

D-39385/19

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IN THE SUPREME COURT OF INDIA  
CIVIL EXTRAORDINARY JURISDICTION  
WRIT PETITION (CIVIL) NO. 1389 OF 2019  
[Under Article 32 of the Constitution of India]

IN THE MATTER OF:

HON'BLE THE CHIEF JUSTICE OF INDIA

Mahua Moitra

...Petitioner

*Versus*

Election Commission of  
India

...Respondent

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: SAMEER SHRIVASTAVA

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ITEM NO.36, 36.1

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 1389/2019

MAHUA MOITRA

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA

Respondent(s)

WITH

W.P.(C) No. 1382/2019 (PIL-W)  
(FOR ADMISSION)

Date :24-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)

Mr. Prashant Bhushan, AOR

Mr. Sidharth Arora, Adv.

Mr. Vishal Sinha, Adv.

Mr. Sameer Shrivastava, AOR

For Respondent(s)

Mr. Amit Sharma, AOR

Mr. Dipesh Sinha, Adv.

Ms. Ayiala Imti, Adv.

Mr. Anmol Chandan, Adv.

Mr. Arvind K Sharma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

List on a non-miscellaneous day after four  
weeks.

In the meantime, counter affidavit be filed.

  
[ CHARANJEET KAUR ]  
A.R.-CUM-P.S.

  
[ INDU KUMARI POKHRIYAL ]  
ASSTT. REGISTRAR

24.2.2020

Ms. Meera Bhatia, Adv.  
Mr. Binay Kumar Jha, Adv.  
Mr. Priyadarshan Pattnaik, Adv.  
Ms. Suman Sharma, Adv.  
Mr. Raj Saheb Patil, Adv.  
Mr. Shashindra Tripathi, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Issue notice returnable on 17.02.2020.

Tag with Writ Petition (Civil) No.1389 of 2019.

(SANJAY KUMAR-II)  
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)  
ASSISTANT REGISTRAR

ITEM NO.21

REVISED  
COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

2

Writ Petition(s)(Civil) No(s). 1382/2019

ASSOCIATION FOR DEMOCRATIC REFORMS &amp; ANR.

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA &amp; ANR.

Respondent(s)

(FOR ADMISSION )

Date : 13-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SURYA KANTFor Petitioner(s) Mr. Prashant Bhushan, AOR  
Ms. Neha Rathi, Adv.  
Mr. Pranav Sachdeva, Adv.  
Ms. Shivani Kapoor, Adv.For Respondent(s) Mr. Debasis Misra, AOR  
Mr. Vishaal S. Jogdand, Adv.  
Mr. Parvez Bashista, Adv.  
Mr. Narender Kumar Sharma, Adv.  
Mr. Suhas Kadam, Adv.  
Mr. R.C. Paul Kanakraj, Adv.  
Mr. Jagdev, Adv.  
Mr. Shreyas Gallhe, Adv.  
Mr. R. Sharath, Adv.  
Ms. Pareena Swarup, Adv.  
Ms. Nanita Sharma, Adv.  
Mr. Manav, Adv.  
Ms. Alpana Sharma, Adv.  
Mr. Rajnish Kumar, Adv.  
Mr. Choudhari Samsuddin Khan, Adv.  
Mr. Jay Prakash Somani, Adv.  
Mr. M.S. Vinayak, Adv.  
Dr. Sanatan Ray Choudhari, Adv.  
Ms. Sangeeta Joshi, Adv.  
Mr. K.V. Bharathi Upadhayaya, Adv.  
Mr. Varinder Kumar Sharma, Adv.  
Mr. Ved Prakash, Adv.  
Mr. Dharmender Pratap Singh, Adv.  
Mr. Arjun Dev Singh, Adv.

Signature Not Verified

Digitally signed by  
SANJAY KUMAR  
Date: 2019.12.16  
16:44:39 IST  
Reason:

ITEM NO.28

COURT NO.1

①

24/12/20

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 1389/2019

MAHUA MOITRA

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA

Respondent(s)

(FOR ADMISSION )

Date : 09-12-2019 This petition was called on for hearing today.

CORAM :

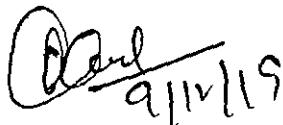
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Gopal Shankarnarayanan, Sr. Adv.  
Mr. Sidharth Arora, Adv.  
Mr. Sameek Srivastava, Adv.  
Mr. Vishal, Adv.  
Mr. Sameer Shrivastava, AOR

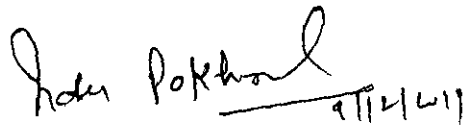
For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Issue notice.

  
9/12/19

[ CHARANJEET KAUR ]  
A.R. -CUM-P.S.

  
9/12/19

[ INDU KUMARI POKHRIYAL ]  
ASSTT. REGISTRAR

9/12/19

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PERFORMA FOR FIRST LISTING

Section- PIL  
A1

The case pertains to (Please tick/check the correct box):

- Central Act: Constitution of India, Representation of the People Act, 1951.
  - Section: Articles 14 and 324 of the Constitution, Section 73 of the Representation of the People Act, 1951.
  - Central Rule: Conduct of Elections Rules, 1961.
  - Rule No: Rule 49S, 56, 56C, 59, 59A, 63, and, 66A of along with Form 17 and Form 20 appended to the Conduct of Elections Rules, 1961.
  - State Act: N/A
  - Section: N/A
  - State Rule: N/A
  - Rule No: N/A
  - Impugned Interim Order: N/A
  - Impugned Final Order / Decree: N/A
  - High Court: N/A
  - Name of Judges: N/A
  - Tribunal / Authority Name: N/A
- 

1. Nature of Matter: Civil

2. (a) Petitioner / Appellant: Mahua Moitra.

(b) Email ID: ~~mahua.moitra@icloud.com~~ mahua.moitra@icloud.com

(c) Phone No: ~~99007032246~~ 99007032246

3. (a) Respondent: Election Commission of India

(b) Email ID: N/A

(c) Phone No: N/A

4. (a) Main Category: 08 PIL Matters

(b) Sub Category: 0812, Others

5. Not to be listed before: N/A

6A. Decided Cases with Citation: No decided cases with citation

6B. Similar/Pending matter: No similar/pending matter

7. Criminal Matters: N/A

(a) Whether accused / convicted has surrendered: N/A

(b) FIR / Complaint No: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention/custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters): N/A

Date: 04.11.2019

Sameer Shrivastava

**ADVOCATE FOR PETITIONER**

**Email id: [s.shrivastava86@gmail.com](mailto:s.shrivastava86@gmail.com)**

**AoR Code: 2438**

ADVOCATE FOR PETITIONER

This petition, filed in public interest under Article 32, seeks mandatory directions to be issued to the Election Commission of India regarding the public disclosure and due reporting of Account of Votes Recorded ("**Form 17C Part I**"), Result of Counting ("**Form 17 C Part II**") & Final Result Sheet ("**Form-20**") under the Conduct of Elections Rules, 1961 after each Parliamentary and Assembly Election within a period of 48 hours in case of Form 17C Part I & II and a period of 7 days in case of Form 20.

The disclosure and publishing of data about election result are sought under the Fundamental Right to know & receive information under Article 19(1)(a) related to the integrity of the electoral process and to allow public examination of the processes employed in the Conduct of Elections by the ECI under Article 324 of the Constitution.

Form 17C Part I & II and Form 20 are statutory forms prepared by the Election Commission of India ("**ECI**") under the Conduct of Elections Rules, 1961 and record information about the election result. The information recorded in the said forms is crucial evidence regarding the sanctity of the electoral process and statutory proof of the number of valid votes cast in favor of a candidate.

While Form 17C Part I is only provided to the polling agent of each candidate, Form 17 Part II and Form 20 which establish the accuracy of an election result are not published for the benefit of the citizenry. In the absence of a Statutory framework mandating the due reporting and publishing of Form 17C Part I and II & Form 20 for each Parliamentary and Assembly Elections, there is no legal obligation being recognized by the ECI to publish the Statutory forms and enhance the accountability of an election result. Reporting of information, in limited circumstances, is not conducted within a reasonable period of time post the counting stage. In some states, Form 20 information has been published after the declaration of results and the swearing-in of the Ministers, thus not providing the

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citizenry with an opportunity to validate the result publicly before the candidate takes up the Office of a Member of Parliament or a Member of the Legislative Assemblies of States. In the wake of discrepancies in data, doubts arise about the manipulation of election results, in the absence of transparent practices and checks of accountability.

As a practice, the ECI has published Form 20s for each Parliamentary and Assembly Election since 2004, but the practice was discontinued for the 2019 Parliamentary Elections without disclosing any reason. Out of the 7 Phases of the 2019 Parliamentary Elections, Form 20s were published by the ECI on its website for the first 4 phases. However, upon the emergence of certain discrepancies in the data between the total number of votes polled and the votes counted on EVMs, information for the first 4 phases was retracted and no publishing has since taken place for any phase. According to certain reports, surplus votes counted were found in 220 of the 373 constituencies polled in the first four phases.

ECI has the constitutional obligation under Article 324, to ensure that any qualms about the credibility of the election process are answered fittingly and democracy in India continues to thrive. Article 19(1)(a) protects the right of citizens to receive information concerning free and fair elections. In the electoral process, this includes the receiving of the requisite information to allow the voter to know the consequence of her/his vote. Transparency and accountability in the electoral process are guaranteed by Article 19(1)(a) and under the principles of democracy and fair and free elections, which have been recognized to be a part of the basic structure of the Constitution.

In a representative democracy, the most crucial facet of election accountability is the transparency of the electoral process which is covered by Article 21 of the Constitution. Elections by way of adult suffrage are the hallmark of self-government, and transparency during the electoral process – right from the time elections are

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announced till the time the results are declared – is essential to ensure accountability of process employed by ECI. Thus, accountability is the most effective tool to preserve the integrity and sanctity of the electoral process, and hence also of the democratic setup. Information critical to the validity and integrity of the election and practices will allow public examination and scrutiny of the election process and will countermand any cynicism about the democratic ethos which flows in all provisions of the Constitution of India.

The democratic fabric of our country is being tested by unlawful acts of misconduct by candidates during elections. In the wake of such instances, the faith of the electorate in the democratic process is being severely affected. In the absence of publishing of the collated results for each constituency in the form of reporting of Form 17 Part I, Form 17 Part II and Form 20, there are no avenues available to the voters to render public examination of the results in a reliable and transparent manner as doubts emerge from several quarters.

It is imperative on the part of the ECI to take positive steps to provide the electorate with sufficient infallible data regarding each election through due publishing of Form 17C Part I and II and Form 20 within a period of 48 hours in case of Form 17C Part I & II and a period of 7 days in case of Form 20. Such an obligation flows from the rights of the citizens under Article 19(1)(a) and the principles of democracy and fair and free election.

E

LIST OF DATES

Date	Event
15.04.1961	The Conduct of Election Rules, 1961 were notified in the Official Gazette providing for preparation and publication of Forms and Information critical to the validity of the Election Process, including Form-20.
2002	Form-20 Results sheets were published for the first time for the Assembly Elections for the Gujarat, Manipur and Punjab Legislative Assembly.
24.10.2008	ECI addressed a letter to all Chief Electoral Officers of all States and Union Territories directing the analysis of Form-20 Results from past general elections. Polling Stations where the percentage of poll recorded if found to be more than 75% and where more than 75% of votes have been recorded in favor of one candidate were to be identified as a critical polling station.
2002-2018	As a practice of accountability, Form-20 Results were published for each Parliamentary and Assembly Election held in the country.
07.09.2018	ECI published the Handbook for Candidates providing that a copy of Form-20 may be supplied to a candidate if asked for, on payment of a certain fee.
Feb 2019	ECI published the Handbook for Counting Agents providing for the procedure which compiling the final result and preparing Form 20. It provided that entries made in Form 20 in respect of each polling station shall be announced so that the candidates and their agents may take note of the result of counting in respect of each polling station.



- 11.05.2019 Form 20s were published by the ECI on the website for the first 4 phases of the Lok Sabha Elections.
- 31.05.2019 A report was published finding that surplus votes counts were found in 220 of the 373 constituencies polled in the first four phases.
- 31.05.2019 Researchers and analysts noted glaring inconsistencies in the data published by the ECI. Thereafter, the Information was retracted from the ECI website without any justification and no publishing has since taken place for any phase.
- 04.09.2019 Research conducted by the Commonwealth Human Rights Initiative found several discrepancies in the information published by the ECI.

**IN THE SUPREME COURT OF INDIA**  
**CIVIL EXTRAORDINARY JURISDICTION**  
**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019**  
**[Under Article 32 of the Constitution of India]**

**IN THE MATTER OF:**

Mahua Moitra, ...Petitioner  
7A, FL-9A. Judges Court  
Road, Ward No.74, Kolkata-700027

**CURRENTLY RESIDING AT**  
11/1, Sarvapriya Vihar,  
New Delhi-110016

Versus

Election Commission of India, ...Respondent  
Through the Chief Election  
Commissioner,  
Ashoka Road, New Delhi-110001

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN  
PUBLIC INTEREST, PRAYING FOR A WRIT OF MANDAMUS TO BE ISSUED TO  
RESPONDENT TO DIRECT DUE REPORTING AND PUBLICATION OF FINAL  
RESULT SHEET ("FORM-20"), ACCOUNT OF VOTES RECORDED ("FORM  
17C PART I") & RESULT OF COUNTING ("FORM 17 C PART II")  
UNDER THE CONDUCT OF ELECTIONS RULES, 1961 AFTER EACH  
PARLIAMENTARY AND ASSEMBLY ELECTION.**

*To*

*The Chief Justice of India and  
His Companion Justices of the  
Hon'ble Supreme Court of India*

This Humble Petition of  
the Petitioner abovenamed

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**Most Respectfully Showeth:**

1. That the Petitioner is filing this Public Interest Litigation ("**PIL**") under Article.32 of the Constitution of India ("**the Constitution**") praying for a writ of mandamus to be issued to the Respondent to ensure due reporting and publication of Final Result Sheet ("**Form-20**"), Account of Votes Recorded ("**Form 17C Part I**") & Result of Counting ("**Form 17 C Part II**") under the Conduct of Elections Rules, 1961 after each Parliamentary and Assembly Election.
2. That the Petitioner resides at 11/1, Sarvapriya Vihar, New Delhi and her email id is [mahua.moitra@icloud.com](mailto:mahua.moitra@icloud.com). The Petitioner has a PAN Card bearing No. **BAUPM3990G**. The Petitioner further states that she has not filed any other petition either in this Hon'ble Court or in any other Court seeking the same or similar directions.
3. That the Petitioner is a public-spirited Indian citizen who is a member of the All India Trinamool Congress Party and is currently serving as a Member of Parliament in the present 17th Lok Sabha from Krishnanagar constituency in West Bengal, and draws a monthly salary as a Member of Parliament to the tune of approx. Rs.2,00,000/- (Rupees Two Lakh). It is further stated that she has been a member of the Legislative Assembly of West Bengal and has also been the General Secretary and National Spokesperson for the All India Trinamool Congress Party. That, prior to entering politics, the Petitioner had a well-established career as an investment banker in London. The Petitioner quit her position in London to return and serve her country. The Petitioner belongs to a respected family and has earned the recognition and respect

of the public through her accomplishments in her professional as well as political life. A typed copy of the Curriculum Vitae of the Petitioner is annexed herewith as **Annexure-1** (pp. 37 to 41). The Petitioner states that the present Petition has been filed in individual capacity by the Petitioner.

4. That the Petitioner has no personal interests, individual gain, private motive or oblique reasons behind filing this PIL. The Petitioner is involved in no litigation which has or could have any nexus whatsoever with this petition. The Petitioner has filed this petition with bona fide intentions solely towards the end of public and national interest. The present Petition concerns the transparency required of the electoral process across India, and which seeks enforcement of the "guaranteed" fundamental right of information on behalf of all citizens. The Petitioner has not moved for relief(s) sought in this Petition to the concerned Competent Authority.
5. That the Election Commission of India is the sole Respondent required to comply with the present prayers and is clearly "State" for the purposes of Article 12 of the Constitution, and the petition is maintainable against it. No other persons, bodies or institutions are likely to be affected by this petition.
6. That the facts leading to the filing of this Public Interest Litigation are as follows:

- a. The Constitution of India came into force, Article 324(1) of

which stated as follows:

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324. Superintendence, direction and control of elections to be vested in an Election Commission:

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

The text of Article 324 of the Constitution is appended herewith as **Appendix-A (pp. 25 to     )**.

b. The Representation of the People Act, 1951 (hereinafter referred to as "**Act**") was enacted by the Parliament of India on 17.07.1951. Sec. 73 provides for the Publication of results of general elections to the House of the People and the State Legislative Assemblies and Sec. 169 of the Act confers rule-making powers on the Central Government.

The text of Section 73 and 169 of the Representation of the People Act, 1951 is appended herewith as **Appendix-B (pp. 26 to 27 )**.

c. Under Sec. 169 of Act, Conduct of Elections Rules, 1961 (hereinafter referred to as "**Rules**") came into force on 25.04.1961. Rule 56 provides for the procedure to be adopted in Counting of Votes and

thereafter, the announcement of results. Rules 56(7)

states as follows:

56. (7) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed,

(a) the counting supervisor shall fill in and sign Part II—Result of Counting, in Form 16, which shall also be signed by the returning officer; and

(b) the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars.

The text of Rule 56 of the Conduct of Elections Rules, 1961 is appended herewith as **Appendix-C** (pp. 28 to 29 ).

- d. The Conduct of Election Rules, 1961 made under the Act provides for specific statutory forms which have to be maintained and shared with the candidates participating in the election through their election/polling agents, including -
- i. **FORM 17A** (Register of Voters) – The register sets out the list of eligible voters who were present and permitted to vote after verification.
  - ii. **FORM 17B** (List of Tendered Votes) - In cases where a vote has already been cast against the name of a voter in his/her absence, the Presiding Officer has the power to issue a tendered vote form, and separately record their vote under Form 17B.
  - iii. **FORM 17C PART I** (Account of Votes Recorded) – At the end of a polling day, the total number of votes tendered at every

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EVM is recorded under Form 17C. The form records the control unit number, ballot unit number, and the VVPAT number (if any). It also sets out the total number of electors assigned to the polling station (present and those on election duty), number of voters who turned up to vote (as recorded under Form 17A). It also records the number of voters who did not either vote after verifying themselves (under Rule 49O) or were not allowed to vote (under Rule 49M). The form also records the number of test votes that were punched at the time of testing, so that the number is subtracted from the final number. Form 17C is kept along with the respective EVMs and a copy is issued to each polling agent at the close of the election.

- iv. **FORM 17 C PART II** (Result of Counting) - At the time of counting, each counting table records the number of votes secured by the candidates in an EVM. This data for each EVM is recorded under Form 17C, verified by the counting agents present, and then shared with the counting table for aggregation. The form is only shown to the counting agents of candidates to enable them to note down the results of each candidate and a copy of the form is not issued to each agent. The rules mandate that Returning Officer countersign the Form after satisfying himself/herself that the same has been properly filled and completed in all respects. The Form so

countersigned by the Returning Officer is sent to the officer who is compiling the final result and preparing the Final Result Sheet in Form 20.

- v. **FORM 20** (Counting of Votes) - The final tally of votes counted based on the EVMs (for each round) and postal votes are recorded under Form 20 for declaration and certification.

A format of Form 17C and Form 20 appended to the Conduct of Elections Rules, 1961 is appended herewith as **Appendix-D (pp. 30 to 36.)**

- e. While Form 17A is made public and a copy to Form 17C Part I is provided to the polling agent of each candidate, Form 17 C Parts I & II and Form 20 are not made public. Form 17 C Part II is only shown to the counting agents of candidates for them to note down and copies of Form 20 can be obtained by Candidates on payment of a certain fee, as provided in Handbook for Candidates published by the ECI on 07.09.2018. However, Form 17C Part I, Form 17C Part II and Form 20 are not accessible to the public at large, in the absence of a rule providing for publication or due reporting.

