

THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. _____ 2021

IN THE MATTER OF:

K SATHYAN

...PETITIONER

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR PETITIONER: NISHE RAJEN SHONKER

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LISTING PROFORMA

A

SECTION

PIL

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

☐

Central Act: Title)

Under Article 32 of the
Constitution of India

☐

Section:

Under Article 32 of the
Constitution of India.

☐

Central Rule: (Title)

N.A.

Rule No(s)

N.A.

State Act:

N.A.

Section:

N.A.

State Rule: (Title)

N.A.

☐

Rule No(s)

N.A.

Impugned Interim Order: (Date)

N.A.

☐

Impugned Final Order /

N.A.

Decree: (Date)

☐

High Court: (Name)

N.A.

☐

Names of Judges:

N.A.

Tribunal / Authority: (Name)

N.A.

1. Nature of Matter

☒

Civil

☐

Criminal

2. (a) Petitioner / Appellant:

K SATHYAN

(b) E-mail Id:

N.A.

(c) Mobile Phone Number:

N.A.

3. (a) Respondent No. 1:

UNION OF INDIA & ANR.

(b) E-mail Id:

N.A.

(c) Mobile Phone Number

N.A.

4. (a) Main Category Classification.

18 Ordinary Civil Matters

(b) Sub Classification:

1807 Others

5. Not to be listed before:

N.A.

- A-1
6. (a) Similar disposed of matter with citation, if any, & case details: No similar matter has been disposed of or is pending before this Hon'ble Court. *no similar matter Disposed.*
- (b) Similar pending matter with case details: *no similar matter pending*
No similar matter is pending before this Hon'ble Court. *pending*
7. Criminal Matters: N.A.
- (a) Whether accused / convict has surrendered: ☐ Yes
No.
- (b) FIR Nos. N.A. Dates: N.A.
- (c) Police Station: N.A.
- (d) Sentence N.A.
Awarded:
- (e) Period of sentence undergone including N.A.
period of detention / custody undergone:
8. Land Acquisition Matters:
- (a) Date of Section 4 notification: N.A.
- (b) Date of Section 6 notification: N.A.
- (c) Date of Section 17 notification: N.A.
9. Tax Matters: State the tax effect: N.A.
10. Special Category (First Petitioner / Appellant only):
- Senior Citizen > 65 Years SC / ST Woman / Child
Disabled Legal Aid Case In Custody
11. Vehicle Number (in case of Motor Accident Claim Matters):
N.A.

Place: New Delhi

Date: 27.01.2021

(Name)- Nishe Rajen Shonker

Registration No.1698

Email ID; nrshonker@gmail.com

Mob- 98113 42057

SYNOPSIS

B

1. This Writ Petition, filed in public interest, challenges the unreasonable and arbitrary denial of the constitutional right to suffrage. It pleads for certain measures to improve the quality of the electoral process in the country in accordance with the constitutional and statutory prescriptions for a better and improved electoral process to strengthen India's democracy.
2. This Hon'ble Court has time and again emphasised the significance of free and fair elections in maintaining the democratic structure, which is part of the basic structure of the Constitution, as highlighted in *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1, *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405, *Kihoto Hollohon v. Zachillhu* 1992 Supp (2) SCC 651, *Raghubir Singh Gill v. Gurcharan Singh Tohra* 1980 Supp SCC 53, *PUCL v. Union of India* (2003) 4 SCC 399, *PUCL v. Union of India* (2013) 10 SCC 1.
3. The right to vote has been held fundamental and indispensable to democracy in *Jyoti Basu v. Debi Ghosal* (1982) 1 SCC 691.

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Several sections of voters including internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as Non- Resident Indians (hereafter, referred as NRIs) and overseas migrant labourers on account of their profession, occupation, education, trade, business, marriage etc. have been alienated from the electoral process for very long. They are deprived of the access to vote, which is in violation of the constitutional obligation of the State to protect the praxis of free and fair election.

4. Freedom to vote for the candidate of one's choice is now recognised within the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India as held in PUCL v. Union of India (2013) 10 SCC 1. The respondents have failed to abide by their constitutional duty to ensure free and fair elections, by arbitrarily denying voters this fundamental right.
5. The phrase "ordinarily resident" is defined in Section 20 of the Representation of People Act, 1950 (hereafter, referred as 1950

D

Act), in the context of persons who are entitled to enrol as voters in the electoral roll. This term requires a pragmatic understanding and application in keeping with the current times, to bring out the legislative intent behind the provision. The vast majority of population, who now reside temporarily away from their constituency, for many reasons including profession, occupation, trade, business, education, marriage etc. are disentitled from the freedom to cast their vote in violation of their fundamental right of expression under Article 19(1)(a). Section 60 of the Representation of People Act, 1951(hereafter, referred as 1951 Act), that enables the respondents to make provisions to allow voting through postal ballot, is currently limited to a few categories of persons. The respondents are bound to exercise the power under Section 60 (c) of the 1951 Act, and to extend the benefit of voting through postal ballots to the citizens who are unable to come back to their constituencies. Omission to include the categories of persons stationed outside their constituency, from the category of persons enjoying the right to vote through postal ballots, is arbitrary and violative of their fundamental rights

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under Articles 14, 19(1)(a), 19(1)(d), 19(1)(g) and 21 and the right to vote under Article 326.

6. It is also essential to read down the phrase "not in any other manner", other than postal ballot, occurring in Section 60 (c) of the 1951 Act. Such a term in the provision, cannot and should not stand in the way of providing other remote electronic voting methods, which the law makers could not foresee at the time of legislating the Act.
7. Steps must also be taken to curtail misuse of the assisted voting for blind and physically infirm persons as stated in Rules 40, 49N and 40A of Conduct of Election Rules, 1961. The term "companion" to such persons should be restricted to either an immediate family member or an officer from the booth.
8. Broadly, the petitioner urges for two composite schemes for the purpose of ensuring enhanced access to the electoral process and to curb electoral malpractices:-

- 5
- I. Expanding the access of citizens to the electoral process facilitating expanded platforms for casting votes by:
 - i. Decentralising the voting system by expanding access to voting;
 - ii. Enhancing the existing system of postal voting to other categories, by expanding the scope of “certain classes of people” occurring in Section 60 of the 1951 Act;
 - iii. Facilitating an option for e-voting
 - II. Ensuring a fairer election process, through technological and other means by curbing malpractices and corrupt practices such as booth capturing, vote rigging, *in absentia* voting, misuse of open vote etc. by taking the following steps:
 - i. Providing double databases for transactions, namely a central database and a local database, which would drastically reduce the chance of manipulation of data and Electronic Voting Machines (hereafter, referred as EVMs);

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- ii. Evolving a One-Time Password (hereafter, referred as OTP) system for the purpose of fault free identifications of voters without infringing privacy rights;
 - iii. Installation of Closed-Circuit Television (hereafter, referred as CCTV) in all the polling booths across the country so as to ensure probity in the process of voting;
 - iv. Steps to curtail misuse of the facility for assisted voting for blind and physically infirm persons;
 - v. Steps to curb multiple voting by necessary verifications

Hence the present Writ Petition.

