

**IN THE SUPREME COURT OF INDIA**  
(INHERENT JURISDICTION)  
**REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2024**  
IN  
**WRIT PETITION (CIVIL) NO. 184 OF 2024**

**IN THE MATTER OF:**

ARUN KUMAR AGRAWAL

.....PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA AND ANR.

..RESPONDENTS

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*Neha Rathi*

**NEHA RATHI**

(COUNSEL FOR THE PETITIONER)

New Delhi

Dated: **10.05.2024**

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**{REVIEW PETITION ON BEHALF OF THE PETITIONER}**

COUNSEL FOR THE PETITIONER: **NEHA RATHI**

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**IN THE SUPREME COURT OF INDIA**  
(INHERENT JURISDICTION)  
**REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2024**

IN

**WRIT PETITION (CIVIL) NO. 184 OF 2024**

[Arising out of the impugned order dated 26.04.2024 passed by this Hon'ble Court in WP (C) No. 184 of 2024]

**IN THE MATTER OF:-**

1. ARUN KUMAR AGRAWAL  
S/O LATE DR R.S.P AGRAWAL  
R/O T8 EAGLETON GOLF RESORT,  
BANGALORE MYSORE ROAD, BIDADI,  
RAMNAGARA, KARNATAKA - 562109

...PETITIONER

**VERSUS**

1. ELECTION COMMISSION OF INDIA  
THROUGH ITS SECRETARY  
NIRVACHAN SADAN, ASHOKA ROAD  
NEW DELHI - 110001

2. UNION OF INDIA  
THROUGH THE CABINET SECRETARY  
RASHTRAPATI BHAWAN  
NEW DELHI - 110004

.... RESPONDENTS

**REVIEW PETITION UNDER ARTICLE 137 OF THE  
CONSTITUTION OF INDIA READ WITH ORDER XLVII OF THE  
SUPREME COURT RULES, 2013 SEEKING REVIEW OF**

**JUDGMENT DATED 26.04.2024 PASSED BY THIS HON'BLE COURT IN W.P. (C) No. 184 of 2024.**

**TO  
THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA.**

**THE HUMBLE PETITION OF THE  
PETITIONERS ABOVE NAMED**

**MOST RESPECTFULLY SHOWETH:**

1. That the instant review petition is filed by the Petitioner herein seeking review of the impugned judgment dated 26.04.2024, passed by this Hon'ble Court in *W.P(C) No. 184 of 2024* whereby this Hon'ble Court was pleased to dispose of the said Writ Petition filed by the Petitioner herein. The directions passed by this Hon'ble Court *vide* impugned judgment dated 26.04.2024 is quoted herein below:

*76. Nevertheless, not because we have any doubt, but to only further strengthen the integrity of the election process, we are inclined to issue the following directions:*

*(a) On completion of the symbol loading process in the VVPATs undertaken on or after 01.05.2024, the symbol loading units shall be sealed and secured in a container. The candidates or their representatives shall sign the seal. The sealed containers, containing the symbol loading units, shall be kept in the strong room along with the EVMs at least for a period of 45 days post the declaration of*

*results. They shall be opened, examined and dealt with as in the case of EVMs.*

*(b) The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at SI.No.2 or Sl.No.3, behind the highest polled candidate. Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/microcontroller after the verification process is conducted. The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered.*

A copy of impugned judgment dated 26.04.2024 passed by this Hon'ble Court in Writ Petition 184 of 2024 is annexed herewith as **ANNEXURE R1 (Pg 19 to 74)**).

2. It is respectfully submitted that there are mistakes and errors apparent on the face of the impugned order, dated 26.04.2024, and as such there are sufficient reasons which require review of the impugned order/judgment, dated 26.04.2024, passed by this

Hon'ble Court in W.P(C) No. 184 of 2024. The petitioner respectfully seeks review on the following issues as have been dealt with in judgment dated 26.04.2024:

- i) Feasibility of counting of all VVPAT paper slips in terms of time to be taken and additional manpower
- ii) Vulnerability of SLU
- iii) Percentage of VVPAT slips counted for tallying with EVM votes after *Chandrababu Naidu [(2019) 15 SCC 377]* Judgment

### ***Brief Facts***

#### ***Feasibility of counting of all VVPAT paper slips in terms of time to be taken and additional manpower***

3. That this Hon'ble Court in the impugned judgment at para 71 was pleased to note:

*71. "During the course of hearing, it was suggested that instead of physically counting the VVPAT slips, they can be counted by a counting machine. This suggestion, including the suggestion that barcoding of the symbols loaded in the VVPATs may be helpful in machine counting, may be examined by the ECI,".*

The petitioner submits that the same is a very welcome suggestion and gives an impression that this Hon'ble Court favors the

counting of VVPAT paper slips, if the same can be done accurately and without delay.

4. This Hon'ble Court in Para 70 of impugned judgment noted the following:

*70. VVPAT slip is made of a 9.9 cm x 5.6 cm thermal paper coated with chemical to ensure print retention for about 5 years. It is very soft and sticky, which makes the counting process tedious and slow. The counting process is undertaken through the following steps: the verification of unique ID of the VVPAT, opening of the VVPAT drop box, taking out the paper slips, counting the total number of slips, matching the number of slips with the total votes polled as per Form 17C, segregation of candidate-wise VVPAT slips, making candidate-wise bundles of 25 slips and counting of bundles and leftover slips. There are instances of recounting and reverification of the slips till the candidate wise tallying is done. Thus, the counting process, it is stated, takes about five hours. The counting is done by a team of three officers under CCTV coverage and under direct supervision of the supervising officer and the ECI observer of the constituency. Candidates/agents can remain present. We are not inclined to modify the aforesaid directions to increase the number of VVPAT undergoing slip count for several reasons. First, it will increase the time for counting and delay declaration of results. The manpower required would have to be doubled. Manual counting is prone to human errors and may lead to deliberate mischief. Manual intervention in counting can also create multiple charges of manipulation of results. Further, the data and the results do not indicate any need to increase the number of VVPAT units subjected to manual counting.*

5. The Petitioner herein submits that VVPAT paper is of the same size as the thermal print out received when a credit/ debit card is



swiped on making a payment. The counting of the slips after they have been sorted candidate-wise, is *in fact* easier than counting normal paper because the VVPAT paper slip is slightly curled on account of being thermally printed from a roll. The curling makes the picking up of the paper slip from the surface of a table easy. Each slip can be counted while being picked to make bundles of 25 slips (as mandated under instructions given in the ECI's Manual on EVM and VVPAT, 2023).

6. That ECI's note titled "*Response of the Election Commission of India to the Queries raised by the Hon'ble Court on 16.04.2024*" submitted to this Hon'ble Court during the course of hearing contains certain data. As per ECI's note handed over in court, at Serial No. 12 the issue '*Growth in number of electors and machines from 2019 to 2024*' was dealt with and the following figures were provided by the ECI:

*Polling Stations: 2019 – 10.35 Lakhs; 2024 – 10.48 Lakhs*

*Votes Polled : 2019 – About 61.4 Crores; 2024- About 97 Crore registered voters*

*Ballot Unit: 23.3 Lakhs ; 2024: 21.6 Lakhs*

*Control Unit: 16.35 Lakhs; 2024: 16.8 Lakhs*

*VVPAT: 17.4 Lakhs ; 2024: 17.7 Lakhs*

A copy of the note titled "*Response of the Election Commission of India to the Queries raised by the Hon'ble Court on 16.04.2024*" is annexed herewith as **ANNEXURE R2 (Pg 75 to 88)** ).

7. Serial No. 8 in the said Note states that the average votes polled per booth is 1000. The petitioner respectfully submits that the same is incorrect. That based on data provided by ECI above quoted, it is noted that in 2019 approximately 61.4 cr. individuals votes were polled and in 2024 there are approximately 97 crore registered voters. It is known that in 2019 there were 92 crore registered voters. Thus, with 92 crores registered voters votes polled were 61.4 crores. Hence, with 97 crore registered voters in 2024, it can be safely estimated that approximately 68 crores individuals would cast their vote in 2024 elections.
8. Above figures further show that there are 10.48 lakh polling stations for a maximum of 68 crore votes to be polled in 2024. Thus, the average number of votes per polling station would be 68 crore /10.48 Lakhs The sorting and counting of 650 votes per polling station actually take less than thirty minutes, since as per ECI manual three counting officers and one supervising officer are involved in counting of one VVPAT.
9. Moreover, it is submitted that the counting of all VVPAT slips can be done accurately with a fraction of the employees and at a

fraction of cost and within 5 to 8 hrs. It is submitted that as per letter dated 06.06.2023 of the ECI, counting supervisors are paid a remuneration of Rs 350 per day and polling and counting officer are paid a remuneration of Rs 250 per day. A team of three counting officer and a counting supervisor can count at least 8 booths in 8 hours which works out to Rs. 150 per booth. A copy of ECI's letter dated 06.06.2023 is annexed herewith as **ANNEXURE R3 (Pg 89 to 93 )**.

- 10.** That the Petitioner herein has made a representation to the Chief Election Commissioner and other Election Commissioners on 07.05.2024 requesting to count VVPAT votes based on the above. The relevant part is quoted herein below:

.....

*3. The VVPAT slips can indeed be counted by a counting machine. There are counting machines available in the market which can count bundles of slips of the size of 10 cm by 5.6 cm of very thin paper. ....*

.....

*5. The spending of an additional Rs 10 crores to count all the VVPAT votes after spending Rs 5000 crores, will not only justify the Rs. 5000 crores already spent on the purchase of VVPAT machines but will also inspire confidence of the voters in the democratic process. It is a small fraction of the total amount of the tax payer's money already spent. In fact, it is only 0.2% of the total capital cost already incurred. The cost of counting every vote works out to a meagre 14 paise per vote count.*

6. It is therefore requested that the Commission should count all the VVPAT votes by using paper counting machine on the counting date i.e. 4th June, 2024.

7. If, for some cogent reasons, ECI is unable to count the votes by the counting machine, it should be proactive in counting the VVPAT votes manually so that the voters have complete satisfaction that their votes have been counted. All the votes of the VVPAT should be counted not because the present system is not fool-proof but because voter's confidence is paramount.

.....

9. At a very conservative estimate, even if 20 per cent of the voting population – the figure is much higher -- doubts the integrity of the men behind the machines, then a duty is cast on the Election Commission to put an end to such doubt. This is more so when it can be easily done at a negligible cost of 14 and 20 paise per voter for machine and manual counting of votes.

.....

13. The VVPAT paper slip is thermal paper of the same width and length as that of the customer's copy when he swipes his debit/credit card to make a payment. It is not soft but firm and slightly sticky because it is thin and curls slightly. It does not make the counting process slow and tedious but in fact makes it easy to pick from the surface and count while making them into bundles of 25.

.....

15. The 28 teams involved in the counting of 250 booths of a legislative assembly can finish the counting in a maximum of 9 hours (according to time line calculated by ECI) but in much less time of 5 to 6 hours. A maximum wait of 9 hours for completion of counting can by no stretch be described as delay when voters wait for 45 days to know the result. Even the electronic EVM count, it takes six hours to declare the result. An excess time of 3 hours cannot be said to delay the results. More manpower can be deployed, if required.

.....

A copy of Representation dated 07.05.2024 sent by the Petitioner herein to ECI is annexed herewith as **ANNEXURE R4 (Pg 94 to 97)**).

11. Furthermore, it is submitted that according to the Returning Officer Handbook, 2023, there is a provision for placing 28 counting tables for electronic counting. The petitioner submits that if the same number of tables is utilized for counting of the VVPAT slips under the existing CCTV surveillance system, the entire counting of average of 250 booths can be done within 5-8 hours with the additional manpower of (28 x 4) 108 persons per Assembly segment. Thus, it is not correct to state that the result will be unreasonably delayed, or the manpower required will be the double of that already deployed. Furthermore, the existing CCTV surveillance of counting halls would ensure that manipulation and mischief does not occur in VVPAT slip counting.

The relevant para is quoted herein below:

*15.3.15 In cases where number of polling stations in an AC/AS is large, counting may be taken up in two halls with a maximum of 14 tables in each hall (excluding the table(s) in which postal ballots are counted). All such cases shall be personally scrutinized by the Returning Officer and the District Election Officer, considering all factors such as number of candidates, number of Counting Agents etc. before sending a proposal for approval of the Counting Centre through CEO to the Commission.*

A copy of relevant section of Returning Officer Handbook, 2023 is annexed herewith as **ANNEXURE R5 (Pg 98 to 102 )**.

### **Vulnerability of Symbol Loading Unit**

**12.** That the judgment dated 26.04.2024 in para 30, 35 and 36, with regard to Symbol Loading Unit (SLU) states the following:

.....

*30. About 10 to 15 days prior to the date of polling, the symbol loading process is undertaken by using the symbol loading units. The symbols are loaded in the flash memory of the VVPATs in the form of a bitmap file, comprising the symbol of the political party/candidate, serial number and name of the candidate. A laptop/PC with the symbol loading application is used to create a bitmap file comprising the serial number, the candidate name and the symbol. This file is loaded on VVPAT units by using the symbol loading units. Authorised engineers of the manufacturers and the District Election Officer are involved in the symbol loading process. The whole process takes place in the presence of the candidates or their representatives and a monitor/TV screen displays the symbol loading process.*

.....

*35. Thus, it is clear that till the symbol loading into the VVPAT is done by using the symbol loading unit, the EVM is blank and has no data/particulars of political parties or candidates. One cannot ascertain and know which button/key in the ballot unit will be allocated to a particular candidate or a political party.*

*36. It has been highlighted before us by the ECI that the symbol loading process conducted by using symbol loading unit in the VVPAT cannot be equated with the uploading of*

*the software. A bitmap file comprising of the serial number, name of the candidate and the symbol allocated to the particular candidate is uploaded in the symbol loading process. The symbol loading process undertaken by using the symbol loading unit cannot alter or modify the programme/firmware in the VVPAT which has been burnt/loaded in the memory. ....*

It is respectfully submitted that the entire discussion on the SLU ignores the fact that SLU is vulnerable and needs to be audited.

- 13.** This Hon'ble Court completely overlooked the possibility that the data in the SLU can have extra bytes other than just the necessary images. The same has been dealt in detail in the following article written by Madhav Deshpande, published on 27.04.2024 in *The Wire*:

***It is the data in the SLU, not just the alteration of program in the chip:***

*As per reports, the verdict talks about the Symbol Loading Unit (SLU) being sealed and preserved. However, there is no direction to reveal the data in the SLU in the process of verification to address complaints from the candidates. The data in the SLU can make the VVPAT program misbehave. Excluding the SLU and its data from the verification process and focusing only on the program in the microprocessor is the gravest of errors.*

*It is extremely unlikely that the program in the microprocessor will be tampered with. However, it is very possible that the data in the SLU will have extra bytes other than just the necessary images. SC seems to have completely missed / overlooked this possibility.*

*This data in the SLU will not be audited during verification and the proverbial elephant in the room is the data given to*

*the already existing program; and no one has seen the elephant!*

*Data changes the behaviour of an already existing program. i.e. the program will take an already coded but different line of execution upon receiving different specific data input—note that the program does not need to change. Only changing the data is sufficient.*

***The glaring conflict of interest***

*The SC says the burnt memory will be verified by the engineers from the manufacturer. Isn't there an obvious conflict of interest here?*

*If a patient's death is suspected to be due to wrong medication, does the doctor who treated the patient conduct the autopsy or is it some other doctor? Since it is a standard practice to use an independent autopsy precisely to avoid conflict of interest, why is such blatant conflict of interest not being addressed in the case of EVMs?*

A copy of article dated 27.04.2024 titled *Why the Supreme Court Verdict on EVMs Is Disappointing* published in *The Wire* is annexed herewith as **ANNEXURE R6 (Pg 103 to 106 )**.

***Percentage of VVPAT slips counted for tallying with EVM votes after Chandrababu Naidu [(2019) 15 SCC 377] Judgment is less than 2% and not 5% as noted in the impugned judgment***

**14.** That this Hon'ble Court in Para 10 and 11 of the concurring impugned judgment has noted the following:

*10. Electronic voting is not something which is prevalent only in India. Multiple countries use electronic voting in varying degrees in their national elections. However, use of*



*EVMs in elections in India are not without its checks and balances. Reasonable measures to ensure transparency, such as tallying 5% VVPAT slips with votes polled, are already in place after the decision of this Court in N. Chandrababu Naidu v. Union of India. This measure, as has been noticed by Hon'ble Khanna, J., was undertaken out of abundant caution and not as an admission of a flaw in the process.*

*11. The exercise of tallying 5% VVPAT slips with votes cast by the electors has not, till date, resulted in any mismatch. This assertion of the ECI has not been proved to be incorrect by the petitioners by referring to any credible material or data. So long no mismatch is detected even after tallying 5% of VVPAT slips, as directed in N. Chandrababu Naidu (supra), it would defy the sense of logic and reason of a prudent man to issue a Mandamus to the ECI to arrange for tallying 100% VVPAT slips on the specious ground of the petitioners' apprehension that the EVMs could be manipulated.*

**15.** That the above-quoted para 10 and para 11 of concurring impugned Judgement notes that presently 5% of the VVPAT paper slips are tallied with votes cast. It is respectfully submitted that the said figure is factually incorrect and *in fact*, less than 2% of the VVPAT slips are counted for verification of EVMs. It is respectfully submitted that the said fact was also orally pointed out by petitioners during the course of hearing of the instant case. It is submitted that, after **Chandrababu Naidu judgment (2019) 15 SCC 377**, paper slips from 5 VVPATs per Assembly constituency/ Assembly segment having an average of 250 booths is counted.

**16.** As per ECI's note handed over in court (Annexure No. 2 herein), at Serial No. 12 the issue '*Growth in number of electors and machines from 2019 to 2024*' was dealt with and the following figures were provided by the ECI:

*Polling Stations: 2019 – 10.35 Lakhs; 2024 – 10.48 Lakhs*  
*Votes Polled : 2019 – About 61.4 Crores; 2024- About 97 Crore registered voters*  
*Ballot Unit: 23.3 Lakhs ; 2024: 21.6 Lakhs*  
*Control Unit: 16.35 Lakhs; 2024: 16.8 Lakhs*  
*VVPAT: 17.4 Lakhs ; 2024: 17.7 Lakhs*

**17.** It is respectfully submitted that based on the abovementioned data it is evident that there are 10.48 lakhs booths. It is an admitted fact that there are 4123 assembly segments. Thus, the average booth per Assembly constituency is  $10.48 \text{ lakhs} / 4123 = 254$  and in one Assembly constituency 5 booths are counted. Hence the percentage of VVPAT counted is  $500/254$  which comes out to be only 1.97% and not 5% as noted in Para 10 and 11 of the concurring judgment.

