature stood diminished—a position further supported by the foibles associated with the policy’s sloppy implementation. To make matters worse, RBI then prevaricated when it came to informing the public how much old currency had come back into the system post 8 November. It was finally forced to disclose in its August 2017 annual report that 99% of the notes that had ceased to be legal tender wound up in Indian banks—an embarrassment to the government. While it is true that the new Monetary Policy Committee (MPC) has held the line on interest rates—much to the consternation of the executive—one cannot help but wonder whether institutional lines were crossed.

The third example of an elite institution grappling with credibility issues is the Supreme Court, whose internal fissures have played out in spectacularly public fashion. The Supreme Court has historically enjoyed widespread popular support, especially when compared to the highly uneven lower judiciary. Over time, however, a number of structural issues affecting its operations have gone unaddressed. One of these is the accumulation of power in the hands of the Chief Justice of India (CJI). The CJI is the “master of the rolls”, and therefore exercises considerable discretion both in setting up benches and in deciding what cases get heard. In an unprecedented January press conference, four Supreme Court justices accused CJI Dipak Misra of selectively setting up benches in order to shape the outcomes of particular cases pending before the court.

One notable example involves the case of the Prasad Educational Trust, a matter which the CJI had been overseeing. According to the Central Bureau of Investigation (CBI), the trust had retained a retired Odisha high court judge to “fix” the outcome of the Supreme Court’s decision. When an NGO implored the apex court to set up a special investigation team (SIT) to investigate the matter, Justice J. Chelameswar ordered the establishment of a five-judge Constitution Bench to consider its plea. The CJI quickly overruled his colleague, listing the matter before a bench of relatively junior justices on which he also figured. Misra took this decision despite the fact that he had been personally involved in the Prasad case—the very one that required an independent investigation into its handling.

Then of course there is the enigmatic subject of Justice B.H. Loya, a judge who presided over a case in a special CBI court in which BJP president Amit Shah stood accused of murder. After Loya’s unexpected death, the court cleared Shah of all wrongdoing, prompting many to speculate that Loya himself was murdered. Given the sensitive nature of the case, the Supreme Court was compelled to take it up, but Misra assigned it to a junior bench. Only after Misra’s colleagues failed to persuade him to constitute a more senior bench to hear the potentially explosive case did they decide to hold their controversial press conference.

Sceptics might respond to these examples by claiming they are aberrations linked to individual personalities, rather than hallmarks of institutional malaise. Such a reaction blinds us to the

multiple systemic challenges India's core federal institutions face. First, across the board, Indian institutions continually struggle with managing human capital, as evidenced by the unending morass concerning judicial appointments. Second, exogenous actions, like the passage of the Right to Information Act, have compelled greater accountability to the public. Yet the quality of external accountability is in doubt, as evidenced by how all three institutions have struggled to balance the demands of public justification with the temptation to hold on to discretion. Third, internal accountability mechanisms have largely foundered. In nearly all Indian institutions, power remains far too centralized in the hands of the chief. Fourth, political interference remains an ever-present obstacle. Much of this interference comes down to subverting behavioural norms rather than actual violations of the law. As US President Donald Trump has shown us, the grey area in between offers ample room to manoeuvre.

The meta-lesson from the trials and tribulations of India's elite institutions is the stark divergence between the rule of law in practice and the rule of law on paper. This should concern Indians, but also foreign investors and governments seeking to do business with India. India's democracy is its most important calling card, but its governing apparatus has failed to keep pace. For certain public functions, there is scope for institutional regeneration from below and state-level experimentation. Unfortunately, these remedies do not apply to India's core federal institutions. Either government must tackle their challenges head on or risk facilitating greater institutional decay.

*Milan Vaishnav is senior fellow and director of the South Asia Program at the Carnegie Endowment for International Peace, and a co-editor of Rethinking Public Institutions In India (Oxford University Press, 2017).*

*Comments are welcome at [views@livemint.com](mailto:views@livemint.com).*

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