A true copy of relevant extracts from the Election Commission's Handbook for Candidates dated February, 2019 is annexed herewith as **Annexure-2 (pp. 42 to 72).**



f. Information collected in Form 20 is also crucial for the determination of critical polling stations. Polling Stations where the percentage of poll recorded is found to be more than 75% and where more than 75% of votes have been recorded in favor of one candidate are identified as a critical polling station and specific measures are undertaken to ensure free and fair elections therein. On 24.12.2018, ECI addressed a letter to all Chief Electoral Officers of all States and Union Territories directing the analysis of Form-20 Results from past general elections.

A true copy of the Election Commission's Letter No.464/INST/2008-EPS dated 24.10.2008 is annexed herewith as **Annexure-3** (pp. 73 to 75 ).

g. In February 2019, ECI published the Handbook for Counting Agents providing for the procedure which compiling the final result and preparing Form 20. It provided that entries made in Form 20 in respect of each polling station shall be announced so that the candidates and their agents may take note of the result of counting in respect of each polling station.

A true copy of relevant extracts from the Election Commission's Handbook for Counting Agents dated February, 2019 is annexed herewith as **Annexure-4** (pp. 76 to 87 ).

h. By way of convention, the ECI has published the Form 20 of every constituency for every Parliamentary and Assembly Election since 2004, but the practice discontinued for the 2019 Parliamentary Elections without disclosing any reason.

A list of Parliamentary and Assembly Elections for which Form 20 for each constituency is available on the website of the ECI is annexed herewith as **Annexure-5 (pp. 88 to 91 )**.

i. It is pertinent to note that out of the 7 Phases of the 2019 Lok Sabha Elections, Form 20s were initially published on the website of the ECI. for the first 4 phases. However, upon the emergence of certain discrepancies in the data between the total number of votes polled EVMs and the votes counted on EVMs, the information about the first 4 phases was retracted without any justification. No publishing has since taken place for any Phase of the Parliamentary Election on the website of the ECI.

j. Form 20 data for the 2019 Parliamentary Elections is being hosted on the websites of respective sites of Chief Electoral Officers of some States and Union Territories in no particular timeline or format. Such reporting is not being carried it uniformly across states in the absence of a Statutory framework laid out by the ECI mandating the procedure and

timeline to be followed in reporting of Form 20 information. Pertinently, Form 17 Part II data which is proof of the accuracy of the election result and is countersigned by the polling and counting agents of the candidates are not published at all.

- k. According to a report published on the Quint, it was found that surplus votes counted were found in 220 of the 373 constituencies polled in the first four phases.

A copy of the News Article published on Quint titled 'EVM Vote Count Mismatch In 370+ Seats and EC Refuses to Explain' dated 31.05.2019 is annexed herewith as **Annexure-6 (pp. 92 to 102)**.

- l. According to certain reports, surplus votes counted were found in 220 of the 373 constituencies polled in the first four phases. For instance, as per the data published by the ECI initially,
- In Kancheepuram, Lok Sabha seat in Tamil Nadu, 12,14,086 EVM votes were polled, and 12,32,417 EVM votes counted – a surplus of 18,331 EVM votes.
  - In Dharmapuri, Lok Sabha seat in Tamil Nadu, 11,94,440 EVM votes were polled, and 12,12,311 EVM votes counted – a surplus 17,871 EVM votes.
  - In Mathura, Lok Sabha seat in Uttar Pradesh, 10,88,206 EVM votes were polled, and 10,98,112 EVM votes counted. A surplus of 9,906 EVM votes.

m. Researchers and analysts noted glaring inconsistencies in the data published by the ECI.

Research conducted by the Commonwealth Human Rights Initiative finding several discrepancies in the information published by the ECI.

A copy of Report published by the Commonwealth Human Rights Initiative titled 'BEL Refuses to Disclose EVM/VVPAT Info Under RTI After Demanding Fees: Randomization as A Safeguard Is Questionable Based on Manufacturer Data Supplied Under RTI' dated 04.09.2019 is annexed herewith as **Annexure-7 (pp. 103 to 116).**

A true copy of News Article published on News click titled 'Thousands of Phantom Votes Suspected Across Lok Sabha Seats in Bihar, UP' dated 28.05.2019 is annexed herewith as **Annexure-8 (pp. 117 to 120).**

n. Certain other reports claim that the total difference between the votes polled during the seven-phase election and the votes counted on May 23, 2019, stands at a total of 5.465 million.

A true copy of News Article published on 31.05.2019 titled 'Why EC Owes an Answer to the Country Over Phantom Votes' is annexed herewith as **Annexure-9 (pp. 121 to 127).**

o. In the wake of such instances, the faith of the electorate in the democratic process is being severely affected. In the absence of publishing of Form 17C Part I, Form 17C Part II and Form 20 results for each constituency, there are no avenues available to the voters to render public examination of the results in a reliable and transparent manner. There are no safeguards under the existing procedure adopted by the ECI which allows the transmission of reliable and infallible information about the integrity of the election process.

p. In view of the absence of statutory requirement on part of the ECI to disclose primary data about the Election Results and provide the electorate with due information about the integrity of the Election Process in Final Result Sheet ("Form-20"), Account of Votes Recorded ("Form 17C Part I") & Result of Counting ("Form 17 C Part II"), the present Writ Petition is preferred in public interest.

7. The present Writ Petition is hence preferred on the following Grounds:

8.

#### **GROUND**

A. That the Citizens of India have a Fundamental Right to receive information relating to the validity of Election

Process under Article 19(1)(a) of the Constitution of India.

B. This right to receive information has been recognized as a facet of Fundamental Right to Speech and Expression by this Hon'ble Court in –

- a. State of U.P. v. Raj Narain, (1975) 4 SCC 428
- b. S.P. Gupta v. Union of India, 1981 Supp SCC 87
- c. Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641
- d. Reliance Petrochemicals Ltd. v. Indian Express Newspapers, (1988) 4 SCC 592
- e. Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161
- f. Dinesh Trivedi v. Union of India, (1997) 4 SCC 306
- g. Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294
- h. People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399
- i. Namit Sharma v. Union of India, (2013) 1 SCC 745
- j. Resurgence India v. Election Commission of India, (2014) 14 SCC 189
- k. Lok Prahari v. Union of India, (2018) 4 SCC 699
- l. Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639
- m. Public Interest Foundation v. Union of India, (2019) 3 SCC 224

In **S.P. Gupta v. Union of India**, 1981 Supp SCC 87,

P.N. Bhagwati, J. in his judgment opined:

67. ...This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The

approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest...

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In **Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal**, (1995) 2 SCC 161, P.B.

Sawant, J. wrote:

36. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression...

43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press...

C. In the electoral process, the right of the citizens under Article 19(1)(a) includes the receiving of requisite information to enable the citizen to give an expression of her/his choice by casting a vote. As summarily concluded by this Hon'ble Court after referring

to precedents in **Resurgence India v. Election Commission of** 15

**India**, (2014) 14 SCC 189:

20... a voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires.

In **Union of India v. Assn. for Democratic Reforms**,

(2002) 5 SCC 294, it was held:

38. If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter — a little man — to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and



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expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy.

D. Democracy has been recognized to be a part of the Basic Structure of the Constitution by this Hon'ble Court, being an overarching principle linking all provisions of the Constitution. Since the encapsulation of the Basic Structure Doctrine in **Kesavananda Bharati and Ors. v. State of Kerala and Anr.** (1973) 4 SCC 225, Democracy has been recognized to be a part of the Basic Structure of the Constitution.

E. Free & fair elections (meaning elections free from the control or influence of any political party) have also been held to be part of the basic structure in **Indira Gandhi v. Raj Narain**, 1975 Supp SCC 1 and in **re (Gujarat Assembly Election matter)**, (2002) 8 SCC 237.

F. In a representative democracy, the most crucial facet of governmental transparency is the transparency of the electoral process. Elections by way of adult suffrage are the hallmark of self-government, and transparency during the electoral process – right from the time elections are announced till the time the results are declared – is essential to ensure accountability of the agency responsible for conducting the exercise (i.e., the Election

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Commission). In turn, this accountability is the most effective tool to preserve the integrity and sanctity of the electoral process, and hence also of the democratic setup. It follows that every citizen has a fundamental right to receive free and accurate information about the electoral process. In **Dinesh Trivedi v. Union of India**, (1997) 4 SCC 306, it was noted:

16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.

G. Furthermore, the primary link between the State and the citizenry is the election process, where voting choices and patterns articulate the true beliefs and expectations of the citizens of our country. Information critical to the validity and integrity of the election and practices will allow public examination and scrutiny of the election process and will countermand any cynicism about the democratic ethos which flows in all provisions of the Constitution of India.

H. Furthermore, it is imperative on the part of the Election Commission of India, the constitutional authority responsible for superintendence, direction, and control of elections under Article 324 to take positive steps to provide the electorate with sufficient infallible data regarding each election.

I. Article 324 of the Constitution of India vests the "conduct" of elections exclusively in the ECI. When the constitution of a democracy vests the solemn function of the "conduct" of elections in a body and provides constitutional protection to the said body, it follows that the procedure to be adopted by the ECI while conducting elections must be in consonance of principles of democracy and self-governance.

J. Article 326 of the Constitution of India embodies the idea of universal adult suffrage which mandates that each and every vote cast shall be counted for the purposes of government formation. Any manipulation of election results causes a direct affront to this solemn principle. As discussed by P. Venkatarama Reddi, J. in **People's Union for Civil Liberties (PUCL) v. Union of India**, (2003) 4 SCC 399:

94. The trite saying that "democracy is for the people, of the people and by the people" has to be remembered forever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a candidate. "Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue", as observed by this Court in *Lily Thomas v. Speaker, Lok Sabha* [(1993) 4 SCC 234] ... To scuttle the flow of information — relevant and essential — would affect the electorate's ability to evaluate the candidate. .... An enlightened and informed citizenry would undoubtedly enhance democratic values. Thus, the availability of proper and relevant information about the candidate fosters and promotes the freedom of

speech and expression both from the point of view of imparting and receiving the information. In turn, it would lead to the preservation of the integrity of electoral process which is so essential for the growth of democracy...

K. In the absence of a Statutory framework mandating the due reporting and publishing of Form 17C Part I and II & Form 20 for each Parliamentary and Assembly Elections, there is no mandate being implemented to publish the Statutory forms and enhance the accountability of an election result.

L. Reporting of information, in limited circumstances, is not conducted within a reasonable period of time post the counting stage. In some states, Form 20 information has been published after the declaration of results and the swearing-in of the Ministers, thus not providing the citizenry with an opportunity to validate the result publicly before the candidate takes up the Office of a Member of Parliament or a Member of the Legislative Assemblies of States. In the wake of discrepancies in data, doubts arise about the manipulation of election results, in the absence of transparent practices and checks of accountability.

M. Information collected in Form 17C Part I, Form 17C Part II and Form 20 provides reliable data about the election result which cannot be manipulated. In the absence of due reporting of the same, the citizenry has no avenues to examine the validity of an election and pacify any reservations about the validity of the

Election Process. There is no grievance redressal mechanism available to citizens to require the ECI to publish the said statutory forms and seek resolution to any discrepancy in election results.

N. In the wake of discrepancies in information published in the First 4 Phases of the 2019 Parliamentary election, reservations about the credibility of the democratic process need to be quelled and positive measures should be undertaken to revive faith in democracy and constitutionalism.

O. Form 17C Part I and II are prepared at the close of the poll, as per Rule 49-S, and should be published within a period of 48 hours from the preparation of the Form at the closing of the Post-Polling Stage.

P. Form 20 is prepared at the end of the Counting Stage, as per Rule 56, and should be published within a period of seven days from the preparation of the Form and the declaration of results in the Constituency.

9. PRAYER:

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased:

- a. **ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT** directing the Respondent to publish on the website of the Election Commission of India the constituency-wise information collated in Form 17C Part I and Form 17C Part II for every subsequent Parliamentary and Assembly Election as per Rule 49-S, within a period of Forty-Eight hours from preparation of the Form ;
- b. **ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT** directing the Respondent to publish on the website of the Election Commission of India the information collated in Form 20 for every subsequent Parliamentary and Assembly Election as per Rule 56, within a period of seven days from the declaration of results in the constituency;
- c. **ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT** directing the Respondent to formulate a protocol mandating due reporting of Form 17C Part I, Form 17C Part II and Form 20 after each Parliamentary and Assembly Election, specifically providing for a strict timeline of 48 hours and seven days, respectively, to be followed as well as a grievance redressal mechanism in any case of breach of the

guidelines framed or discrepancies between the information  
published in Form 17C and Form 20; and

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d. **PASS** any such other orders as this Hon'ble Court may deem fit  
in the facts and circumstances of this case.

*And for this act of kindness, the petitioner as in duty bound shall ever pray.*

Drawn by:

VISHAL SINHA, Advocate

Settled By:

GOPAL SANKARANARAYANAN, Senior Advocate

DATE: 04.11.2019

Filed By:

Place: New Delhi

SAMEER SHRIVASTAVA

Advocate for The Petitioner

**IN THE SUPREME COURT OF INDIA**

**CIVIL EXTRAORDINARY JURISDICTION**

**WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2019**

**[Under Article 32 of the Constitution of India]**

**IN THE MATTER OF:**

Mahua Moitra .....Petitioner

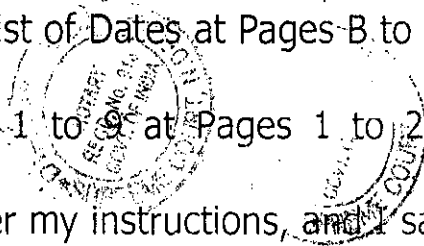
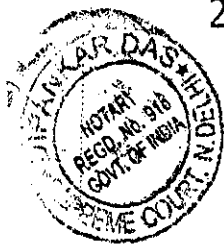
Versus

Election Commission of India .....Respondents

**AFFIDAVIT**

I, Mahua Moitra, D/o Dwipendra Lal Moitra, aged about 44 years, resident of 7A, Fl – 9A, Judges Court Road, Ward No. 74, Kolkata – 700027 presently residing at 11/1 Sarvpriya Vihar, New Delhi-110016, do hereby solemnly affirm and declare as under:

1. That I am the Petitioner in the above matter and I am conversant with the facts and circumstances of the case and hence competent to swear to this affidavit.
2. That I have read and understood the contents of the accompanying Synopsis and List of Dates at Pages-B to E, the Writ Petition from Paras 1 to 9 at Pages 1 to 22, which have been drafted under my instructions, and I say that the contents thereof are true and correct to my knowledge and belief.
3. That the deponent has no personal gain, private motive or oblique reason in filing this Writ Petition.





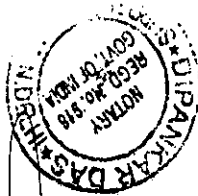
4. That the annexures with the Petition are true copies of <sup>24</sup>  
their respective originals.

*[Signature]*  
DEPONENT

VERIFICATION

Verified at New Delhi on 21 day of October, 2019 that the contents of Paragraph 1 to 3 of the above affidavit are true and correct to the best of my knowledge and as derived from record and nothing material has been concealed therefrom.

*[Signature]*  
DEPONENT



ATTESTED

LIPANKAR DAS  
NOTARY PUBLIC  
R.K. GARG BLOCK  
SUPREME COURT

21.10.19

*[Signature]*  
ATTESTED

*[Signature]*  
co-2438

Constitution of India

**Article 324** - Superintendence, direction and control of elections to be vested in an Election Commission.

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(True copy)

**APPENDIX-B**Representation of People Act, 1951

**Section 73** – Publication of results of general elections to the House of the People and the State Legislative Assemblies.

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette, as soon as may be after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153 have been declared by the returning officer under the provisions of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed—

a) to preclude—

i. the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30; or

ii. the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of section 153; or

b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.

**Section 169 - Power to make rules.**

(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(Type copy)

**APPENDIX-C**Conduct of Elections Rules, 1961**Rule 49S - Account of votes recorded**

(1) The presiding officer shall at the close of the poll prepare an account of votes recorded in Form 17C and enclose it in a separate cover with the words 'Account of Votes Recorded' super scribed thereon.

(2) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in Form 17C after obtaining a receipt from the said polling agent therefor and shall attestit as a true copy.

**Rule 56 - Counting of Votes**

(7) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed, —

(a) the counting supervisor shall fill in and sign Part II—Result of Counting, in Form 16, which shall also be signed by the returning officer; and

(b) the returning officer shall make the entries  
in a result sheet in Form 20 and announce the  
particulars.

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(True copy)

Conduct of Elections Rules, 1961

**FORM 17C**

[See rules 49S and 56C(2)]

**PART I—ACCOUNT OF VOTES RECORDED**

Election to House of the People/Legislative Assembly of  
the State/Union territory \_\_\_\_\_ from \_\_\_\_\_  
Constituency.

No. and Name of Polling Station \_\_\_\_\_.

Identification No. of Voting Control Unit \_\_\_\_\_.

Machine used at the Polling Station balloting Unit:

\_\_\_\_\_

1. Total No. of electors assigned to the Polling Station \_\_\_\_\_
2. Total No. of voters as entered in the Register for Voters (Form 17A) \_\_\_\_\_
3. No. of voters deciding not to record votes under rule 49-O \_\_\_\_\_
4. No. of voters not allowed to vote under rule 49M \_\_\_\_\_
5. Total No. of votes recorded as per voting machine \_\_\_\_\_
6. Whether the total No. of votes as shown against item 5 tallies with the total No. of voters as shown

against item 2 minus Nos. of voters deciding not  
to record votes as against item 3 minus No. of  
Voters as against item 4 (2-3-4) or any  
discrepancy noticed \_\_\_\_\_

31

7. No. of voters to whom tendered ballot papers  
were issued under rule 49P \_\_\_\_\_

8. No. of tendered ballot papers.

Sl. No.

From

To

(a) received for use

\_\_\_\_\_  
\_\_\_\_\_

(b) issued to electors

\_\_\_\_\_  
\_\_\_\_\_

(c) not used and returned

\_\_\_\_\_

9. Account of papers seals

Sl. Nos.

From To

Signature of polling agents.

1. Serial Numbers of paper seals

1. \_\_\_\_\_

supplied

2. \_\_\_\_\_

From .....to .....



- 2. Total Numbers supplied 3. \_\_\_\_\_
- 3. Number of paper seals used 4. \_\_\_\_\_
- 4. Number of unused paper seals 5. \_\_\_\_\_  
returned to Returning Officer 6. \_\_\_\_\_  
(Deduct item 3 from item 2)
- 5. Serial number of damaged paper seal, if any

Date.....

Signature of Presiding Officer

Place.....

Polling Station No .....

PART II — RESULT OF COUNTING

33

Sl. No.	Name of Candidate	No. of Votes Recorded
1.		
2.		
3.		
4.		
5.		
6.		
Total		

Whether the total nos. of votes shown above tallies with the total No. of votes shown against item 5 of Part I or any discrepancy noticed between the two totals.

Place.....

Date.....

Signature

of Counting Supervisor

Name of candidate/election agent/counting agent

Full signature 1

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Date.....

Signature of Presiding Officer

Place.....

**FORM 20**

35

[See rule 56(7)]

**FINAL RESULT SHEET**

(To be used for recording the result of voting at polling stations other than notified polling stations)

Election to the \_\_\_\_\_ from \_\_\_\_\_ constituency.

**PART I**

(To be used both for Parliamentary and Assembly elections)

Name of the Assembly segment (in the case of election from a Parliamentary constituency) \_\_\_\_\_

Total No. of electors in Assembly constituency/segment \_\_\_\_\_

Serial No. of Polling Station	No. of Valid votes Cast in favour of A B C	Total of Valid Votes	No. of Rejected Votes	Total No. of tendered Votes
1.				
2.				
3.				
etc.				