**18.** The petitioner submits that electronic voting machines do not allow voters to verify that their votes have been accurately recorded. Furthermore, given their very nature, electronic voting machines are especially vulnerable to malicious changes by insiders such as designers, programmers, manufacturers, maintenance technicians, etc.

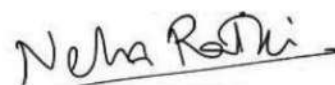
**19.** Therefore, in light of the above there are apparent errors on the face of the impugned order dated 26.04.2024 and the impugned judgment, is liable to be reviewed

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

- a.** Review the judgment and order dated 26.04.2024 passed by this Hon'ble Court in *W.P. (C) No. 266 of 2024*; and
- b.** Pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.**

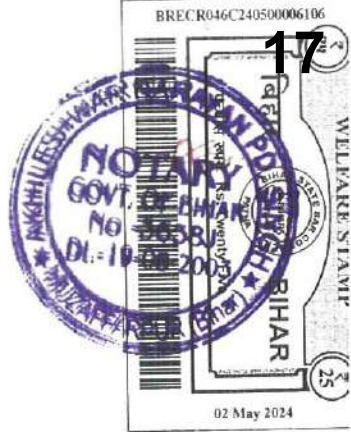


**NEHA RATHI**

(COUNSEL FOR THE PETITIONER)

New Delhi

Dated: **10.05.2024**



**IN THE SUPREME COURT OF INDIA**  
(INHERENT JURISDICTION)

**REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2024**

IN

**WRIT PETITION (CIVIL) NO. 184 OF 2024**

Sl.No. .... 101  
Date 08 MAY 2024

**IN THE MATTER OF:**

ARUN KUMAR AGARWAL

...PETITIONER

VERSUS

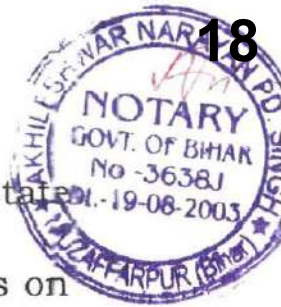
ELECTION COMMISSION OF INDIA & ANR.

....RESPONDENTS

**AFFIDAVIT**

I, Arun Kumar Agarwal, aged about seventy years, S/o Late Dr R S P Agrawal, R/o T8 Eagleton Golf Resort, 30 km Bangalore Mysore Road, Bidadi -562109, Dist: Ramnagara, Karnataka, presently at Muzaffarpur, Bihar do hereby affirm and state as under:

1. That I am the Petitioner in the instant Review Petition and being familiar with the facts and circumstances of the instant case, I am fully competent to swear this Affidavit.
2. That I have read and got explained the contents of the accompanying review petition and all other miscellaneous applications and I submit that they are true and correct as per



my knowledge, information, belief and as per my records. I state that I have instructed my counsel to draft the applications on my behalf and as per my instructions and the legal submissions are drawn by my counsel and believed by me to be true.

3. That all the annexures annexed with the Review Petition are true copies of their respective originals.

*Akshay Kumar*  
**DEPONENT**

**VERIFICATION**

I, the above-named deponent, do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, information and belief. I further verify that nothing contained therein is false and no facts have been suppressed nor any material has been concealed therefrom.

Verified at Muzaffarpur this eighth day of May, 2024.

*Akshay Kumar*  
**DEPONENT**

The Deponent Identified by Advocate has solemnly affirmed before me that the contents of the affidavit are true to the best of his/her knowledge.

*Akhileshwar Prasad Singh*  
AKHILESHWAR P. SINGH  
NOTARY Muzaffarpur, Bihar  
08 May 2024



2024 INSC 341

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**  
**EXTRA-ORDINARY ORIGINAL JURISDICTION**  
**WRIT PETITION (CIVIL) NO. 434 OF 2023**

ASSOCIATION FOR DEMOCRATIC REFORMS .... PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA  
AND ANOTHER .... RESPONDENTS

**WITH**

**WRIT PETITION (CIVIL) NO. 184 OF 2024**

**AND**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2024**  
**(DIARY NO. 35782 OF 2023)**

**J U D G M E N T**

**SANJIV KHANNA, J.**

Delay in refiling is condoned.

2. At the outset, we take on record that the counsel for the petitioners, in unison, have stated that the petitioners do not attribute any motive or malice to the Election Commission of India<sup>1</sup>, or for that matter contend that the Electronic Voting Machines<sup>2</sup> have been tutored or configured to favour or disfavour a candidate or political party. However, due to

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<sup>1</sup> For short, 'ECI'.

<sup>2</sup> For short, 'EVMs'

possibility of manipulating the EVMs there is suspicion and, therefore, this Court should step in to instil confidence in the voters<sup>3</sup> and the people. Voters have the right to know that the franchise exercised by them has been correctly recorded and counted.

3. On a pointed question put by the Court, it was argued, without prejudice and in the alternative, on behalf of the petitioner – Association for Democratic Reforms, that the Court should direct:
  - a) return to the paper ballot system; or
  - b) that the printed slip from the Voter Verifiable Paper Audit Trail machine<sup>4</sup> be given to the voter to verify, and put in the ballot box, for counting; and/or
  - c) that there should be 100% counting of the VVPAT slips in addition to electronic counting by the control unit.
  
4. Other arguments raised relate to — the alleged modification of the VVPAT in the year 2017, whereby the glass window on the VVPAT was made translucent/tinted instead of transparent, depriving the voter from knowing whether the vote cast by him was actually registered and counted; Rule 49MA of the Conduct of Election Rules, 1961<sup>5</sup> is draconian, arbitrary, and contrary to law as reference to Section 177 of the Indian Penal Code, 1860<sup>6</sup> in the written declaration under Rule 49MA

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<sup>3</sup> 'Voters' and 'Electors' is used interchangeably.

<sup>4</sup> For short, 'VVPAT'.

<sup>5</sup> For short, '1961 Rules'.

<sup>6</sup> For short, 'IPC'.

is wrong and misconceived; and lastly, the voters' right to know that the vote as cast is duly registered, being a paramount and indelible fundamental right, any administrative reason and ground raised by the ECI objecting to 100% counting of the VVPAT paper trail should be rejected.

5. Paper ballots were the norm, till EVMs were projected as a viable alternative in 1980s. EVMs were first used in an assembly bye-election in Kerala in 1982. All through the 1980s and early 1990s, the use of EVMs for elections was discussed and debated by politicians and experts in the domain of technology and electoral process, and after due deliberations and review, the EVMs were accepted and embraced. In view of the legal challenge<sup>7</sup> regarding use of EVMs without legislative approval, the Parliament *vide* Act 1 of 1989 amended the Representation of the People Act, 1951<sup>8</sup> allowing the use of EVMs. They were used in the General Elections in 2004 and have been used in each and every General and other election thereafter.
6. ECI maintains that the EVMs have been a huge success in ensuring free, fair and transparent elections across the nation in all elections. They restrict human intervention, checkmate electoral fraud and malpractices like stuffing and smudging of votes, and deter the errors and mischiefs faced in manual counting of ballot papers. While earlier it was

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<sup>7</sup> See *A.C. Jose v. Sivan Pillai and others*, (1984) 2 SCC 656.

<sup>8</sup> For short, 'RP Act'.



apprehended that the introduction of EVMs will lead to hardship and disenfranchisement, independent studies showcase that EVMs have led to increase in voter participation.<sup>9</sup> Yet, it is also true that time and again use of EVMs has been objected to and questioned, not by one but by all political parties and others. There have been several litigations in this Court and the High Courts, albeit the challenge to the use of EVMs has been rejected recording good grounds and reasons.

7. We deem it appropriate to begin this decision by referring to some of the earlier case laws and judgments of this Court on the efficacy and use of EVMs in the elections in this country.
8. This Court in ***Subramanian Swamy v. Election Commission of India***,<sup>10</sup> held that a paper trail was an indispensable requirement of free and fair elections. The relevant portion of the judgment is reproduced below:

“28. From the materials placed by both the sides, we are satisfied that the ‘paper trail’ is an indispensable requirement of free and fair elections. The confidence of the voters in the EVMs can be achieved only with the introduction of the “paper trail”. EVMs with Vvpat system ensure the accuracy of the voting system. With an intent to have fullest transparency in the system and to restore the confidence of the voters, it is necessary to set up EVMs with Vvpat system because vote is nothing but an act of expression which has immense importance in a democratic system.

29. In the light of the above discussion and taking notice of the pragmatic and reasonable approach of ECI and considering the fact that in general elections all over India, ECI has to handle one million (ten lakh) polling booths, we permit ECI to introduce Vvpat in gradual stages or geographical-wise in the

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<sup>9</sup> Legal History of EVMs and VVPATs, Edition 1, January 2024, p.654.

<sup>10</sup> (2013) 10 SCC 500.

ensuing general elections. The area, State or actual booth(s) are to be decided by ECI and ECI is free to implement the same in a phased manner. We appreciate the efforts and good gesture made by ECI in introducing the same. For implementation of such a system (Vvpat) in a phased manner, the Government of India is directed to provide required financial assistance for procurement of units of Vvpat.”

Accordingly, to ensure full transparency and confidence of voters, this Court recommended that EVMs be set up with VVPATs. Amendment to the 1961 Rules was notified on 14.08.2013 to introduce the VVPAT mechanism.

9. In ***N. Chandrababu Naidu and Others v. Union of India and Another***,<sup>11</sup> the petitioners prayed that 50% randomised VVPAT slip verification be conducted in every General and Bye Elections instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency. This Court held as under:

“9. At the very outset the Court would like to observe that neither the satisfaction of the Election Commission nor the system in vogue today, as stated above, is being doubted by the Court insofar as fairness and integrity is concerned. It is possible and we are certain that the system ensures accurate electoral results. But that is not all. If the number of machines which are subjected to verification of paper trail can be increased to a reasonable number, it would lead to greater satisfaction amongst not only the political parties but the entire electorate of the country. This is what the Court should endeavour and the exercise, therefore, should be to find a viable number of machines that should be subjected to the verification of Vvpat paper trails keeping in mind the infrastructure and the manpower difficulties pointed out by the Deputy Election Commissioner. In this regard, the proximity to the election schedule announced by the ECI must be kept in mind.

10. Having considered the matter, we are of the view that if the number of EVMs in respect of which Vvpat paper slips is to be subjected to physical scrutiny is increased from 1 to 5, the additional manpower that would be required would not be difficult

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<sup>11</sup>(2019) 15 SCC 377.

for the ECI to provide nor would the declaration of the result be substantially delayed. In fact, if the said number is increased to 5, the process of verification can be done by the same team of polling staff and supervisors/officials. It is, therefore, our considered view that having regard to the totality of the facts of the case and need to generate the greatest degree of satisfaction in all with regard to the full accuracy of the election results, the number of EVMs that would now be subjected to verification so far as Vvpat paper trail is concerned would be 5 per Assembly Constituency or Assembly Segments in a Parliamentary Constituency instead of what is provided by Guideline No. 16.6, namely, one machine per Assembly Constituency or Assembly Segment in a Parliamentary Constituency. We also direct that the random selection of the machines that would be subjected to the process of Vvpat paper trail verification as explained to us by Mr Jain, Deputy Commissioner of the Election Commission, in terms of the guidelines in force, shall apply to the Vvpat paper trail verification of the 5 EVMs covered by the present order.”

Accordingly, instead of one EVM per assembly constituency or assembly segment in a parliamentary constituency, as stipulated under the erstwhile Guideline 16.6 of the Manual on EVM and VVPAT, it was held that five EVMs per assembly constituency or assembly segment in a parliamentary constituency would be subject to VVPAT verification.

10. This Court *vide* order dated 22.11.2018 dismissed Writ Petition (Civil) No. 1332/2018 titled ***Nyaya Bhoomi and Another v. Election Commission of India***, seeking return to the ballot paper system instead of EVMs.
11. This Court *vide* order dated 21.05.2019 dismissed Writ Petition (Civil) No. 692/2019 titled ***Tech for All v. Election Commission of India***, seeking 100% verification of VVPATs against the EVM outcomes, as the issue had already been decided in ***N. Chandrababu Naidu*** (supra).

12. Even earlier, this Court *vide* order dated 30.10.2017 in ***Prakash Joshi v. Election Commission of India***<sup>12</sup>, had rejected a similar prayer with regard to modification of the procedure for counting of votes by use of EVMs, leaving it to the discretion of the ECI. It was observed that this Court was not inclined to enter into the said arena.

13. This Court *vide* order dated 30.09.2022 dismissed Special Leave Petition (Civil) No. 16870/2022 titled ***Madhya Pradesh Jan Vikash Party v. Election Commission of India*** regarding use of EVMs with costs. This Court observed that:

“The election process under the representation of the People Act, 1951 is monitored by a Constitutional Authority like Election Commission. Electronic Voting Machines (EVM) process has been utilized in our Country for decades now but periodically issues are sought to be raised. This is one such endeavor in the abstract.”

14. Recently, this Court *vide* order dated 22.09.2023 dismissed Writ Petition (Civil) No. 826/2023 titled ***Sunil Ahya v. Election Commission of India*** seeking independent audit of the source code of EVMs. This Court observed that:

“The Election Commission is a constitutional entity entrusted under Article 324 of the Constitution with superintendence and control over the conduct of the elections. The petitioner has placed no actionable material on the record of the Court to indicate that the Election Commission has acted in breach of its constitutional mandate. Ultimately, the manner in which the source code should be audited and the way the audit should be dealt with bears on sensitive issues pertaining to the integrity of the elections which are conducted under the superintendence of the Election Commission. On such a policy issue, we are not inclined to issue a direction as sought by the petitioner. There is no material before this Court, at this stage, to indicate that the

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<sup>12</sup> 2017 SCC OnLine SC 1734.

Election Commission is not taking suitable steps to fulfill its mandate.”

15. This Court in ***Kamal Nath v. Election Commission of India and Others***<sup>13</sup>, observed that it was without doubt that over the last several decades ECI has built the reputation of an impartial body and a constitutional authority which strives to hold fair election in which the people of this country participate with great trust and faith. The challenge to the EVMs and prayer for conducting VVPAT verification on random basis for 10% of the votes was rejected.
16. We could have dismissed the present writ petitions by merely relying upon the past precedents and decisions of this Court which, in our opinion, are clear and lucid, and as repeated challenges based on suspicion and doubt, without any cogent material and data, are execrable and undesirable. However, we would like to put on record the procedure and safeguards adopted by the ECI to ensure free and fair elections and the integrity of the electoral process. For this purpose, we shall refer to and take on record the features of EVMs.<sup>14</sup> Lastly, we would give two directions, and take on record suggestion(s) for consideration of the ECI.
17. The EVM consists of three units, namely, the ballot unit, the control unit, and the VVPAT. The ballot unit acts as a keyboard or a keypad. The

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<sup>13</sup> (2019) 2 SCC 260.

<sup>14</sup> In view of the issue raised, we are not dealing with the post counting handling of EVMs.

ballot unit consists of 16 keys/buttons one of which the voter has to press when he exercises his choice to vote for any candidate. The keys are political party and candidate agnostic. The serial numbers, names of the candidates and the symbols of the political parties/candidates are physically pasted on the ballot unit so as to enable the voter to identify the corresponding key/button against the respective candidate and the symbol. The control unit, which is also called the master unit, remains with the polling/presiding officer. Before the ballot unit can be used by a voter, the polling/presiding officer is required to press the 'BALLOT' button on the control unit, thereby enabling the voter to cast his vote on the ballot unit. As soon as the voter presses the 'blue button' and casts his/her vote on the ballot unit, an LED against the candidate button glows red and the control unit sends the command to the VVPAT. The VVPAT then prints the VVPAT slip comprising of the serial number, candidate name and the symbol. The VVPAT slip, after being printed, is displayed through the glass window which is illuminated for 7 seconds to enable the voter to know and verify the serial number, the candidate and the symbol for whom they have voted. The VVPAT slip then gets cut from the roll and falls into the box/compartiment attached to the VVPAT. The fall sensor in the VVPAT then sends a confirmation to the control unit. The control unit records the vote.

18. The control unit, as explained below in some detail, has burnt memory, which is agnostic and does not have the names of the candidates and

symbols allotted to the candidates or political parties. As noted earlier, the polling/presiding officer has to activate the EVM by pressing the 'BALLOT' button on the control unit. The data stored in the control unit, upon the vote being cast, records and counts the button or the key pressed on the ballot unit. The data, therefore, records the total number of votes as cast by the voters, and the key or the button number on the ballot unit pressed by the voters for casting their vote. After the vote is cast and the control unit has recorded the vote, a loud beep sound confirms the registration of the vote.

19. The EVMs are manufactured and supplied to the ECI by two public sector undertakings, namely, Bharat Electronics Limited<sup>15</sup> (which functions under the Ministry of Defence), and Electronic Corporation of India Limited<sup>16</sup> (which functions under the Department of Atomic Energy).<sup>17</sup> The EVMs in use after 2013 are referred to as 'M3' EVMs. The EVM setup is designed in a rudimentary fashion and the EVM units are standalone and non-networked, that is, they are unconnectable to any other third-party machine or input source. In case any unauthorised attempt is made to access the microcontroller or memory of the EVM, the Unauthorised Access Detection Mechanism (UADM) disables it permanently. The advanced encryption techniques and strong mutual authentication or reception capability rules out the deciphering of

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<sup>15</sup> For short, 'BEL'.

<sup>16</sup> For short, 'ECIL'.

<sup>17</sup> Collectively referred to as the 'manufacturers'.

communication between the EVM units and any unauthorised interaction with the EVM.