LIST OF DATES

17

12.05.1950 The Representation of the People Act, 1950 was enacted by the Parliament of India. The Act was amended from time to time. It was enacted with the aim to "provide the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union Territories, and matters connected therewith."

17.07.1951: The Representation of the People Act, 1951 was enacted by the Parliament of India. It was enacted with an aim to "provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and

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the decision of doubts and disputes arising out of or in connection with such elections”

1957 The first case of large-scale booth capturing was reported from Rachiyahi in the State of Bihar.

25.05.1961: The Conduct of Elections Rules, 1961 came into force.

1989 Representation of People Act, 1951 was amended to include voting by EVMs (Electronic Voting Machines) by introduction of Section 61A.

May 1990: The Dinesh Goswami Committee submitted their report on Electoral Reforms. The following recommendation was made:

“Use of Electronic Voting Machines:

In view of the report of the technological experts certifying the credibility of the Electronic Voting Machines, the Electronic Voting Machines may be put to use at all future bye-elections and general elections to Lok Sabha and State Assemblies and local bodies. Intrusive Training

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programme for polling personnel at all levels on the working of the machines should also be urged."

25.03.1999: The Law Commission submitted the 170th report on Electoral Reforms to the Ministry of Law and Justice. The report recommended various measures which are essential to make electoral system more representative, fair and transparent, to arrest and reverse the process of proliferation and splintering of political parties and to introduce stability in governance.

31.03.2002: The National Commission to Review the working of the Constitution submitted its report to the Union Minister for Law and Justice. The commission made some major recommendations on the electoral process. It recommended that a foolproof method of preparing the electoral roll be developed at the Panchayat level, augmented by a fool proof voter ID card that serves as a multipurpose citizenship card for all citizens above the age of 18. It was also recommended that electoral rolls be publicly displayed. Recommendations in the nature of "use

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of tamper-proof video and other electronic surveillance at sensitive polling stations/ constituencies" were also made to curb booth capturing.

17.01.2007 The Election Commission of India issued letter no. 447/2007-PLN-IV regarding the use of videography and digital cameras during the elections.

2007 Estonia held the world's first parliamentary internet election where a simple internet voting facility was made available to its citizens. Citizens of Estonia are now able to vote from anywhere in the world as long as there is access to an internet-connected computer.

12.03.2015: The 255th report titled 'Electoral Reforms' was submitted to the Ministry of Law and Justice. A 261-page report was prepared in response to a request by the Government "to consider the issue of 'Electoral Reforms' in its entirety and suggest comprehensive measures for changes in the law".

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04.10.2010: In an all-party meeting, suggestions were made by some political parties to introduce VVPATs (Voter verifiable paper audit trail). Pursuant to the Apex Court decision in Dr. Subramanian Swamy v. Election Commission of India (2013) 10 SCC 500, VVPATs were introduced in elections in India, after amending the Conduct of Election Rules, 1961. However, VVPATs have not been uniformly implemented across all constituencies. Election Commission of India (respondent No. 2) reports that VVPATs are used in certain constituencies in each Legislative Assembly elections and that it was used in 8 Parliamentary Constituencies in the 2014 Lok Sabha elections.

2012 Russia used webcams in polling stations to ensure that no activities of fraud committed during the elections. The idea was to livestream the elections which could be accessed by citizens on the internet to see that there is no fraud. Similarly, Ukraine in the same year used webcams to

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monitor election processes including registration, voting
etc.

01.12.2020: The Election Commission has proposed extending the
usage of Electronically Transmitted Postal Ballot System
(hereafter, referred as ETPBS) to NRI voters for the forth
coming elections in the states of Assam, West Bengal,
Kerala, Tamil Nadu and Puducherry to the Law Ministry.

27 .01.2021: Hence, this instant writ petition.

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THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. _____ 2021

IN THE MATTER OF:

K SATHYAN

S/O. KRISHNAN

SOUPARNIKA, NARAVOOR,

KUTHUPARAMBA, KANNUR,

KERALA – 670 643,

.....PETITIONER

Vs.

1. UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF LAW AND JUSTICE,
3RD FLOOR, C-WING,
LOK NAYAK BHAWAN,
KHAN MARKET
NEW DELHI- 110003.

2. THE ELECTION COMMISSION OF INDIA

THROUGH ITS CHIEF ELECTION COMMISSIONER,

NIRVACHAN SADAN,

ASHOKA ROAD,

NEW DELHI – 110 001.

.....RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING THE UNREASONABLE AND ARBITRARY DENIAL OF THE CONSTITUTIONAL RIGHT TO SUFFRAGE AND SEEKING APPROPRIATE ISSUANCE OF WRITS TO FULFIL THE CONSTITUTIONAL OBLIGATION FOR ENSURING FREE AND FAIR ELECTIONS AS WELL AS PROTECTION OF FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLE 14, ARTICLE 19 AND ARTICLE 21 OF THE CONSTITUTION OF INDIA.

To,

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

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1. The petitioner is filing the present Writ Petition under Article 32 of the Constitution of India challenging the unreasonable and arbitrary denial of the constitutional right to suffrage and seeking appropriate writs. He also begs to highlight the issue of deprivation of access to vote to certain members of the society which is in violation of the constitutional obligation of the state to protect the praxis of free and fair elections. It is submitted that unreasonable and illegitimate restrictions on access to electoral process are violative of Articles 14 and 19(1)(a) of the Constitution of India.
- 1A. The petitioner is having an Aadhar Card Bearing No. 8546 5775 2635 and the Pan Card Bearing No. BLJPS6440R. The petitioner is an income tax payee and his annual income is Rs.2.5 Lakhs per annum. (Two Lakh Fifty Thousand Only), Occupation: Political Activist, Mob. No. +91 94470 53378, Email. sanalrk007@gmail.com.
2. The petitioner is a law-abiding citizen of India and has been taking keen interest in the socio-political affairs of the nation. He

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has been actively observing the happenings in the country. He has initiated a few legal actions for probity and honesty in bureaucracy by filing petitions before the Hon'ble High Court of Kerala.