TOTAL No. of votes recorded at Polling Stations.

No. of votes recorded on postal ballot papers.  
(To be filled in the case of election from an Assembly constituency.)

TOTAL votes polled.

Place.....  
Returning Officer  
Date.....

PART II

36

(To be used for a Parliamentary election only)

Name of Assembly Segment	No. of Valid votes Cast in favour of A B C	Total of Valid Votes	No. of Rejected Votes	Total No. of tendered Votes
1.				
2.				
3.				
etc.				
<hr/>				
TOTAL				
<hr/>				
No. of votes recorded on postal ballot papers.				
<hr/>				
GRAND TOTAL				

Place.....  
Returning Officer .  
Date.....

(True copy)

**MAHUA MOITRA**  
**Curriculum Vitae**

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**EXPERIENCE:**

**MEMBER PARLIAMENT:** currently serving as Member Parliament, after being elected from Krishnanagar in 2019 Lok Sabha Elections.

- Member, Standing Committee on Information Technology

**MEMBER, WEST BENGAL LEGISLATIVE ASSEMBLY,**  
KARIMPUR, NADIA

- Elected to the WBLA in May, 2016 from Karimpur constituency in Nadia district by a margin of 16,000 votes on an All India Trinamool Congress ticket; Karimpur had been held by the CPIM continuously since 1977
- Member, Standing Committee On Public Estimates, West Bengal Legislative Assembly
- Member, Standing Committee On Health And Family Welfare, West Bengal Legislative Assembly

**ALL INDIA TRINAMOOOL CONGRESS, CALCUTTA, INDIA**

***General Secretary, 2010 – Present***

**INDIAN NATIONAL CONGRESS**

***State head of AAKS, youth development programme***  
***, 2009 –2010***

- Part of the core committee of the party. Work with the party organization across various levels in districts and state; responsible for booth level cadre-building across all blocks;

co-ordinate grassroots development programmes in areas of rural employment, rural electrification, primary healthcare, education and social welfare

- Responsible for the state-wide implementation and monitoring of AAKS, a national grassroots level movement initiated by the youth wing of the Indian National Congress aimed at popularizing and implementing central government programmes such as the National Rural Employee Guarantee Act and the National Healthcare Missions at the village level
- Worked directly with the Chairman Media Cell Indian National Congress in analysing the Indo-US Civil Nuclear Agreement for presenting to Parliament
- Worked extensively on a direct basis with Mr. Pranab Mukherjee, Hon'ble Finance Minister Government of India (Now Hon'ble President of India) on implementing all grass-root level developmental programmes in selected constituencies in West Bengal. Also researched and assisted on working papers, material for parliamentary committees on a variety of topics including need for privatization of public sector enterprises, public private partnerships in infrastructure and development of rural areas

## **JPMORGAN**

***Vice President, Special Situations, Proprietary Positioning Business (PPB), London, 2006-2009***

- Responsible for investing JPMorgan's proprietary capital in Europe as part of the 4 member PPB team focussing on equity special situations – fund size of US\$900mm
- Invested in announced and pre-announced deals involving special situations including risk arbitrage, holding companies and dual listings; responsible for P&L of risk arbitrage positions

- Responsible for idea generation in special situations including events, risk arbitrage, holding companies and dual listings across a spectrum of products including cash, options and swaps
- Proven track record of generating revenues for the bank by putting on equity and options positions via derivative and cash trading desks

## **JPMORGAN**

***Associate, M&A Valuation & Analytical Policy Team, London, 2002- 2004***

***Vice President, M&A Valuation & Analytical Policy Team, London, 2004- 2006***

- Worked alongside industry groups on all aspects of M&A valuation in marketing and execution assignments
  - Advised JPMorgan clients in Europe and the United States on valuation and capital structure including dividend policy and distribution
  - Developed and applied an option pricing model for pharmaceutical and biotechnology companies to value drugs in pipeline; similar application for mining stocks to value reserves and resources
  - Worked on extensive capital structuring assignments for Siemens AG, Philips NV, Vodafone, Reed Elsevier, Daimler Chrysler, Novartis, Ericsson, Nokia, Microsoft, IBM, St. Pauls Travelers, Tiffany, Wal-Mart
- Advised the Republic of South Africa on Black Economic Empowerment (BEE), program launched to redress Apartheid-era inequalities by ensuring economic participation of previously disadvantaged groups – worked with various entities including Telkom SA, Sasol, Standard Bank to ensure compliance with BEE ownership regulations



**Analyst & Associate, Financial Institutions Group,  
London & New York, 1998- 2002**

- Coverage of banks and insurance companies in Emerging Europe, Mediterranean and Gulf regions. Responsibilities included marketing and executing advisory services. Transactions include privatizations, bank restructurings, cross-border and local acquisitions and divestitures.
- Gained experience across full spectrum of advisory assignments, including:
  - *Restructuring:* Advised the Republic of Turkey on a complete restructuring of its banking system post its liquidity crisis of early 2001 – individual valuations and sell side advisory included Yapikredi, Koçbank, Akbank, Disbank
  - *Valuation:* Expert valuation of the merger of CSOB/IPB, the largest bank by assets in the Czech Republic
  - *Buy-side advisory:* Advised on the minority buy-out of Ceska Sporitelna; Deal size: US\$660 mm; Advised on the purchase of Rijecka Banka; Deal size: US \$140 mm; Advised on the minority buy-out of Inter-Europa Bank in Hungary; Deal size: US\$40 mm
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(True-Copy)



सत्यमेव जयते

# HANDBOOK FOR CANDIDATE

भारत निर्वाचन आयोग

FEBRUARY 2019

भारत निर्वाचन आयोग  
ELECTION COMMISSION OF INDIA

"No voter to be left behind"

# HANDBOOK FOR CANDIDATE

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16.20.25. It is important that soon after the counting is finished, the fully reconciled counting data is tabulated and checked thoroughly before the result is formally declared.

16.20.26. The Observers will ensure that the Final Result Sheet in form 20A is filled by the RO before he declares the result in Form 21 C and sends it to appropriate quarters. One copy each of the Forms 20 A, 21C and 21E duly filled in will be collected by the Observers and attached with their reports on counting.

16.20.27. Commission has decided that all Observers will keep a close watch on the process of counting of votes and compilation of results. Before the Returning Officer declares result of an election, he/she shall obtain an authorization for declaration of result from the Observer concerned. Every Observer shall completely satisfy himself/herself about the fairness of counting of votes and complete accuracy of compilation of result. After having done so, he/she shall issue an authorization to the concerned Returning Officer in the following format for declaration of result: -

"\_\_\_\_\_ Observer (Code\_\_\_\_), For \_\_\_\_\_Assembly Constituency after having satisfied myself about the fairness of counting of votes and complete accuracy of compilation of result in Form-20 hereby authorize the Returning Officer for \_\_\_\_\_Assembly Constituency to declare the result."

Signature of the Observer\_\_\_\_\_

Name of the Observer\_\_\_\_\_

Code of the Observer\_\_\_\_\_

Assembly Constituency No. & Name\_\_\_\_\_

16.20.28. No Returning Officer shall declare the result without receiving the authorization in the format above from the Observer. It shall be the personal responsibility of the Observer and Returning Officer to ensure fairness of counting of votes and accurate compilation of results.

16.20.29. It shall be the personal responsibility of the concerned District Election Officer to ensure that all the above-mentioned instructions are strictly complied with and brought to the notice of all the Returning Officers, Observers, Candidates, Counting Agents etc sufficiently before the commencement of the Counting.

## **16.21. MAINTENANCE OF SECRECY**

16.21.1. Every person inside the counting hall is required by law to maintain, and to aid in maintaining, the secrecy of voting and should not communicate to any person any information calculated to violate such secrecy. They should note that any person

contravening the provisions of law in this respect is liable to be punished with imprisonment for a term which may extend to 3 months or with fine or with both (Section 128 of the R.P. Act, 1951)

16.21.2. Before the commencement of the counting of votes, the Returning Officer will read out and explain the provisions of the above-mentioned Section 128 for the information of all present and for compliance on their part.

## **16.22. COUNTING TO BE CONTINUOUS**

16.22.1. The counting of votes will, as far as practicable, be proceeded with continuously till it is over.

## **16.23. COUNTING OF POSTAL BALLOT PAPERS FIRST**

On the counting day, the postal ballot counting will be taken up first and after a gap of 30 minutes, the EVM counting can also start. There should be a separate table and separate arrangement for the counting of postal ballots. For every 500 postal ballot papers, extra table should be used for counting. Returning Officer will be responsible for counting of postal ballot paper at his table. One Assistant Returning Officer shall be dedicated to handle the postal ballot counting. The Observer and Returning Officer should closely monitor the progress made in postal ballot counting as well as EVM counting simultaneously. The candidates/their election agents shall be advised to nominate a separate counting agent and he may remain present near the table where the postal ballot counting taking place.

### **(A) COUNTING OF ELECTRONICALLY TRANSMITTED POSTAL BALLOT PAPERS (ETPBs) FOR SERVICE VOTERS**

16.23.1. Counting of ETPBs shall be done at Returning Officer's table as in the case of the other postal ballots. Only such Postal Ballots as are received before the hour fixed for commencement of counting shall be counted.

16.23.2. First Phase: Opening of Form 13-C (Outer Envelope): The covers in Form 13-C received in time should be verified and opened one after another. QR code on the Outer Envelope will be scanned using a computer software and QR code reader and necessary validity checks will be performed. After verification of the outer envelope, a unique serial number will be provided by the computer. This serial number will also be manually marked by RO on the envelope being verified. The computer software will check the entry in the QR code for any possible duplicates in the list of Postal Ballots received and flag a warning for such cases. The computer software will also provide the list of serial numbers which are all duplicate to the Postal Ballot being handled. The RO

will locate all such duplicate envelopes as indicated by the computer software and keep them together physically and invalidate all such duplicate/multiple votes. All such envelopes declared invalid shall not be opened for further processing and will be kept aside and preserved for future reference. Number of such duplicate Postal Ballots shall be marked in the register. On opening the cover "B" (Form 13C), two documents are required to be found inside. The first is the declaration by the voter in Form 13A and the second the inner cover i.e. Form 13B containing the Postal Ballot Paper. As each cover is opened, RO should take out the declaration in Form 13A and the cover in Form 13B, scan, verify and then scrutinize the declaration.

16.23.3. Before opening the cover in Form 13B containing the Postal Ballot Paper, the Returning Officer must check the declaration in Form 13A and all such forms 13A must be kept separately and sealed, before taking up Form 13B for opening and counting. Returning Officer will reject a Postal Ballot without opening its inner cover in Form 13B if:

- the declaration in Form 13A is not found in the cover, or
- the Electronic Postal Ballot Identification Number (e-PBID) in the declaration in Form 13A does not match the issued e-PBID, or
- the declaration has not been duly signed and, or not attested by an officer competent to do so, or the e-PBID of Postal Ballot appearing in the declaration is different from the e-PBID on the cover in Form 13B.

16.23.4. Each such rejected cover should be endorsed suitably and the declaration and the cover should be placed back in the cover in Form 13C (Outer Envelope). All such covers in Form 13C should be kept together in a separate packet duly sealed and full particulars such as the name of the constituency, the date of counting and a brief description of contents should be noted thereon for easy identification. All the declarations in Form 13A, which have been found to be in order, should then be kept separately for counting.

16.23.5. For further counting, all instructions for counting of postal ballot paper shall apply.

16.23.6. Scanning of QR Codes SHOULD be done in the sequence without fail. Form 13C should be scanned first, followed by both the QR Code on Form 13A and then Form 13B. Sequence of QR code scanning should not be changed under any circumstances.

#### **(B) COUNTING OF POSTAL BALLOT PAPERS**

- 16.23.7. Each postal ballot paper received from a voter will be contained in an inner cover in Form 13B. This cover along with the declaration of the elector in Form 13A will be contained in a larger cover in Form 13C addressed to the Returning Officer.
- 16.23.8. The Returning Officer will not open any cover in Form 13C containing a postal ballot paper which he has received late, that is, after the time fixed for the commencement of counting. He will make a suitable endorsement for this purpose on the outside of the cover in Form 13C. The votes contained in these covers will not be counted. He will make a packet of all such covers and seal the packet.
- 16.23.9. All covers in Form 13C containing postal ballot papers which were received in time by the Returning Officer will be opened by him, one after another. The declaration by the voter in Form 13A will be found inside each cover in Form 13C. Before opening any of the inner covers in form 13B containing the postal ballot papers proper, the Returning Officer will check the declarations (From 13A). He will reject a ballot paper without opening its inner cover (Form 13B) in any of the following cases:
- a. If the declaration in Form 13A is not found in the cover in Form 13C;
  - b. If the declaration has not been duly signed by the elector or has not been duly attested by an officer competent to do so or is otherwise substantially defective; N.B.: It may be noted that it is not necessary under the rules that the officer attesting the declaration should affix his seal and the objection should not, therefore, be raised on this ground if the identity of the attesting officer is otherwise known from the particulars about his designation, address etc., furnished in the form.
  - c. if the serial number of the ballot paper appearing on the declaration is different from the serial number as endorsed on the inner cover in Form 13B.
- 16.23.10. All such rejected covers in Form 13B will be suitably endorsed by the Returning Officer, and will be replaced with the respective declarations in the larger covers in Form 13C. All such larger covers will be kept in a separate packet which will be sealed by the Returning Officer and full particulars, such as the name of the Constituency, the date of counting, and a brief description of the contents will be noted thereon for identifying the packet.
- 16.23.11. Thereafter, the Returning Officer will proceed to deal with the remaining covers in Form 13B, i.e., other than those rejected as aforesaid. In order that there may be no case of the secrecy of the postal votes being violated, all the declarations in Form 13A which are found by the Returning Officer on scrutiny to be in order will first be placed in a separate packet and sealed. Identifying particulars will be noted on the packet. It is necessary to put these declarations away in a sealed packet before any

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ballot papers proper are brought out of their covers in Form 13B, as the declarations contain the names of the voters along with the respective serial numbers of their postal ballot papers.

16.23.12. After the above procedure has been completed, the Returning Officer will proceed to open the covers in form 13B, one after another, and the postal ballot papers contained in them will be brought out. The Returning Officer will scrutinize every such ballot paper and decide its validity.

16.23.13. A postal ballot paper will be rejected -

- a. if no vote is recorded thereon; or
- b. if votes are given on it in favour of more than one candidate; or
- c. if it is a spurious ballot paper; or
- d. if it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or
- e. if it is not returned in the cover sent along with it to the elector by the Returning Officer; or
- f. if the mark indicating the vote is made in such a way that it is doubtful to make out the candidate to whom the vote has been given; or
- g. if it bears any marks or writing by which the voter can be identified.

16.23.14. There is no particular mark required by law to be made by a voter to indicate his vote on a postal ballot paper. Any mark can be accepted as valid so long as it has been so made and so placed on the ballot paper that the intention of the voter to vote for a particular candidate is clear beyond any reasonable doubt. Thus, a mark made anywhere in the space allotted to a candidate will be taken as a valid vote in favour of the candidate concerned. Again, a vote recorded on a postal ballot paper will not be rejected merely on the ground that the mark indicating the vote is not distinct or made more than once for the same candidate, if the intention that the vote should be for a particular candidate clearly appears from the way the paper is marked.

16.23.15. The valid votes will then be counted and each candidate credited with the votes given to him. The total number of postal votes received by each candidate will then be counted, entered in the result sheet in Form 20 and announced for the information of the candidates/election agents/counting agents.

16.23.16. Thereafter, all the valid postal ballot papers and all the rejected postal ballot papers will be separately bundled and kept together in a packet and sealed with the seal of the Returning Officer, and the seals of such of the candidates, their election agents or

counting agents (not exceeding two in respect of any one candidate) as may desire to affix their seals thereon.

16.23.17. Under no circumstances, the results of all the rounds of the EVM counting should be announced before finalizing the postal ballot counting.

16.23.18. In case, the victory is being decided only on account of postal ballot counting there should be a mandatory re-verification. In the presence of Observer and Returning Officer, all the postal ballot papers rejected as invalid as well as the votes counted in favour of each and every candidate shall be once again be verified and tallied. The Observer and Returning Officer shall record the findings of the re-verification and satisfy themselves before finalizing the result.

16.23.19. Whenever such re-verification/recounting is done, the entire proceeding should be video-graphed without compromising the secrecy of ballot and the videocassette/ CD should be sealed in a separate envelope for future reference.

#### **16.24. COUNTING OF VOTES POLLED AT POLLING STATIONS**

16.24.1. While the postal ballot papers are being counted by the Returning Officer at his table, the counting of votes recorded at polling stations by means of EVMs will also be taken up by the Assistant Returning Officer(s) at the other tables provided in the counting hall. For that purpose, the Control Units of EVMs received from the polling stations will be distributed to the various counting tables, beginning with the Control Unit of EVM of polling station No. 1, being distributed to table No. 1, the Control Unit of EVM of polling station No.2 being distributed to table No.2 and so on. At each counting table, votes cast at one polling station shall be taken up at a time. Thus, the counting of votes of as many polling stations as there are the number of counting tables will be simultaneously taken up in the first round of counting. The counting will be done and completed in as many rounds as are necessary, having regard to the number of counting tables and number of polling stations. The Control Units for the next round will not be brought on the counting tables, unless the counting of the previous round is over. In case of simultaneous elections, the total number of counting tables should be divided into two groups of equal number of tables. The first group should be for Assembly election and the other group for the Parliamentary election. For example, if the total number of counting tables is 14 (fourteen), in the first round of counting, Control Unit for Assembly election used at polling station number 1 should be given to table number 1 and the Control Unit used for Lok Sabha election at polling station number 1 should be given to table number 8, i.e., the first table for the counting of votes for Lok Sabha



election, and Control Unit for Assembly election used at polling station number 2 should be given to table number 2 and the Control Unit used for Lok Sabha election at polling station number 2 should be given to table number 9, i.e., the second table for the counting of votes for Lok Sabha election and so on. Counting Agent should keep an account of such distribution with him/her for his/her information. It is to be noted that in the case of counting for simultaneous elections, the next round of counting shall be taken up only after the counting in the previous round, in respect of both assembly and parliamentary elections is completed and Control Units used in the polling stations covered by the round completed are removed from the counting tables.

- 16.24.2. At the time of counting, only the Control Unit of the EVM used at a particular Polling Station is required for ascertaining the result of poll at that polling station. The Balloting Units have to be kept in strong room.
- 16.24.3. Along with the Control Unit, the relevant account of votes recorded in form 17C pertaining to that polling station will also be supplied to the counting table.
- 16.24.4. At the closure of each round, the Observer would randomly select any two EVM control units from amongst the Control units of the concerned round which has been counted. He would then direct the counting staff specifically deployed for this purpose by the Returning Officer/Assistant Returning Officer through random selection to independently note down from the Control units selected, the details of the votes polled as indicated by the machine. These details he would then compare with the details provided by the officials in the table wise result to check for any discrepancy between the two. Care must be taken that the staff assigned for random checking is not aware of the details provided in the table wise result.
- 16.24.5. Apart from one Counting Supervisor and one Counting Assistant for each counting Table, one additional staff would be seated in each of the 14 counting tables. The additional staff will invariably be a Central Govt./ Central Govt. PSU employee. This additional staff will note down the details of votes exhibited by the EVMs being counted in each round in that Table. These additional counting staff would be provided with a pre-printed statement on which there will be space for noting down the CU No., Round No., Table No., Polling Station Number and thereafter the names of all the contesting candidates and panel for NOTA as they appear in the ballot paper. They will put their signature at the end of the statement and shall hand over the statement to the Observer after each round.
- 16.24.6. Wherever adequate number of Central Govt. staff are not available, the shortfall will be made good by the Divisional Commissioner by mobilizing the required

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number of staffs from the neighbouring districts within the Division. The additional staff will be given a brief orientation training before being deployed at the counting centre as above. The additional staff also will be provided an ID Card by the District Election Officer. The constituency-wise and subsequently Table-wise deployment of such additional staff shall also be done randomly by the Observer.