20. The programme loaded in the EVM<sup>18</sup> is key hashed and burnt into a One Time Programmable microcontroller chip at the time of manufacturing, thus dispelling any possibility of tampering. It is pertinent to note that all the three units of the EVM – ballot unit, control unit and VVPAT, have microcontrollers in which the respective firmware is burnt. The burnt programme/code is unalterable and cannot be modified after the EVM is delivered/supplied by the manufacturer to ECI. Every key press of the control unit is dynamically coded, thus making it impossible to decode the signal flowing among the units of the EVM *inter se*. Further, each key press is recorded with date and time stamp on a real time basis.
21. As mentioned earlier, the firmware of the control unit is agnostic to any candidate name or political party symbol. The control unit only recognises the button/key pressed on the ballot unit. The control unit has a capacity to store up to 2000 vote entries.
22. Apart from the burnt one-time programmable memory, the VVPAT has a flash memory of 4 megabytes. The flash memory of the VVPAT is designed to solely store and recognise a bitmap format file. The VVPAT can store a maximum of 1024 bitmap files containing the symbol, the serial number and name of the candidate. One candidate's name,

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<sup>18</sup> EVM here refers to the ballot unit, the control unit and the VVPAT unit.



symbol, and serial number is packed into a single bitmap file of 4 kilobytes. The VVPAT does not store or read any other software or firmware.<sup>19</sup>

23. The VVPAT flash memory is empty and does not contain any symbol or name related details at the time of supply/delivery to the ECI. VVPATs in this form/state are stored in warehouses. The control units and ballot units are also stored and secured in the warehouses.
24. Five to six months before national or state elections are to be held, the required quantity of the EVMs are taken out from the warehouses and stored in the designated strong rooms. The EVMs, after they are put in the strong room, are subjected to First Level Check<sup>20</sup> by engineers of the manufacturers in the presence of the representatives of the recognised political parties. The FLC is carried out at the district level under the supervision of the District Election Officer.
25. During the FLC, 100% or all machines are checked by casting of vote in each of the 16 buttons on the ballot unit 6 times. Further, 5% of the machines are randomly selected by the representatives of the recognised political parties for a higher mock poll by them. Out of the 5%

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<sup>19</sup> It is apposite to note the difference between firmware and software. Firmware is a form of microcode or instructions embedded into hardware devices to help them operate effectively. Firmware size is usually small and ranges in size of a few kilobytes. Software on the other hand, is installed onto a device and used for interaction, such as browsing the internet, computing, word processing and many more complex tasks. Software usually runs on the top of operating systems and are usually large in size between few hundred kilobytes to gigabytes. Software is upgradable or updatable, and its memory is usually accessible and designed for user interactions. The ECI submits that the VVPATs do not have software as they only have firmware.

<sup>20</sup> For short, 'FLC'.

EVMs; 1200 votes are cast in 1% EVMs, 1000 votes are cast in 2% EVMs and 500 votes are cast in 2% EVMs. The voting result indicated in the control unit is tallied with the VVPAT slip count. A list of 'FLC OK' EVMs is prepared and shared with all the recognised political parties.

26. After check and verification that the EVM is working properly, the control unit of each EVM is sealed with a pink paper seal which is signed by the representatives of the political parties. Thereafter, the plastic cabinet of the EVMs cannot be opened. There is no access to any of the EVM components. Till this stage the VVPAT flash memory is empty and it does not have any data or symbols.
27. 10% of the 'FLC OK' EVMs are taken out for training and awareness purpose in the presence of the recognised political parties. The list of the training and awareness units is also shared with the political parties. These training and awareness units are stored separately in a designated warehouse. EVM demonstration centres are set up at the District Election Office, and at the Returning Officer Headquarter/ Revenue Sub-Division Offices. Mobile demonstration vans are also deployed to cover all polling locations. The EVMs used for training and awareness are thereafter not mingled and are taken back to the designated warehouse.
28. To dispel any scenario of bias or prior knowledge, the verified EVMs undergo a two-stage randomization process. It is submitted that not even

the manufacturer of the EVMs would be able to know the allotment of a particular machine for a particular state or constituency. The randomization process is conducted without any human intervention by the EVM Management System software application. The first randomization is conducted to allocate the EVMs Assembly constituency/segment-wise. The second randomization is conducted to allocate the machines polling station wise and for the reserve pool. The randomization process is done in the presence of the representatives of the political parties/candidates and the Central Observers deputed by the ECI. The list of EVMs containing serial number as randomly allocated constituency wise and then to a particular polling station are provided to the representatives of the political parties/candidates.

29. It is important to reiterate that till this stage, particulars of the candidates or the political parties are not loaded or stored in the VVPAT. The flash memory of the VVPAT is blank/empty. The control unit being agnostic to any political party or candidate, only recognises the push button on the ballot unit. It is programmed to compute the number of times all and a particular button/key has been pressed.
30. About 10 to 15 days prior to the date of polling, the symbol loading process is undertaken by using the symbol loading units. The symbols are loaded in the flash memory of the VVPATs in the form of a bitmap file, comprising the symbol of the political party/candidate, serial number and name of the candidate. A laptop/PC with the symbol loading

application is used to create a bitmap file comprising the serial number, the candidate name and the symbol. This file is loaded on VVPAT units by using the symbol loading units. Authorised engineers of the manufacturers and the District Election Officer are involved in the symbol loading process. The whole process takes place in the presence of the candidates or their representatives and a monitor/TV screen displays the symbol loading process.

31. It is at this stage that the specific button/key on the ballot unit is allocated to each candidate. The sequence/location of button/key allocated to a candidate of a political party is done in alphabetical order on the basis of the name of the candidate, first for the National and State recognised political parties, followed by other State registered parties, and then for independent candidates. Thus, the sequence/location of the button/key on the ballot unit and the consequent allotment for the purposes of the VVPAT varies from constituency to constituency. For example, candidate or political party 'A' may be allocated button '1' in one parliamentary constituency, whereas button '1' may be allocated to political party 'B' in another constituency.
32. There are 16 buttons/keys on each ballot unit. In case there are more than 15 candidates (one button is for NOTA), more than one ballot units are attached to the control unit. A total of 24 ballot units can be connected to a control unit to make a single EVM set. Therefore, a maximum of 384 candidates (including NOTA) can be catered by the EVM.

33. The advantages of the EVM-VVPAT mechanism are noted below:

- It runs on battery/power-packs and does not require any external power supply.
- Voting is done by pressing a button thereby negating a scenario of invalid vote akin to an invalid paper ballot.
- It does not permit more than 4 votes per minute, thereby deterring and disincentivising booth capturing.
- After the pressing of 'CLOSE' button on the control unit, there is no possibility of voting.
- It ensures quick, error-free and mischief-free counting of votes.
- Voter is instantly able to verify the recording of their vote through the beep sound. Further, the VVPAT slip helps verify that the vote casted is recorded correctly.
- By pressing the 'TOTAL' button on the control unit at any time, the total number of votes polled up to the time of pressing the button is displayed, without indicating the candidate-wise result of votes.
- The original program, which is political party and candidate agnostic, is ported on to the microcontroller of the EVM<sup>21</sup> during the manufacturing at the factory. This process is done way before the elections and it is impossible to know the serial number of any

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<sup>21</sup> The EVM, as earlier observed and we clarify here, means the ballot unit, the control unit and the VVPAT unit.

candidate in advance. Thus, it is not possible to pre-program the EVM in a spurious manner.

34. After the symbol loading process is completed, all or 100% of the EVMs, including the VVPATs, are checked by casting one vote by pressing each candidate button, including NOTA. A higher mock poll is also conducted in 5% randomly selected units wherein 1000 votes are cast, and the electronic result is tallied with the VVPAT slip count. The candidates or their representatives are also allowed to choose the 5% EVMs and conduct a mock poll. Once the symbol loading process or the candidate setting is completed, and the mock polls are conducted, the ballot unit of the EVM is also sealed with the thread or plain paper seals. The symbol loaded VVPATs are sealed with address tags. The paper seals and address tags bear the signatures of the representatives of the political parties/candidates.
35. Thus, it is clear that till the symbol loading into the VVPAT is done by using the symbol loading unit, the EVM is blank and has no data/particulars of political parties or candidates. One cannot ascertain and know which button/key in the ballot unit will be allocated to a particular candidate or a political party.
36. It has been highlighted before us by the ECI that the symbol loading process conducted by using symbol loading unit in the VVPAT cannot be equated with the uploading of the software. A bitmap file comprising

of the serial number, name of the candidate and the symbol allocated to the particular candidate is uploaded in the symbol loading process. The symbol loading process undertaken by using the symbol loading unit cannot alter or modify the programme/firmware in the VVPAT which has been burnt/loaded in the memory. The control unit and the ballot unit are not subjected to the symbol loading process and not touched. The burnt/loaded firmware in the control unit and the ballot unit is and remains candidate and political party agnostic. The control unit acts and functions as the calculator, computing the total votes cast on the basis of the number of times the key/button on the ballot unit are pressed, and the number of times a specific key/button on the ballot unit is pressed.

37. On the polling date, one and a half hours before the start of polling, the presiding officer/polling officer takes out the EVMs and conducts a mock poll of 50 votes. The votes are counted electronically. The VVPAT paper slips are also counted and tallied with electronic votes. Each EVM unit is thereupon again sealed with a paper seal of a different colour. Paper seals are also signed by the candidates or their representatives.
38. The paper seals used from time to time at different stages have a serial number. They also have security features and cannot be replicated. As paper seals are used at different stages, they are given different colours.

39. The polled EVM<sup>22</sup> units are sealed and stored in the strong room in the presence of the candidates or their representatives. The candidates or their representatives are also allowed to put their seals on the lock of the strong room. The strong room is guarded by minimum one platoon of armed security and has CCTV coverage. The candidates or their representatives are allowed to stay and watch the strong room and in case where the entrance to the strong room is not visible, CCTV display facility is provided.
40. The VVPAT paper slips are in a roll form of 1500 slips. The control unit can store up to 2000 votes. In view of the restriction on the number of VVPAT paper slips, each EVM can be used for casting of up to 1500 votes and not more. The control unit is configured in a way that each vote would take about 15 seconds. Thus, in one minute only four votes can be cast. This prevents and checks bogus voting.
41. As explained earlier and to recapitulate, after each vote is cast by pressing the button on the ballot unit, the VVPAT glass window illuminates and the name, serial number, and symbol of the candidate voted is displayed for 7 seconds to the voter. The display of VVPAT slip informs and assures the voter that the vote as cast has been recorded. Thereafter, the VVPAT printer cuts the slip from the roll and the VVPAT slip drops in the box compartment of the VVPAT. The fall sensor in the

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<sup>22</sup> The EVM, as earlier observed and we clarify here, means the ballot unit, the control unit and the VVPAT unit.



VVPAT printer drop box senses and chronicles the fall of the slip in the drop box, and thereupon the control unit records the button/key pressed on the ballot unit. The burnt memory, as noticed above, which records this data is agnostic to the candidates/political parties. The control unit records the serial number of the button/key pressed on the ballot unit by each voter. The presiding officer by pressing the 'TOTAL' key on the control unit can ascertain the total number of votes recorded in the control unit. However, the breakup of votes cast in favour of each candidate is not known. On the counting day, in the presence of the candidates/their representatives, the 'RESULT' key on the control unit is pressed. The control unit displays the number of times each button/key was pressed in the ballot unit on the polling day, thus depicting the result. EVMs are standalone machines which cannot be connected to internet. The EVMs do not have any ports so as to enable a person to have access to the burnt memory.

42. It flows from the above discussion that the possibility to hack or tamper with the agnostic firmware in the burnt memory to tutor/favour results is unfounded. Accordingly, the suspicion that the EVMs can be configured/manipulated for repeated or wrong recording of vote(s) to favour a particular candidate should be rejected. At this stage we would refer to other checks and protocols to ensure and ascertain the legitimacy and integrity of the EVMs and the election process.

43. Part IV, Chapter II of the 1961 Rules, which relates to voting by EVMs, lays down details of preparation of the voting machine by the returning officer, arrangements at the polling station, admission to the polling stations, and preparation of voting machine for poll. The three units of the EVM have to bear the serial number of the unit, name of the constituency, serial number and name of the polling station(s), and the date of poll. Before the commencement of the poll, the presiding officer has to demonstrate to the polling agent and other persons present that no vote has already been recorded in the control unit, the three units bear the label as prescribed and the drop box of the VVPAT printer is empty. Paper seal is thereupon used for securing the control unit. The presiding officer affixes his own signature on the paper seal and also obtains the signatures of the polling agents who are desirous of affixing the same. The VVPAT and the ballot unit are put in the voting compartment and are connected with the control unit in the manner directed.
44. Before permitting any elector to vote, the polling officer is required to record the electoral roll number of the elector as mentioned in the electoral rolls, signature or thumb impression of the elector, name of the elector and the document produced by the elector in proof of their identification. These particulars are recorded in Form 17A prescribed under Rule 49L of the 1961 Rules. The format prescribed in terms of Form 17A is as under:

Sl.No.	Sl.No. of elector in the electoral roll	Details of the document produced by the elector in proof of his/her identification	Signature/Thumb impression of elector	Remarks
(1)	(2)	(3)	(4)	(5)
1.				
2.				

Form 17A is required to be signed by the presiding officer.

45. Every elector is permitted to vote in secrecy in the voting compartment of the polling station. They are required to press the blue button or key on the ballot unit against the name and symbol of the candidate/political party they intend to vote. In terms of the proviso to Rule 49M(3), the elector is entitled to view through the transparent window of the printer of VVPAT, kept along with the ballot unit inside the voting compartment, the printed paper slip showing the serial number, the name and the symbol of the candidate for whom he has voted. Thereupon, the paper slip gets cut and drops into the drop box attached to the VVPAT. No elector is permitted to enter the voting compartment when another voter is inside.
46. Rule 49O deals with the scenario where an elector, even after entering her/his details in Form 17A and having put signature or thumb impression thereon, does not vote. The presiding officer is then required to make a remark in Form 17A and take the signature or thumb impression of the elector against such remark.
47. Rule 49M(6) deals with the scenario where the elector who has been permitted to vote under Rule 49L or Rule 49P refuses, even after the warning by the presiding officer, to observe the procedure of voting laid

down in Rule 49(M)(3). In such a case, the presiding officer, or the polling officer under the direction of the presiding officer, shall not allow such elector to vote. Rule 49M(7) lays down that in such a scenario, a remark to that effect shall be made against the elector's name in Form 17A by the presiding officer under his signature.

48. As per instructions issued by the ECI, the presiding officer is periodically required to check the total number of votes cast as recorded in the control unit with the data as recorded in Form 17A.
49. As per Rule 49S, at the close of the poll, the presiding officer is required to prepare an account of votes recorded in Form 17C. This is a detailed form, which in Part I, requires the presiding officer to mention the total number of electors assigned to the polling station, the total number of voters as entered in the register for voters, that is, Form 17A, the total number of voters who had decided not to vote even after recording their details in Form 17A (Rule 49O scenario), and the total number of voters not allowed to vote (Rule 49M scenario). The form also requires to give details of the total number of votes recorded per voting machine. This total number recorded in the voting machine should tally with the total number of voters entered in Form 17A *minus* the number of voters deciding not to vote and the number of voters not allowed to vote. The details of the paper seals supplied for use, paper seals used, unused paper seals returned to the returning officer etc. are also recorded and entered after the close of the poll.

50. Under Rule 49S of the 1961 Rules, at the time of close of the poll, the presiding officer furnishes attested true copy of the account of votes recorded in Part I of Form 17C to the polling agents of the candidates. He also retains a receipt of the same from the polling agent.
51. Before start of counting of votes, the serial number of the EVMs and the paper seals affixed on the EVMs are verified with details mentioned in Form 17C and are shown to the counting agents. The total votes displayed by pressing the 'TOTAL' button on the control unit is also tallied with the total votes polled as per Form 17C.
52. The counting is done in the presence of the polling agents/candidates by pressing the 'RESULT' button on the control unit. The total votes polled and the total votes polled by each candidate is thereupon displayed on the display panel.
53. In terms of the directions issued by this Court in ***N. Chandrababu Naidu*** (supra), the VVPAT slips of five polling stations per assembly constituency/assembly segment of the parliamentary constituency, are randomly selected and counted. The results are then tallied with the electronic results of the control unit.
54. It may be relevant here to also refer to Rule 56D of the 1961 Rules, which reads as under:

“56-D. *Scrutiny of paper trail.*—(1) Where printer for paper trail is used, 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 drop box of the printer in respect of any polling station or polling stations.

(2) On such application being made, the returning officer shall, subject to such general or special guidelines, as may be issued by the Election Commission, decide the matter and may allow the application in whole or in part or may reject in whole, if it appears to him to be frivolous or unreasonable.

(3) Every decision of the returning officer under sub-rule (2) shall be in writing and shall contain the reasons therefor.

(4) If the returning officer decides under sub-rule (2) to allow counting of the paper slips either wholly or in part or parts, he shall—

(a) do the counting in the manner as may be directed by the Election Commission;

(b) if there is discrepancy between the votes displayed on the control unit and the counting of the paper slips, amend the result sheet in Form 20 as per the paper slips count;

(c) announce the amendments so made by him; and

(d) complete and sign the result sheet.”

55. Any candidate, or in his absence an election agent or counting agent, as per the said Rule, can apply in writing to the returning officer to count the printed paper slips in the drop box in respect of any polling station(s). The returning officer, subject to any general or special guidelines issued by the ECI, has to decide the matter and can allow the application in whole or in part, or may reject the application in full if it appears to be frivolous or unreasonable. Every decision of the returning officer is to be in writing and has to contain reasons. If the returning officer decides to allow counting of paper slips, either wholly or in part, he has to do so in the manner prescribed in sub-rule (4) to Rule 56D of the 1961 Rules.

56. As per the ECI guidelines, in case there is any mismatch between the total number of votes recorded in the control unit and Form 17C on account of non-clearance of mock poll data or VVPAT slips, in terms of Rule 56D(4)(b) of the 1961 Rules etc., the printed VVPAT slips of the respective polling stations are counted and considered if the winning margin is equal to or less than total votes polled in such polling stations.
57. At this stage, we would refer to the data on the performance of the EVMs. More than 118 crore electors have cast their votes since EVMs have been introduced. In 2019, about 61.4 crore voters had cast their votes in 10.35 lakh polling stations. 23.3 lakh ballot units, 16.35 lakh control units and 17.40 lakhs VVPAT units were used in the 2019 General Elections. For the purpose of the 2024 General Elections, 10.48 lakh polling stations have been established to enable 97 crore registered voters to cast their votes. 21.60 lakh ballot units, 16.80 lakh control units and 17.7 lakh VVPAT units have been made ready for being used.
58. ECI has conducted random VVPAT verification of 5 polling booths per assembly segment/constituency for 41,629 EVMs-VVPATs. Further, more than 4 crore VVPAT slips have been tallied with the electronic counts of their control units. Not even a single case of mismatch, (except one which we will refer to subsequently), or wrong recording of votes has been detected. Returning officers have allowed VVPAT slip recounting

under Rule 56D in 100 cases since 2017. The VVPAT slip count matched with the electronic count recorded in the control unit in all cases.<sup>23</sup>

59. In the 2019 Lok Sabha Elections, 20,687 VVPAT slips were physically counted, and except in one case, no discrepancy or mismatch was noticed.
60. The discrepancy during mandatory verification of VVPAT slips happened in polling station No. 63, Mydukur Assembly Constituency, Andhra Pradesh during the 2019 Lok Sabha Elections. On verification, it was found that the discrepancy had arisen on account of failure of the presiding officer to delete the mock poll data.<sup>24</sup> While it is not possible to rule out human errors, paragraph 14.5 of Chapter 14 of the Manual on EVM and VVPATs deals with such situations and lays down the protocol which is to be followed.
61. During the course of hearing, our attention was drawn to Rule 49MA which permits an elector to raise a complaint regarding the mismatch between the name and symbol of the candidate shown on paper slip generated by the VVPAT and the vote cast on the ballot unit. Such elector is required to make a written declaration to the presiding officer.
- There have been 26 such cases in which the electors have complained

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<sup>23</sup> The above figures are updated on the basis of the response given by the ECI to the queries raised by the Court on 16.04.2024. The figures given in the counter affidavit filed by the ECI are as follows: 38,156 randomly selected VVPATs have been physically counted and they have tallied with the electronic count of their control unit. Not even a single case of mismatch or transfer of vote meant for candidate A to candidate B has been detected. Counting of VVPAT slips under Rule 56D has been allowed in 61 cases but there is not even a single case of mismatch.