3. The petitioner has not filed any similar Writ Petition either before this Hon'ble Court or any other High Courts. The petitioner has not approached any of the respondents/authorities for the reliefs sought in the present Writ Petition. Further, it is stated that there is neither civil, criminal nor revenue litigation, involving the petitioner herein which has or could have a legal nexus with the issues involved in the present Public Interest Litigation (hereafter, referred as PIL).
4. The petitioner has the *locus standi* to file the present PIL as he is a public-spirited person and is keen and active in fighting for the cause of public in general. He is also a political activist in Kerala. Hence, the petitioner has *locus standi* to file the instant Writ Petition challenging the said provisions before this Hon'ble Apex Court under Article 32 of the Constitution.

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5. The petitioner prefers the present petition in the nature of PIL and the same squarely falls within the ambit of the guidelines prescribed in the decision of this Hon'ble Court in State of Uttaranchal v. Balwant Singh Chaufal and Others 2010 (3) SCC 402 and subsequent judgments wherein this Hon'ble Court had reiterated the prerequisites for filing a PIL.
6. An affidavit of undertaking that there is no personal gain, private or oblique reason for the petitioner in filing the present PIL is enclosed with the vakalatnama.
7. The Respondent No.1 is the Union of India represented through the Ministry of Law and Justice. The respondent no. 2 is the Election Commission of India, established under Article 324 of the Constitution of India to ensure that elections are conducted in a free and fair manner.

2. FACTS OF THE CASE:

- 2.1 This Writ Petition pleads for certain measures to improve the quality of the electoral process in the country in accordance with the constitutional and statutory prescriptions for a better and

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improved electoral process that strengthens India's democracy. The plea is for materialising a more inclusive and efficacious electoral process as indicated in the paragraphs *infra*.

2.2 Democracy is a part of the basic structure of the Constitution of India. Free and fair elections are indispensable for democratic governance which in turn is part of the basic structure of the Constitution. This is firmly reiterated in *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1, *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405, *Kihoto Hollohon v. Zachillhu* 1992 Supp (2) SCC 651, *PUCL v. Union of India* (2003) 4 SCC 399, *PUCL v. Union of India* (2013) 10 SCC 1. Free and fair election is the life-blood of constitutional democracy as recognised in *PUCL v. Union of India* (2003) 4 SCC 399, *PUCL v. Union of India* (2013) 10 SCC 1, *Raghubir Singh Gill v. Gurcharan Singh Tohra* 1980 Supp SCC 53.

2.3 Freedom to vote for the candidate of one's choice is now recognised within the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India as held in *PUCL v. Union of India* (2013) 10 SCC 1.

- 2.4 In India, election is governed by the Constitution, the Representation of People Act, 1950 (hereafter, referred as 1950 Act), the Representation of People Act, 1951(hereafter, referred as 1951 Act), the Rules there under, (such as the Registration of Electors Rules, 1961) and the orders, notifications and circulars issued by the Election Commission from time to time.
- 2.5 Article 326 of the Constitution of India guarantees universal adult suffrage to every person, who is a citizen of India and has attained the age of 18 years. He/ she should also be registered as a voter on satisfying other relevant conditions. Section 19 of the 1950 Act specifies the conditions for registration as a voter. One should have attained 18 years of age and should be ordinarily resident of a constituency. The term "ordinarily resident" is further defined in section 20 of the 1950 Act. Going by the phraseology of the section, except for some category of citizens, "ordinarily residing" will mean only those persons who usually and continuously reside in a particular locality.

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2.6 Section 60 of the 1951 Act governs voting by postal ballot.

Section 60 (c) of the 1951 Act reads:

"Any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules"

But, till date, said benefit is not extended to classes like internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as Non-Resident Indians (hereafter, referred as NRIs) and overseas migrant labourers. They are excluded from enjoying the benefit of the above said provisions. No efforts have been made by the Election Commission of India to ensure that they do not continue to be disenfranchised. This exclusion from the electoral process has the effect of sabotaging the concept of fair elections.

2.7 The mode and mechanism of conduct of elections at present, by the respondent no. 2, needs a thorough reconsideration.

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Invariably, barring the limited postal voting, the voter should be physically present at the polling booth and before the EVM to cast the vote. This is a rigid and exclusionary scheme, which makes the voting process inaccessible to a vast majority of citizens who are eligible to be registered as voters under Article 326 of the Constitution of India. Thus, they are being deprived of their fundamental right to freedom of voting emanating from Article 19(1)(a) of the Constitution as explained in *PUCI v. Union of India* (2013) 10 SCC 1. It also violates their constitutional and statutory right to vote.

2.8 This Writ Petition filed *pro bono publico* pleads for certain urgent steps for reformatting the electoral process in India. Broadly speaking, the Writ Petition urges for:-

- i. Expanding the access of citizens to the electoral process facilitating expanded platforms for casting votes and;
- ii. Ensuring a fairer election through technological and other means by curbing malpractices and corrupt practices.

These reforms are suggested since the existing system in the absence of such reforms impacts the citizenry in varied ways and

violate their fundamental rights. It is abundantly clear that in India, reforms have happened in the electoral landscape more on account of activist judicial interventions, though there were a few legislative measures in this direction. It is a matter of concern that very many technological facilities which emerged in the last three decades are not sufficiently integrated with the electoral process in the country. Due to lack of exploration of technological possibilities, the very idea of free and fair election has been impacted. This, in turn, has serious ramifications on the fundamental rights of the voters at large, for it fails to ensure the constitutional and statutory guarantee of an egalitarian electoral system. It is rather disturbing to see how the outdated practices infringe the voters' right to cast their vote and to participate in a free and fair electoral system.