#### **16.25. OPENING OF CARRYING CASES OF CONTROL UNITS**

16.25.1. As each carrying case of Control Unit is brought to the counting table, the seals put thereon by the Presiding Officer at the polling station will be examined. Even if the seal of a carrying case is not intact in any case, the Control Unit kept therein could not have been tampered with, if the seals thereon and particularly the green paper seals on that unit are intact. The carrying case will then be opened and the Control Unit taken out and placed on counting table for the inspection and checking of seals thereon by the candidates or their agents present at the counting table.

#### **16.26. CHECKING SEALS ON CONTROL UNITS**

16.26.1. Before the votes recorded in any Control Unit of a voting machine are counted, the counting agents present at the counting table shall be allowed to inspect the outer strip seal, the special tag, the paper seals and such other vital seals as may have been affixed on the carrying case and the Control Unit and to satisfy themselves that the seals are intact and Control Unit has not been tampered with. If any Control Unit is found to have been tampered with, the votes recorded in that machine shall not be counted and the matter shall be reported to the Commission for its directions.

#### **16.27. CHECKING OF SEALS AND IDENTITY MARKS ON THE CONTROL UNIT**

16.27.1. As each Control Unit is taken out of the carrying case, its serial number will be checked so as to ensure that it is the same Control Unit which was supplied for use at that polling station. Then, the seal on the 'Candidate Set Section' which is put by the Returning Officer before the supply of the machine to the polling station and the seal on the outer cover of Result Section which is put by the Presiding Officer at the polling station will be checked. Even if any of these seals is not intact the Control Unit could not have been tampered with, if the green paper seals put on the inner cover of the Result Section are intact.

Counting Tables for their record and verification. The starting of the next round of counting need not wait till distribution of these copies is complete. This can go on simultaneously. Therefore, necessary arrangements for photocopying shall be made in each counting hall. The original second copy should be returned to the Counting Supervisor of the respective table. They will keep the copy of each round of EVM counting and at the end of the counting put them in an envelope super scribed "Duplicate copy of result of counting in Form 17C-Part-II", mention the Table No., total number of rounds counted and the Name of the Counting Supervisor and handover the envelope personally to the R.O./A.R.O. after completion of counting. This packet should be sealed and kept separately by the RO along with other documents.

16.31.3. The Commission has also directed that when tabulation sheet of each polling booth (Form 17C) is received at the Returning Officer's table, it will be the responsibility of the Returning Officer to show it to the candidates/their election agents/counting agents sitting at the Returning Officer's table to enable them to note down the results of each candidate for each polling station. Returning Officer should countersign the Form after satisfying himself/herself that the same has been properly filled and completed in all respects. The Form so countersigned by the Returning Officer should be sent to the officer who is compiling the final result and preparing the Final Result Sheet in Form 20.

16.31.4. Further, Returning Officer should either announce or cause the entries of votes polled by each candidate after each round to be written on a display-board of minimum size of 6x9 feet to be put up conspicuously so that each counting agent can see and note down /cross check the entries and announce through public address system. This will enable Returning Officer to proceed uninterruptedly with the counting of votes at other polling stations.

16.31.5. The Commission has directed that henceforth in case of non-display of result on the Display Panel of the Control Unit, the following action shall be taken:

1. In case any Control Unit does not display result, it should be kept back inside its carrying case and then be kept in the Returning Officer's custody in the counting hall. Counting of votes in other machines should be continue as usual.
2. Result from such Control Unit(s) will not be retrieved using Auxiliary Display Unit or Printer.
3. After completion of counting of votes from all the Control Units, the printed paper slips of the respective VVPAT shall be counted as per the counting produce prescribed by the Commission.

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4. Thereafter, counting of printed paper slips of VVPAT(s) under Rule 56D of the Conduct of Election Rules, 1961 should be taken up, if any.

16.31.6. A report regarding counting of VVPAT paper slips is to be sent to the Commission in the prescribed format through Chief Electoral Officer.

### **16.32. PREPARATION OF FINAL RESULT SHEET**

16.32.1. The officer in-charge of compiling the final result and preparing the Final Result Sheet in Form 20 (**Appendix 33**) shall make entries on that Form showing the votes polled by each candidate polling station wise strictly in accordance with the entries made in 'Part II Result of Counting' of Form 17C in respect of each polling station. The number of such votes separately in respect of NOTA also in Part II of form 17C. The number of test votes in VVPAT and tendered votes polled, if any, at a polling station shall also be noted in the appropriate column in Form 20 against the polling station concerned.

16.32.2. The entries so made in Form 20 in respect of each polling station shall be announced so that the candidates and their agents may take note of the result of counting in respect of each polling station. Alternatively, the Returning Officer may cause the entries made in Form 20 to be written on a blackboard. This will enable the counting agent to proceed uninterruptedly with the counting of votes at other polling stations.

### **16.33. MANDATORY VERIFICATION OF VVPAT PAPER SLIPS OF ONE POLLING STATION**

16.33.1. Mandatory verification of VVPAT paper slips of randomly selected one polling station shall be conducted in addition to the provisions of Rule 56D of the conduct of Election Rules, 1961, after the completion of the last round of counting of votes recorded in the EVMs. In case of the General and Bye election to State Legislative Assemblies, verification of VVPAT paper slips of randomly selected one polling station in each Assembly Constituency. In case of General and Bye election to the House of the People, verification of VVPAT paper slips of randomly selected one polling station of each Assembly segment of the Parliamentary Constituency concerned or as directed by the Commission.

16.33.2. For this mandatory verification of VVPAT paper slips, the following procedure shall be followed:

1. The verification of VVPAT paper slips of randomly selected one polling station for each Assembly Constituency/Segment shall be taken up after the completion of the last round of the counting of the votes recorded in the EVMs.
  2. The randomly selection of one polling station per Assembly Constituency/Segment shall be done by the Draw of lots, by the Returning Officer concerned, in the presence of candidates /their agents and the General Observer appointed by the Commission for that Constituency.
  3. The draw of lots must be conducted immediately after the completion of the last round of counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency/Assembly Segment.
  4. A written intimation regarding the conduct of the draw of lots for the random selection of one polling station for verification of VVPAT paper slips shall be given by the Returning Officer to the candidates/ their election agents well in advance.
  5. The following procedure shall be followed for the conduct of draw of lots:
    - a. white colour paper cards of postcard size shall be used for conducting the draw of lots.
    - b. the total number of such paper cards should be equal to total number of polling stations in the Assembly Constituency/Assembly Segment.
    - c. The paper cards shall have pre-printed Assembly Constituency/Assembly Segment number, Assembly Constituency/Assembly Segment name and date of polling on the top, and the polling station number in the centre. Each digit of the polling station number shall be at least 1" X 1" (one inch by one inch) size and printed in black.
    - d. the paper cards to be used for draw of lots should be four folded in such a way that polling station number is not visible.
    - e. Each paper card shall be shown to the candidates/their agents before folding and dropping in the container.
    - f. The paper cards shall be kept in the big container and must be shaken before picking up one slip by the Returning Officer.
- 16.33.3. The verification of VVPAT paper slips shall be done in a 'VVPAT Counting Booth' specifically prepared for this purpose inside the Counting Hall. The booth shall be enclosed in a wire mesh just like a bank cashier's cabin so that no VVPAT paper slip can be accessed by any unauthorized person. One of the Counting table in the Counting hall can be converted into VVPAT counting booth and can be used for normal counting

Signature of Returning Officer

Signature of General Observer

**16.34. RECOUNT**

16.34.1. Normally, there will be no question of recount of votes recorded in the voting machines. Every vote recorded by the voting machines is a valid vote and no dispute will arise as to its validity or otherwise. At the most, some candidates or their agents may not have noted down properly the result of voting at any particular polling station when the control unit displayed that information. If necessity arises for re-verification, the same can be done by pressing the 'Result' button whereupon the result of voting at that polling station will again be displayed in the Display Panels of that control unit.

16.34.2. Despite the necessity for recount being totally eliminated by the use of voting machines, the provisions relating to recount contained in Rule 63 of the Conduct of Election Rules, 1961, still apply in relation to all constituencies.

16.34.3. Accordingly, after the entire counting is over, the Returning Officer will announce the result giving the total number of votes polled by each candidate as recorded in the Final Result Sheet (Form 20). After the announcement is made, the candidate or his/her election agent or any of his/her counting agents, may apply in writing for a recount of recorded at all or any of polling stations stating the grounds on which he/she demands such recount. For this purpose, the Returning Officer will announce the exact hour and minute, up to which he will wait for receiving the written application for recount. When such an application for recount is made, the grounds urged for the recount will be considered and a decision taken by the Returning Officer. He may allow the application in whole or in part if it is reasonable or he may reject it in to if it appears to be frivolous or unreasonable. The decision of the Returning Officer will be final. If, in any case, an application for recount either wholly or in part is allowed, the Returning Officer will direct counting of the votes over again. The postal ballot papers may also be recounted if a request is made for their recount and such a request is allowed by the Returning Officer. After such recount has been completed, the result sheet will be amended to the extent necessary and the amendments so made announced. After the total number of votes polled by each candidate has been announced, the result sheet will be completed and signed.

16.34.4. It should be noted that the candidate or his/her election agent or any of his/her counting agents has no right to demand a recount after the Returning Officer

has completed and signed the result sheet. Any demand for a recount of votes made after the result sheet has been completed and signed will be rejected.

- 16.34.5. Where printer for paper trail is used, any candidate or in his absence his election agent or any of his counting agents may apply in writing to the RO to count the printed paper slips in the drop box of the printer in respect of any polling station or polling stations after the entries made in the result sheet is announced. If such an application is received, the returning officer shall, subject to such general or special guidelines as may be issued by the ECI, decide the matter and may allow in whole or in part or may reject in whole, if it appears to him as frivolous or unreasonable. Every decision of the RO shall be in writing and shall contain the reasons thereof. If the RO decides the counting of paper slips either wholly or in part or parts, he shall -
- a. do the counting in the manner as may be directed by the Commission,
  - b. amend the result sheet in form 20 as per the paper slips count if there is discrepancy between the votes displayed on the Control Unit and the counting of Paper Slips.
  - c. announce the amendment so made by him
  - d. complete and sign the result sheet.

- 16.34.6. If votes of a Parliamentary Constituency are counted at more places than one, then, according to rule 65 of the Conduct of Elections Rules, 1961, demand for recount of votes can be made only at the end of counting at the last place fixed for the purpose. Such last place would generally be the Headquarters of the Returning Officer where he would be collating and consolidating the results of the various Assembly segments comprised within that Parliamentary Constituency.

### **16.35. ADJOURNMENT OF COUNTING IN CASE OF FRESH POLL**

- 16.35.1. The Returning Officer will wait for the direction of the Election Commission if he has made any report to it about any voting machine having been found tampered with. Where the Commission directs a fresh poll to be taken at the affected polling stations, the counting will be adjourned after the counting process in respect of all other polling stations has been completed. In such case, all the EVMs, VVPATs and also all other papers relating to elections will be sealed by the Returning Officer. Every candidate or his agent, if he desires to place his seal on every voting machine and packet etc., in which the election papers are kept, will be allowed to do so. The counting so adjourned shall be recommenced after the fresh poll has been held, on such date and hour as the Returning Officer may fix in this behalf and completed in accordance with the procedure prescribed above.

### **16.36. RESEALING OF VOTING MACHINES AFTER COUNTING**

16.36.1. After the result of voting recorded in a Control Unit has been ascertained candidate-wise and entered in Part II - Result of Counting of Form 17C and in the Final Result Sheet in Form 20, the Control Unit shall be resealed with Returning Officer's seal, the secret seal of the Commission and the seals of such of the candidates or their election agents who may desire to affix their seals thereon. The resealing has, however, to be done in such a manner that the result of voting recorded in the Control Unit is not cleared or obliterated and the unit retains the memory of such result.

### **16.37. EQUALITY OF VOTES**

16.37.1. In case of tie, the result will be decided by lot. For example- If, in a constituency, A, B, C and D are the contesting candidates and the total number of votes they have secured are as follows- A - 12703, B - 17567, C - 17567, D - 16394. A lot will be draw between B and C, who have each polled the highest number of votes (which are equal) and the person whose name is drawn will be deemed to have polled one additional vote. The Returning Officer will then complete and sign the result sheet.

### **16.38. DECLARATION OF RESULT OF ELECTION**

16.38.1. After the counting is complete in all respects and the Returning Officer has completed and signed the Final Result Sheet, he will proceed to formally declare the result of election, if there is no direction of the Commission to the contrary. He will make the declaration of result in Form 21C in the case of general election, and in Form 21D in the case of bye-election.

16.38.2. In case the Commission has issued any direction withholding the declaration of result in any Constituency until its further direction, any declaration of result by the Returning Officer in contravention of any such direction shall be null and void ab initio.

### **16.39. CERTIFICATE OF ELECTION**

16.39.1. Soon after the declaration of result, the Returning Officer will grant to the returned (elected) candidate a certificate of election in Form 22 and obtain from him an acknowledgement of its receipt duly signed by him. In case he is not present at the time of declaration of result, he should immediately contact the Returning Officer and obtain the certificate of election. In this connection the Commission has decided that-

(1) the certificate of election, in respect of both Parliament and the State Legislatures, should be issued in English or in Hindi but it should be open to the elected candidate to sign the acknowledgement in any language he likes;



4. No fee shall be charged when inspection or certified copy of a document is required for official purpose.

**19.5. SUPPLY OF COPIES OF RESULT SHEETS AND ELECTION RETURNS**

19.5.1. Copies of result sheet in Form 20 may be supplied, if asked for, on payment of fee as charged for supply of certified copies of other election records.

19.5.2. Copies of election return in Form 21-E may be supplied by the Returning Officer, District Election Officer, the Chief Electoral Officer, or the Election Commission on a payment of Rupees 2 for each copy under sub-rule (3) of Rule 93 of the Conduct of Election Rules, 1961.

**19.6. FORM OF APPLICATION FOR REFUND**

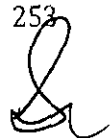
19.6.1. Forms of applications for refund of security deposits are given in **Appendix 39**. Every application for a refund should be made by the candidate or by the person who made the deposit on his/her behalf in the forms as may be appropriate. When a person other than the candidate has made the deposit, the candidate should verify the application. If the candidate has died, his legal representative may make the application for refund in the appropriate form.

**19.7. WHEN TO RETURN THE DEPOSIT**

19.7.1. If the candidate is not shown in the list of contesting candidates or if he dies before the commencement of the poll, the deposit made by him will be returned as soon as practicable after the publication of the list of contesting candidates or after his death, as the case may be. Some candidates may have made along with their second and subsequent nominations further security deposits. The second and subsequent deposits should be returned, as far as practicable, after the publication of the list of contesting candidates. In other cases, the deposit will be returned as soon as practicable after the result of election is declared.

**19.8. DEPOSIT RETURNABLE IN ONE CONSTITUENCY ONLY**

19.8.1. Note that if a candidate was a contesting candidate at a general election to the House of the People or State Legislative Assembly in more than one Parliamentary or Assembly Constituency, he cannot get a return of more than one deposit made by him or on his behalf. Other deposits made by him or on his behalf will be forfeited to Government.

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**INSTRUCTION SI. No.8**

Election Commission's Letter No.464/INST/2008-EPS Dated: 24<sup>th</sup> October, 2008 addressed to 1. The Chief Secretaries of All States and Union Territories. 2. The Chief Electoral Officers of All States and Union Territories.

**Subject:- Identification of critical polling stations and measures to be taken to ensure free and fair elections**

Sir,

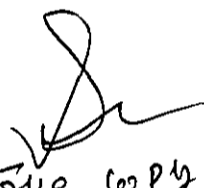
In supersession of Commission's instructions contained in its letter No. 464/INST/2007-PLN-I dated the 12<sup>th</sup> October, 2007, I am directed to say that in order to ensure free and fair elections the Commission has decided to deploy CPF in all polling stations. However, in order to identify the critical polling stations, which may require some more additional measures, it is necessary to spell out certain objective criteria to be followed by the DEO/RO as under :-

1. An analysis of the polling station wise number of voters with EPIC and without EPIC (non EPIC voters) shall be made. The polling stations shall be sorted in descending order in terms of number of non-EPIC voters in order to prioritise.
2. The Commission had recently directed a survey of missing voters under two categories i.e. missing voters with family links and missing voters without family links. Out of these two categories the existence of missing voters without family links offers a scope for misuse and malpractice. The number of voters coming under the second category shall be analyzed polling station wise and the Polling Station with large number of such voters shall be marked. For this purpose the total number of such missing voters without family linkage shall be divided by the total number of polling stations to work out the assembly constituency average. Analyzing the deviation above the average shall identify the polling stations with large number of such voters.
3. During the election the DEOs/ROs may be asked to do a vulnerability mapping of hamlets/villages/electoral segments vulnerable for threat and

intimidation. Polling stations identified as having vulnerable pockets shall be listed.

4. The polling station wise election results available in Form 20 with reference to the past general election shall be analyzed. All such Polling Station where percentage of poll recorded is more than 75% and where more than 75% of votes have been recorded in favors of one candidate shall be identified as critical polling station.
5. The polling stations that went for redpoll during the previous election due to reported electoral malpractices; the polling stations that witnessed any sort of electoral violence shall also be identified.
6. The DEOs and ROs shall factor all the above inputs while finally identifying the critical polling stations for additional measures. The ECI Observers shall be consulted while finalizing the list of critical polling stations as per the above instructions.
7. The response protocol to be followed with reference to the vulnerable villages/hamlets/electoral segments has been detailed vide Commission's letter 464/INST/2007-PLN-I Dated 12. October, 2007.  
These instructions shall be implemented without fail.
8. With reference to polling stations identified as **critical polling stations** on account of other indicators listed above one or all of the following measures shall be put in place.
  - a. The presence of CPF to safe guard the polling station.
  - b. Digital camera or video camera shall be positioned in the polling station. The procedure for deploying such cameras has been given vide letter No.447/2007/PLN-IV, dated 17.01.2007.

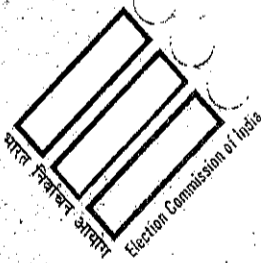
- c. The Presiding Officer shall be specially briefed to ensure that the EPIC/approved identification document, if any are properly verified and reflected in the remarks column of Form 17 A.
- d. The list of such polling stations shall be given to the Commanding/Assistant Commanding Officers of CPF so that they can also keep an eye on such polling stations.
- e. Deployment of a micro-observer inside the polling station.
- 9. This shall be brought to the notice of all concerned. A copy of the circular be handed over to all Observers through DEOs.