<sup>24</sup> The said discrepancy was duly rectified in terms of the protocol laid down in the Manual on EVM and VVPAT.



under Rule 49MA. There is not even a single case in which any mismatch or defect was found.

62. The EVMs have been subjected to test by technical experts committee from time to time. These committees have approved and did not find any fault with the EVMs. The M3 EVMs currently in use are designed by engineers of BHEL and ECIL. These designs are vetted by the technical experts committee.
63. Our attention was drawn to the query of the Parliamentary Committee on Government Assurances regarding the data on discrepancy between the EVM and VVPAT counts in 2019 Lok Sabha Elections. Reliance is placed on a news report published in *The Wire* to submit that the ECI failed to submit the requisite information and revert back to the parliamentary committee despite multiple reminders. The ECI has explained that a reply regarding the said query was sent to the Parliamentary Committee on 05.07.2019.
64. Reliance was placed on a news report of *The Quint* to contend that there were discrepancies in 2019 Lok Sabha Elections, viz. the electronic votes recorded in the control unit and the total votes polled/voter turnout. The ECI has explained that the report referred to in the Quint is with reference to the live voter turnout data uploaded on the website of the ECI during 2019 Lok Sabha Elections. The voter turnout data is dynamic in nature and is uploaded by the ECI on real time approximation by taking inputs from the presiding officers of the polling stations. Inaccuracies

were found in the real-time inputs given by the presiding officers. However, there was no mismatch of the data of votes recorded in the EVMs and the data of total votes recorded in Form 17C. The data in the EVM and Form 17C matched and accordingly the results were declared in Form 20.

65. On a question being put by the Court, it was stated that a minimum of 50% of the polling stations are equipped with CCTV cameras. Data from the CCTV cameras is stored and retained at least for a period of 45 days from the date of announcement of the polling results. Similarly, the EVMs are retained in the strong room along with seals etc. as affixed after counting of the votes. The candidates have the right to challenge the poll result by filing an election petition within 45 days from the date of election of the returned candidate. The ECI guidelines/protocol stipulate that confirmation regarding the filing status of election petitions must be obtained from the relevant High Courts. If challenge is made, the EVMs are retained in the strong room along with the seals etc. for a longer period. In cases where no election petitions are filed, the strongrooms are opened and the EVMs are shifted to the warehouse.
66. The ECI has also in its counter affidavit stated that the EVMs have been continuously used in different elections since the year 2000. The electoral outcome had been divergent, favouring or disfavouring different political parties. Details of the political parties with maximum number of seats since 2004 is tabulated as under:

PARTY WITH MAXIMUM NUMBER OF SEATS IN LEGISLATIVE ASSEMBLY ELECTION SINCE 2004										
<b>Andhra Pradesh</b>	2004 INC	2009 INC	2014 TDP	2019 YSRCP		<b>Meghalaya</b>	2008 INC	2013 INC	2018 INC	2023 NPEP
<b>Arunachal Pradesh</b>	2004 INC	2009 INC	2014 INC	2019 BJP		<b>Mizoram</b>	2008 INC	2013 INC	2018 MNF	2023 ZPM
<b>Assam</b>	2006 INC	2011 INC	2016 BJP	2021 BJP		<b>Nagaland</b>	2008 NPF	2013 NPF	2018 NPF	2023 NDPP
<b>Bihar</b>	2005 RJD	2010 JD(U)	2015 RJD	2020 RJD		<b>Odisha</b>	2004 BJD	2009 BJD	2014 BJD	2019 BJD
<b>Chhattisgarh</b>	2008 BJP	2013 BJP	2018 INC	2023 BJP		<b>Punjab</b>	2007 SAD	2012 SAD	2017 INC	2022 AAP
<b>Goa</b>	2007 INC	2012 BJP	2017 INC	2022 BJP		<b>Rajasthan</b>	2008 INC	2013 BJP	2018 INC	2023 BJP
<b>Gujarat</b>	2007 BJP	2012 BJP	2017 BJP	2022 BJP		<b>Sikkim</b>	2004 SDF	2009 SDF	2014 SDF	2019 SKM
<b>Haryana</b>	2005 INC	2009 INC	2014 BJP	2019 BJP		<b>Tamil Nadu</b>	2006 DMK	2011 AIADMK	2016 AIADMK	2021 DMK
<b>Himachal Pradesh</b>	2007 BJP	2012 INC	2017 BJP	2022 INC		<b>Telangana</b>	2014 TRS	2018 TRS	2023 INC	
<b>Jammu &amp; Kashmir</b>	2008 JKNC	2014 JKPDP				<b>Tripura</b>	2008 CIP(M)	2013 CIP(M)	2018 BJP	2023 BJP
<b>Jharkhand</b>	2005 BJP	2009 BJP & JMM	2014 BJP	2019 JMM		<b>Uttarakhand</b>	2007 BJP	2012 INC	2017 BJP	2022 BJP
<b>Karnataka</b>	2004 BJP	2008 BJP	2013 INC	2018 BJP	2023 INC	<b>Uttar Pradesh</b>	2007 BSP	2012 SP	2017 BJP	2022 BJP
<b>Kerala</b>	2006 CPI(M)	2011 CPI(M)	2016 CPI(M)	2021 CPI(M)		<b>West Bengal</b>	2006 CPI(M)	2011 TMC	2016 TMC	2021 TMC
<b>Madhya Pradesh</b>	2008 BJP	2013 BJP	2018 INC	2023 BJP		<b>NCT of Delhi</b>	2008 INC	2013 BJP	2015 AAP	2020 AAP
<b>Maharashtra</b>	2004 NCP	2009 INC	2014 BJP	2019 BJP		<b>Puducherry</b>	2006 INC	2011 AINRC	2016 INC	2021 AINRC
<b>Manipur</b>	2007 INC	2012 INC	2017 INC	2022 BJP						

67. We have referred to the data, after elucidating the mechanics and the safeguards embedded in the EVMs to check and obviate wrongdoing, and to evaluate the efficacy and performance of the EVMs. We acknowledge the right of voters to question the working of EVMs, which are but an electronic device that has a direct impact on election results. However, it is also necessary to exercise care and caution when we raise aspersions on the integrity of the electoral process. Repeated and persistent doubts and despair, even without supporting evidence, can have the contrarian impact of creating distrust. This can reduce citizen participation and confidence in elections, essential for a healthy and robust democracy. Unfounded challenges may actually reveal perceptions and predispositions, whereas this Court, as an arbiter and adjudicator of disputes and challenges, must render decisions on facts based on evidence and data. This is the reason why we had re-listed the matters for directions and clarifications on 24.04.2024, when specific points/questions raised were answered by the ECI. The petitioners were also heard.
68. The counsel for the petitioners, on 24.04.2024, drew our attention to a Wikipedia article which states that firmware is a software which provides low-level control of computing device hardware etc. It also states that programmable firmware memory can be reprogrammed via a procedure sometimes called flashing. This is stoutly denied by the officer of the ECI, who states that this would require the EVMs to be re-engineered by the

manufacturers. It is submitted that the microcontroller used in the EVM has one-time programmable memory, that is, it is unalterable once burned. It is only the VVPAT which has a flash memory component for the purpose of storing the bitmap file. To us, it is apparent that a number of safeguards and protocols with stringent checks have been put in place. Data and figures do not indicate artifice and deceit. Reprogramming by flashing, even if we assume is remotely possible, is inhibited by the strict control and checks put in place and noticed above. Imagination and suppositions should not lead us to hypothesize a wrong doing without any basis or facts. The credibility of the ECI and integrity of the electoral process earned over years cannot be chaffed and over-ridden by baroque contemplations and speculations.

69. The test for determining the scope of unenumerated rights is based on tracing them to specific provision of Part III of the Constitution or to the core values which the Constitution espouses. While we acknowledge the fundamental right of voters to ensure their vote is accurately recorded and counted, the same cannot be equated with the right to 100% counting of VVPAT slips, or a right to physical access to the VVPAT slips, which the voter should be permitted to put in the drop box. These are two separate aspects – the former is the right itself and the latter is a plea to protect or how to secure the right. The voters' right can be protected and safeguarded by adopting several measures. This Court in ***Subramanian Swamy*** (supra) had directed gradual introduction

of VVPATs to guarantee utmost transparency and integrity in the system. This direction was made to safeguard the right of the voters to know that the vote has been correctly recorded in the EVM. The direction has been implemented. The voter can see the VVPAT slip through the glass window and this assures the voter that his vote as cast has been recorded and will be counted. In ***N. Chandrababu Naidu*** (supra), the direction for counting the VVPAT paper trail in 5 EVMs per assembly constituency or assembly segment in a parliamentary constituency was issued, primarily as a precautionary measure rather than a justification or necessity. This decision was aimed at ensuring the highest level of confidence in the accuracy of election results. Giving physical access to VVPAT slips to voters is problematic and impractical. It will lead to misuse, malpractices and disputes. This is not a case where fundamental right to franchise exists only as a parchment, rather, the entire electoral process protocol, and the checks as well as empirical data, ensure its meaningful exercise.

70. VVPAT slip is made of a 9.9 cm x 5.6 cm thermal paper coated with chemical to ensure print retention for about 5 years. It is very soft and sticky, which makes the counting process tedious and slow. The counting process is undertaken through the following steps: the verification of unique ID of the VVPAT, opening of the VVPAT drop box, taking out the paper slips, counting the total number of slips, matching the number of slips with the total votes polled as per Form 17C,

segregation of candidate-wise VVPAT slips, making candidate-wise bundles of 25 slips and counting of bundles and leftover slips. There are instances of recounting and reverification of the slips till the candidate-wise tallying is done. Thus, the counting process, it is stated, takes about five hours. The counting is done by a team of three officers under CCTV coverage and under direct supervision of the supervising officer and the ECI observer of the constituency. Candidates/agents can remain present. We are not inclined to modify the aforesaid directions to increase the number of VVPAT undergoing slip count for several reasons. First, it will increase the time for counting and delay declaration of results. The manpower required would have to be doubled. Manual counting is prone to human errors and may lead to deliberate mischief. Manual intervention in counting can also create multiple charges of manipulation of results. Further, the data and the results do not indicate any need to increase the number of VVPAT units subjected to manual counting.

71. During the course of hearing, it was suggested that instead of physically counting the VVPAT slips, they can be counted by a counting machine. This suggestion, including the suggestion that barcoding of the symbols loaded in the VVPATs may be helpful in machine counting, may be examined by the ECI. These are technical aspects, which will require evaluation and study, and hence we would refrain from making any comment either way.

72. We must reject as foible and unsound the submission to return to the ballot paper system. The weakness of the ballot paper system is well known and documented. In the Indian context, keeping in view the vast size of the Indian electorate of nearly 97 crore, the number of candidates who contest the elections, the number of polling booths where voting is held, and the problems faced with ballot papers, we would be undoing the electoral reforms by directing reintroduction of the ballot papers. EVMs offer significant advantages. They have effectively eliminated booth capturing by restricting the rate of vote casting to 4 votes per minute, thereby prolonging the time needed and thus check insertion of bogus votes. EVMs have eliminated invalid votes, which were a major issue with paper ballots and had often sparked disputes during the counting process. Furthermore, EVMs reduce paper usage and alleviate logistical challenges. Finally, they provide administrative convenience by expediting the counting process and minimizing errors.
73. ECI has been categorical that the glass window on the VVPAT has not undergone any change. The term used in Rule 49M is 'transparent window'. The tinted glass used on the VVPAT printer is to maintain secrecy and prevent anyone else from viewing the VVPAT slips. The voter in the voting compartment who is viewing the glass from the top can have clear view of the slip for 7 seconds. Marginal tint on the VVPAT glass window, or the fact that the cutting and dropping of the slip from the roll in to the drop box of the printer is not visible, does not violate



Rule 49M. The words 'before such slips get cut' in the proviso to Rule 49M(3) indicate and require that the slip should be cut from the roll after the elector has seen the print through the glass window. Use of glass window prevents damage, smudging, attempt to deface or physically access the VVPAT slip. The rule ensures that the voter is able to see the slip along with the serial number with name of the candidate and the symbol for whom they have voted.

74. Similarly, we would reject the submission that any elector should be liberally permitted as a routine to ask for verification of vote. Rule 49MA permits the elector to raise a complaint if she/he is of the view that the VVPAT paper slip did not depict the correct candidate/political party she/he voted. However, whenever a challenge is made, the voting process must be halted. An overly liberal approach could cause confusion and delay – hindering the election process and dissuading others from casting their votes.<sup>25</sup> ECI has stated that only 26 such requests in terms of Rule 49MA were received, and in all cases, the allegation was found to be incorrect.

75. We have conducted an in-detail review of the administrative and technical safeguards of the EVM mechanism. Our discussion aims to address the uncertainties and provide assurance regarding the integrity of the electoral process. A voting mechanism must uphold and adhere to

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<sup>25</sup> However, we refrain from making any comments on the application of Section 177 of the Indian Penal Code, 1860.

the principles of security, accountability, and accuracy. An overcomplex voting system may engender doubt and uncertainty, thereby easing the chances of manipulation. In our considered opinion, the EVMs are simple, secure and user-friendly. The voters, candidates and their representatives, and the officials of the ECI are aware of the nitty-gritty of the EVM system. They also check and ensure righteousness and integrity. Moreover, the incorporation of the VVPAT system fortifies the principle of vote verifiability, thereby enhancing the overall accountability of the electoral process.

76. Nevertheless, not because we have any doubt, but to only further strengthen the integrity of the election process, we are inclined to issue the following directions:

(a) On completion of the symbol loading process in the VVPATs undertaken on or after 01.05.2024, the symbol loading units shall be sealed and secured in a container. The candidates or their representatives shall sign the seal. The sealed containers, containing the symbol loading units, shall be kept in the strong room along with the EVMs at least for a period of 45 days post the declaration of results. They shall be opened, examined and dealt with as in the case of EVMs.

(b) The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers

of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at SI.No.2 or SI.No.3, behind the highest polled candidate. Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/microcontroller after the verification process is conducted. The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered.

77. The writ petitions and all pending applications, including the applications for intervention, are disposed of in the above terms.

.....J.  
(SANJIV KHANNA)

.....J.  
(DIPANKAR DATTA)

**NEW DELHI;  
APRIL 26, 2024.**

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**WRIT PETITION (C) NO. 434/2023**

**ASSOCIATION FOR DEMOCRATIC REFORMS**

**...PETITIONER**

**VERSUS**

**ELECTION COMMISSION OF INDIA & ANOTHER**

**...RESPONDENTS**

**With**

**WRIT PETITION (C) ...../2024 (@ DIARY NO. 35782/2023)**

**WRIT PETITION (C) NO. 184/2024**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

1. I have had the privilege of reading the opinion authored by brother Hon'ble Khanna, J. His Lordship, in my opinion, has dealt with the legal and techno-legal issues arising in connection with the challenge to the process of polling of votes through Electronic Voting Machines<sup>1</sup> mounted by the writ

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<sup>1</sup> EVMs

petitioners and the several intervenors with unmatched finesse and admirable clarity. I do not recollect any previous decision of this Court having explained the working of the EVMs in such great detail with lucidity and dexterity. The reasons assigned by His Lordship for negating the challenge, without doubt, are cogent and valid. The twin directions in the penultimate paragraph, notwithstanding that the electoral process for constituting the 18<sup>th</sup> Lok Sabha is in full swing, are in the nature of forward-looking measures to strengthen the electoral system by bringing in more transparency. Such directions do not have the effect of retarding, interrupting, protracting or stalling the counting of votes, and is a course of action that seems to be perfectly permissible in the light of the Constitution Bench decision of this Court in ***Election Commission of India v Ashok Kumar***<sup>2</sup>.

2. Though His Lordship's opinion has my whole-hearted concurrence, I have thought of penning a few words to express my own views, keeping in mind the customary challenges that are laid before this Court whenever an election is reasonably imminent, by way of emphasis. Hon'ble Khanna, J. and I are speaking through different judgments, but our voices are not too different.

3. I have heard senior counsel/counsel for the three petitioners suspect, without however attributing any malice to the Election Commission of India<sup>3</sup> (in which vests the superintendence, direction and control of

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<sup>2</sup> (2000) 8 SCC 216

<sup>3</sup> ECI

elections per Article 324 of the Constitution of India<sup>4</sup>), the efficacy of exercise of the right of franchise through the EVMs which, according to them, are not entirely reliable and open to manipulation, and that completely tallying the Voter Verifiable Paper Audit Trail<sup>5</sup> slips with the votes cast on the ballot unit is the plausible solution to ensure a taint-free election. I have also heard counsel for the petitioning association in the lead matter rely on certain reports to persuade the Court hold that casting of votes through EVMs is not fool-proof and that voting through electronic means has been discontinued by a European nation in compliance with a judicial verdict. He was also heard to suggest, when called upon by the Court regarding the nature of relief the petitioning association seeks, that the electoral process in India should return to the “paper ballot system” upon discontinuance of voting through the EVMs.