2.9 This petitioner would, therefore, place two composite schemes for the purpose of ensuring enhanced access to the electoral process and to curb electoral malpractices. The scheme suggested would be as follows:

I. Enhance the citizens' access to voting by:

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- i. Decentralising the voting system by expanding access to voting;
 - ii. Enhancing the existing system of postal voting to other categories, by expanding the scope of "certain classes of people" occurring in Section 60 of the 1951 Act;
 - iii. Facilitating an option for e-voting
- II. Curbing the electoral malpractices by technological means:
- i. Providing double databases for transactions, namely a central database and a local database, which would drastically reduce the chance for manipulation of data and the EVM;
 - ii. Evolving an OTP system for the purpose of fault free identifications of voters without infringing privacy rights;
 - iii. Installation of CCTV in all the polling booths across the country so as to ensure probity in the process of voting;
 - iv. Steps to curtail misuse of the facility for assisted voting for blind and physically infirm persons;

- v. Steps to curb multiple voting by necessary verifications.

2.10 In the global scenario, the issue of access to the polling booths has taken multiple dimensions. These were not adequately foreseen during the time of the basic legislations on electoral process namely the 1950 Act and the 1951 Act. Because of social mobility and migration, the very idea of "ordinarily residing" as occurring in Section 20 of the 1950 Act requires a realistic and pragmatic interpretation. The conventional understanding of the said phrase may not be able to address the issue of access to the process of voting in respect of classes like internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as NRIs and overseas migrant labourers. Therefore, it is essential to evolve a new electoral jurisprudence by imaginatively (read constitutionally) interpreting the provisions of the basic enactments on election in the country. This petitioner may try to explain the manner in which the existing system curtails the fundamental rights of various classes of citizens by essentially blocking their access to

the process of voting. The respondents may also place certain suggestions with regard to these issues so as to move closer to an ideally designed electoral system which is both free and fair.

I. **Enhance the citizens' access to voting by:**

i. **Decentralising the voting system by expanding the idea regarding the place of voting:**

2.11 Decentralising the voting system by expanding the voting right regarding the place of voting is essential for the purpose of ensuring access to voting and for curbing electoral malpractices. As per Section 19 of the 1950 Act, the following persons are entitled to enrol as voters in the electoral roll, if he or she;

- “ (a) is not less than eighteen years of age on the qualifying date, and
- (b) is ordinarily resident in a constituency,”

The term “ordinarily resident” is defined in Section 20 of the 1950 Act. A reading of Section 20 would make it abundantly clear that merely because a person is not temporarily residing in a particular constituency, he / she is not disentitled from

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being in the electoral roll. There is a vast majority of the population who are temporarily residing away from their constituency, due to reasons like employment, marriage, education etc. They are entitled to continue in the electoral roll as per the 1950 Act. However, due to the present scheme of electoral process, they are practically disentitled from exercising the freedom to cast their vote. This amounts to violation of their fundamental right of expression, as declared in PUCL (2013) (*supra*). The petitioner has identified a few such classes who are often denied their right to vote due to rigidity of the existing system. They are as follows:

a) **Internal migrant labourers:**

2.12 Internal or domestic migrant labourers, especially circular migrant labourers significantly suffer due to the existing system. It is unduly burdensome for them financially and practically to return to their native states/ constituencies for voting. They are not yet notified as classes who are permitted to exercise their right to vote through postal ballot by the Election Commission. Migrant workers are unable to obtain

documentary proof to enrol in the electoral constituencies of their host states. As a result, large sections of the migrant working population are practically unable to vote, due to the outdated, inaccessible and exclusionary system put in place by the respondents. Thus, they are deprived of their fundamental rights under Article 19(1)(a) of freedom of voting as well as statutory right to vote arising from the 1950 Act and 1951 Act.

- 2.13 A study titled 'Political inclusion of Seasonal Migrant Workers in India: Perceptions, Realities and Challenges' authored by Amrita Sharma, Santosh Poonia, Milind Babar, Vikas Singh, Preeti Singh and Lalit K R by surveying 15 locations in 5 states (UP, Bihar, Maharashtra, Rajasthan and Gujarat) (with Aajeevika Bureau, GDS, GSVS, Disha, GPSVS) states:

"The first question that the study looked at was whether migrants were counted as voters. In India, every voter is issued a voter ID, which has a unique number and it certifies the person's right to vote. In absence of a voter ID or name in the voter list, a person is (sic) not eligible to

vote. The study found that 78 per cent of the respondents reported to possess voter IDs or have their names in the voter list. Of greater significance was the fact that close to 60 per cent of respondents had missed voting in elections at least once because they were away from home seeking livelihood options. When adjusted for short distance movement, where it was easier for migrants to come home during elections, the percentage of migrants missing voting rose to 83 per cent."

2.14 It further states:

"Data gathered on the question, 'Did you vote in the last election?' revealed that 65 per cent of the respondents had voted in the last Panchayat elections. Compared to this, participation in Lok Sabha elections was 48 per cent (the national average voter turnout for general elections in 2009 was 59.7 percent)." A copy of the study titled 'Political inclusion of Seasonal Migrant Workers in India: Perceptions, Realities and Challenges' is produced herewith and marked as Annexure P1 (Pgs 84 To 96).

For reference, a copy of the article/blog post by Radhika Goyal and Sharvari Kothawade arguing for access to voting for migrant workers 'Migrant workers and the right to vote' on Indian Constitutional Law and Philosophy Blog, dated 21.09.2020 is produced herewith and marked as **Annexure P2 (Pgs. 97 To 100)**. A copy of the article by Teesta Setalvad titled 'The migrant's right to vote: EC must ensure optimal conditions for exercise of this freedom,' The Indian Express, dated 18.07.2004 is produced herewith and marked as **Annexure P3 (Pgs. 101 To 105)**.