  
(True copy)



# Handbook for Counting Agent

Document No. 24 Edition 1



**भारत निर्वाचन आयोग**  
**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

*"No voter to be left behind"*

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## 10. COUNTING OF VOTES POLLED AT POLLING STATIONS

- 10.1 While the postal ballot papers are being counted by the Returning Officer at his table, the counting of votes recorded at polling stations by means of EVMs will also be taken up by the Assistant Returning Officer(s) at the other tables provided in the counting hall. For that purpose, the control units of EVMs received from the polling stations will be distributed to the various counting tables, beginning with the control unit of EVM of polling station No. 1, being distributed to table No. 1, the control unit of EVM of polling station No.2 being distributed to table No.2 and so on. At each counting table, votes cast at one polling station shall be taken up at a time. Thus, the counting of votes of as many polling stations as there are the number of counting tables will be simultaneously taken up in the first round of counting. The counting will be done and completed in as many rounds as are necessary, having regard to the number of counting tables and number of polling stations. The control units for the next round will not be brought on the counting tables, unless the counting of the previous round is over. In case of simultaneous elections, the total number of counting tables should be divided into two groups of equal number of tables. The first group should be for Assembly election and the other group for the Parliamentary election. For example, if the total number of counting tables is 14 (fourteen), in the first round of counting, control unit for Assembly election used at polling station number 1 should be given to table number 1 and the control unit used for Lok Sabha election at polling station number 1 should be given to table number 8, i.e., the first table for the counting of votes for Lok Sabha election, and control unit for Assembly election used at polling station number 2 should be given to table number 2 and the control unit used for Lok Sabha election at polling station number 2 should be given to table number 9, i.e., the second table for the counting of votes for Lok Sabha election and so on. Counting Agent should keep an account of such distribution with him/her for his/her information. It is to be noted that in the case of counting for simultaneous elections, the next round of counting shall be taken up only after the counting in the previous round, in respect of both assembly and parliamentary elections is completed and control units used in the polling stations covered by the round completed are removed from the counting tables.
- 10.2 At the time of counting, only the control unit of the EVM used at a particular Polling Station is required for ascertaining the result of poll at that polling station. The ballot units have to be kept in strong room.
- 10.3 Along with the control unit, the relevant account of votes recorded in form 17C pertaining to that polling station will also be supplied to the counting table.
- 10.4 Before the votes recorded in any control unit of an EVM are counted, the seals on the control units are checked. The counting agents present at the counting table shall be allowed to inspect the outer paper strip seal, the special tag, the green paper seals and such other vital seals as may

- have been affixed on the carrying case and the control unit and to satisfy themselves that the seals are intact and seals of control unit has not been tampered with. If seal of any control unit is found to have been tampered, the votes recorded in that machine shall not be counted and the matter shall be reported to the Commission for its directions.
- 10.5 As each carrying case of control unit is brought to the counting table, the seals affixed there on by the Presiding Officer at the polling station will be examined. Even if the seal of a carrying case is not intact in any case, the control unit kept therein could not have been tampered with if the seals thereon and particularly the paper seal(s) on that unit are intact. The carrying case will then be opened and the control unit taken out.
  - 10.6 As each control unit is taken out of the carrying case, its serial number will be checked so as to ensure that it is the same control unit which was supplied for use at that polling station. Then, the seal on the 'Candidate Set Section' which is put by the Returning Officer before the supply of the machine to the polling station and the seal on the outer cover of 'Result Section' which is affixed by the Presiding Officer at the polling station will be checked. Even if any of these seals is not intact the control unit could not have been tampered, if the paper seals put on the inner cover of the Result Section are intact.
  - 10.7 On opening the outer cover of the Result Section, the inner cover sealed with the seal of the Presiding Officer will be seen. Even if this seal is not intact, the control unit could not have been mishandled if the paper seal is intact and has not been tampered. In the inner cover of the Result Section, there will be a green paper seal. The green paper seal will have been so fixed that the two open ends of the seal project outwards from the sides of the inner compartment in which the result buttons are located. On one such open end of the paper seal will be the printed serial number of that seal. That serial number on the paper seal will be compared with the serial number as given in the paper seal account prepared by the Presiding Officer in item 10 of Part I of Form 17C. The counting agents present at the counting table will be allowed to compare such serial number of the paper seal and satisfy themselves that the paper seal is the same which had been fixed by the Presiding Officer at the polling station before the commencement of poll.
  - 10.8 If the serial number of the paper seal actually used in the control unit does not tally with the serial number as shown by the Presiding Officer in the paper seal account, it may be that the paper seal account contains a mistake or there would be a prima-facie suspicion that the voting machine has been mishandled with. The Returning Officer will decide the question by checking the serial numbers of the unused paper seals returned by the Presiding Officer. If he finds it to be a case of clerical mistake, he will ignore the discrepancy.
  - 10.9 On the other hand, if the Returning Officer is satisfied that the voting machine has been mishandled with or is not the same which was supplied for use at that polling station, the machine will be kept apart and the votes recorded therein shall not be counted. He will report the



matter to the Commission for its directions. Under the law, it is not necessary to adjourn the entire counting if any voting machine has been found to have been mishandled. The Returning Officer will proceed with the counting in respect of the other polling stations.

- 10.10 At the closure of each round, the Observer would randomly select any two control units from amongst the Control units of the concerned round which have been counted. He would then direct the micro-observer specifically deployed for this purpose by the Returning Officer/Assistant Returning Officer through random selection to independently note down from the Control units selected, the details of the votes polled as indicated by the machine. These details he would then compare with the details provided by the officials in the table wise result to check for any discrepancy between the two. Care must be taken that the staff assigned for random checking are not aware of the details provided in the table wise result.
- 10.11 Apart from one Counting Supervisor and one Counting Assistant for each counting Table, one additional staff would be seated in each of the 14 counting tables. The additional staff will invariably be a Central Govt./ Central Govt. PSU employee. This additional staff will note down the details of votes exhibited by the EVMs being counted in each round in that Table. These additional counting staff would be provided with a pre-printed statement on which there will be space for noting down the CU No., Round No., Table No., Polling Station Number and thereafter the names of all the contesting candidates and panel for NOTA as they appear in the ballot paper. They will sign at the end of the statement and hand them over to the observer after each round.
- 10.12 Wherever adequate numbers of Central Govt. staff are not available, the shortfall will be made good by the Divisional Commissioner / CEO by mobilizing the required number of staff from the neighbouring districts within the Division. The additional staff will be given brief orientation training before being deployed at the counting center as above. The additional staff also will be provided an ID Card by the District Election Officer. The constituency-wise and subsequently Table-wise deployment of such additional staff shall also be done randomly by the Observer.
- 10.13 The Observers nominated by the Election Commission and deployed in the concerned constituencies during the election process, have been provided special responsibility to oversee and supervise the counting process under the statutory provisions given under the Law. They have also been empowered to stop the counting process at any time before the declaration of result or may direct the Returning Officer/Assistant Returning Officer not to declare the result under different circumstances as envisaged in the law.
- 10.14 In cases where the Observer orders to stop the process of counting, a detailed report in the matter shall be furnished forthwith to the Commission by the Observer and Returning Officer concerned either jointly or separately for seeking appropriate orders of the Commission.

## 11. ASCERTAINING THE RESULT

- 11.1 After satisfying that the paper seal is intact, that the control unit is the same as was supplied at the polling station and that it has not been tampered, the votes recorded therein shall be counted. For this purpose, the following procedure will be followed by the Counting Supervisor:
- (i) Power switch provided in the rear compartment of the control unit will be put to 'ON' position. The 'ON' lamp in the display section of the control unit will then glow green.
  - (ii) The paper seal over the 'Result' Button provided beneath the upper aperture of the inner cover of result section will be pierced through.
  - (iii) The 'Result' Button will then be pressed.
  - (iv) At the 'Result' button being so pressed, the total number of votes recorded for each Candidate and NOTA at the polling station shall be displayed automatically in the Display Panels of the control unit.
  - (v) The result as displayed sequential candidate-wise shall be noted by the Counting Supervisor in 'Part II-Result of Counting' of Form 17C.
- 11.2 If required, the Result button can be pressed again to enable the candidates and/or their agents to note down the above result.
- 11.3 After the result has been noted, the cover of result section will be closed and the control unit switched off.

## 12. ACTION TO BE TAKEN IN CASE OF MALFUNCTIONING OF ELECTRONIC VOTING MACHINES (EVM) DURING COUNTING OF VOTES

- 12.1 Following actions to be taken in case of malfunctioning of EVM during counting of votes:
- a. In case any Control Unit does not display result, it should be kept back inside its carrying case and then be kept in the Returning Officer's custody in the counting hall. Counting of votes in other machines should continue as usual.
  - b. Result from such Control Unit(s) will not be retrieved using Auxiliary Display Unit or Printer.
  - c. After completion of counting of votes all the Control Units, the printed paper slips of the respective VVPAT shall be counted as per the counting procedure prescribed by the Commission to count VVPAT paper slips.
  - d. Thereafter, counting of printed paper slips of VVPAT(s) under Rule 56D of the Conduct of Election Rules, 1961 should be taken up, if any.
  - e. A report regarding counting of VVPAT paper slips should be sent to the Commission in the following format through CEO concerned for information:

S. No.	No. and Name of Assembly Constituency	Polling Station No.	Unit ID of VVPAT	Unit ID of Control Unit for which VVPAT paper slips counted	
				Non-retrieval of result from CU	Under Rule 56D of the Conduct of Election Rules 1961
1	2	3	4	5	6
1.					
2.					

- f. After completion of counting, all the Control Units whether result has been retrieved from it or not should be kept back inside their respective carrying cases. The carrying cases should then be sealed once again. The Returning Officer and Observer should put their signatures on the seal. All candidates and their election agents should also be allowed to put their signature on the seal. The Control Unit should be then kept in the strong room (s).

### 13. COMPLETION OF 'PART II-RESULT OF COUNTING' OF FORM 17C

- 13.1 As the votes secured by each candidate and for none of the above (NOTA) are displayed on the display panels of the control unit, the counting supervisor shall, as mentioned above, record the number of such votes separately in respect of each candidate in 'Part II – Result of Counting' of Form 17C. He shall also note down in the said Part II of Form 17C whether the total number of votes as shown in that part tallies with the total number of votes shown against item 6 of Part I of that Form or any discrepancy has been noticed between these two totals.
- 13.2 If he notices any such discrepancy, he will bring it to the notice of the Returning Officer for appropriate action in accordance with law. Counting Agent may also bring it to the notice of the Candidate or his election agent so that he may if he so likes, pursue the matter, with the Returning Officer.
- 13.3 After completing Part II of Form 17C in all respects, the counting supervisor shall sign it. He shall also get it signed by the candidates or their agents present at the counting table.
- 13.4 A sample Form 17C is given at Appendix III.
- 13.5 After the Counting Supervisor has duly filled in Part II of Form 17C, signed it and got it signed by the candidates or their agents, he shall handover that form to the Returning Officer. The Returning Officer shall countersign the Form after satisfying himself that the same has been properly filled and completed in all respects. The form so countersigned by the Returning Officer shall be sent to the officer who is compiling the final result and preparing the Final Result Sheet in Form 20.

#### 14. MANDATORY VERIFICATION OF VVPAT PAPER SLIPS OF RANDOMLY SELECTED ONE POLLING STATION

- 14.1 Mandatory verification of VVPAT paper slips of randomly selected one polling station shall be conducted in addition to the provisions of Rule 56D of the conduct of Election Rules, 1961, after the completion of the last round of counting of votes recorded in the EVMs. In case of the General and Bye election to State Legislative Assemblies, verification of VVPAT paper slips of randomly selected one polling station in each Assembly Constituency. In case of General and Bye election to the House of the People, verification of VVPAT paper slips of randomly selected one polling station of each Assembly segment of the Parliamentary Constituency concerned or as directed by the Commission.
- 14.2 For this mandatory verification of VVPAT paper slips, the following procedure shall be followed:
1. The verification of VVPAT paper slips of randomly selected one polling station for each Assembly Constituency/Segment shall be taken up after the completion of the last round of the counting of the votes recorded in the EVMs.
  2. The randomly selection of one polling station per Assembly Constituency/Segment shall be done by the Draw of lots, by the Returning Officer concerned, in the presence of candidates /their agents and the General Observer appointed by the Commission for that Constituency.
  3. The draw of lots must be conducted immediately after the completion of the last round of counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency/Assembly Segment.
  4. A written intimation regarding the conduct of the draw of lots for the random selection of one polling station for verification of VVPAT paper slips shall be given by the Returning Officer to the candidates/ their election agents well in advance.
  5. The following procedure shall be followed for the conduct of draw of lots:
    - a. white colour paper cards of postcard size shall be used for conducting the draw of lots.
    - b. the total number of such paper cards should be equal to total number of polling stations in the Assembly Constituency/Assembly Segment minus the number of the polling stations(s) whose VVPAT paper slips have already been counted due to non-display of result from Control Unit(s) or under Rule 56D of the Conduct of Elections Rules, 1961 or whatsoever reasons.
    - c. The paper cards shall have pre-printed Assembly Constituency/Assembly Segment number, Assembly Constituency/Assembly Segment name and date of polling on the top, and the polling station number in the centre. Each digit of the polling station number shall be at least 1" X 1" (one inch by one inch) size and printed in black.

- d. the paper cards to be used for draw of lots should be four folded in such a way that polling station number is not visible.
  - e. Each paper card shall be shown to the candidates/their agents before folding and dropping in the container.
  - f. The paper cards shall be kept in the big container and must be shaken before picking up one slip by the Returning Officer.
- 14.3 The verification of VVPAT paper slips shall be done in a 'VVPAT Counting Booth' specifically prepared for this purpose inside the Counting Hall. The booth shall be enclosed in a wire mesh just like a bank cashier's cabin so that no VVPAT paper slip can be accessed by any unauthorized person. One of the Counting table in the Counting hall can be converted into VVPAT counting booth and can be used for normal counting of round-wise EVM votes before the count of VVPAT paper slips as per random selection after the completion of round-wise EVM votes counting.
- 14.4 The verification count of VVPAT paper slips of the randomly selected one polling station shall be conducted strictly in accordance with the instructions of the Commission on counting of printed paper slips.
- 14.5 The Returning Officer and Assistant Returning Officer, as the case may be, shall personally supervise the counting of VVPAT paper slips at this booth. The General Observer shall ensure close and careful observation of the entire exercise and ensure compliance of the Commission Instructions.
- 14.6 The above process shall be fully video-graphed.
- 14.7 After completion of the above process, the Returning Officer shall give certificate in the format given below:

**Verification of paper slips of VVPAT of one randomly selected polling station**

Name of State

No. and Name of Assembly/Parliamentary Constituency

No. and Name of Assembly Segment (in case of PC)

S. No. and Name of Polling Station

Unique ID of Control Unit

Unique ID of VVPAT

It is certified that pilot testing of counting of paper slips of VVPAT of one randomly selected polling station has been conducted as per the instructions of the Commission.

"No voter to be left behind"

Name of Candidate	No. of Votes Cast		Discrepancy, if any
	As per EVM	As per Paper slips	
1.			
2.			
3.			
...			
...			
NOTA			
<b>TOTAL VOTES</b>			

Signature of Counting Agents

- 1.
- 2.
- 3.

Signature of Counting Supervisor

Signature of Returning Officer

Signature of General Observer

### 15. PREPARATION OF FINAL RESULT SHEET

15.1 The officer in-charge of compiling the final result and preparing the Final Result Sheet in Form 20 shall make entries in that form showing the votes polled by each candidate polling station wise, strictly in accordance with the entries made in 'Part II- Result of Counting' of Form 17C in respect of each polling station. The number of test votes in VVPAT and tendered votes polled, if any at a polling station shall also be noted in the appropriate column in Form 20 against the polling station concerned.

15.2 The entries so made in Form 20 in respect of each polling station shall be announced so that the candidates and their agents may take note of the result of counting in respect of each polling station. Alternatively, the Returning Officer may cause the entries made in Form 20 to be written on a display board. This will enable RO to proceed uninterruptedly with the counting of votes at other polling stations.

### 16. RECOUNT

16.1 Normally, there will be no question of recount of votes recorded in the voting machines. Every vote recorded by the voting machines is a valid vote and no dispute will arise as to its validity or otherwise. At the most, some candidates or their agents may not have noted down the result of voting at any particular polling station properly when the control unit displayed that information. If necessity arises for re-verification, the same can be done by pressing the 'Result' button, whereupon the result of voting at that polling station will again be displayed in the display panels of that control unit.

- 16.2 Despite the necessity for recount being totally eliminated by the use of voting machines, the provisions relating to recount contained in Rule 63 of the Conduct of Elections Rules, 1961 still apply in relation to constituencies.
- 16.3 Accordingly, after the entire counting is over, the Returning Officer will announce that result giving the total number of votes polled by each candidate as recorded in the Final Result Sheet (Form 20). After the announcement is made, a candidate, or in his absence his election agent or any of his counting agents, may apply in writing for a recount of votes recorded at all or any of polling stations stating the grounds on which he demands such recount.
- 16.4 After the entries made in the result sheet are announced, any candidate or in his absence his election agent or any of his counting agents may apply in writing to the returning officer to count the printed paper slips in the VVPAT in respect of any polling station or polling stations. The returning officer may, based on the guide lines issued by the commission, decide the matter as provided in Rule 56D of the conduct of election Rules.
- 16.5 For this purpose, the Returning Officer will announce the exact hour and minute up to which he will wait for receiving the written application for recount. When such an application for recount is made, the grounds urged for the recount will be considered and a decision taken by the Returning Officer. He may allow the application in whole or in part if it is reasonable, or he may reject it in toto if it appears to be frivolous or unreasonable. The decision of the Returning Officer will be final. If, in any case, an application for recount either wholly or in part is allowed, the Returning Officer will direct counting of the votes over again. The postal ballot papers may also be recounted if a request is made for their recount and such a request is allowed by the Returning Officer. After such recount has been completed, the result sheet will be amended to the extent necessary and the amendments so made announced. After the total number of votes polled by each candidate has been announced, the result sheet will be completed and signed.
- 16.6 It should be noted that a candidate or his election agent or any of his counting agents has no right to demand a recount after the Returning Officer has completed and signed the result sheet. Any demand for a recount of votes, made after the result sheet has been completed and signed, will be rejected.
- 16.7 If votes of a parliamentary constituency are counted at more places than one, then, according to Rule 65 of the Conduct of Elections Rules 1961, demand for recount of votes can be made only at the end of counting at the last place fixed for the purpose. Such last place would generally be the Headquarters of the Returning Officer where he would be collating and consolidating the results of the various assembly segments comprised within that parliamentary constituency.

## **17. ADJOURNMENT OF COUNTING IN CASE OF FRESH POLL.**

- 17.1 Before taking any of the steps mentioned in the foregoing para, the Returning Officer will wait for the direction of the Election Commission if he has made any report to it about any voting machine having been found tampered with as mentioned earlier in para 10.4 above. Where the Commission directs a fresh poll to be taken at the affected polling station(s), the counting will be adjourned after the counting process in respect of all other polling stations has been completed.

In such a case all the voting machines and also all other papers relating to elections will be sealed by the Returning Officer. Every candidate or his agent, if he desires to affix his seal on every voting machine and packet, etc., in which the election papers are kept, will be allowed to do so. The counting so adjourned shall be recommenced after the fresh poll has been held, on such date and hour as the Returning Officer may fix in this behalf and completed in accordance with the procedure prescribed above.

17.2 Observers appointed by the Election Commission to watch the conduct of elections have the powers to direct the Returning Officer to stop the counting of votes at any time before the declaration of result or not to declare the result, if in their opinion booth-capturing has taken place at a large number of polling stations or at the counting place or the Electronic voting machine or postal ballot papers are unlawfully taken out of the custody of Returning Officer or are accidentally or intentionally destroyed or lost or damaged or tampered with. The election proceeding in such cases shall proceed further in accordance with such directions of the Election Commission as it may issue on the report of the Observers and after taking all material circumstances into account.

**18. RESEALING OF VOTING MACHINES AFTER COUNTING**

18.1 After the result of voting recorded in a control unit has been ascertained candidate wise and entered in 'Part II – Result of Counting' of Form 17C and in the Final Result Sheet in Form 20, the returning officer shall reseal the units with his seal and the seals of such of the candidates or their election agents present who may affix the seals thereon so that the result of voting recorded in the unit is not obliterated and the unit retains the memory of such result. Also VVPAT papers slip should be sealed such manner as directed by the Election Commission.

18.2 The aforesaid resealing of control unit shall be done in the following manner:

- (i) After completion of counting of votes, EVMs and VVPATs containing printed paper slips in its Drop box, shall be kept in the same strong room without removing Power Packs of Control Units and Power Packs and Paper Rolls of VVPATs.
- (i) The outer cover of the Result Section of EVM shall be closed and resealed.
- (ii) The control unit of EVM so resealed shall be kept back in its carrying case.
- (iii) The carrying case shall be resealed.
- (iv) An address tag shall be firmly attached to the handle of the carrying case containing the particulars of the election, name of the constituency, the particulars of polling station where the control unit was used, serial number of the control unit, date of poll, and date of counting.