4. I place on record that although such a suggestion was subsequently withdrawn by counsel in course of the proceedings that ensued following listing of the writ petitions “For Directions” on 24 April, 2024 to seek clarifications from the ECI on certain points, nothing much turns on it. The withdrawal was more of an attempt to erase the impression we, the Judges forming the Bench, were urged to form by senior counsel for the ECI while arguing that the petitioning association’s utter lack of *bona fides* (in invoking this Court’s writ jurisdiction under Article 32 of the Constitution) is completely exposed thereby. I have no hesitation to accept the submission of senior counsel for the ECI that reverting to the “paper ballot system” of

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<sup>4</sup> Constitution

<sup>5</sup> VVPAT

the bygone era, as suggested, reveals the real intention of the petitioning association to discredit the system of voting through the EVMs and thereby derail the electoral process that is underway, by creating unnecessary doubts in the minds of the electorate.

5. It is of immediate relevance to note that in recent years, a trend has been fast developing of certain vested interest groups endeavouring to undermine the achievements and accomplishments of the nation, earned through the hard work and dedication of its sincere workforce. There seems to be a concerted effort to discredit, diminish, and weaken the progress of this great nation on every possible frontier. Any such effort, or rather attempt, has to be nipped in the bud. No Constitutional court, far less this Court, would allow such attempt to succeed as long as it (the court) has a say in the matter. I have serious doubt as regards the *bona fides* of the petitioning association when it seeks a reversion to the old order. Irrespective of the fact that in the past efforts of the petitioning association in bringing about electoral reforms have borne fruit, the suggestion put forth appeared inexplicable. Question of reverting to the "paper ballot system", on facts and in the circumstances, does not and cannot arise. It is only improvements in the EVMs or even a better system that people would look forward to in the ensuing years.

6. At the same time, one cannot be oblivious that in a society pledged to uphold the rule of law, none - howsoever high or low - is above the law. Everyone is subject to the law fully and completely, and authorities within the meaning of State in Article 12 of the Constitution are no exception. Concepts of unfettered discretion or unaccountable action has no place in

the matter of governance; hence, neither can the ECI nor can any other authority claim to possess arbitrary power over the interests of an individual voter and seek cover from the sunlight of judicial scrutiny if, indeed, a valid cause is set up for interference. After all, "let right be done" is also the motto of our nation like any other civilised State. That the sanctity of the electoral process has to be secured at any cost has never been in doubt.

7. Conducting elections in India is a difficult task, is an understatement; rather, it is a humongous task and presents a novel challenge, not seen elsewhere in the world. India is home to more than 140 crore people and there are 97 crore eligible voters for the 2024 General Elections, which is more than 10% of the world population. These voters represent the largest electorate in the world. The Representation of the People Act, 1951<sup>6</sup> which, to my mind, amidst the vast legislative landscape of the nation is the most important enactment after the Constitution of India, is also the most effective instrument to uphold democratic and republican ideals, which are the hallmarks of our preambular promise. The RoP Act, which has established the legal framework for conducting elections, ensures that each and every citizen has a fair and equal opportunity to exercise his/her right of vote and to participate in the democratic process for electing his/her governor. The duties, functions and obligations to be performed/discharged by the ECI are ordained by the RoP Act, which are paramount and non-negotiable. Being a complete code in itself, the RoP Act reinforces the rule of law and upholds the principles of justice, fairness and transparency. The

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<sup>6</sup> RoP Act



larger the electorate, greater are the challenges associated with the elections. As it is, the ECI has an onerous responsibility to shoulder and there is absolutely no margin for error. Periodical challenges to electoral processes, which gain momentum particularly when General Elections are imminent, require the ECI as of necessity to raise robust, valid and effective defence to spurn such challenges failing which any adverse judgment by a court is bound to undermine the authority and prestige of the ECI and bring disrepute to it.

8. The 2024 General Elections, which are proposed to be conducted in 7 (seven) phases and presently underway, will entail an estimated expenditure of around Rs. 10,00,00,00,00,000 (Rupees One lakh crore); more than 10 lakh polling booths are required to be setup to facilitate the voting process. The EVMs are carried to the remotest areas of this country, occasionally on the backs of horses and other animals; voting booths have been set up in far-off villages at the foothills of the Himalayan mountains as well as the delta of the Sundarbans which are only accessible through boats. These challenges are unique to India, and the election process has to be considered in this context.

9. Taking an example, West Bengal is the 13<sup>th</sup> largest state in terms of area, spread over 88,752 sq. km. The density of population of the state is 1028 persons/sq. km. Even a small state like West Bengal is more densely populated than most European nations. This being the scenario, any comparison of the nature which was sought to be drawn on behalf of the petitioning association with a particular European nation, may not be adequately representative since the demographic and logistical challenges

in the conduct of elections in each country are unique to it. Also, it was not demonstrated before the Court that the machines put to use in the electoral system of such nation are similar and what was said by its court applies *ex proprio vigore* to India.

10. Electronic voting is not something which is prevalent only in India. Multiple countries use electronic voting in varying degrees in their national elections. However, use of EVMs in elections in India are not without its checks and balances. Reasonable measures to ensure transparency, such as tallying 5% VVPAT slips with votes polled, are already in place after the decision of this Court in ***N. Chandrababu Naidu v. Union of India***<sup>7</sup>. This measure, as has been noticed by Hon'ble Khanna, J., was undertaken out of abundant caution and not as an admission of a flaw in the process.

11. The exercise of tallying 5% VVPAT slips with votes cast by the electors has not, till date, resulted in any mismatch. This assertion of the ECI has not been proved to be incorrect by the petitioners by referring to any credible material or data. So long no mismatch is detected even after tallying 5% of VVPAT slips, as directed in ***N. Chandrababu Naidu*** (supra), it would defy the sense of logic and reason of a prudent man to issue a Mandamus to the ECI to arrange for tallying 100% VVPAT slips on the specious ground of the petitioners' apprehension that the EVMs could be manipulated.

12. The petitioning association has relied on the Report titled '*An inquiry into India's Election System: Is the Indian EVM and VVPAT system fit for*

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<sup>7</sup> (2019) 15 SCC 377

*democratic elections?*' submitted by the Citizens' Commission on Elections<sup>8</sup>, to emphasize the vulnerabilities of the current electronic voting system. The CCE Report, on a bare reading, appears to be the culmination of inputs given by domain experts. For whatever such report is worth and though counsel claimed that the efficacy of the voting system through EVMs has been doubted, the CCE Report itself concludes, *inter alia*, that no hacking of any EVM has been detected; what it observes is that there is no guarantee that the EVMs cannot be hacked. This, in essence captures the underlying weakness in the petitioning association's entire case, inasmuch as the only grounds for the reliefs sought lie in the realm of apprehension and suspicion. *In arguendo*, even if the CCE Report is taken on face value and it is believed that the EVM-VVPAT system can be hacked, can it be said that there is absence of a redressal mechanism for the same? Should there be hacking, resulting in violation of a right of an elector in any manner, and if there be proof adequate enough to upturn an election result, the law already has in place a remedy, i.e., an election petition under section 80 of the RoP Act. Such an election petition can be filed not just by an aggrieved candidate, but also by a voter, within 45 (forty-five) days from the date of declaration of the result of election. Since there is already a remedy in law to allay the fears that have been expressed by the petitioners, if and when a discrepancy in the results arises, the Courts are not powerless to uphold the sanctity of the democratic process by appropriate intervention.

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<sup>8</sup> CCE Report

13. The petitioning association has also attempted to highlight a public trust deficit with respect to the current voting system by relying on a survey conducted by the Centre for the Study of Developing Societies – Lokniti, which concluded that a majority of the Indian population did not trust the EVMs. It is a private report and I find little reason to trust such a report. Over the years, more and more voters have participated in the election process. Had the voters any doubt regarding the efficacy of the EVMs, I wonder whether the voting percentage would have seen such increase. EVMs have stood the test of time and the increased voting percentage is sufficient reason for us to hold that the voters have reposed faith in the current system and that the report to the contrary, which has been relied on, merits outright rejection.

14. Next, the petitioners submit that their right to be informed under Article 19(1)(a) vis-à-vis the electoral process have two facets. First, a voter has a right to know that the vote is recorded as cast; and, secondly that the vote as cast is counted. These facets need to be dealt with separately.

15. A citizen's right 'to freedom of speech and expression' under Article 19(1) is not absolute; the State by virtue of Article 19(2) can place reasonable restrictions on these rights. There can be no doubt that the electorate has a right to be informed if the votes, as cast, are accurately recorded. The dispute, in the present writ proceedings, centres around the modality of delivering the information. The petitioners have characterised the present procedure, wherein the voter after pressing the 'blue button' and casting his/her vote can see his VVPAT slip for 7 seconds through an

illuminated glass window, as inadequate for the voter to verify if his/her vote, as cast, is recorded.

16. To buttress their submission, the petitioners have relied on the proviso to Rule 49M (3) of the Conduct of Election Rules, 1961<sup>9</sup>. The petitioners urge that the ECI is not following the statutory mandate provided in the Election Rules. I am *ad idem* with the interpretation of the relevant rule placed by Hon'ble Khanna, J. The ordainment of Rule 49M (3) is that the VVPAT slip should be momentarily visible to the voter; and it is not the requirement of the rule that the VVPAT slip or its copy has to be handed over to the voter. Recording of the vote cast signifying the choice of the voter and its projection on the VVPAT slip, *albeit* for 7 (seven) seconds, is fulfilment of the voter's right of being informed that his/her vote has been duly recorded. In my considered view, as long as there is no allegation of statutory breach, there can be no substitution of the Court's view for the view of the ECI that the light in the VVPAT would be on for 7 (seven) seconds and not more.

17. We now address the second facet of the argument based on the right guaranteed by Article 19(1)(a) – the voter's right to know that his/her vote, as recorded, has been counted. To deal with this contention, a question comes to my mind – did this right not exist when the "paper ballot system", which the petitioning association wishes to be reverted to, was in vogue? Then, voters would simply drop their paper ballots into a box, for it to be safely ferried away to the counting stations, whereafter the same were

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<sup>9</sup> Election Rules

counted by election officials far away from the voter's scrutiny, with no way of knowing whether the vote cast by the voter was indeed counted or had not fallen victim to human error and missed from being counted. In the present far more technologically advanced system of the EVM – VVPAT, every voter who enters the polling booth has his/her name recorded, along with an affixation of signature in the Register of Voters maintained by the Presiding Officer, as provided by Form 17A of the Election Rules. Thereafter, the voter presses the desired button on the ballot unit to cast his/her vote, sees a visual confirmation of the same on the transparent VVPAT screen and hears a loud beep. At the end of the voting process, the Presiding Officer is required to record in Form 17C, not just the total number of voters as per the Register of Voters, but also the total number of votes recorded per voting machine as well as those staying away from the voting process despite affixing signature on the register. The total votes polled as per Form 17C is then again tallied with the total votes recorded by the control unit. Rule 56D(4) also provides that if there is any mismatch between these two totals, the printed VVPAT slips of the polling station would be counted. Furthermore, if a voter is aggrieved by a mismatch in the candidate voted for in the ballot unit *vis-a-vis* that recorded in the VVAPT, Rule 49M allows the voter to approach the Presiding Officer. Upon the conclusion of polling, there exists yet another remedy under Rule 56-D, for a candidate to apply for a count of the VVPAT slips, should any discrepancy be suspected. Thus, it is manifest that there is in place a stringent system of checks and balances, to prevent any possibility of a miscount of votes, and for the voter to know that his/her vote has been counted. There can be no doubt that

such a system, which is distinctly more satisfactory compared to the system of the yester-years, suitably satisfies the voter's right under Article 19(1)(a) to know that his/her vote has been counted as recorded.

18. The Republic has prided itself in conducting free and fair elections for the past 70 years, the credit wherefor can largely be attributed to the ECI and the trust reposed in it by the public. While rational scepticism of the *status quo* is desirable in a healthy democracy, this Court cannot allow the entire process of the underway General Elections to be called into question and upended on mere apprehension and speculation of the petitioners. The petitioners have neither been able to demonstrate how the use of EVMs in elections violates the principle of free and fair elections; nor have they been able to establish a fundamental right to 100% VVPAT slips tallying with the votes cast.

19. In view of the foregoing discussion, the petitioners' apprehensions are misplaced. Reverting to the paper ballot system, rejecting inevitable march of technological advancement, and burdening the ECI with the onerous task of 100% VVPAT slips tallying would be a folly when the challenges faced in conducting the elections are of such gargantuan scale.

20. There are two other ancillary issues, to add to the issues already covered in detail by Hon'ble Khanna, J.

21. The first is the very issue of maintainability of writ petitions of the nature presented before us. Should mere suspicion of infringement of a right be considered adequate ground to invoke the writ jurisdiction? In my opinion, the answer should be 'NO'.

22. A writ petition ought not to be entertained if the plea is based on the mere suspicion that a right could be infringed. Suspicion that a right could be infringed and a real threat of infringement of a right are distinct and different.

23. To succeed in a claim under Article 32 or 226, one must demonstrate either *mala fide*, or arbitrariness, or breach of a law in the impugned State action. Though a writ of right, it is not a writ of course. The writ jurisdiction under Article 32/226 of the Constitution of India being special and extraordinary, it should not be exercised casually or lightly on the mere asking of a litigant based on suspicions and conjectures, unless there is credible/trustworthy material on record to suggest that adverse action affecting a right is reasonably imminent or there is a real threat to the rule of law being abrogated. It must be shown, at least *prima facie*, that there is a real potential threat to a right, which is guaranteed by law to the person concerned.

24. I am not oblivious of two decisions rendered by this Court on the aforesaid issue.

25. A Constitution Bench of this Court in ***D.A.V. College, Bhatinda v. State of Punjab***<sup>10</sup> held thus:

“5. [...] a petition under Article 32 in which petitioners make out a prima facie case that their fundamental rights are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place.”

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<sup>10</sup> (1971) 2 SCC 261



26. In ***Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu***<sup>11</sup> a Bench of two Hon'ble Judges of this Court held:

"12. [...] The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court."

27. While a writ petition may be instituted, if there is a genuine and looming threat of a right being trampled upon, what is, however, clear from the aforesaid decisions is that such threat or apprehension has to be well founded and cannot be based merely on assumptions and presumptions as is found in the present set of writ petitions.

28. The mere suspicion that there may be a mismatch in votes cast through EVMs, thereby giving rise to a demand for a 100% VVPAT slips verification, is not a sufficient ground for the present set of writ petitions to be considered maintainable. To maintain these writ petitions, it ought to have been shown that there exists a tangible threat of infringement; however, that has also not been substantiated. Thus, without any evidence of malice, arbitrariness, breach of law, or a genuine threat to invasion of rights, the writ petitions could have been dismissed as not maintainable. But, considering the seriousness of the concerns that the Court *suo motu* had expressed to which responses were received from the official of the ECI as well as its senior counsel, the necessity was felt to issue the twin directions in the greater public interest and to sub-serve the demands of justice.

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<sup>11</sup> (2016) 2 SCC 725

29. Finally, I wish to touch upon one other issue of importance.

30. It is pertinent to reiterate that the doctrine of *res judicata* is applicable to writ petitions under Article 32 and Article 226 as well. The inclusion of the term "public right" in Explanation VI of Section 11 of the Civil Procedure Code, 1908 aims to avoid redundant legal disputes concerning public rights. Given this clarification, there is no room for debate regarding the application of Section 11 to matters of public interest litigation presented through writ petitions.

31. In ***Daryao and others v. State of U.P. and others***<sup>12</sup>, a Constitution Bench of this Court emphasized that the rule of *res judicata* is founded on significant public policy considerations rather than being a mere technicality. It was clarified that petitioners seeking to challenge a decision must present new grounds distinct from those previously raised in order to escape the bar of *res judicata*. The Bench articulated this as follows:

*"31. [...] We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."*

32. Another Constitution Bench of this Court in ***Direct Recruit Class II Engineering Officers' Association. v. State of Maharashtra and others***<sup>13</sup> followed the aforesaid dictum to hold that the principles of *res judicata* are not foreign to writ petitions. A reference may be made to the following paragraph:

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<sup>12</sup> (1962) 1 SCR 574

<sup>13</sup> (1990) 2 SCC 715

35. [...] *It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. [(1962) 1 SCR 574 : AIR 1961 SC 1457] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea [...]*"

33. No doubt, *res judicata* bars parties from re-litigating issues that have been conclusively settled. It is true that this principle is not rigid in cases of substantial public interest and Constitutional Courts are empowered to adopt a flexible approach in such cases, acknowledging their far-reaching public interest ramifications.

34. However, this standard is applicable only when substantial evidence is presented to validate the irreversible harm or detriment to the public good resulting from the action impugned. The Court must come to the conclusion that the petition is not just an old wine in a new bottle, but rather raises substantial grounds not previously addressed in litigation. Only under

these circumstances may it consider such a petition; otherwise, it is within its authority to dismiss it at the threshold.

35. This issue at hand of doubting the efficacy of the EVMs has been previously raised before this Court and it is imperative that such issue is concluded definitively now. Going forward, unless substantial evidence is presented against the EVMs, the current system will have to persist with enhancements. Regressive measures to revert to paper ballots or any alternative to the EVMs that does not adequately safeguard the interests of Indian citizens have to be eschewed.

36. I also wish to observe that while maintaining a balanced perspective is crucial in evaluating systems or institutions, blindly distrusting any aspect of the system can breed unwarranted scepticism and impede progress. Instead, a critical yet constructive approach, guided by evidence and reason, should be followed to make room for meaningful improvements and to ensure the system's credibility and effectiveness.

37. Be it the citizens, the judiciary, the elected representatives, or even the electoral machinery, democracy is all about striving to build harmony and trust between all its pillars through open dialogue, transparency in processes, and continuous improvement of the system by active participation in democratic practices. Our approach should be guided by evidence and reason to allow space for meaningful improvements. By nurturing a culture of trust and collaboration, we can strengthen the foundations of our democracy and ensure that the voices and choices of all

citizens are valued and respected. With each pillar fortified, our democracy stands robust and resilient.

38. I conclude with the hope and trust that the system in vogue shall not fail the electorate and the mandate of the voting public shall be truly reflected in the votes cast and counted.

.....J  
(DIPANKAR DATTA)

**New Delhi;  
26<sup>th</sup> April, 2024.**

*Neha Reddy*  
**TRUE COPY**

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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. 434/2023

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS

... PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA &amp; ANR.