- 2.15 Statistically, it is clear that the migrant workers, in large proportions are deprived of their right to vote. The latest census of 2011, states that the number of migrant workers in the country is around 45 crores. However, a majority of them are prevented from exercising their right to vote. Further, there is a disproportionate financial, physical and mental burden on migrant workers when it comes to voting. Due to migration, they stay away from their constituency which causes systemic exclusion of the migrant workers

from political participation in democracy violating Articles 14, 21, 19(1)(d) and 19(1)(g) of the Constitution of India.

b) **Employees, business professionals stationed outside the constituency and their spouses stationed with them:**

2.16 Employees and business professionals stationed outside their constituency and their spouses also find it financially and practically difficult to return to their constituency for voting. This is due to the geographical vastness of India coupled with financial and physical constraints for travelling. There are chances of losing livelihood if a worker decides to travel for voting. Thus, the employees and business professionals stationed outside the constituency and their spouses stationed with them are also fenced out from the process of voting. Their inclusion is quite possible, provided the system is adequately reformed. At present, they are deprived of their voting rights.

c) **NRIs and overseas migrant labourers:**

2.17 NRIs including Indian citizens working as migrant labourers abroad also find it especially arduous, financially and practically, to return to India to vote. Many citizens take up job abroad, due to lack of sufficient job opportunities and adequate payment in India. This disproportionate burden stemming from the inflexible exclusionary system envisaged for the conduct of elections can be removed if restrictions on postal ballot facility/e-voting facilities are removed. In this regard, the respondent no. 2 itself, has recently approached the respondent no. 1 to extend postal ballot facility to NRIs (For reference, please see, Special Correspondent, "*ECI plan to extend postal ballots to NRIs pending with Law Ministry*", The Hindu, 15.10.2020, <<https://www.thehindu.com/news/national/govt-for-wider-consultations-before-allowing-postal-ballots-for-overseas-indians/article33337733.ece>>).

ii. **Expanding the existing system of postal voting**

2.18 It is submitted that Section 60 of the 1951 Act, enables the respondents to make provisions to allow voting through postal

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ballot. However, now the same is limited to a few categories of persons. This results in denial of freedom to vote for a large number of persons, as mentioned in point no. 1 above.

2.19 Section 60 (c) of the 1951 Act reads :

"any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules"

The respondents are bound to exercise the power under Section 60 (c) and to extend the benefit of voting through postal ballots to the citizens who are unable to come back to their respective constituencies for the reasons already discussed under point no. 1. Omission to include the categories of persons discussed in point no. 1 from the category of persons enjoying the right to vote through postal ballots is arbitrary and violative of their fundamental rights.

2.20 Limiting the benefit of Section 60 (c) to a small category of people also amounts to discrimination and is thus violation of Article 14 of the Constitution of India.

iii. **Facilitating an option for e-voting**

2.21 At present there is Electronically transmitted Postal Ballot System (ETPBS) in place. As per the official website of the Election Commission:

“(ETPBS) is developed by Election Commission of India with the help of Centre for Development of Advanced Computing (C-DAC), for the use of the Service Voters. It is a fully secured system, having two layers of security. Secrecy is maintained through the use of OTP and PIN and no duplication of casted Electronically Transmitted Postal Ballot (ETPB) is possible due to the unique QR Code”.

This system enables the entitled service voters to cast their vote using an electronically received postal ballot from anywhere outside their constituency. The voters who make

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such a choice will be entitled to postal ballot delivered through electronic media for a particular election.

The developed system is implemented in line with the existing Postal Ballot System. Postal ballot will be transmitted through electronic means to the voters. It enables the voters to cast their vote on an electronically received postal ballot from their preferred location, which is outside their originally assigned voting constituency. This system would be an easier option of facilitating voting by the electors as the time constraint for dispatch of postal ballot has been addressed using this system."

But this facility is limited only to:

- "Service Voters, other than those who opt for proxy voting (Classified Service Voters);
- The wife of a Service Voter who ordinarily resides with him;
- Overseas Voters."

Features of this system listed in the website are as follows:

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- “ Service voters can avail this service from anywhere outside their constituency;
- System facilitates creation of service voter electoral roll data;
- Easy, efficient and hassle free;
- It is a secure system, having two layer security;
- OTP is required to download encrypted electronically transmitted postal ballot file;
- Secrecy is maintained and no duplicate of casted ETPB is possible due to QR code;
- PIN is required to decrypt, print and deliver ETPB.”

Thus, when there is already an electronic system in place that has to be extended to the ordinary citizens who are residing outside their constituency. However, dispatch of the ballot still remains via “by Post”. This can be modernised by introducing electronic mechanism for despatch as well. Therefore, it follows that, the term “not in any other manner” occurring in Section 60 (c) cannot and should not stand in the way of other remote electronic voting methods. But, if the provision is understood textually it would follow that, it doesn’t permit any adoption of

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advanced technological means in the matter of voting. A proper interpretation of the said section can only mean that such adoption is permissible. If it is otherwise, it would follow that the said provision in its current form does not pass the constitutional muster. Viewed so, if the text of the provision is given a literal interpretation, it is essential to strike down the said part "not in any other manner" occurring in Section 60 (c). It is only to be declared as unconstitutional, if taken in the literal sense. Otherwise, it will be essential to read down the said phrase "not in any other manner", so as to mean that the same does not stand in the way of adopting digital variations or forms of remote voting.

2.22 With the advent of technology, there are now several countries around the world testing and considering the use of remote e-voting facilities, with a special focus on domestic migrants and citizens living abroad. This is aimed at increasing political participation which will contribute to the legitimacy and accountability of a democratic system of governance. In 2007, Estonia held the world's first parliamentary internet election where a simple internet voting facility was made available to its

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citizens. This allows them to vote from anywhere in the world as long as there is access to an internet-connected computer. There is a designated pre-voting period, where the voter can log into the national election system after authentication using the national ID card or a mobile ID. Once the authentication is done, the voter can choose among the candidates displayed. After the vote is cast, it is encrypted by the system and digitally signed by the voter. The identity of the voter is concealed by removing the personal digital signature from the e-ballot before it reaches the National Electoral Commission for counting. This way, the anonymity of the voter is protected.

2.23 The voter can verify their vote by downloading a verification application on their smart device. This makes it easier to ensure that the votes aren't manipulated or tampered with. As the casting of the vote and the verification take place on two different devices, the chances of votes being compromised is low.

2.24 All these can be done in the comfort of one's home. Apart from Estonia, there are several other countries such as France, Switzerland and Netherlands, currently conducting pilot projects

for remote e-voting. (For reference, please see Kaleev Letaru, "How Estonia's E- Voting system could be the future", Forbes, 07.06.2017,

<<https://www.forbes.com/sites/kalevleearu/2017/06/07/how-estonias-e-voting-system-could-be-the-future/?sh=6dedbcfa3b95>>)

II. Curbing electoral malpractices by technological means:

2.25 The mode and mechanism of conduct of elections in India left enough room for malpractices causing various problems in the electoral process. These problems emerge from the lack of transparency. This results in problems like booth capturing, vote rigging, (*in absentia*) voting, misuse of open vote etc. Problems like *in absentia* voting can be curbed to a large extent by enlarging the scope of postal ballots, permitting remote voting by way of electronic means etc. However, this alone will not be sufficient to curb other forms of malpractices, which essentially happen by exploitation of the loopholes in the existing system. Therefore, it is essential to modify the present voting system for preventing malpractices which is a threat to our democracy.