18.2 The candidates/their election agents or counting agents are also permitted to affix their seals on the voting machines if they so desire. The counting agents are advised in the interest of the candidates whom they represent to ensure that they affix their seals on these machines. It will satisfy their candidates that there is no possibility of the votes recorded therein being tampered with. Where, however, the candidate himself or his election agent has affixed such seal, the counting agents need not affix their separate seals.

*[Handwritten signature]*  
(True copy)





< <https://eci.gov.in/statistical-report/link-to-form-20/> >

## Link to Form 20

Link to Form 20

STATES	YEARS
<b>Andhra Pradesh</b>	
Vidhansabha	<u>2014</u> <u>2009</u> <u>2004</u>
Loksabha	<u>2014</u> <u>2009</u> <u>2004</u>
<b>Andaman &amp; Nicobar</b>	
Loksabha	<u>2014</u> <u>2009</u>
<b>Arunachal Pradesh</b>	
Vidhansabha	<u>2014</u> <u>2009</u> <u>2004</u>
Loksabha	<u>2009</u> <u>2004</u>
<b>Assam</b>	
Vidhansabha	<u>2011</u> <u>2006</u>
Loksabha	<u>2014</u> <u>2009</u> <u>2004</u>
<b>Bihar</b>	
Vidhansabha	<u>2015</u> , <u>2010</u> , <u>2005</u>
Loksabha	<u>2014</u> <u>2009</u> <u>2004</u>
<b>Chandigarh</b>	
Loksabha	<u>2014</u> <u>2009</u> , <u>2004</u>
<b>Chhattisgarh</b>	
Vidhansabha	<u>2013</u> <u>2008</u>
Loksabha	<u>2014</u> <u>2009</u>
<b>Dadar &amp; Nagar Haveli</b>	
Loksabha	<u>2009</u> , <u>2004</u>
<b>Daman &amp; Diu</b>	
Loksabha	<u>2009</u>
<b>Delhi</b>	
Vidhansabha	<u>2015</u> <u>2013</u> <u>2008</u>
Loksabha	<u>2014</u> <u>2009</u>

**Goa**Vidhansabha 2012 2007Loksabha 2014 2009**Gujarat**Vidhansabha 2017, 2012, 2007, 2002Loksabha 2014, 2009, 2004**Haryana**Vidhansabha 2014 2009 2005Loksabha 2014 2009 2004**Himachal Pradesh**Vidhansabha 2017 2012 2007 2003Loksabha 2014 2009 2004**Jammu & Kashmir**Vidhansabha 2014 2008Loksabha 2014 2009**Jharkhand**Vidhansabha 2014 2009Loksabha 2014 2009**Karnataka**Vidhansabha 2013 2008Loksabha 2014 2009**Kerala**Vidhansabha 2016 2011Loksabha 2014, 2009**Madhya Pradesh**Vidhansabha 2013 2008Loksabha 2014 2009**Meghalaya**Vidhansabha 2018 2013Loksabha 2014 2009 2004**Maharashtra**Vidhansabha 2014, 2009Loksabha 2014, 2009**Manipur**Vidhansabha 2017, 2012, 2007, 2002Loksabha 2014 2009, 2004

**Mizoram**Vidhansabha 2013, 2008, 2003Loksabha 2014, 2009, 2004**Nagaland**Vidhansabha 2018, 2013, 2008, 2003Loksabha 2014, 2009, 2004**Odisha**Vidhansabha 2014, 2009, 2004Loksabha 2014, 2009, 2004Bye Election 2012**Punjab**Vidhansabha 2017, 2012, 2007, 2002Loksabha 2014, 2009, 2004**Puducherry**Vidhansabha 2016, 2011, 2006Loksabha 2014, 2009, 2004Bye-Elections 2011, 2016**Rajasthan**Vidhansabha 2013, 2008Loksabha 2014, 2009**Sikkim**Vidhansabha 2014 2009Loksabha 2014 2009**Tamilnadu**Vidhansabha 2016, 2011, 2006Loksabha 2014 2009**Telangana**Vidhansabha 2014Loksabha 2014**Tripura**Vidhansabha 2018 (59-ACs), 2018 (AC-19), 2013, 2008, 2003Loksabha 2014 2009, 2004, 1999**Uttar Pradesh**Vidhansabha 2017, 2012, 2009, 2007Loksabha 2014 2009**Uttarakhand**

Vidhansabha

2017, 2012

Loksabha

2014 2009, 2004

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**West Bengal**

Vidhansabha

2016, 2011, 2006

Loksabha

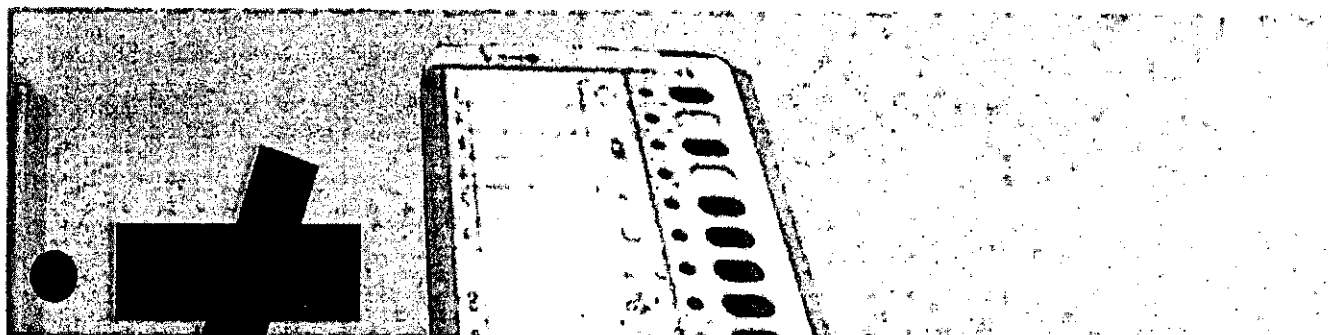
2014, 2009, 2004

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(True Copy)

10/26/2019

Election Results 2019 Mismatch In Votes Polled and Counted In EVM in Multiple Seats. The Quint investigates the EVM data mism...



# EVM Vote Count Mismatch In 370+ Seats and EC Refuses to Explain

POONAM AGARWAL

UPDATED:  
31.05.19

8 min read

LOK ENGAGE WASTE



The data you're about to read defies logic and calculation. **The Quint** has deep-dived into two sets of data shared by the Election Commission of India (EC); first, the voter turnout/votes polled data on the Electronic Voting Machines (EVMs) and second, the votes counted data on EVMs in the Lok Sabha Elections 2019. We have found serious discrepancies in the two sets of data in 373 constituencies which went to polls in the first four phases of the election.

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counted – a surplus of **18,331** EVM votes. Why? No answer from EC.

- In Dharmapuri, Lok Sabha seat in Tamil Nadu, the EC data says **11,94,440** EVM votes were polled, and **12,12,311** EVM votes counted – a surplus **17,871** EVM votes. Why? No answer from EC.
- In Sriperumbudur, Lok Sabha seat in Tamil Nadu, the EC data says **13,88,666** EVM votes were polled, and **14,03,178** EVM votes counted. A surplus of **14,512** EVM votes. Why? No answer from EC.
- In Mathura, Lok Sabha seat in Uttar Pradesh, the EC data says **10,88,206** EVM votes were polled, and **10,98,112** EVM votes counted. A surplus of **9,906** EVM votes. Why? No answer from EC.

These are four of highest surpluses in the data.

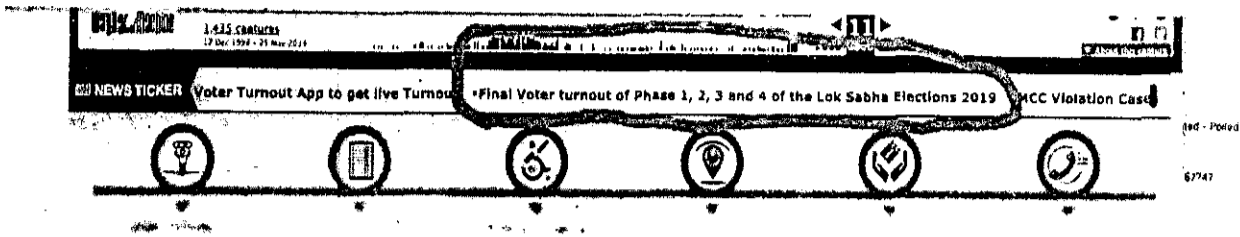
Of the 373 constituencies polled in the first four phases, there were surplus votes counted in over 220 of them – in the rest, vote deficits were recorded.

## EC Pulled Down the Votes Polled Data After The Quint Demanded Answers

The Quint has taken into account only the first four phases – the EC website clearly stated “Final Voter turnout of Phase 1,2,3 and 4 of the Lok Sabha Elections 2019”.

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The screenshot of EC's official website reflecting the ticker final vote count of phases 1, 2, 3 and 4. It disappeared from the EC's website [eciresults.nic.in](http://eciresults.nic.in) after The Quint raised questions.

We did not delve into phase 5, 6 and 7 data of votes polled because the EC's website mentioned it as 'estimated' data.

Early on 27 May, *The Quint* had emailed the EC questions on the discrepancies in all 373 constituencies. An EC officer even contacted us saying that they will send a reply soon. By afternoon, on the same day, we found that the ticker mentioning "final voter turnout" mysteriously disappeared from the EC's website [eciresults.nic.in](http://eciresults.nic.in).



When we asked the EC why the ticker and the data has been removed from the website, there was no response.

Later in the evening, we got an email from the EC clarifying the votes polled of only one constituency. The EC also said that this data is not complete and it might be revised later.

We again wrote to the EC demanding answers for the discrepancies in other constituencies. We attached with our email all the documents on phases 1 to 4 – all votes polled data downloaded from the EC's official website. But EC's reply is still awaited.

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10/26/2019

Election Results 2019 Mismatch In Votes Polled and Counted In EVM in Multiple Seats. The Quint investigates the EVM data mism...



polled data is being compiled? why is the EC taking so much time to compile the votes polled data?

As per procedure, on polling day, it is the duty of the Presiding Officer to inform their senior about the votes polled data every two hours. So it shouldn't take more than a few days to upload the votes polled data.

The Quint spoke to former chief election commissioner OP Rawat about the discrepancies. He said:

*"Prima facie, it appears to be a serious issue. I am not aware of any such occurrence (where votes polled didn't match with votes counted) in the past, that is, during my tenure as chief election commissioner."*

O P Rawat, Former Chief Election Commissioner



Below we have listed state-wise the top constituencies that we found had surplus votes. These four states are Tamil Nadu, Bihar, UP and Arunachal Pradesh.

News and Views



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## Constituencies With Surplus Votes Counted



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# TAMILNADU

## SURPLUS VOTES IN EVMs IN LOK SABHA ELECTION 2019

CONSTITUENCY	VOTES POLLED	VOTES COUNTED	SURPLUS VOTES
KANCHEEPURAM	1214086	1232417	18331
DHARMAPURI	1194440	1212311	17871
SRIPERUMBUDUR	1388666	1403178	14512
CHENNAI SOUTH	1111681	1123410	11729
THIRUVALLUR	1395121	1403349	8228

*the  
quint*

(Graphics: Aroop Mishra/The Quint)

AIADMK's candidate K Maragatham lost Kancheepuram seat to DMK's Selvam G. Maragatham's office informed **The Quint** that they are aware of the discrepancies in votes polled and counted. As of now, they are collecting relevant documents, based on which they will decide their next course of action.

Experts say the candidates can demand a recount if votes counted don't match the votes polled. The discrepancies in the two sets of data might not impact the winner. But there are larger questions here –

*One, why did the EC upload votes polled data as final data for the first four phases? Two, why did they remove the data? Three, why is*

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# UTTAR PRADESH



**SURPLUS VOTES IN EVMs  
IN LOK SABHA ELECTION 2019**

CONSTITUENCY	VOTES POLLED	VOTES COUNTED	SURPLUS VOTES
MATHURA	1088206	1098112	9906



(Graphics: Aroop Mishra/The Quint)

BJP Hema Malini won this seat by securing 6,67,342 votes, leaving the runner-up Kumar Narendra Singh of Rashtriya Lok Dal way behind with 3,77,319 EVM votes.

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# BIHAR

## SURPLUS VOTES IN EVMs IN LOK SABHA ELECTION 2019



CONSTITUENCY	VOTES POLLED	VOTES COUNTED	SURPLUS VOTES
AURANGABAD	930758	939526	8768

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quint*

(Graphics: Aroop Mishra/The Quint)

The BJP candidate Sushil Kumar Singh won the Aurangabad seat with 4,29,936 EVM votes, while the first runner-up Upendra Prasad from Hindustani Awam Morcha secured 3,58,611 EVM votes.

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# ARUNACHAL PRADESH

## SURPLUS VOTES IN EVMs IN LOK SABHA ELECTION 2019

CONSTITUENCY	VOTES POLLED	VOTES COUNTED	SURPLUS VOTES
Arunachal West	336161	344122	7961

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(Graphics: Aroop Mishra/The Quint)

Former Union Minister of State for Home, Kiren Rijiju of BJP, won the Arunachal Pradesh Parliamentary constituency with 63.02% vote share. The Congress candidate Nabam Tuki was left way behind with merely 14.22%.

**The Quint** has earlier reported on a similar mismatch in the Madhya Pradesh Assembly Elections held in November 2018. Out of 230 Assembly constituencies, the data of number of votes polled and number of votes counted did not tally in 204.

According to an EVM expert, there shouldn't be a mismatch of even a single vote and if a mismatch surfaces, the EC officer on counting duty

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and integrity of the election process, the expert said.

*“This is very disturbing as I have read that three former CECs – SY Qureshi, N Gopalaswami, HS Brahma – are reported to have said that the EC should explain these discrepancies. That is the only way the credibility of the EC can be restored.”*

Jagdeep Chokker, Member, Association of Democratic Reform



## Experts Stumped By Constituencies That Saw Vote Count Deficit

In the case of surplus votes, the EC’s standard defence had been that this was simply estimated data, and so was liable to increase (leaving aside that its own website identified the data as ‘final’ data).

*The former chief election commissioner Rawat says, “The vote polled data will always increase, not decrease.” The reason for this is that the estimates for turnout are given based on data collected on polling day. By the end of polling day, this number is sure to have risen.*



Now, can the EC explain this: If the current vote polled data is not the final data, and the votes polled number is likely to increase as more data becomes available, then how did the votes counted end up less than the votes polled in some constituencies?

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# DEFICIT VOTES IN EVMS

IN LOK SABHA ELECTION 2019



CONSTITUENCY	VOTES POLLED	VOTES COUNTED	DEFICIT VOTES
TRIPURA WEST	1121138	1101362	-19776
KEONJHAR	1184697	1173526	-11171
BHUBANESWAR	1011754	1003704	-8050

*the  
quint*

(Graphics: Aroop Mishra/The Quint)

Will the EC clarify the deficit vote count? Will EC explain the delay in uploading votes polled data after counting has concluded? As per procedure, the Presiding Officer in the polling booth has to update the EC about the total votes polled every two hours on polling day – why has it taken over a month since polled to get the final data?

## Countries That Have Banned EVMs

Developed countries like Britain, considered the mother of democracies, do not use EVMs. Rather, they still rely on the paper ballot system.

In Germany, EVMs were introduced in 2005. The Federal Constitutional

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Many other countries like the US, France and Netherlands have also banned the use of EVMs. The only form of electronic voting used in the US is fax or email.

*(Click here to access the final vote poll data of phases 1, 2, 3 and 4, which was downloaded by The Quint from the Election Commission's website before it was taken down.)*

*(The Quint is moving to Telegram and we'd like you to come along! We won't be on WhatsApp December 2019 onwards, owing to changes in its policies towards news publishers. Join us on Telegram here to get the latest news updates.)*

First Published: 31.05.19

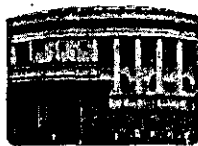
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In Haryana, Is BJP Bearing the Brunt of Int. Anger?

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BEL REFUSES TO DISCLOSE EVM/VVPAT INFO UNDER RTI  
AFTER DEMANDING FEES: RANDOMISATION AS A  
SAFEGUARD IS QUESTIONABLE BASED ON  
MANUFACTURER DATA SUPPLIED UNDER RTI

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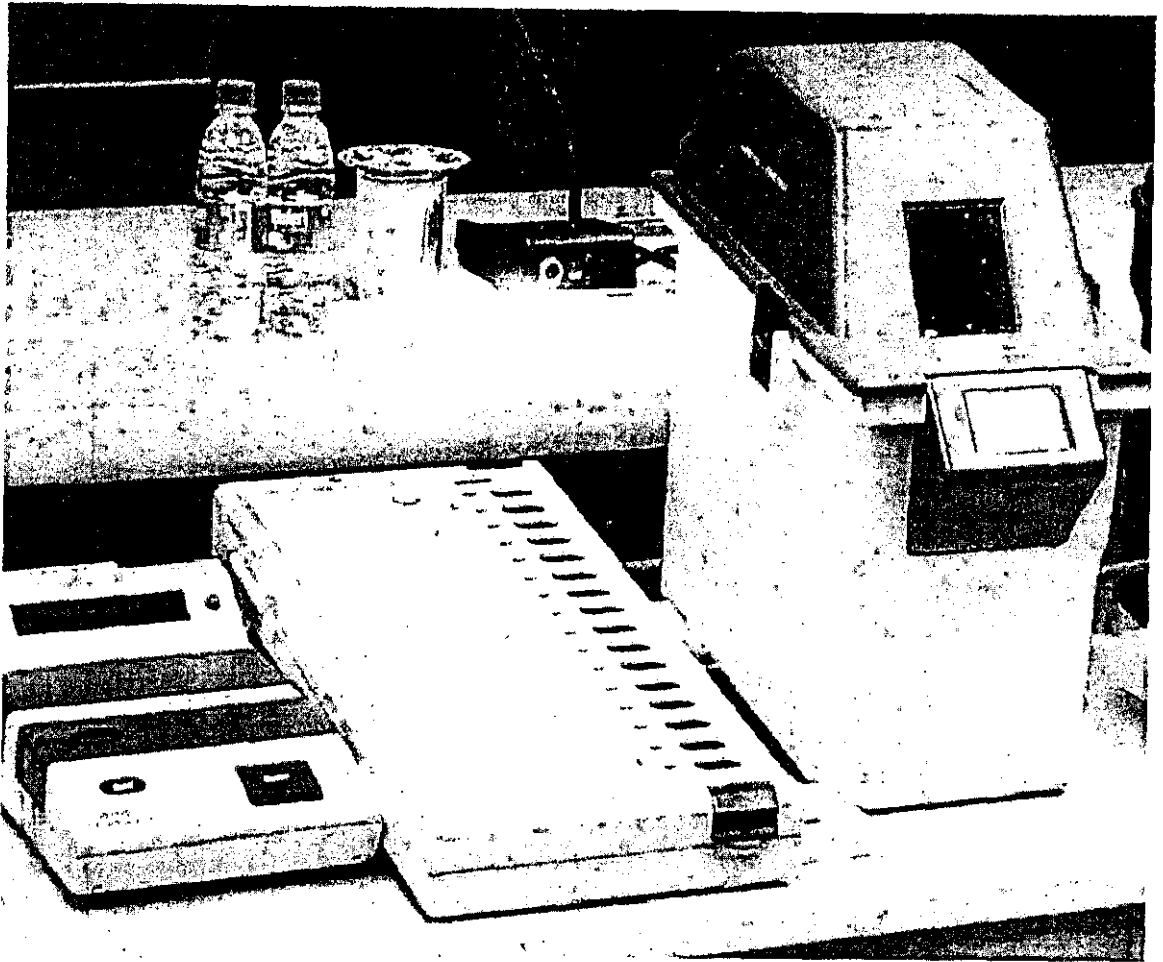


Image courtesy: <https://www.news18.com/>

Sept 04, 2019

By: Venkatesh Nayak

Readers may remember the bold declaration that the Union Minister of State for Personnel, Public Grievances and Pensions made about the NDA-III Government's commitment to transparency while replying to the debate on the Bill to amend *The Right to Information Act, 2005* (RTI Act) in the Lok Sabha. On 22/07/2019 the Minister said:

"Now, coming straight to RTI, as far as RTI is concerned, let me first make it clear this Government has been absolutely committed, as in other wings of governance, to ensure full transparency and full



accountability." [[Click here](#) for the full text of the uncorrected debate of the day and scroll down to page 369 of the text/or page 128 of the pdf file for this part of the Minister's statement]

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**Sadly, this governance philosophy does not seem to have percolated downwards beyond the corridors of the Prime Minister's Office (PMO) with which the Union Minister is associated.**

In June, 2019 I had sought detailed information about **Electronic Voting Machines (EVMs), Voter Verified Paper Trail (VVPAT) Units and Symbol Loading Units (SLUs)**, from **Bharat Electronics Ltd (BEL)** and **Electronics Corporation of India Ltd. (ECIL)** by filing identical requests under the RTI Act.