... RESPONDENTS

RESPONSE OF THE ELECTION COMMISSION OF INDIA TO THE QUERIES RAISED BY THE HON'BLE COURT ON16.04.2024

S. No.	Issue	Response
1.	WHETHER ALL THE 3 UNITS – BU, CU AND VVPAT – WHICH ARE USED TOGETHER TO CONDUCT THE POLL STORED TOGETHER?	Yes. The BU, <u>CU</u> and VVPAT together constitute the EVM and all three units are stored in the Strong Rooms after the election which is sealed in the presence of the candidates/their agents. The EVMs are stored for a period of at least 45 days in the Strong Rooms, i.e. the period for filing of Election Petitions.
2.	WHETHER ANY SOFTWARE IS INSERTED IN VVPAT AT THE TIME OF SYMBOL LOADING?	i. The VVPAT is only a printer. No software is involved in the loading of symbols in VVPAT by SLU. No software is uploaded or can be uploaded in the VVPAT through SLU.

		<p>ii. During the symbol loading process there is no scope for inserting any program or application onto VVPATs as VVPATs can accept only image file of specified format (.bmp) containing serial number, candidate details and their symbols. Any file in any other format will not get loaded onto VVPATs.</p> <p>ii. Upon Symbol Loading a test printout is signed and certified by the Returning Officer / Assistant Returning Officer.</p> <p>v. Entire process is conducted in the presence of contesting candidates or their agents/representatives and it is also shown on a big monitor / TV Screen.</p>
3.	<p><b>PARTICIPATION OF POLITICAL PARTIES AND CANDIDATES IN THE PROCESS OF DEPLOYMENT OF EVM - VVPATs.</b></p>	<p>Entire process from procurement of machines from BEL/ECIL till storage after counting is represented in Chart Form which is annexed as <u>ANNEXURE – A from page 10 to 11</u>.</p> <p>Detailed procedures are provided in EVM Manual [Annexure – C/40 of ECI Counter at page 560 (Vol. II)].</p>
4.	<p><b>WHETHER POLLING OFFICER HAS THE OPPORTUNITY TO SEE THE RESULT OF THE POLLING STATION DURING THE POLL DAY?</b></p>	<p>i. No. Polling Officer cannot see the Result as the “Result” button is sealed. Polling officer does not have the access to see the results on the poll day as prior to the start of actual polls the ‘Result’ section of Control Unit is sealed in the presence of the polling agents with their signatures affixed on the seals.</p>

		<p>ii. Unless the seal is opened/broken (done at the stage of counting) the results cannot be seen.</p> <p>iii. However, the Presiding Officer can check the number of votes polled in the CU so as to cross check the same with Form 17.</p>
5.	<p><b>WHETHER, AFTER POLLING, THERE IS A POSSIBILITY OF TAMPERING OF EVMS?</b></p>	<p>i. No tampering is possible in EVM at any stage.</p> <p>ii. After completion of poll the Presiding Officer presses the 'Close' button. Thereafter, the EVM does not accept any vote. The poll 'start time' and 'end time' are recorded in the machine as well as by the Presiding Officer. After the close of poll, the Control Unit is switched off and thereafter the Ballot Unit is disconnected from the Control Unit and kept separately in their respective carrying cases and <i>sealed with paper slips on which polling agents also sign.</i></p> <p>iii. Further, the Presiding officer has to hand over to each polling agent a copy of the account of total votes recorded in Form 17-C – Part I [Form 17-C is annexed as <u>ANNEXURE – B from page 12 to 14.</u></p> <p>iv. At the time of counting of votes, the total votes recorded in a particular control unit is tallied with the account of votes in Form 17-C and if there is any discrepancy, Counting</p>



	<p>6. WHAT ARE THE PENAL PROVISIONS APPLICABLE TO ATTEMPT AT MANIPULATION WITH THE ELECTORAL PROCESS / EVM?</p>	<p>Agents of candidates can request for counting VVPAT paper slips under Rule 56(D).</p> <p>i. Section 131 of RP Act, 1951 – Penalty for disorderly conduct in or near polling stations: Presiding Officer can direct Police Officer to immediately arrest such person – punishment – imprisonment for 3 months or fine or both.</p> <p>ii. Section 132 of RP Act, 1951 – Penalty for misconduct at the polling station: Presiding Officer can direct for removal of such person from Polling Station – – punishment – imprisonment for 3 months or fine or both.</p> <p>iii. Section 134 of RP Act, 1951 – Breaches of official duty in connection with elections: Any act or omission on part of officers tasked with election duty is punishable with fine which may extend to five hundred rupees.</p> <p>iv. Section 136 of RP Act, 1951 – Other offences and penalties thereof: fraudulently defacing ballot paper, fraudulently or without authority destroying, opening or otherwise interfering with ballot boxes is punishable – punishment - for upto 2 years months or fine or both for election officers and for 6 months or fine or both for any other person.</p> <p>v. Section 177 of IPC, 1860 – Furnishing false information – whoever, being legally</p>
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		bound to furnish information to any public servant furnishes information which he knows or has reason to believe to be false is punishable - punishment - for upto 2 years months or fine or both.
7.	WHETHER CLOCK DATA (SHOWING THE DATE AND TIME WHEN THE VOTES WERE CAST) IS SHOWN TO THE CANDIDATES DURING COUNTING?	Control Unit has a clock that records time stamp for each vote. However, this data can be retrieved only if Competent Court asks for the data as it will compromise the secrecy of voters by comparing data with the sequence of voters mentioned in Form-17A.
8.	WHY DOES IT TAKE ONE HOUR TO COUNT VVPAT OF ONE POLLING STATION?	<ul style="list-style-type: none"> <li>i. On an average, 1,000 VVPAT slips are required to be counted per polling station.</li> <li>ii. The slips counting process involves – verification of unique ID of VVPAT, opening the VVPAT dropbox, taking out the paper slips, counting the total number of slips, matching the number of slips with the total votes polled as per Form 17C, segregation of candidate-wise VVPAT slips, making candidate-wise bundles of 25 slips and counting of bundles and leftover slips.</li> <li>iii. Due to the small size and special nature of the paper that makes it sticky the manual counting of VVPAT slips is cumbersome at every step outlined above. The process cannot be expedited or hurried.</li> </ul>

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		<p>iv. There are instances of re-count and re-verification of slips till the candidate-wise tallying is done. This again consumes more time.</p> <p>v. It may be noted that the overall environment in a Counting centre is charged up and the counting personnel are under tremendous mental pressure. This is also a factor that affects the speed of counting VVPAT slips.</p>
9.	<p>WHY THERE CAN BE NO MISMATCH BETWEEN VOTE POLLED AND VOTES COUNTED?</p>	<p>i. There cannot be any mismatch between votes polled and votes counted as the votes are registered in the Control Unit only after receiving the confirmation from VVPAT about the print and fall of VVPAT paper slip.</p> <p>ii. There is a "Fall Sensor" provided in the VVPAT which senses the cut and fall of paper slip into the ballot box. Only after the slip is fallen, the VVPAT acknowledges to the CU that command has been executed and then CU records the vote and sounds a loud beep.</p> <p>iii. In case, there is no cut and fall of the paper slip, VVPAT shows "FALL ERROR" and no vote is recorded in CU – ensuring that there is no possibility for mismatch in the votes polled. No beep sound would indicate that the vote is not recorded and polling officials will change the entire set of CU, BU and VVPAT.</p>

10.	ISSUE OF SLIGHT TINT IN GLASS OF VVPAT	Right from the time of introduction of VVPAT, the window colour of VVPAT has been the same. Marginally tinted glass was used to maintain the secrecy of voting so that, even by mistake, anyone other than the voter is not able to view the paper slip easily.
11.	RESULT OF ALL VVPAT PAPER SLIP COUNTING DONE TILL DATE.	<p>Complaints of Voters under Rule 49MA – Total Instances: 26   Mismatch: 0</p> <p>Re-counting request under Rule 56(D) - Total Instances: 100   Mismatch: 0</p> <p>Random verification of 5 polling booth per assembly segment - Total Instances: 41,629   Mismatch: 0</p> <p>Number of VVPAT paper slips matched - Total Instances: More than 4 Cr.   Mismatch: 0</p>
12.	GROWTH IN NUMBER OF ELECTORS AND MACHINES FROM 2019 TO 2024:	<p>Polling Stations: 2019 – 10.35 Lakhs; 2024 - 10.48 Lakhs</p> <p>Votes Polled: 2019 - About 61.4 Crore; 2024 - About 97 Crore registered voters</p> <p>Ballot Unit: 23.3 Lakh.   2024: 21.6 Lakh</p> <p>Control Unit: 16.35 Lakh   2024: 16.8 Lakh</p> <p>VVPAT: 17.4 Lakh   2024: 17.7 Lakh</p>
13.	TECHNICAL EXPERTS COMMITTEE	i. In order to continuously strengthen the credibility and integrity of elections, as a Constitutional Authority entrusted with the task of conducting the elections, the ECI

has taken all necessary steps including the participation of independent technical experts whose committee is called as Technical Experts Committee. The experts who form part of the Technical Experts Committee are not employees of the Election Commission of India and are not paid any remuneration.

- ii. 1<sup>st</sup> TEC was formed in January, 1990 - Prof. S. Sampath, Chairman Technical Advisory Committee, DRDO; Prof. P. V. Indiresan, IIT Delhi; Dr. Rao C. Kasarabada, Director, Electronic Research & Development Center (ERDC), Trivandrum.
- iii. 2<sup>nd</sup> TEC formed in 2005 – Prof. P. V. Indiresan, Ex-Director, IIT Madras; Prof. D. T. Shahani, IIT Delhi; Prof. A. K. Agarwala, IIT Delhi.
- iv. 3<sup>rd</sup> TEC formed in 2010 – Prof. D. T. Shahani, Prof. Emeritus, IIT Delhi; Prof. Rajat Moona, IIT Bhilai, Former Director General CDAC; Prof. A.K. Aggarwala, IIT Delhi; Prof. Dinesh K. Sharma, IIT Bombay.
- v. ECIL and BEL have designed the EVMs and VVPATs and the designs were vetted by the TEC.

14. WHETHER ECI REPLIED TO THE  
QUERIES OF PARLIAMENTARY

Reply was sent on 5<sup>th</sup> July, 2019.

	<p>COMMITTEE REFERRED IN THE NEWS REPORT AT ANNEXURE P/16, PAGE – 434 OF WRIT PETITION NO. 184/2024 TITLED AS ARUN KUMAR AGRAWAL VS ECI</p>	
15.	<p>DISCREPANCY IN DATA MENTIONED IN NEWS REPORT OF QUINT [ANNEXURE P/17, PAGE – 436 OF WRIT PETITION NO. 184/2024 TITLED AS ARUN KUMAR AGRAWAL VS ECI]</p>	<p>i. Quint has not disclosed that discrepancy is with respect to live voter turnout data uploaded on ECI website during 2019 General Election. The discrepancy in voter turnout data has nothing to do with the EVM. During 2019 General Elections, a mechanism was adopted to give a real time approximation of voter turnout. Voter turnout data was published on ECI website on real-time basis by taking inputs from Presiding Officers of polling stations.</p> <p>ii. There was no mismatch between the data of votes polled as per EVMs which is recorded in Form 17C and the data of results which is declared as per Form 20.</p>

# INVOLVEMENT OF THE RECOGNISED POLITICAL PARTIES AND CANDIDATES IN EVM-VVPAT RELATED ACTIVITIES

Recognised Political Parties/ Candidates

Storage

- Opening and closing of EVM warehouse/strong room only in the presence of the Recognised Political Parties candidates under videography.
- Under custody of District Election Officer (DEO) in double lock system, with CCTV coverage
- Minimum 1/2 section armed security plus log-book, etc.

Recognised Political Parties

First Level Checking

- FLC is conducted by BEL/ECIL engineers at DEO level in the presence of the Recognised Political Parties.
- 100% of machines: Checking by casting of 6 votes against each of the candidate buttons of BU (i.e. total 96 votes) and observation of result
- 5% machines for higher mock poll: Randomly selected by the representatives of the recognised political parties.
- In 1% EVMs: 1200 votes cast, in 2% EVMs: 1000 votes cast, in 2% EVMs: 500 votes cast. The electronic result of EVM is tallied with the VVPAT slips count.
- List of FLC OK is shared with all Recognised Political Parties.
- Stored in Strong Rooms with double lock; CCTV coverage and minimum 1 section Armed Security.

Recognised Political Parties

Training and Awareness units

- 10% of FLC OK units are taken out for T&A purpose in the presence of Recognised Political Parties.
- The list of T&A units is shared with the political parties
- T&A units are stored separately
- EVM Demonstration Centres (EDC) at district election office/RO level/revenue sub-division offices
- Mobile Demonstration Van (MDV) are deployed to cover all polling locations

Candidates/ their representatives

Storage of polled EVMs and VVPATs

- Polled EVMs and VVPATs are stored in the strong room in the presence of Candidates/their representatives.
- Candidates/their representatives are also allowed to put their seals on the locks of the strong room.
- Polled EVM Strong Room has minimum 1 platoon of armed security (CAPF) and CCTV coverage.
- Polled EVM Strong Room has two-cordon security. Inner cordon under CAPF and outer cordon under State Armed Police.
- No one is allowed to enter inner cordon.
- Candidates/their representatives are allowed to stay to watch the Strong Room. If entrance of the strong room is not visible, CCTV display facility is provided.

Recognised Political Parties/ Candidates/ their representatives

First and second Randomisations of EVMs-VVPATs

- Randomisations done using EVM Management System (EMS) software application of ECI.
- First randomisation is conducted to allocate EVMs and VVPATs Assembly constituency/ segment-wise.
- List of first randomised units (AC/AS-wise) is shared with National and State Recognised Political Parties. The list is also shared with contesting candidates after finalisation of list of contesting candidate.
- Second randomisation is conducted in the presence of contesting candidates to allocate machines polling station wise and for reserve
- The list of second randomised EVMs and VVPATs is shared with contesting candidates.

Candidates/ their representatives

Commissioning (Candidates sitting)

- Commissioning of machines for use in poll is done in the presence of contesting candidates, by the district official.
- Symbol loading onto VVPAT is done by using Symbol Loading Unit (SLU). Symbols being loaded in VVPATs are simultaneously displayed on the monitor/ TV screen for viewing by candidates/their representatives as a measure of improved transparency.
- 100% of EVM & VVPATs: Checked by casting one vote to each candidate button including NOTA.
- Higher mock poll in 5% randomly selected units: 1000 votes is cast, and electronic result of EVM is tallied with the VVPAT slips count.
- Candidates/their representatives are allowed to pick 5% EVMs and VVPATs randomly and also to do mock poll.

Candidates/  
their  
representatives



- In the presence candidates: EVM-VVPAT strong room is opened under videography & dispersal is done

Candidates/  
Polling Agents  
appointed by  
candidates



- On Poll day 90 minutes before the Actual Poll start time, mock poll of atleast 50 votes (minimum one vote to each candidate including NOTA) is conducted at every PS in the presence of the polling agents nominated by the contesting candidates. Electronic Result of mock poll is tallied with the VVPAT slip count.
- Mock poll data is cleared from Control Unit and mock poll VVPAT slips are kept in the black envelope and sealed with Pink Paper Seal.
- Before starting actual poll, Control Unit is sealed with Green Paper Seal, Special Tag and Address Tag. VVPAT drop box (Ballot compartment) is also sealed using Address Tag.
- On completion of Poll, presiding officer presses the CLOSE button of CU to close the poll. EVM & VVPAT are kept in the respective carrying cases and sealed with address tags.
- Polling Agents are allowed to sign the seals used in sealing EVMs and VVPATs (before commencement of poll and on close of poll).
- Polling Agents nominated by the contesting candidates are allowed to remain in polling stations to observe polling process.
- A copy of Form 17C containing details of voters, EVM-VVPAT & seals used, vote polled including votes polled in EVM etc. is provided to polling agents.

Candidates/  
Polling  
Agents



- After completion of poll, EVMs & VVPATs are transported from polling station to collection centre under escort.
- Candidates/Polling agents are allowed to follow vehicles carrying polled EVMs and VVPATs.

Candidates/  
their  
representatives



- Polled EVMs and VVPATs are stored in the strong room in the presence of Candidates/their representatives.
- Candidates/their representatives are also allowed to put their seals on the locks of the strong room.
- Polled EVM Strong Room has minimum 1 platoon of armed security (CAPF) and CCTV coverage.
- Polled EVM Strong Room has two-cordon security, Inner cordon under CAPF and outer cordon under State Armed Police.
- No one is allowed to enter inner cordon.
- Candidates/their representatives are allowed to stay to watch the Strong Room, if entrance of the strong room is not visible, CCTV display facility is provided.

Candidates/  
Counting  
Agents



- Polled Strong Room is opened in the presence of Candidates, Returning Officer, ECI Observer on counting day under videography.
- On the counting day, Control Units of EVMs are brought to the counting table from the strong room under CCTV coverage, and result is seen on the display of the CU by pressing 'RESULT' button on Control Unit after Seal verification by the Candidates/Counting Agents.
- EVM wise result is recorded by Counting Supervisor in Form 17C and sent to RO for compilation and declaration of round wise result.
- After completion of counting of votes, mandatory verification of VVPAT slips of randomly selected 5 PS per AC/AS is conducted.
- Thereafter, EVMs are kept in the EVM Strong Room and sealed envelopes of VVPAT slips are kept with the



12

[FORM 17B

(See rule 49P)

LIST OF TENDERED VOTES

Election to the House of the People/Legislative Assembly of the State/Union Territory..... from..... Constituency.....

No. and Name of Polling Station.....

Part No. of Electoral Roll.....

Sl. No.	Name of elector	Sl. No. of elector in electoral roll	Sl. No. in Register of Voters (Form 17A) of the person who has already voted in place of elector	Signature/Thumb impression of elector
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Date.....

Signature of the Presiding Officer]

[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.....

Number and Name of Polling Station.....

Identification Number of voting.....

Machine used at the Polling Station :.....

control unit.....  
balloting unit.....  
Printer (if used).....

1. Total number of electors assigned to the Polling Station
2. Total number of voters as entered in the Register for Voters (Form 17A)
3. Number of voters deciding not to record votes under rule 49-C
4. Number of voters not allowed to vote under rule 49M

1. Subs. by S.O. 2470(E), dated 14th August, 2013, for FORM 17C (w.e.f. 14-8-2013). Earlier FORM 17C was inserted by S.O. 230 (E), dated 24th March, 1992 and corrected by S.O. 530 (E), dated 17th July, 1992.