These malpractices are the result of a faulty system that is violating the fundamental rights of the people.

- i. **Providing double databases for transactions, namely a central database and a local database, which would drastically reduce the chance for manipulation of data and EVMs**

2.26 It is argued that after the introduction of EVMs by replacing the ballot papers, the election process became smooth and less time consuming. However, a major concern regarding the EVM is the threat of manipulation of voting data. It is high time that measures are taken to reduce the threat of EVM data manipulation and hacking. There has to be more than one to record the transactions of the EVM. There could be a central database which can store the entire data, independent of a separate local database. This will mean that, if any person attempts to manipulate the votes by tampering with the data generated by EVMs, they will have to manipulate both the databases. This makes it difficult for the person attempting to tamper with the EVMs. Further, having multiple databases also ensures

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accountability and greater transparency, and votes can be cross-checked through both databases in cases of conflict or allegations of voting data manipulation. For reference, a copy of the relevant pages of the report titled 'Making Electronic Voting Machines Tamper Proof: Some Administrative and Technical Suggestions' by K. Ashok Vardhan Shetty (The Hindu Centre of Politics and Public Policy) is produced herewith and marked as Annexure P4 (Pgs. 106 To 142).

ii. **Evolving an OTP system for the purpose of fault free identifications of voters without infringing the privacy rights.**

2.27 A major reason for electoral malpractices like impersonation is the lack of a fault free identification process of the voters. To curb impersonation further, an OTP system can be introduced, where every time a voter approaches the polling booth, they may be sent an OTP at the registered mobile number. Only after the verification of the OTP, the person must be allowed to cast their vote. This ensures that if people are carrying a fake identity card, they can be weeded out. OTP system is already in place with

respect to ETPBS Such a system can be adequately modified and extended for voting from poll booths as well.

iii. Installation of CCTV in all the polling booths across the country so as to ensure probity in the process of voting.

2.28 CCTVs can be installed inside the polling booths to ensure that no person casts their vote through unfair means. In the year 2012, Russia used webcams in polling stations to ensure that there are no activities of fraud committed during the elections. The idea was to livestream the elections which could be accessed by citizens on the internet to see that there is no fraud. If the activities in the polling booths are broadcast on the day of election there won't be any chances of buying and selling of votes. Similarly, Ukraine in the year 2012, used webcams to monitor election processes including registration, voting etc. These footages will be used to cross check the number of votes with the number of people voted on a particular day if there arise any discrepancies with regard to the number of votes cast.

2.29 In India also, the use of webcams should be expanded to all the polling stations. Currently, in a few sensitive polling stations

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webcams were used to monitor elections (For reference, please see, Sharad Vyas, "*CCTVs to monitor sensitive polling booths*",

The

Hindu,

03.02.2019,

<<https://www.thehindu.com/news/cities/mumbai/cctvs-to-monitor-sensitive-polling-booths/article26164715.ece>>). This will help the authorities to monitor the activities in the polling station during the day of election. This can also be used for future references to count the number of votes when compared to the number of people who have arrived to cast vote on a particular day at a particular constituency. Further, the use of webcams should also be expanded to ensure security for electronic voting machines. Also, there should be CCTV cameras installed in the EVM manufacturing centres. The entire procedure of manufacturing, procuring and keeping the EVM at the strong room should be monitored thoroughly to avoid any chances of tampering the machine. There should be sensors around the EVM strong room which shall ring an alarm when unauthorised persons enter or operate the EVM. This will, to a good extent, ensure that there is no tampering of the EVMs.

2.30 The Election Commission of India vide letter no. 447/2007-PLN-IV dated 17.01.2007 issued a letter regarding the use of videography and digital cameras during the elections. This is the latest notification available in the website of the Election Commission of India. A copy of letter no. 447/2007-PLN-IV dated 17.01.2007 is attached herewith and marked as **Annexure P5** **(Pgs. 143 To 148)**. For reference, A copy of Aadhar card for the petitioner is attached herewith and marked as **Annexure P6** **(Pgs. 149)**.

2.31 The said letter was issued in the year 2007, after which technological advancements have taken place. Hence, the following suggestions could also be considered:

- (i) Inclusion of details regarding installation of CCTV cameras instead of using digital cameras;
- (ii) There has to be an option of live streaming of elections, this will give people a chance to closely monitor and scrutinize the election process;

- (iii) The duties and responsibilities of the returning officer and observers have to be clearly specified with regard to the installation and maintenance of CCTV cameras;
- (iv) Installation of CCTV cameras in strong rooms to keep a close watch on the EVMs;
- (v) The database and control of the CCTV footages and recordings and its further storage and handling need to be clearly specified;
- (vi) The Election Commission of India recommends that the faces of all electors coming to cast their vote but not having Electors Photo Identity Card (hereafter, referred as EPIC) or other Election Commission of India approved photo identity card have to be captured. Instead, if the faces of each individual who comes to cast their vote in a particular constituency is captured and that data stored, it can be used in introducing features like facial recognition so as to prevent double voting etc.

It is submitted that revised guidelines have to be issued whereby installation of CCTV cameras are also included.

2.32 Installation of CCTV in every polling booth is sufficient enough in capturing the face of everyone entering the polling booth. This in turn will act as a preventive mechanism against booth capture and impersonation and misuse of benefits like proxy voting, aided voting etc.

iv. Steps to curtail misuse of the facility of assisted voting for blind and physically infirm persons:

2.33 The concern with respect to misuse of the provisions with respect to the recording of votes by the blind or infirm electors is also significant. At present, by virtue of Rules 40 (Voting through ballot paper), 49N (Voting with Machine) and 40A (Voting at elections by assembly members and in council constituencies) of Conduct of Election Rules, 1961 such persons can take a 'companion of not less than eighteen years' who can read and assist the voter to vote either through ballot paper or through voting machine. Though the said rules are incorporated to enable the physically abled voters and the elderly persons, those are misused to a great extent. Generally, such companions are arranged from the booth only by the political parties. The companions assisting the

voters may either pressurise the voter to cast vote for a specific candidate or deceitfully vote for the candidate he wishes contrary to the will of the voter. Also, the probabilities of persons pretending blindness, or any other physical infirmities cannot be ruled out. There is absolutely no safeguard to prevent misuse of the facility by the companions. Resultantly, the process of election is abused in two ways. Firstly, the freedom to vote the person of choice as guaranteed under Article 19 (1)(a) of such persons will be violated. Secondly, electoral malpractices will take place.