BEL, a **Navaratna Public Sector Enterprise (PSE)** under the Union Ministry of Defence, initially agreed to supply some information about and demanded Rs. 1,434/- as additional fees. **However, a month later, BEL revised its earlier reply. This time the CPIO claimed that BEL did not hold most of the information and also rejected one of the queries stating that disclosure would endanger the life of its Engineers and returned the Bank Draft that I sent them for fee payment.**

Earlier, ECIL uploaded some of this information on the **RTI Online Facility** but rejected access to some crucial bits of information sought in my RTI application. **I have not received a formal reply from the ECIL's under its Central Public Information Officer's signature, via email or in hard copy till date.**

**These RTI replies when compared with the ECI's claims about the maximum capacity of VVPAT Units to print votes cast through EVMs and contrasted against the Polling Station Level voter turnout data as compared with the number of voters registered on the Electoral Rolls (all of these are public documents), throw open more disturbing questions about the entire electoral process.**

### ***The Background***

The April-May 2019 General Elections returned the National Democratic Alliance Government to power with a thumping majority.

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Dissatisfied with the scanty information about the manner in which polls were conducted across the country, several private citizens and mediapersons have used the RTI Act to seek information about voter turnout data mismatch, complaints about EVMs malfunctioning, complaints about mismatch of EVMs and VVPAT printouts, movement of EVMs and VVPATs to the electoral constituencies from the manufacturing companies and details of action taken on complaints received against high profile politicians for violating the Model Code of Conduct. Many of these requests have been turned down by the relevant public authorities.

In May, 2019, shortly before counting day, this author had placed in the public domain a set of papers and reports obtained under the RTI Act about EVMs and the micro-controllers used in them questioning the oft-repeated claim of the Election Commission of India (ECI) as to whether or not they are indeed "one-time programmable" (OTP). The resultant country-wide debate has ranged from the manufacturers swearing by their non-tamperability to civil society groups and political activists launching a country-wise campaign to return to paper ballot. Strangely, the Opposition Parties which had vociferously doubted the infallibility claims about EVMs and VVPATs fell silent after the election results revealed the extent of drubbing they had suffered at the hustings. It is not known how many election petitions have been filed across the country doubting the performance and results of EVMs and VVPATs. Some media reports highlighted the mismatch between the voter turnout figures and the final results that the ECI announced a few weeks later. The ECI explained, the initial voter turnout figures were "tentative and not final" in nature.

### *The RTI Intervention*

After closely scrutinising some of the information and statistics published by the ECI, on 17th June, 2019, I filed two identical RTI applications seeking the following information from BEL and ECIL. **Neither these companies nor the ECI have placed this information in the public domain:**

"I would like to obtain the following information pertaining to the Electronic Voting Machines (EVMs), Voter Verified Paper Audit Trails (VVPATs) and Symbol Loading Units (SLUs) supplied by your company for use during the recently concluded General Elections to the Lok Sabha, under the RTI Act: 106

1) The maximum number of votes recordable on each EVM supplied for use in the 2019 Lok Sabha Elections,

2) The maximum number of votes printable on each VVPAT Machine supplied for use in the 2019 Lok Sabha Elections,

3) The district-wise number of Control Units of EVMs transported across India for use in the 2019 Lok Sabha Elections,

4) The district-wise number of Ballot Units of EVMs transported across India for use in the 2019 Lok Sabha Elections,

5) The district-wise number of VVPATs transported across India for use in the 2019 Lok Sabha Elections,

6) The district-wise number of thermal paper rolls used in VVPATs transported across India for use in the 2019 Lok Sabha Elections,

7) A clear photocopy of the List of Engineers with name and designation, deputed for carrying out tasks relating to the preparation of EVMs and VVPATs that was sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections,

8) A clear photocopy of the List of Senior Level Engineers with name and designation, deputed for supervision and coordination during the preparation of EVMs and VVPATs that was sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections,

9) The total number of SLUs used by your Team(s) of Engineers during the 2019 Lok Sabha Elections,

10) A clear photocopy of the official document handed over to every District Election Officer during the 2019 Lok Sabha Elections containing details of every SLU allocated to your team(s) of Engineers,

11) A clear photocopy of the User Manual prepared by your company, pertaining to the VVPAT machines used during the 2019 Lok Sabha Elections, if any, 107

12) A clear photocopy of the User Manual prepared by your company, pertaining to the SLUs used during the 2019 Lok Sabha Elections, if any,

13) A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on VVPAT, if any, along with the postal address of such office, and

14) A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on SLU, if any, along with the postal address of such office."

### ***BEL's RTI Replies***

The CPIO of BEL sent a fee intimation letter for INR 1,434/- for a total of 717 pages, after almost a month had passed since the submission of my RTI application. He agreed to supply most of the information but denied access to the VVPAT patent application filed with the Office of the Controller General of Patents, citing Section 8(1)(d) of the RTI Act. Readers will recognise, Section 8(1)(d) of the RTI Act exempts from disclosure, information that is in the nature of a trade secret or commercial confidence or intellectual property rights whose disclosure may harm the competitive position of a third party. That under Sections 11A and 145 of *The Patents Act, 1970*, read with Rules 24 and 27 of *The Patents Rules, 2008*, the patent application along with complete specifications of the invention sought to be patented are publicly accessible information is an issue which the CPIO completely ignored while formulating his reply. However, accessing this information under the patents regime is very difficult unless one knows the patent application number.

Nevertheless, I promptly sent the CPIO, BEL a Bank Draft for Rs. 1,434/- while reserving my right to appeal against his refusal to part with the VVPAT patent application. ([Click here](#) for the BEL-related RTI application, the CPIO's fee letter and a copy of my reply and Bank Draft sent to him.)

Then I waited for more than a month for this information thinking 108  
that the delay might be because of the time taken to copy 700+ pages  
of records. After 40 days had lapsed, on 28/08/2019 I filed a first appeal  
under Section 19(1) of the RTI Act challenging the non-supply of  
information.

Believe it or not, the CPIO who was silent until then, sent a reply  
returning the Bank Draft and claimed that BEL did not have most  
of the information sought which he had agreed to supply in his first  
reply. Interestingly, the CPIO's revised reply is dated 27/08/2019-  
a day before I filed my first appeal. However, the letter seems to  
have been handed over to the local post office only the next day, i.e.,  
the 28th of August (the day I filed my first appeal). Has he  
backdated his revised reply? An inquiry by the Central  
Information Commission alone can reveal. ([Click here](#) for the  
CPIO's revised reply and the consignment tracking report.)

#### *ECIL's RTI Reply*

Although ECIL's CPIO had disposed of my RTI application earlier, in  
August, 2019, I decided to wait for the BEL CPIO's reply before going  
public with these RTI interventions. ECIL's CPIO merely uploaded  
some text on the RTI Online Facility without any signature (I am still  
waiting for a hard copy of this reply or a scanned copy by email) which  
states as follows:

*1) RTI Queries 4, 5 & 6:* ECIL's CPIO claimed that information about  
EVMs and VVPATs despatched to the Lok Sabha constituencies and  
the number of thermal paper rolls used for printing the ballots is not  
readily available and they will be sent as soon as they are received.

*2) RTI Queries 7 & 8:* The CPIO denied access to the list of Engineers  
who were stationed in the constituencies to do prepare the EVMs and  
VVPATs for polling and their superiors who supervised the whole  
exercise claiming that it was personal information exempt under  
Section 8(1)(j) of the RTI Act.

*3) RTI Queries 10 & 12:* The CPIO rejected access to the User Manual  
of the Symbol Loading Units and the official document related to them,  
handed over to the district administration after the candidate

information is loaded on the EVMs and VVPATs. The CPIO says that 109  
it is classified information and attracts Section 8(1)(a) and 8(1)(d) of  
the RTI Act. Section 8(1)(a) exempts information which will  
prejudicially affect security and strategic interests of the State. (Click  
here for the ECIL-related RTI application and the CPIO's reply.)

*What is problematic with these RTI replies?*

BEL's CPIO had initially agreed to supply information about the  
number of EVMs (Control and Ballot Units) and VVPATs  
manufactured by the company, and the thermal paper rolls used in the  
VVPATs all of which were sent to the districts for use during the 2019  
Lok Sabha elections. He had also agreed to supply the list of Engineers  
who took part in and coordinated and supervised the preparation of  
these machines for the elections. **He had physically counted the  
number of pages relatable to each RTI query and demanded fees  
accordingly.** In his revised reply, however, he states that BEL does not  
hold most of the requested information. **So which papers did he count  
before sending the first reply?** Only one of these replies, not both, can  
be true. **Perhaps the latest reply is an afterthought arising out of  
pressure exerted- probably by an external agency against making  
this information public. I hope the identity of this external agency  
is revealed during the appeal proceedings in the coming months.**

Even more surprising is the CPIO's latest claim that revealing the names  
of Engineers who helped with the technological aspects of polling  
would put their lives and physical safety in danger. **If the 2019 Lok  
Sabha Polls were indeed free and fair without any element of foul  
play whatsoever, how could transparency endanger the lives and  
safety of these Engineers? These companies, the ECI and the  
Government have a lot to explain.**

Next, **ECIL's CPIO claimed that they do not have readily  
available information about the number of EVMs, VVPATs and  
Thermal Paper Rolls that were sent by their own company to the  
districts.** This is very strange indeed because ECIL was responsible for  
manufacturing at least 50% of these machines deployed during the 2019  
Elections. The Elections were conducted without encountering the

problem of non-availability of an adequate number of EVMs and VVPATs, So this part of the reply is also difficult to digest. ECIL's CPIO denied access to the List of their Engineers claiming that their personal privacy would be violated. The CPIO seems to think that disclosure of such information either has no public interest element in it or it would cause unwarranted invasion of the privacy of those Engineers! As for the EVM/VVPAT Manual, he has pointed to the ECI's Manual on the subject instead of supplying a copy of the company's own manual. Is it too much to expect that a manufacturing company ought to have and publicly share a User Manual for its machines?

*The comparative picture arising from the RTI replies sent by BEL and ECIL's CPIOs*

- a) Both CPIOs have confirmed that their EVMs can record a maximum of 2,000 votes per machine.
- b) However, BEL's VVPAT Unit can record a maximum of 1,300 votes while ECIL's VVPAT can record 1,400 votes per thermal paper roll.
- c) Interestingly, BEL says they used 1,400 Symbol Loading Units (SLUs) to load candidate information in the EVMs and VVPATs. But ECIL says they used 3,299 SLUs for loading candidate information on their machines in different parts of the country.

*What do these replies reveal when compared with ECI's Manuals?*

1) The total number of votes cast in an Assembly or Parliamentary constituency is recorded on **Form 20 (called Final Result Sheet)** by its Presiding Officer and submitted to the ECI. This **Form 20** information for every constituency is usually uploaded on ECI's website for the Lok Sabha elections and State Assembly Elections up to 2018. However, similar data is not available for the 2019 Lok Sabha Elections on the ECI's website. An interested person is now compelled to visit the websites of the Chief Electoral Officers (CEOs) of every State/UT, separately, to access this information. Even here, there is no uniformity. While many CEOs have uploaded **Part 1 of Form 20** which contains Polling Station-wise data of the number of votes cast

(for example see Delhi CEO's website), a few have published only **Part 2 of Form 20** which contains aggregate data for each Assembly segment of the Parliamentary Constituency (for example see Bihar CEO's website). It is Polling-Station-wise data that throws up some crucial questions when compared with the ECI's claims and the RTI replies of BEL and ECIL.

Regarding the number of votes that can be printed on one thermal paper roll in a VVPAT Unit, para 1.2.3 of the ECI's Handbook for Presiding Officers of Polling Stations states as follows:

*"1.2.3. VVPAT operates on 22.5-volt battery and is now being used in all elections at every polling station. The thermal paper used in the VVPATs for printing of VVPAT paper slips can print approximately 1500 paper slips only, out of which approximately 100 paper slips are got printed during the commissioning of VVPATs and mock poll at polling station on poll day. So, the maximum number of electors assigned to any Polling station is 1400." [emphasis supplied]*

This statement will have to be treated as inaccurate in view of the RTI replies from BEL and ECIL. After accounting for 100 VVPAT slips used up during First Level Checking (FLC) and during mock poll prior to the start of actual polling, only 1,200 slips would be available on a BEL manufactured VVPAT Unit during elections. On ECIL manufactured VVPAT Unit this will be only 1,300 slips available on the thermal paper roll.

Let us take Polling Station-wise data from Kerala as an example to do further checking of the veracity of ECI's claims. According to Form No. 20: Part 1 data published by Kerala's CEO for the Wayanad Lok Sabha Constituency, a total of 1,204 votes were cast in the 2019 Lok Sabha Polls at Polling Station No. 190 housed in the South-West Building Right Wing of the Government High School of Aanappara in Sulthanbathery Assembly Segment. So, it is obvious that the BEL VVPAT might not have been used here as one thermal paper roll would not have been adequate for the purpose of recording all these votes.



Perhaps ECIL's VVPAT was used at this Polling Station, instead. <sup>112</sup>  
However, the Electoral Rolls published on the CEO's website reveals a total of 1,326 voters who are registered to vote at Polling Station No. 190. So ECIL's VVPAT will also not be able to record the votes in excess of 1,300 unless a fresh thermal paper roll is loaded. Readers might say, this is indeed the solution.

However, para 33.2.25 of ECI's Handbook for Presiding Officers (see page 117) clearly states, they must ensure that the paper roll compartment is sealed with the Returning Officer's seal prior to the election. To the best of my knowledge, this Handbook does not contain any instructions for replenishing a thermal paper roll by breaking this VVPAT seal on polling day. Further, paras 5.4.4.4 and 5.4.9.3 of this Handbook mention the placement of one thermal paper roll only in the carrying case for each VVPAT Unit of M2 and M3 generation. So if all 1,326 voters turned out to cast their vote on polling day at Polling Station No. 190 in Sulthanbathery, how would the VVPATs record their votes in print is a billion Rupee question that the ECI must answer. A random checking revealed similar incompatibility between registered voter figures, the total number of votes actually polled and the capacity of VVPATs to print votes in Kasargod and Kannur Lok Sabha constituencies in Kerala.

Lest readers accuse me of limiting my illustrations to one State, let us take Polling Station No. 16 located in the Nauhazari Muslimpara Primary School located in the Satgachia Assembly Constituency of Diamond Harbour Lok Sabha Constituency in West Bengal. According to Form 20: Part 1 Data published by the CEO 1,248 voters cast their votes at this Polling Station in the 2019 Lok Sabha Elections. According to the Electoral Rolls published on the CEO's website for this Polling Station, there are 1,443 voters registered as on 01 January, 2019. So even if one were to go by para 1.2.3 of the ECI's Handbook for Presiding Officers the thermal paper roll of 1,400 printing capacity would not be adequate. So also their claim that not more than 1,400 voters may be assigned to one Polling Station seems to fall flat.

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Here also, the thermal paper roll would have to be replenished after breaking the RO's seal on the VVPAT used. To the best of my knowledge, the ECI's Manuals published on its website do not contain any instructions for replenishing thermal paper rolls. I will be happy to stand corrected if readers can show me otherwise.

So what is the ECI's plan if all registered voters turned up at this Polling Station remains a mystery. Readers might like to access Form 20: Part 1 data for other Parliamentary Constituencies to make an assessment for themselves.

2) According to ECIL, it used 3,299 Symbol Loading Units to load candidate data such as name, serial number and election symbol on to the EVMs/VVPATs. BEL used only 1,400. If according to data publicly available, ECI placed orders for roughly similar numbers of EVMs and VVPATs by dividing up the total requirement between the two companies, why did ECIL use more than double the number of SLUs than BEL for loading candidate data on their machines? ECI has not clarified this matter either.

*Can randomisation of EVM/VVPATs be a credible a basis for the non-tamperability claim?*

Two-stage randomisation of EVMs and VVPATs, once before their allotment to each constituency and next before sending them to each Polling Station, is one of the two pillars on which the ECI, the manufacturing companies and technical experts rest their arguments for the non-tamperability of these machines. If the capacities of the VVPATs produced by BEL and ECIL vary, can there ever be a true randomisation, given the lack of uniformity in the number of voters registered for each Polling Station? This is a seminal question that the ECI as the owner of the EVMs and VVPATs must answer urgently.

For example, according to the Electoral Rolls for Polling Station No. 1, Pashchim Vihar located in Govt. Co-Ed. Sr. Secondary School, A-6, Pashchim Vihar in the Shakur Basti Assembly Constituency which forms part of the Chandni Chowk Lok Sabha Constituency has 1,229 registered voters. So if all of them turned up

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on polling day, a BEL manufactured VVPAT which permits only 1,200 votes to be recorded after 100 slips are used during FLC and mock poll would be inadequate for that Polling Station. Only an ECIL VVPAT can be used there to cover all voters. Or take **Polling Station No. 8 situated in Urdu Madhya Vidyalay, Narkat Ghat, Eastern Block (Bhawan No.1) Northern Portion in the Patna Sahib Assembly and Lok Sabha Constituency in Bihar** which has 1,297 voters. BEL VVPATs cannot be used there unless the ECI Manual permits breaking of the RO's seal on the paper roll compartment of the VVPAT to replenish the thermal paper roll. If paper rolls cannot be replenished, then an ECIL VVPAT will have to be sent there. So it is difficult to accept the argument that all EVMs and VVPATs will be randomised twice for every constituency. Randomisation will be subject to the maximum capacity of VVPATs to print votes. This is not true and complete randomisation as any mathematical expert would tell us. **In my humble opinion, the ECI has a lot more explaining to do than it has so far, in order to clear up this mystery.**

The one-time programmable (OTP) nature of the micro-controller embedded in the EVMs/VVPATs is the other pillar on which the non-tamperability claim of EVMs and VVPATs rested so far. In my May 2019 despatch I had shown how official records obtained under the RTI Act do not bear out these OTP claims. Additionally, the ECI's Handbook for Presiding Officers (see para 1.2.2 on page 2) also states that the polling data gets recorded on the micro-controller and remains there even when the battery is removed from the EVM. How can an OTP micro-chip record data more than once and still be labelled "OTP" is a question that the ECI, its technical experts and the manufacturing companies have not yet answered.