5. Test votes recorded under rule 49MA (d) required to be deducted—

(a) total number of test votes Total No. Sl No. (s) of elector(s) in Form 17A

(b) candidate(s) for whom Sl No. Name of candidate No. of votes test vote(s) cast:

6. Total number of votes recorded as per voting machine:

7. Whether the total number of votes as shown against item 6 tallies with the total number of votes as shown against item 2 minus numbers of voters deciding not to record votes as against item 3 minus number of voters as against item 4 (i.e. 2-3-4) or any discrepancy noticed:

8. Number of voters to whom tendered ballot papers were issued under rule 49P:

9. Number of tendered ballot papers

Sl. No.	Total	From	To
(a) received for use			
(b) issued to electors			
(c) not used and returned			

10. Account of papers seals

1. Paper seals supplied for use. Total No. Signature of polling agents

Sl No. from to

2. Paper seals used:

Total No. 2

3. Unused paper seals returned to Returning Officer:

Sl No. (s) Total No. 3

4. Damaged paper seal, if any:

Sl No. (s) Total No. 4

Sl No. (s) Total No. 5

Date

Place

Signature of Presiding Officer  
Polling Station No.

PART II  
RESULT OF COUNTING

Sl. No. of candidate	Name of candidate	Number of votes as displayed on control unit	Number of test votes to be deducted as per item 5 of Part I	Number of valid votes (3-4)
(1)	(2)	(3)	(4)	(5)
1.				
2.				
3.				
4.				
5.				
6.				
Total				

14

Whether the total number of votes shown above tallies with the total number of votes shown against item 6 of Part I or any discrepancy noticed between the two totals

Place .....  
Date .....  
Signature of Counting Supervisor  
Full Signature

Name of candidate/election agent/counting agent

Place .....  
Date .....  
Signature of Returning Officer.

FORM 18  
[Sec rule 52(2)]

APPOINTMENT OF COUNTING AGENTS

Election to the ..... from the ..... constituency

To: The Returning Officer,

..... a candidate/the election agent of ..... who is a candidate at the above election, do hereby appoint the following persons as my counting agents to attend the counting of votes at .....

Name of the counting agent .....  
Address of the counting agent .....

We agree to act as such counting agents ..... Signature of candidate/election agent.

1  
2  
3  
etc

Place .....  
Date .....  
Signature of counting agents

Neha Reddy  
TRUE COPY

By Email/ Speed Post

**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001

**No.464/INST/EPS/2023/Remuneration & TA/DA****Dated: 6<sup>th</sup> June, 2023**

To

1. The Secretary to Government of India  
Ministry of Home Affairs  
North Block, New Delhi-110001.
2. The Secretary to Government of India  
Department of Legislative Affairs,  
Ministry of Law & Justice  
A-wing, Shastri Bhawan, New Delhi-110001.
3. The Chief Secretaries of  
All States/UTs
4. The Chief Electoral Officers of  
All States/UTs

**Subject: Payment of Remuneration and TA/DA to personnel deployed for election related duties – regarding.****References: All the Commission's Instructions referred to:**

- (i) 218/4/96/PLN-IV dated 09.02.1996
- (ii) 458/4/98/Vol.II/PLN-IV dated 08.12.1998
- (iii) 464/INST/2009/EPS dated 09.01.2009
- (iv) 464/INST/2012/EPS dated 29.01.2012
- (v) 464/INST/2013-EPS dated 12.04.2013
- (vi) 464/INST/2013/EPS dated 06.09.2013
- (vii) 464/INST-PAY/2014-EPS dated 28.02.2014
- (viii) 464/INST/2014-EPS dated 21.03.2014
- (ix) 464/INST/2022-EPS dated 09.06.2022

Madam/Sir,

Election Commission of India is vested with the superintendence, direction, and control of all elections to the Parliament and to the Legislature of every State/UT and of elections to the offices of President and Vice President held under clause (1) of Article 324 of the Constitution of India. Conduct of elections involves diverse activities carried out by an election machinery consisting of officials and staff requisitioned from various departments including polling personnel/police personnel/staff under Section 26, 27, 28, 28A, 29 and 159 of Representation of the People Act, 1951.

2. The duty of conducting free, fair and peaceful election rests on the election machinery deployed on the ground which comprises personnel from various authorities i.e. Central Government, State Government, PSUs, Local Authorities etc.

3. In view of difficult nature of the work performed by polling/police personnel etc., the Commission has directed to pay remuneration for election duty carried out by them. In addition to remuneration, admissible TA/DA and any other allowance shall also be paid as per the norms by their parent department.

4. Further, instructions issued from time to time in the matter have been reviewed, consolidated and *in supersession* of all the previous instructions, the Commission has directed to issue a comprehensive direction in order to eliminate any ambiguity on the subject cited above.

**A. REMUNERATION TO PERSONNEL ON ELECTION DUTY:**

- (i) Remuneration is minimum amount payable to personnel for attending training sessions, collecting polling material and for performing duty on polling day/counting day. This instruction is also applicable to police personnel who are called for training and actually deployed on election related duties on polling/counting centers on the same criteria as being paid to the polling/counting personnel.
- (ii) Polling/ counting personnel deployed on reserve duty should be paid remuneration at the same rates as polling/ counting personnel on actual duty.
- (iii) Remuneration shall be paid for both General and Bye elections.
- (iv) The rates of remuneration of the polling official, going to the Polling Stations in difficult terrain where polling parties depart 3 days or more in advance shall be double than normal rates.
- (v) The rates recommended by the Commission are minimum rates to be paid mandatorily to the employee mentioned in the table at **Point C**. States/UTs are at liberty to pay higher rates of remuneration than the minimum rates fixed by the Commission. State/UTs, paying remunerations at the higher rates than the minimum rates recommended by the Commission, can continue to pay at such higher rates.
- (vi) Other officials related to conduct of elections can also be included by State Governments as deemed fit under this provision.

- (vii) Irrespective of the payment of remuneration, packed lunch and/or light refreshment shall be provided for polling personnel including police personnel, personnel in mobile parties, Home Guards, Forest Guards, Gram Rakshak Dal, NCC cadets, ex-Servicemen, volunteers etc. deployed at all polling stations/counting centres for election related work.

**B. PAYMENT OF TA/DA:**

- (i) All persons put on election duty should be paid, as far as possible, 100% TA/DA admissible to persons deployed either in advance or immediately within 24 hours of the completion of their duty. Alternatively, 80% of TA/DA can be paid in advance and remaining 20% amount can be paid within 30 days of election.
- (ii) TA/DA, as admissible, shall be paid for both General and Bye elections
- (iii) The Drawing and Disbursement Officer shall not wait for any specific request from the officers appointed for election related duty for drawing the advance, but shall treat the appointment order issued by the District Election Officer/Returning Officer itself as the proof and request on behalf of the officers/officials concerned.
- (iv) If, after receipt of advance amount, any official, for any reason whatsoever, does not find it possible to perform the official duty assigned to him, he shall forthwith return the amount so paid and obtain a receipt therefore.
- (v) The District Election Officers/Returning Officers shall be personally responsible for ensuring the payment as directed above and inform the Head of Departments and Drawing and Disbursement Officers well in time before the duties commence for prompt payment of TA/DA.
- (vi) In some instances, officers/officials may have to appear before Courts to attend judicial proceedings which arise on account of duties performed during elections, sometimes, even after their retirement. In such cases, officers/officials shall be reimbursed the amount of TA/DA incurred on account of their appearance before Courts as per the rates of TA/DA admissible at the time of retirement of the officers/ officials concerned. However, in case of any difficulty, there shall be a provision for claim of TA/DA from the Commission through Chief Electoral Officer concerned provided that no TA/DA has been claimed from any court or any other office by these officers/officials.

**C. RATES OF REMUNERATION:**

The existing rates of remuneration and TA/DA to all election staff deployed for election related duties as applicable to them respectively are given below:

<b>REMUNERATION</b>	
<b>Designation of officers/officials</b>	<b>Minimum Rate of remuneration (in Rupees)</b>
Zonal Magistrate (if deployed, other than Sector Officer)	Rs.1500 lump sum
Presiding Officer & Counting Supervisor	Rs.350 per day or part thereof
Polling Officer & Counting Assistant	Rs.250 per day or part thereof
Class-IV employees	Rs. 200 per day or part thereof
Video Surveillance Team, Video Viewing Team, Accounting Team, Control Room and Call Centre Staff, Media Certification and Monitoring Committee, Flying Squads, Static Surveillance Team, Expenditure Monitoring Cell	Class -I/II (Rs.1200 Lump Sum)  Class-III (Rs.1000 Lump sum)  Class -IV (Rs.200 per day or part thereof)
Income Tax Inspector	Rs.1200 lump sum
Micro Observer	Rs. 1000 lump sum
<b>FOOD/REFRESHMENT</b>	
Packed Lunch and/or light refreshment for polling personnel including police personnel, personnel in mobile parties, Home Guards, Forest Guards, Gram Rakshak Dal, NCC cadets, ex-Servicemen, volunteers etc. deployed at all polling stations/counting centres for election related work.	Packed lunch or Payment of Rs.150 per day or part thereof.
<b>TA/DA</b>	
<b>Category of Beneficiaries</b>	<b>Rate</b>
Persons deployed for election related duties.	<b>100% TA/DA</b> <b>Method-1:</b> 100% of TA/DA Either within 24 hours of completion of election duty or in advance. <b>Method-2:</b> 80% of TA/DA in advance & 20% within 30 days of completion of election.

**E. EXPENDITURE:**

(a) On account of payment of remuneration and expenditure on food/ refreshments incurred shall be borne in the following manner:

- (i) By Government of India during elections to Lok Sabha;
- (ii) By the State Government during election to Legislative Assemblies and;
- (iii) Shared on a 50:50 basis during simultaneous election to Lok Sabha and Legislative Assembly by the Government of India and concerned State Governments.
- (iv) Payment of TA/DA shall be initially paid by the parent/election department, as the case may be, of the polling/pollice personnel and other personnel deployed for election related duties and shall be borne as per above mentioned manner.\*

The above instruction shall be brought to the notice of all concerned immediately for compliance.

Yours faithfully,



**(SANJEEV KUMAR PRASAD)**  
**SECRETARY**

\* Anomaly in this para [para E(iv) previously para E(b)], in respect of previous instructions, corrected vide letter No.464/INST/EPS/2023/Remuneration & TA/DA dated 17<sup>th</sup> November, 2023.

*Neha Redki*

**TRUE COPY**



Dated: 07.05.2024

From

**Arun Kumar Agrawal**

**Postal Address:**

**T-8 Eagleton Golf Resort, 30 Km Bangalore Mysore Highway,**

**Bidadi, 562109**

**Dist: Ramnagara**

**Dist: Karnataka**

**Email: angrywal@hotmail.com**

**Telephone Number: 9845097444**

To

Chief Election Commissioner

and Companion Election Commissioners

Nirvachan Sadan

Ashoka Road

New Delhi 110001

Sirs,

- I. Request for Counting of 100% VVPAT Votes
- II. 100 % Manual Counting of Votes possible on the same day at Rs 0.21 per vote
- III. Bundle Paper Counting Machine Will Cost Rs 10 crores for the entire Country
- IV. Confidence of the Voters in Election more important than Confidence of ECI in the EVM

1. I was the Petitioner in Writ Petition (Civil) No. 184 of 2024 before the Hon'ble Supreme Court.
2. The Hon'ble Court in para 70 of the Judgment directed the Election Commission to examine the suggestion of counting of VVPAT slips by counting machine. The thought of counting all the votes by counting machine should have originated from the Election Commission.
3. The VVPAT slips can indeed be counted by a counting machine. There are counting machines available in the market which can count bundles of slips of the size of 10 cm by 5.6 cm of very thin paper. I have personally counted bundles of thermal paper slips of the same size in a couple of machines in order to verify the same. The bundle of 100 was counted accurately by the machine. I have the videos of the demo of the counting

machine and am not disclosing the name of the company for ethical reasons and can be disclosed, if required.

4. These machines cost around Rs. 25,000. As there are 4125 Assembly constituencies in the country for the 543 Parliamentary seats ( 2 less with candidate withdrawal) the total cost for purchasing 4125 counting machines will be  $4125 \times 25,000 = 103125000$  or around Rs 10 crores. The ECI has already spent over Rs 5000 crores in ordering 24 lac VVPAT machines at a cost of Rs 19,500/machine, which comprises a plastic box, thermal printer and a chip.
5. The spending of an additional Rs 10 crores to count all the VVPAT votes after spending Rs 5000 crores, will not only justify the Rs. 5000 crores already spent on the purchase of VVPAT machines but will also inspire confidence of the voters in the democratic process. It is a small fraction of the total amount of the tax payer's money already spent. In fact, it is only 0.2% of the total capital cost already incurred. The cost of counting every vote works out to a meagre 14 paise per vote count.
6. It is therefore requested that the Commission should count all the VVPAT votes by using paper counting machine on the counting date i.e. 4<sup>th</sup> June, 2024.

#### **Case for ECI Counting the VVPAT votes Manually**

7. If, for some cogent reasons, ECI is unable to count the votes by the counting machine, it should be proactive in counting the VVPAT votes manually so that the voters have complete satisfaction that their votes have been counted. All the votes of the VVPAT should be counted not because the present system is not fool-proof but because voter's confidence is paramount.
8. From everyday experience, the common man has come to believe that if the system can be manipulated it will be manipulated.
9. At a very conservative estimate, even if 20 per cent of the voting population – the figure is much higher -- doubts the integrity of the men behind the machines, then a duty is cast on the Election Commission to put an end to such doubt. This is more so when it can be easily done at a

negligible cost of 14 and 20 paise per voter for machine and manual counting of votes.

10. The economics of manual counting of all the VVPAT votes shows that it costs only 20 paise to count every vote that has been cast during the election. The remuneration fixed for the counting officer is Rs. 250/- and that of supervising officer Rs. 350/- per day. Three counting officers and one supervisor are involved in counting votes of VVPAT of one booth. The average votes cast per booth is 700. There are 10.35 lac booths in the country and the expected turnout of voters is around 68 crores. These 4 officers can count at least 8 booths in a day. Rs. 1100 is paid for the counting of around 5600 votes which works out to Rs 0.20 paise per vote count.

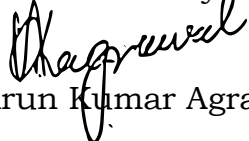
#### **Reasons Given by ECI for not Counting VVPAT votes not Valid**

11. The reasons given by the ECI ( as recorded in the judgment) on not counting the VVPAT votes is that the *“paper is soft and sticky which makes the counting process slow and tedious,”* Additional reasons are, *“First, it will increase the time for counting and delay declaration of results. The manpower required would have to be doubled. Manual counting is prone to human errors and may lead to deliberate mischief. Manual intervention in counting can also create multiple charges of manipulation of results.”*
12. None of these reasons is valid as the Petitioner with three assistants could count 700 votes in less than 30 minutes in similar conditions. The paper slips of 10 cm X 5.6 cm were prepared by the petitioner from thermal rolls in order to check the veracity of EC claims.
13. The VVPAT paper slip is thermal paper of the same width and length as that of the customer’s copy when he swipes his debit/credit card to make a payment. **It is not soft but firm and slightly sticky because it is thin and curls slightly. It does not make the counting process slow and tedious but in fact makes it easy to pick from the surface and count while making them into bundles of 25.**
14. The Returning Officer Manual 2023 on page 119 and 341 provides for simultaneous counting at 28 tables. **As stated above, this will involve**

**only 108 officers which will not result in doubling of manpower required but will be a small fraction of the total manpower deployed for election duty.**

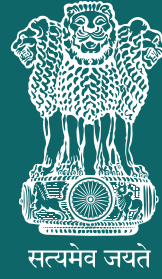
15. The 28 teams involved in the counting of 250 booths of a legislative assembly can finish the counting in a maximum of 9 hours ( according to time line calculated by ECI) but in much less time of 5 to 6 hours. A maximum wait of 9 hours for completion of counting can by no stretch be described as delay when voters wait for 45 days to know the result. Even the electronic EVM count, it takes six hours to declare the result. **An excess time of 3 hours cannot be said to delay the results. More manpower can be deployed, if required.**
16. The other reasons for not counting the VVPAT relate to manipulation and mischief. **The counting hall is sanitised and is a high security zone,** therefore unauthorised entry into the counting area is impossible. **Further the counting is done under CCTV and anyone daring to commit any mischief or manipulation will get caught and punished.**
17. The last reason is that of human error due to manual counting. Human error can always be rectified if the election is close and the error can influence the result. The entire mis-match of numbers of vote polled and counted has been explained away by human error and the ECI has stopped releasing the data on the actual number of votes polled and started releasing the data of percentage polled.
18. A mere 5% manipulation on a VVPAT count of 2% has a slim chance of detection of 0.001 and if detected can be explained as human error.
19. If the Election Commission refuses to count the VVPAT votes either by machine count or manual count at a cost of 14 and 20 paise respectively, then the only conclusion a voter can draw is that his/her worst fears are true.

Yours sincerely

  
Arun Kumar Agrawal



TRUE COPY



# HANDBOOK FOR RETURNING OFFICER 2023



**भारत निर्वाचन आयोग**  
**Election Commission of India**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

*"No voter to be left behind"*

**Edition - 2**



सत्यमेव जयते

# **HANDBOOK FOR RETURNING OFFICER 2023**



**भारत निर्वाचन आयोग**  
**Election Commission of India**

Nirvachan Sadan, Ashoka Road, New Delhi-110001

**“No voter to be leftbehind”**

than one district. Each Counting Center and each Counting Hall within that Counting Centre will have a distinct identity number.