2.34 To prevent the same, the postal ballot voting facility provided vide the Conduct of Elections Rules, 1961 will have to be expanded. At present the same is not popularised or democratised. The respondent no.1 is duty bound to take effective steps to popularise or democratise the same.

2.35 In addition to the same, the Election Commission is duty bound to take steps to curb misuse of the above said provisions. The respondent no.2 can mandate the production of the disability certificate / medical certificate whichever is applicable to avail the facility of assisted voting. The Election Commission can also, by

notification, prescribe the parameters as to who should be the companions of the blind or the physically infirm persons. If the companion is the immediate family member of the voter or the officer from the booth, the possibility of misuse of the above provisions would be reduced. Moreover, the word 'companion' is overbroad and therefore vulnerable to misuse. The above said provisions Rules 40 and 49A of the Conduct of Election Rules, 1961 being vague and abstract are to be read down so as to mean the word 'companion' as 'an immediate family member, or an officer from the booth'.

v. Steps to curb multiple voting by necessary verifications

2.36 Instances of voting more than once (multiple voting) facilitated by entry of name in the electoral roll of more than one constituency is a common electoral malpractice. A variant of such fraud is also commonly reported, wherein a person registers more than once in the same constituency by altering the spelling and surname. Section 17 of the 1950 Act prohibits registration of name in more than one constituency. Section 18 of the 1950 Act prohibits registration in the electoral rolls more than once in the same

constituency. Even then, allegations of multiple voting to the count of about 25 lakh cases have been reported in one state in India. (Please see, Rishika Pardikar, "*The curious case of voter fraud and duplicate voters in Andhra Pradesh*", News 18 India, 23.04.2019, <<https://www.news18.com/news/india/the-curious-case-of-voter-fraud-and-duplicate-voters-in-andhra-pradesh-2055237.html>>).

- 2.37 Non-implementation of measures like multiple voting that curb electoral malpractices results in unfair electoral practices. This also results in arbitrary restriction of freedom of expression via voting under Article 19(1)(a) of the Constitution of India.
- 2.38 Not having adequate measures to cross verify the list of voters is the prime reason for the above said practice. Creation of a cross-verifiable, digitalised dual database at central and local levels, with provision for automatic detection and deletion of name from an electoral roll of one constituency, as soon as a person registers in another is a fool-proof means to curb multiple voting. Further, models involving biometrics or barcode-based verification at the time of election, without restriction of fundamental right to privacy or compromising on the secrecy of

ballot can be used to ensure fairness in election by curbing multiple voting.

2.39 To curb multiple voting, a unique bar code or number can be given to all the identification cards issued to an individual. Since this bar code or number will be the same in all identity cards of individuals, by keeping a centralised data of persons who come for voting, multiple voting can be prevented.

2.40 In a country like India, the respondents can facilitate equitable access to remote voting with adequate safety measures. It is learned that the respondent no.2 has constituted an advisory board so as to explore the possibility for dynamic electronic voting machines and dynamic ballot papers by setting up remote polling booths (Please see, Anubhuti Vishnoi, "*Election Commission looking at vote from workplace EVMs*", The Economic Times, 21.12.2020, can be accessed at <https://economictimesindiatimes.com/news/politics-and-nation/election-commission-looking-at-vote-from-workplace-evms/articleshow/79844666.cms>). In order to ensure effective remote voting in an efficient and inclusive manner, it is essential to accelerate the efforts in this direction. However, the steps in

this regard are taken only at a snail pace and the progress in this direction is far from satisfactory. Therefore, it is highly essential to accelerate the said process for which sufficient support from the respondent no.1 is imperative.

2.41 It is submitted that the omission on part of the respondent no. 2 to take adequate measures to ensure freedom to voting, free and fair elections is contrary to the constitutional duties that it is bound to perform.

3. Hence, the present Writ Petition is filed before this Hon'ble Court. That in the circumstances mentioned hereinabove, this Writ Petition is being preferred by the petitioner inter alia on the following among other grounds:

GROUND

A. Curtailment of freedom to vote negates the freedom under Art. 19 (1) of the Constitution: The respondents have failed to abide by their constitutional duty to ensure fair elections, by arbitrarily curtailing freedom to vote guaranteed under Article 19(1)(a) of the Constitution. They also have violated the statutory right to vote of certain classes of citizens without exploring the

advancements in technology and by not adequately exploring and implementing measures that curtail malpractices.

B. Free elections form part of the basic structure of the

Constitution: It is respectfully submitted that this Hon'ble Court has time and again underlined the significance of free elections in maintaining the democratic structure, which is part of the basic structure of the Constitution (Indira Nehru Gandhi v. Raj Narain 1975 Supp SCC 1, Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405, Kihoto Hollohon v. Zachillhu 1992 Supp (2) SCC 651, PUCL v. Union of India (2003) 4 SCC 399, PUCL v. Union of India (2013) 10 SCC 1). In Kihoto Hollohan v. Zachillhu and Others 1992 Supp (2) SCC 651, it was held-

"democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provisions for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority."

By not ensuring such free and fair elections, the respondents are contributing to the decay of the democratic institutions.

C. Free and fair election is the mainstream of democratic life:

Right to vote has been held fundamental and indispensable to democracy in *Jyoti Basu v. Debi Ghosal* (1982) 1 SCC 691. In *Raghubir Singh Gill v. Gurcharan Singh Tohra*, 1980 Supp SCC 53, it was held by this court that:

"Free and fair elections are the mainspring of a healthy democratic life and a barometer of its strength and vitality. Electoral administration must, therefore, be free from pressure and interference of the executive and legislature. It should be able to secure fairness to all parties and candidateSection An awareness by the people of the significance of their vote and the need for them to exercise it responsibly and an assurance that the voter would be able to exercise the franchise untrammelled by any fear and apprehension of any adverse consequence flowing there from are the main ingredients of a truly democratic and successful electoral system (see Elections in India by R. P. Bhalla). If free and fair election is

the life-blood of constitutional democracy and if secrecy of ballot was ensured to achieve the larger public purpose of free and fair elections either both must be complimentary to each other and co-exist or one must yield to the other to serve the larger public interest."

