

DISCLOSING DISSENT: ON EC'S DECISION TO NOT RECORD SPLIT OPINIONS

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

The [rejection of the demand of one of the Election Commissioners that dissenting opinions be recorded in the orders](#) passed by the three-member Election Commission on complaints of violations of the Model Code of Conduct may be technically and legally right. However, there was indeed a strong case for acceding to the [demand of Ashok Lavasa at least in regard to complaints against high functionaries](#) such as Prime Minister Narendra Modi. The EC has been rightly widely criticised for giving a series of 'clean chits' to the PM, despite some questionable remarks that appeared to solicit votes in the name of the armed forces. Added to the widespread unease was the unexplained delay of several weeks in disposing of complaints against Mr. Modi. It is in this context that Mr. Lavasa's dissenting opinion may have been relevant enough to merit inclusion in the EC's orders. After all, the public is aware of the allegedly offending actions and remarks, and is entitled to be informed if the decision was not unanimous. In this hotly contested election, one in which the level of discourse was abysmally low, the onus on the poll panel to maintain a level-playing field and enforce the election code was quite high. Making public a dissent in the final order would have deepened the popular understanding of the issues in play.

The aftermath of a nasty election

The law requires the multi-member EC to transact business unanimously as far as possible — and where there is a difference of opinion, by majority. Therefore, there is nothing wrong if decisions are made by a 2:1 ratio. The apparent justification for excluding any dissent from the final order, but merely recording it in the file, is that the practice of including dissent is limited to quasi-judicial matters such as allotment of symbols. Should recording of a dissenting opinion be based on such a distinction? A more appropriate distinction would be between decisions that require reasoning — absolving the Prime Minister of an election code violation surely ought to be one — and administrative matters that need to be resolved with dispatch. If members have specific reasons for deciding for or against a particular course of action, there would surely be no harm in spelling out their respective positions. It would be unfortunate indeed if Mr. Lavasa stays away from meetings concerning violations of the Model Code of Conduct. However, as he has taken up the issue through as many as three letters, it is reasonable to infer that there is some basis for his grievance. At a time when the institution's reputation is being undermined by sustained criticism, the EC should not shy away from making public any difference of opinion within. It would be unfortunate if the majority in the EC were to be afraid of any public reaction that may result from disclosure of a split opinion.

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