### *Conclusion*

**I would like to end this piece with a caveat. I am not alleging any wrongdoing by any authority through this research and analysis. All that I am pointing out is that the ECI and the manufacturing companies are reluctant to place detailed information about the working of EVMs and VVPATs beyond what they decide that the citizenry must know. This is just not acceptable.**

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I will be filing the usual appeals against BEL and ECIL for the very simple reason, that all information about elections to Parliament and State Legislatures, except for voter choice must be accessible to the public. This is the principle of "public examinability" that the Federal Constitutional Court upheld in 2009, while striking down the law permitting the use of EVMs in the elections in Germany. The Court said that all essential steps in the conduct of elections must be publicly examinable because this is a constitutional guarantee of free and fair elections under their Constitution.

Although the Indian Constitution does not make a reference to the principle of "public examinability" of all steps taken during elections, the Supreme Court of India implied this principle as the basis of the people's right to know everything that the Government does in a public way, almost three and a half decades before the German Constitutional Court. In the matter of *State of U.P. vs Raj Narain* [AIR 1975 SC 865]. Justice Mathew's opinion echoed this very principle:

"74. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing." [emphasis supplied]

These RTI interventions are aimed at placing as much information as possible in the public domain about EVMs, VVPATs and other related matters which the ECI or other public authorities are reluctant to publish voluntarily. In the context of elections, I firmly believe voters' choices- individually and at the community level, are the limited set of matters that deserve confidentiality, legally and legitimately. All other matters must be amenable to "public examination" in order to facilitate informed public debate about EVMs and VVPATs.

More detailed information in such matters will not harm but strengthen confidence in voters' minds about the infallibility of EVMs and VVPATs. 116


All facts narrated above are in the public domain. Views are personal.

CHRI trail of enquiry: BEL RTI & Reply | BEL CPIO revised reply | ECIL RTI & Reply | Wayanad Sulthanbathery Form 20 | Sulthanbathery PollStation #190 Electoral Roll Extract

Media coverage: counterview.org | moneylife.in

## ABOUT US

- Team

  
(True copy)

## Thousands of Phantom Votes Suspected Across Lok Sabha Seats in Bihar, UP

Three former Chief Election Commissioners say EC should explain, figures need to be reconciled.

**Chandan Nandy, Kashif Kakvi**

28 May 2019



**Representational image. | Image courtesy: The Himalayan Times**

New Delhi: In several Lok Sabha constituencies in Bihar and Uttar Pradesh, thousands of votes were recorded to have been counted in excess of the total votes cast, and in a few cases, counted votes were substantially less than votes cast, an investigation by **NewsClick** has revealed.

These constituencies include at least three high-profile ones -- Patna Sahib, Jehanabad and Begusarai. In Jehanabad, the votes polled are in excess of the votes counted by 23,079. That is, it seems that this number of votes have not been accounted for. The margin of victory of the Janata Dal-United candidate in this seat was just 1,751 votes over the Rashtriya Janata Dal (RJD) rival indicating that the result could have changed had the unaccounted votes been counted.

An earlier version of this story has been updated with latest detailed results from State Chief Electoral Officers (CEOs) which put out the

statutory Form 20 signed by respective Returning Officers, wherever available. Data for total electors in each Lok Sabha constituency has been drawn from statutory Form 2b, wherever put out by the respective State CEOs. 118

#### Phantom Votes?

	Electors	Turnout (%)	Votes Polled	Counted Votes	Difference [Polled-Counted]
Patna Sahib (Bihar)	2136800	43.10	920961	982939	-61978
Begusarai (Bihar)	1942769	62.32	1210734	1226503	-15769
Jehanabad (Bihar)	1575018	53.67	845312	822233	23079
Badaun (UP)	1890129	56.70	1071744	1081108	-9364
Farrukhabad (UP)	1703926	58.72	1000563	1002953	-2390

Sources: Turnout data from ECI app; Counted vote data from CEOs of states except UP where ECI data used.

CEO Madhya Pradesh CEO Bihar Election Commission of India

Some of the LS constituencies mentioned in the earlier story have been omitted because the discrepancies were found to be minor after updating.

#### FORMER CECS WANT EXPLANATION

Three former Chief Election Commissioners (CEC) when contacted by **Newslick** on this matter expressed surprise and said that the Election Commission needs to explain or reconcile the numbers.

"Since there are discrepancies, the Election Commission has to explain. Sometimes there are reasons and since there are none at the moment, they (the Commission) must give an explanation," said SY Quraishi, who was CEC in 2010-12. He even said that if the figures are true then "someone should move court".

Another former CEC, N Gopalaswamy (2006-09), said that "if the Form-17A polled figures have not been included and/or reconciled, then ask the Election Commission. Ideally, such reconciliation should have been done".

HS Brahma who headed the Election Commission in 2015, told Newslick that discrepancy of up to, say, a couple of thousand votes could be understood because sometimes there are issues with postal votes. "But anything more than that needs to be investigated and explained," he added.

Rejected postal votes are often not counted in result tallies put out by the Election Commission but these may amount to as much as a

thousand, in some cases. Since they represent polled votes they have been included in here, wherever such data is available. 119

Similar calculations have been done for other constituencies in several states by other analysts who allege that discrepancies have been discovered in those too.

Repeated phone calls to CEC spokesperson Sheyphali Sharan on May 24 elicited no response. Sharan also did not respond to an SMS message.

### **SURPRISING DISCREPANCIES IN CONSTITUENCIES**

In Patna Sahib constituency, where the two main contenders were the BJP's Ravishankar Prasad and the Congress' Shatrughan Sinha, the total number of electors [that is, eligible voters] in the 2019 general election was 21.368 lakh. The voter turnout on May 19 in this constituency was 43.10%.

On vote counting day, May 23, it turned out that total number of votes cast stood at 9,82,939. But, 43.10% of the total number of voters comes to 9,20,961 votes. That indicates that an excess of 61,978 votes have been counted, compared with the polled votes.

An examination of the second high-profile constituency, Begusarai, reveals a similar disturbing trend. Begusarai had three main contestants -- the BJP's Giriraj Singh, the CPI's Kanhaiya Kumar and the Rashtriya Janata Dal's Mohammad Tanveer Hassan. Of the 19.428 lakh total electors in the constituency, some 62.32% voters exercised their franchise, that is, 12,10,734 voters.

But curiously enough there is a mismatch with the counted votes, which were recorded as 12,26,503. That is, 15,769 extra votes appear to have been counted.

The Jehanabad Lok Sabha seat in Bihar witnessed a close contest between JD(U)'s Chandeshwar Prasad, who won by just 1,751 votes over RJD's Surendra Prasad Yadav. While the total number of registered voters in Jehanabad is 15,75,018, 53.67% exercised their franchise and the total number of votes cast was 8,22,065. The alarming part is that 23,079 votes were not counted and the JDU's candidate won.

### **POLITICAL REACTION**

Even as he accepted defeat in the immediate aftermath of the counting of votes, Shatrughan Sinha told a news agency on May 24 that "there has been a big game (*bada khel hua hai*)". He was unable



C. to respond to **Newslick's** questions on the suspicious vote discrepancy in Patna Sahib since he was travelling.


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Taking a guarded stance, Kanhaiya Kumar, CPI candidate from Begusarai admitted to **Newslick** that "the prevailing situation certainly leaves a lot of room for doubts, but my party and I will take a collective decision on this issue and go over the numbers before making any public statement".

Speaking to **Newslick**, a senior Congress Working Committee (CWC) member who closely followed the election across 40 constituencies in Bihar, said on the condition of anonymity that "there are grave doubts over the EVMs. There appears to be huge differences between polling (as it took place across the state) and counting of ballots. The Congress will certainly undertake its own investigations before the party's legal cell takes up the issue. This matter will be taken up at the CWC meeting on May 25".

In the course of this investigation, it was discovered that there is wide variance in practices of reporting across states and the ECI. For instance, figures on voter turnout varied from the ECI app to the State CEOs. Similar variation exists even in total electors in each constituency. Some of these will cause differing estimates of voter turnout in absolute numbers while inclusion or exclusion of postal ballots or rejected postal ballots may cause other types of discrepancies.

But notwithstanding these avoidable but sadly existing variations, the discrepancies revealed in the few constituencies above show that there is need for a full cross-check by the ECI and also full disclosure of all data in statutory formats. Otherwise, the people will continue to be uncertain of the counting process.

  
(True Copy)

## Why EC Owes an Answer to the Country Over 'Phantom Votes'

In order to ensure that the democratic fabric of this country is unruptured, the Election Commission needs to step up and address this issue.

**Ravi Nair**

31 May 2019



Following the recently concluded Lok Sabha elections, most political parties have been scrutinising the data released by Election Commission of India (ECI), and have substantial reasons to do so. It has been revealed that the total difference between the votes polled during the seven-phase election and the votes counted on May 23 stands at a whopping 5.465 million, as per the data available with the ECI itself. Such a vast difference cannot be dismissed by means of 'disclaimers' that say that these are only 'provisional numbers'. Because the winners of this election – which was swept by the Bharatiya Janata Party (BJP) – were announced on the basis of these very provisional numbers.

The role of the Election Commission – which was criticised time and again for going soft on the ruling BJP in spite of several violations of the Model

Code of Conduct by its leaders during pre-poll campaigning – comes under scanner once again with the hue and cry surrounding these 'phantom votes'. 122

A few parties are said to have collated Form 17C from booth level to crosscheck the veracity of the data released by the ECI. The reasons are said to be many; like mass movements of reserved EVMs day(s) after elections and ECI's vague and casual response to such EVM movements. Against this backdrop, it will be interesting to take a look at the data published by ECI and understand why these 'phantom votes' should be a cause of concern.

We have four sets of data here. The first one is from ECI Voter Turnout Mobile application. In the notification ECI put out while launching this app, they have clearly mentioned: "The mechanism involves simple entry of estimated cumulative percentage turnout through the web or mobile app during the currency of the poll. These entries are to be done mandatorily on a designated time slot by the Assistant Returning Officers from within the New Suvidha Portal. After the end of the poll, New Suvidha Portal allows entry of detailed turnout report both Lok Sabha and Assembly Election-wise, which includes Male, Female, Others gender numbers against the total number of electors."

This is very important because ECI says it is "*estimated* cumulative percentage turnout" (emphasis added). In the same breath, ECI, in its notification in para 3.2, says: "3.2 The entry into the module is mandatory by each ARO on every two hourly intervals. The following will be the slot available for data entry 1. 9 AM, 2. 11 AM, 3. 1 PM, 4. 3 PM, 5. 5 PM, 6. END OF POLL."

In Para 3.5 EC says: "*If the entry is missed based upon the above schedule, no entry will be allowed on that missed time slot. However, the next entry can be made. As the numbers entered are cumulative, the missed entry will not affect the total turnout.* After the 3 PM report time slot is over, CLOSE OF POLL button will be enabled. Anytime after 3 PM the ARO can close the poll by entering the estimated turnout %. The remaining time slot i.e. 5 PM entry will be disabled if the CLOSE OF POLL is enabled. However, ARO can de-freeze the CLOSE OF POLL and the entry for 5 PM will again be available

for entry. *The CLOSE OF POLL percent entry is never timeout and therefore, the entry can be edited anytime afterwards.*"

The fact is that even though the ECI put out certain caveats to make its life easier later, they have captured almost clear percentage of turnout data in the app itself. We can safely reach this assumption by comparing the voter turnout data put out by ECI after every phase of polls and updated on May 24 – a day after the results were announced. In comparison, except in the final phase, the updated voter turnout percentage on the ECI’s website and the one published in the Voter Turnout app stand almost the same with very minute variations, which we shall check later. Let us see it in a graphic chart to understand it better. Don’t forget, these numbers in the ECI app were released on that particular voting day by late night and the ECI website last updated the data on 22 May – a day before counting of votes. Here too, at the bottom of the files, ECI has written in bold letters: ‘\*Note: Provisional Data: subject to change till the generation of Index Card.’

Voter Turnout Voter Turnout (%) ECI Website ECI App Phase I Phase II Phase III Phase IV Phase V Phase VI 020406080 Phase VI • ECI App: 64.41 Election Commission Data

Elections 2019: Voter Turnout in First Six Phases

Elections 2019: Voter Turnout in First Six Phases

For a minute, let us accept that both these sets of data are not final, but are only provisional. The most intriguing piece of information comes from this part of the ECI website. This was last updated at 08:10:02 PM on May 24, 2019 – a day after election results were announced. It has the candidate-wise votes polled for all the 542 constituencies including NOTA and postal ballots. Election results are declared based on these numbers. But ECI has put a “disclaimer” here too! It reads: “The trends displayed are based on the data entry done by ARO/RO as when they complete these rounds and is subject to change. Only Result signed and declared by Returning officer has the statutory validity.”

Let us agree with what the ECI says. But that raises a pertinent question: what should be the permissible variation between three sets of same data – especially that of an election in a democracy? As of now, we don’t know. If

such variation is of a few million votes, how can ECI justify that as the fault of "provisional data"? <sup>124</sup>

Also watch: Elections 2019: How Neutral is Election Commission?

As per the ECI website, India had 910,139,031 eligible voters ahead of the 2019 general election. The election happened in seven phases. As per the ECI website, 141,788,110 were eligible to vote in the first phase and out of that, 69.58% or 98,650,308 people voted. The graphic chart below explains it in a simple way.

Number of Voters Eligible Voters vs Actual Votes Total Number of Eligible Voters  
Number of People Voted Phase I Phase II Phase III Phase IV Phase V Phase VI Phase VII  
0 50M 100M 150M 200M Highcharts.com

Elections 2019: Eligible Voters vs Actual Votes


Till the sixth phase, there is no mismatch between the "estimated" numbers in the ECI app and the "provisional data" of the ECI. But it changes in a big way when it comes to the seventh phase. In the 59 constituencies which went in to polls in the seventh phase, as per ECI, there were 101,378,531 eligible voters. The ECI app shows that the "Estimated Voter Turnout" after three and a half hours of the end of election on May 19 was 63.98%, meaning 64,861,984 people had voted.



SEVENTH PHASE ESTIMATED

**VOTER TURNOUT**

128

 SUIDHA	SECRETARIAT OF THE ELECTION COMMISSION OF INDIA Nirvachan Sadan, Ashoka Road, New Delhi-110001
User: ECI	Date of Print: 19-May-2019 09:30 pm
<b>Voter Turn Out - 63.98%</b>	
<b>Estimated Poll Day Turnout Details- Phase: 7</b>	
State	Latest Updated Poll %(2019)
Bihar	53.36
Chandigarh	63.57
Himachal Pradesh	70.40
Jharkhand	71.16
Madhya Pradesh	75.38
Punjab	64.71
Uttar Pradesh	58.01
West Bengal	73.51
Nirvachan Sadan, Ashoka Road, New Delhi- 110001	

The (provisional) numbers for seventh phase updated on the ECI Website on May 22 shows that the voter turnout was 61.71%. It means 62,560,691 voters used their franchise on May 19. Here, the difference becomes vast – of 23,01,293 votes!

ECI app has revised the numbers a few times in between. On May 28, it showed 65.16% turnout in the seventh phase, and on May 30, the "estimated voter turnout" in the app stood at 65.07%. The difference between 61.71% and 65.07% comes to 34,06,319 votes! How on earth does the provisional data vary by 3.406 million votes in a single phase of election out of seven phases?

Now let us look at the other set of data which the ECI has put out on its website. Here, one can check the total number of votes polled – both on the EVMs and the postal ballots – for all the candidates in all the 542 constituencies where elections were held. As per the data uploaded on this website, the difference between the number of votes counted and votes polled is quite vast.

Let us look at the graphical representation of these numbers:

Number of Votes Variation in Polled & Counted Votes Voted as per ECI Votes  
 Counted\*Phase IPhase IIPhase IIIPhase IVPhase VPhase VIPhase VII  
 025M50M75M100M125M150MHighcharts.com

Variation in Polled & Counted Votes

The ECI has again written a disclaimer, saying: "The trends displayed are based on the data entry done by ARO/RO as when they complete these rounds and is subject to change. Only Result signed and declared by Returning officer has the statutory validity." But this disclaimer raises a fundamental question: how can the ECI change the data even by one vote once the results are already announced?

In the first phase of election, 91 constituencies went on to polls with a total of 141,788,110 eligible voters. Out of the total, ECI data says that 98,650,308 people voted. However, the total number of votes counted were 99,205,334 comprising 98,680,286 EVM votes and 525,048 postal ballots. That amounts to the difference of 555,026 votes.

In the second phase, 108,221,442 votes were polled. The total number of votes counted were 109,063,176 including 109,063,176 EVM votes and 417,151 postal ballots. Here, the difference is of 841,734 votes.

Phase	Seats	Polled Votes	Counted Votes	Difference
PH 1	91	98650308	99205334	555026
PH 2	95	108221442	109063176	841734
PH 3	117	129164277	129401727	237450
PH 4	72	83970574	84313251	342677
PH 5	49	56334850	56434227	99377
PH 6	59	68460969	68678749	217780
PH 7	59	62558995	66099525	3540530
<b>Total</b>	<b>542</b>	<b>607361415</b>	<b>613195989</b>	<b>5834574</b>


This data includes rejected votes. Normally, a certain percentage of postal ballots get rejected for various reasons, and that numbers are put out by the state election commission in the Form 20 of every constituency. As of now, most of the chief election officers' websites are yet to publish this data. Bihar has released it, which can be checked [here](#). So, to calculate the average

percentage of rejection, we have calculated the cumulative average from 40 constituencies of Bihar.

In Bihar, a total 162,839 postal ballots were counted and out of these, 23,792 votes were rejected. So, let us, for the sake of extrapolation, suppose that the average rejection rate was 14.61%. Now, let us calculate the rejected votes for the entire country.

The total number of 1,846,431 postal ballots were counted across 542 constituencies in 2019 general elections. We have seen, in a state like Bihar, that the rejection rate was 14.61%. Let us be more generous and presume it would be about 20% for the pan-nation calculation, which would mean that 369,286 postal ballots were rejected. If we reduce this number from the total counted votes, we still have 54,65,288 more votes than polled. That is 0.9% more than the total votes polled!

These figures are capable of raising serious doubts in the minds of the voters, especially when this election has awarded a thumping majority to the BJP, despite economic failures in its five-year tenure. In order to ensure that the democratic fabric of this country is unruptured, the Election Commission needs to step up and address this issue, and not let this 'phantom' haunt the spirit of democracy.

  
(Type Copy)



IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

**WRIT PETITION (CIVIL) NO. 1389 OF 2019**

(Under Article 32 of the Constitution of India)

AND

**WRIT PETITION (CIVIL) NO. 1382 OF 2019**

(Under Article 32 of the Constitution of India)

Mahua Moitra & etc.

... Petitioners

Versus

Election Commission of India & etc.

... Respondents

**OFFICE REPORT**

**Writ Petition (C) No. 1389/2019**

The Writ Petition above-mentioned was listed before the Court on 09.12.2019, when the Court was pleased to pass the following Order:-

“Issue notice.”

It is submitted that show cause notice was issued to the Sole Respondent through speed post on 16.12.2019.

It is further submitted that Mr. Amit Sharma, Advocate has on 06.02.2020 filed Vakalatnama/appearance on behalf of Election Commission of India i.e. sole Respondent. Hence service of notice is complete.

**W.P.(C) No. 1382 of 2019**

The Writ Petition above-mentioned was listed before the Court on 13.12.2019, when the Court was pleased to pass the following Order:-

“Issue notice returnable on 17.02.2020  
Tag with Writ Petition (Civil) No. 1389 of 2019.”

It is submitted that show cause notice was issued to both the Respondents through speed post on 18.12.2019.

It is further submitted that Mr. Amit Sharma, Advocate has on 06.02.2020 filed Vakalatnama/appearance on behalf of (R-1) i.e. Election Commission of India. As per India Post Tracking Report notice has been delivered upon Respondent No. 2, but no one enter appearance on behalf of R-2 i.e (Union of India).

Service of notice is complete.

It is lastly submitted that no further document has been filed so far.

The Writ Petitions above-mentioned are listed before the Hon'ble Court with this Office Report for Orders.

Dated this the 15<sup>h</sup> day of February, 2020.

Sd/-  
Assistant Registrar

t..