- 15.3.6 The Observer's presence is essential during counting and he/she is also required to perform certain activities in ensuring fairness of counting of votes and ensure accuracy of compilation of results. It is necessary to rationalize the Counting Centres so that the Observers deployed need not oscillate between two or more Counting Centres. The practice of taking up Assembly Segment wise counting at different locations should be avoided and resorted to only in rare case where there is absolute need due to the reasons mentioned above.
- 15.3.7 So far as practicable, government buildings other than colleges/ educational institutions are to be requisitioned keeping in view the suitability to establish Counting Centre. Care should be taken while selecting the Counting Centres and Strong Rooms so that there are minimal disruptions to the educational activities and other societal interests. Creation of permanent Strong Rooms in such colleges /institutions should be done as a last resort.
- 15.3.8 Primary responsibility to ensure all arrangements for counting of votes, as prescribed in this instruction and otherwise, in a district shall be of the District Election Officer.
- 15.3.9 Each Counting Hall shall be a separate room walled on all sides preferably with separate duly guarded exit and entry.
- 15.3.10 Where pre-constructed separate rooms are not available and large rooms are proposed to be divided for creating halls, each part constituting a hall, will be separated by temporary partitions using strong material, preferably CGI (Corrugated Galvanized iron) sheets. Where there is no provision to dig holes on the floor, a suitable rigid frame, with CGI sheets fixed on two sides, may be used. The partition should be done in such a way that each hall is an independent room walled on four sides so that the movement of anyone from one hall to another hall is not possible without using exit door of the hall. Further, the partition should be erected in such a way that it is impossible to slip or pass any material from one hall to the other through the partition.
- 15.3.11 Important consideration for deciding the number of counting tables for CU (EVM) would be the number of Polling Stations, size of the room, the number of contesting candidates, counting agents and counting personnel proposed to be deployed and the security aspects.
- 15.3.12 Counting Centre premises should have adequate parking space, open space, fire-fighting arrangements, good speed internet facility, drinking water facility, food and refreshment, separate toilets for both male and female and uninterrupted power supply with power backup and other required infrastructural facility for smooth conduct of counting and maintenance of law and order.
- 15.3.13 Each Counting Hall, in general, shall have a minimum of 7 and maximum of 14 counting tables for counting of votes in CU (EVM). In addition, one table will be set up for counting of votes in postal ballots as mentioned above. In case the number of tables proposed to be set up is lower or higher than the prescribed number, specific approval of the Commission shall be obtained through CEO. The CEO should specifically mention this aspect in the report/recommendation to be provided as described above. Sample layouts of the Counting Hall are enclosed at Annexure-30 and Annexure-31.
- 15.3.14 Each hall, without exception, should be used for counting for only one AC/AS at a given point of time. However, if sufficiently big hall is not available i.e., size of the hall doesn't allow placing of 14 tables for counting of votes in CU (EVM) and one table for counting of votes in Postal ballots in that Hall then counting of one AC/ AS may be taken up in two halls, with prior approval of the Commission. In such case both the Halls should be adjacent to each other or on the same floor.
- 15.3.15 In cases where number of polling stations in an AC/AS is large, counting may be taken up in two halls with a maximum of 14 tables in each hall (excluding the table(s) in which postal ballots are counted). All such cases shall be personally scrutinized by the Returning Officer and the District Election Officer, considering all factors such as number of candidates, number of Counting Agents

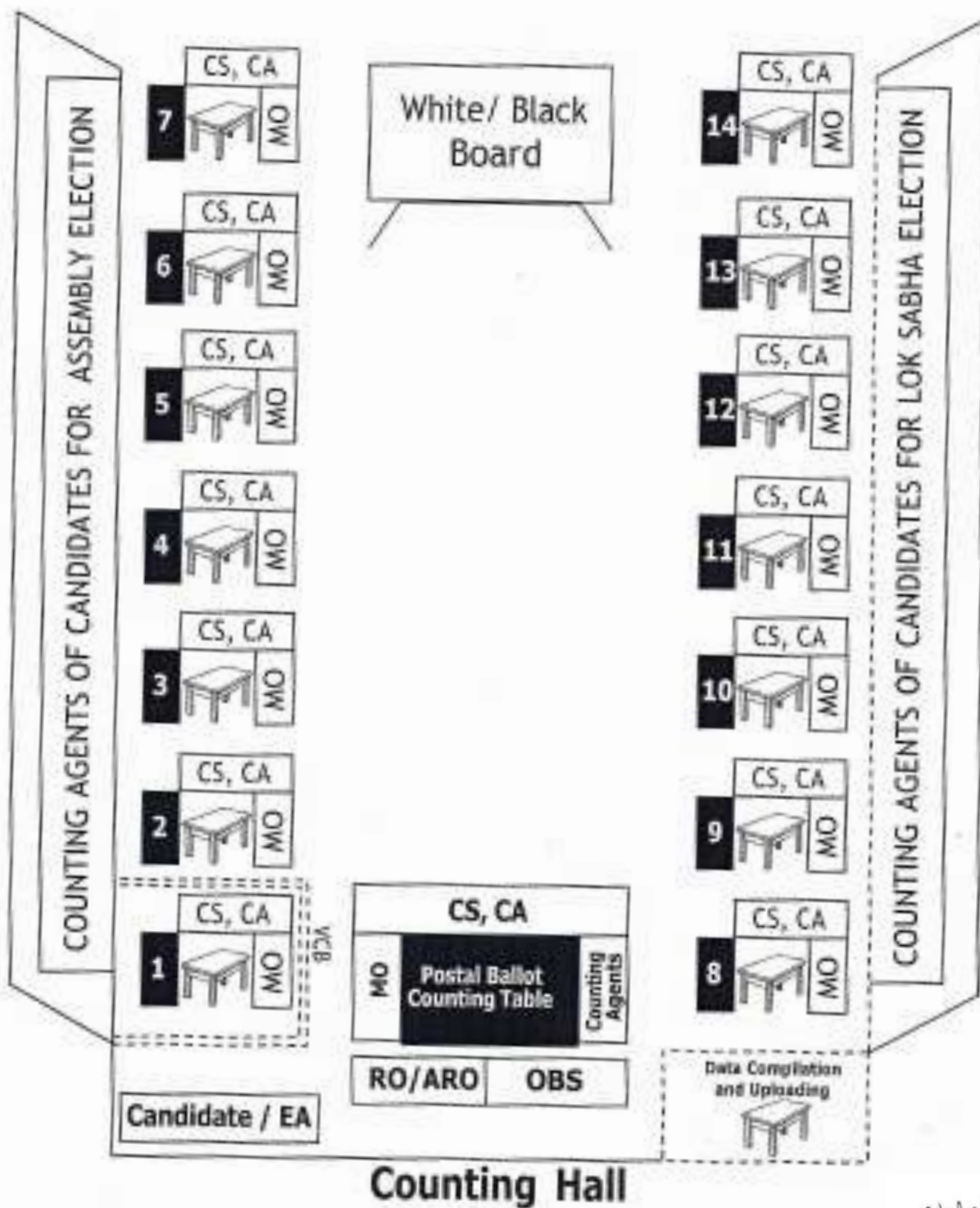
etc. before sending a proposal for approval of the Counting Centre through CEO to the Commission.

- 15.3.16 In all such cases, Polling Station numbers will be pre-allotted to these two halls (each room being one separate Hall) for counting of votes in CU (EVM). This allotment, along with the location of the table(s) on which postal ballots shall be counted, should be made known to all candidates and other stakeholders, in advance. It must be ensured that the table(s) for counting of votes in postal ballots shall be set up in the Hall where RO is sitting. In the other Hall the counting of votes in CU (EVM) shall be supervised by the ARO under overall control and supervision of the Returning Officer.
- 15.3.17 In exceptional cases, where one Hall is being used to count more than one Assembly Constituency/ Assembly Segment, the Counting of votes has to be taken up in a sequential order starting from AC/ AS with lower number e.g., if AC-23, AC-25 and AC-34 are to be counted in one Counting Hall then counting shall start from counting of AC-23 first. In such case, the ROs will need to intimate in advance different times of commencement of counting, by making a reasonable assessment, to the candidates/counting staff concerned and other stakeholders.
- 15.3.18 For the counting of votes in a simultaneous election to the Lok Sabha and Legislative Assembly, the following scenarios may be considered in the context of Returning Officer of Assembly Constituency and Assistant Returning Officer of Assembly Segment of Parliamentary Constituency being normally the same:
- a) If separate Counting Halls for Lok Sabha and Legislative Assembly are available, same can be used for counting of Assembly Constituency and Assembly Segment of Parliamentary Constituency. The Returning Officers for AC/ARO of AS may conduct counting of votes for Assembly Segment and ARO of AC may conduct counting of Votes for AC.
  - b) However, if no separate Halls are available half of the counting tables in a counting hall shall be allotted for PC and half tables for AC. In such case, the Counting Agents will sit accordingly for representing candidates for PC and AC respectively. Since the Strong Rooms for PC and AC are separate, the path to take the CUs and VVPATs and other materials from the Strong Rooms to the Counting Halls and back should be kept separate. The Hall shall also be bifurcated into two partitions with wire-mesh.
- 15.3.19 The Counting Halls, including partitions as planned, should be ready at least three clear days ahead of the date of Counting and a report should be sent by each RO to the Chief Electoral Officer. The CEO shall send a consolidated report to the Commission.
- 15.3.20 Ideally not more than 500 Postal Ballots should be counted on one table. The number of tables needed for counting of Postal Ballots should be assessed by the RO, sufficiently in advance, on the basis of number of the Postal Ballots issued and expected to be received, availability of space and number of AROs. Additional tables may be set up after approval. In such case, if there is space constraint, the counting of postal ballots may be arranged in a separate hall adjacent to it or on the same floor. If number of Postal Ballots expected to be received are significantly large, the proposal for approval of appointment of additional number of AROs and number of additional tables for such counting may be sent to the Commission, by the CEO, in advance. Each postal ballot counting table shall have one ARO each to supervise the counting.
- 15.3.21 Counting tables should be placed against the barricade of woodblock and wire-mesh behind which the Counting Agents of Candidates shall sit/stand. The agents shall be prevented from having physical access to the CU/VVPAT or Postal Ballots but must be able to clearly see and note the contents on the CU display or Postal Ballot. Adequate signage should be prepared and used appropriately for providing guidance to counting staff/candidates/Counting Agents and media personnel.
- 15.3.22 The RO/ARO table(s) shall be placed at the demarcated area in the Counting Hall itself and the seating arrangement for Candidates or their Election Agents, inside the hall, shall be made in such a way that they can watch the counting process. However, they shall not be allowed to access the counting tables and also not to cross the demarcated area. The Observer table will be placed



ANNEXURE 30  
LAYOUT OF COUNTING HALL

Layout of counting hall  
for AC/AS (Single Election)



*Neha Reddi*

TRUE COPY

## Why the Supreme Court Verdict on EVMs Is Disappointing

The Wire Staff1 min read : 11-14 minutes

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The Supreme Court (SC) verdict on [Electronic Voting Machines](#) is extremely disappointing and disheartening to see as a citizen of India who would've loved to see our existing election process improved to a point of common Indians' trust.

Does the ECI have any empirical data to establish that a large number of Indians actually trust the EVMs fully?

It was reported that the court asked what was the source of data for the complainants to claim that a large number of Indians do not trust EVMs. It was also reported that the court dismissed the survey done by the very reputable Centre for the Study of Developing Societies (CSDS) as not trustworthy.

We would like to know if the court asked the Election Commission of India (ECI):

If they have any empirical data collected on the voting day, that includes number of voters who:

- Saw the correct symbol on the Voter Verifiable Paper Audit Trail (VVPAT) slip and saw the slip drop in the box,
- Saw the correct symbol on the VVPAT slip but did not see the slip drop in the box,
- Saw incorrect symbol on the VVPAT slip but saw the slip drop in the box,
- Saw neither the correct symbol on the VVPAT slip nor saw the slip drop in the box.

If ECI does not have such empirical data,

1. On what basis does the ECI claim that a large number of Indians trust EVMs?
2. The SC should have instead asked the ECI these questions and to prove beyond doubt that the petitioners' claims were incorrect – after all it is in the interest of the Indian public at large that the claims be meritoriously considered and answered by the ECI and not the other way around!

The global gold standard of democratic voting is to ensure that the vote is cast as intended, recorded as cast and counted as recorded

In the context of Indian voting system,

- Ballot Unit (BU) light helps the voter to cast their vote as intended
- It is the Voter Verifiable Paper Audit Trail (VVPAT) slip and not the vote stored in the Control Unit (CU), that establishes the vote is recorded as cast.
- It is only logical that counting VVPAT slips will satisfy the “counted as recorded” criteria, counting the electronic votes in the CU does not count what was recorded and seen by the voter.

The problem with votes in CU is that the CU waits for the response from VVPAT after the slip is printed. In absence of any positive proof of / details on the programmed response from VVPAT and its interpretation and processing by the CU, there is more than reasonable doubt that the vote may be altered before it is stored by the CU. I have also explained this in detail in my [chat with Karan Thapar](#)

## **It is the data in the SLU, not just the alteration of program in the chip:**

As per reports, the verdict talks about the Symbol Loading Unit (SLU) being sealed and preserved. However, there is no direction to reveal the data in the SLU in the process of verification to address complaints from the candidates. The data in the SLU can make the VVPAT program misbehave. Excluding the SLU and its data from the verification process and focusing only on the program in the microprocessor is the gravest of errors.

It is extremely unlikely that the program in the microprocessor will be tampered with. However, it is very possible that the data in the SLU will have extra bytes other than just the necessary images. SC seems to have completely missed / overlooked this possibility.

This data in the SLU will not be audited during verification and the proverbial elephant in the room is the data given to the already existing program; and no one has seen the elephant!

Data changes the behaviour of an already existing program. i.e. the program will take an already coded but different line of execution upon receiving different specific data input—note that the program does not need to change. Only changing the data is sufficient.

Programs are routinely written to respond to various types of data like date, speed, height, amount, text and other values.

For example, an interest calculation program in a bank reads “senior citizen” and adds half a percent extra interest while calculating interest amount. The same program calculates normal interest for other depositors. The program remains the same, its behaviour changes based on the data it receives.

In a modern car that has automatic lights, the program controlling the lights remains the same, but as soon as the light sensor feeds lower intensity value, the program switches the lights on. Until then, the same program keeps the lights off. The program does not change, the data makes the program behave differently.

The old adage “Garbage In Garbage Out” tells us what data can do a program’s output. The SC seems to have completely missed this aspect of electronic systems.

### **The glaring conflict of interest**

The SC says the burnt memory will be verified by the engineers from the manufacturer. Isn’t there an obvious conflict of interest here?

If a patient’s death is suspected to be due to wrong medication, does the doctor who treated the patient conduct the autopsy or is it some other doctor? Since it is a standard practice to use an independent autopsy precisely to avoid conflict of interest, why is such blatant conflict of interest not being addressed in the case of EVMs?

Technically, how exactly will the engineers “examine” the burnt memory and “declare” if it is corrupt or not?

Does India face such a dearth of computer experts that an independent expert committee is so difficult to form that we must go back only to the manufacturer, disregarding the clear conflict of interest?

### **Checksum**

One proven way of ensuring integrity of data is verifying the checksum.

For decades in Computer Science, the well-established idea of “checksum” is globally used to verify data integrity. Once a checksum is generated, a change of even a single byte changes the checksum. A checksum is an alphanumeric string calculated using a mathematical formula using every byte and its position in the data.

Checksums are widely used to ensure integrity of every important data item in every standard data repository. In the world of open-source codes, even an ordinary developer can see the checksum of the source they download. Developer then generates the checksum after downloading the data item to verify that the source and target are identical. Checksums are a public “metadata”, even for confidential data items.

Do the EVM manufacturers implement checksums? If yes, where are the checksums maintained? Is checksum for program code generated and stored in the non-erasable memory of the microprocessor? For an audit to happen, a value must be securely saved for future access. Such a previously stored value must then be cross verified with the value generated at the time of verification. If the values match, integrity will be said to be intact, if not, tampering can be proved.

Who will ensure that the two checksums actually match? Surely it cannot be the same engineers again. The SC does not seem to have directed the manufacturers to deposit the source values of checksums with a third-party constitutional body. In absence of such third-party oversight, the “certificate” about non-tampering unfortunately will be seen sceptically.

### **What about the code itself?**

Besides, the entire focus seems to be on checking if the program has changed, without any consideration to the program code itself. The original program code itself may have execution branches that get activated upon reading certain data. This is eminently possible as we have seen in examples above, and no one will ever know about it since the data in the SLU is not asked to be revealed; nor is the source code being made open to public scrutiny.

What is the assurance that the program itself does not have undesirable, susceptible conditional code that will respond and alter values stored? Once again, we are asked to rely on the same people who design the system, write the code and manufacture the system. We are expected to overlook the conflict of interest, the possibility of collusion!

ECI fails to give a technically sound and logical reason for not making the code public

This [report in \*The Hindu\* claims](#) the SC said disclosing the source code will result in its misuse.

The ECI’s claim that the source code can be misused if made public, at this point supported by the court, is very difficult to comprehend given that the ECI itself makes the following claims:

- EVMs cannot be hacked no matter what
- EVM microprocessors are One Time Programmable (OTP) so no new program can be loaded in those
- Microprocessors of these machines have been already programmed several months ago and these machines are already in the field, under secure custody of the ECI
- The ECI is so confident about the secured custody that it has not bothered to introduce the electronic pairing process for the CU and VVPAT

If all the above are true, even if anyone wanted to, how can they “burn” a new program using the source code, even if the code was made public?

The new code can be burnt only in a new chip and then the new chip will have to be “soldered” into the “motherboard” hosting the microprocessor. Usually these chips are Surface Mounted Devices (SMD). A SMD device can be de-soldered and re-soldered using special purpose soldering machines. It is not a job done in a garage. This is a substantially non-trivial effort.

For the sake of argument, it will also have to mean that the EVMs can firstly be illegally accessed/accessed en-masse under the ECI’s nose, in order for any such potential new-code burning to be even theoretically possible. On one side ECI wants us to fully trust its security environments. That means no EVM can be stolen. So, no EVM can be re-programmed, even if source code was available.

What risk of misuse of source code are we perceiving here? We would like the court to help us understand, because in our considered opinion, the source code cannot be misused in any OTP chip once the chip is programmed, unless the chip itself is replaced. And such replacement is not possible given the impregnable ECI security.

If there is no satisfactory explanation of this perceived threat, we would like the source code to be made public, open to public scrutiny.

Making it open will also assuage all suspicions regarding the dialogue between the VVPAT and CU and bring in absolute transparency to the process – a fundamental aspect of almost a billion voters’ critical right to franchise.

### **When elections are getting slower, why does counting need be instantaneous?**

The VVPAT slips are the only copy of the vote that has been viewed by the voter. Per the ECI guidelines Rule 56D (FAQ Q. No.2), the VVPAT slip has primacy over the electronic vote in the CU, since the VVPAT slip is seen by the voter and electronic vote is never seen by anyone.

As such, why are we wasting so much national time, effort and money in refusing to count the instrument that has primacy?

If the argument is of “speed”, our elections are getting slower every time. Now it takes 42 days. Voters from the first round locations must wait at least for 42 days for results, why can the voter of the last round not wait for 5 days? Why not think of the election as a 47 day schedule?

If the ECI were speeding up the matters and shortening the election period, the argument of speed could at least have some merit. In the current scenario, clearly their actions are inconsistent with their argument.

### **After all, who are the elections being conducted for, the people of India or the ECI?**

Transparency is the cornerstone of trust. Healthy democracies are built of transparency, not on opacity.

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*Neha Reddi*

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