The said right is infringed at different levels from different dimensions by the respondents.

D. Freedom of voting falls within the freedom under Art. 19 (1)

(a): It is respectfully submitted that freedom of voting is held to be contained within the right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution of India in *PUCL v. Union of India* (2013) 10 SCC 1. It has been held that:

"As observed by this Court in Association for Democratic Reforms' case (supra), a voter 'speaks out or expresses by casting vote'. Freedom of expression, as contemplated by Article 19(1)(a) which in many respects overlaps and coincides with freedom of speech, has manifold meanings. It need not and ought not to be confined to expressing something in words orally or in writing. The act of manifesting

by action or language is one of the meanings given in Ramanatha Iyer's Law Lexicon (edited by Justice Y.V. Chandrachud). Even a manifestation of an emotion, feeling etc., without words would amount to expression. The example given in Collin's Dictionary of English language (1983 reprint) is: "tears are an expression of grief", is quite apposite. Another shade of meaning is: "a look on the face that indicates mood or emotion; eg: a joyful expression". Communication of emotion and display of talent through music, painting etc., is also a sort of expression. Having regard to the comprehensive meaning of phrase 'expression', voting can be legitimately regarded as a form of expression. Ballot is the instrument by which the voter expresses his choice between candidates or in respect to propositions; and his 'vote' is his choice or election, as expressed by his ballot (vide 'A Dictionary of Modern Legal Usage'; 2nd Edition, by Garner Bryan A). "Opinion expressed, resolution or decision carried, by voting" is one of the meanings given to the expression 'vote' in the New Oxford Illustrated Dictionary. It is well settled, and it needs no emphasis that the fundamental right of freedom of speech and

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expression should be broadly construed, and it has been so construed all these years. In the light of this, the dictum of the Court that the voter "speaks out or expresses by casting a vote" is apt and well founded. I would only reiterate and say that freedom of voting by expressing preference for a candidate is nothing but freedom of expressing oneself in relation to a matter of prime concern to the country and the voter himself."

The court further said that "Here, a distinction has to be drawn between the conferment of the right to vote on fulfilment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of ballot. Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamount to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of

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voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom."

The citizens are deprived of such a right guaranteed under Article 19(1)(a) of the Constitution of India.

E. The phrase "ordinarily resident" needs pragmatic understanding and application: As per Section 19 of the 1950 Act following persons are entitled to enrol as voters in the electoral roll, if he or she is;

"(a) is not less than eighteen years of age on the qualifying date, and

(b) is ordinarily resident in a constituency,"

The term ordinary resident is defined in Section 20 of the 1950 Act. A reading of Section 20 would make it abundantly clear that merely because a person is not temporarily residing in a particular constituency, does not disentitle him/her from being in the electoral roll. There is a vast majority of population, who are

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temporarily away from their constituency, due to many reasons like employment, marriage etc. They are entitled to continue in the electoral roll as per the 1950 Act. However, due to the present scheme of electoral process, they are disentitled from their freedom to cast their vote. This is violation of their fundamental right of expression, as declared in PUCL (2013) (*supra*). To an extent, this makes Section 20 meaningless. The legislative intent behind enacting Section 20 is violated, by denying access to voting to a vast majority of people who are residing outside their constituency. If a person is removed from one electoral roll, he/she can seek inclusion in another electoral roll. But, when access to voting is denied, the right to vote itself is taken away from a citizen.

- F. Exclusion of significant part of the population results in massive deprivation of right to participate in the democratic process:** The respondents have violated the freedom to vote contained within the freedom to speech and expression guaranteed under Article 19(1)(a) of citizens like inter-state migrant workers, overseas migrants workers, other inter-state

employees, business professionals, students, disabled persons, aged persons etc. The benefit of voting through postal ballot is limited to a small section of the society. The respondents are bound to exercise their power under Section 60 (c) of the 1951 Act to ensure access to voting to all registered voter. This can be done by way of postal ballots, ETPBS, or other electronic means. By not providing opportunities in accordance with the technological advancements for exercise of their freedom of voting, the respondents violate the fundamental rights of the registered voter section.

- G. The term “not in any other manner” occurring in Section 60 (c) of the 1951 Act is unconstitutional:** Section 60 (c) of the 1951 Act, cannot and should not stand in the way of providing of other remote electronic voting methods. Now there is ETPB system in place, which is an electronic system. That would mean it is quite possible to introduce other remote electronic voting methods by interpretation of the present section itself. But, if the provision is understood textually it doesn't permit adoption of advanced technological means in the matter of voting. A proper

interpretation of the said section can only mean that such adoption is permissible. If it is otherwise, it would follow that the said provision in its current form does not pass the constitutional muster. Viewed so, if the text of the provision is given a literal interpretation, it is essential to strike down the said part "not in any other manner" occurring in Section 60 (c) of the 1951 Act. It is only to be declared as unconstitutional, if taken in the literal sense. Otherwise, it will be essential to read down the said phrase "not in any other manner", so as to mean that the same does not stand in the way of adopting digital variations or forms of remote voting.

- H. Denial of postal ballot and e-voting to those who happens to be outside the constituency results in Article 14 violation:** It is respectfully submitted that denying postal ballot, e-voting facility etc. to internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as NRIs and overseas migrant labourers is violative of Article 14 of the Constitution of India. Now classes like service electors and members of the armed forces etc. alone are given the benefit of

Section 60. This amounts to discrimination. Classes like internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as NRIs and overseas migrant labourers are also entitled to get the benefit of Section 60. This classification is unreasonable and is hit by the protection guaranteed under Article 14 of the Constitution of India. The said classification is artificial and without any rationale. Such classification also has no nexus with the object sought to be achieved by the provision. Thus, not extending postal ballot/e-voting facility or other facilities to cast remote vote to classes like internal migrant labourers, employees, students and business professionals stationed outside the constituency, as well as NRIs and overseas migrant labourers is violative of Article 14 of the Constitution of India.

- I. **Denial of voting rights to certain categories of people vitiates the constitutional mandates:** It is respectfully submitted that deprivation of right to vote by not extending postal ballot, e-voting facility or other similar facilities to internal migrant labourers, employees, students and business professionals stationed

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outside the constituency, as well as NRIs and overseas migrant labourers, results in violation of constitutional rights. This vitiates the democratic structure that is part of the basic structure of the Constitution. State action that breaches basic structure of the Constitution is arbitrary and manifestly unreasonable. This can be culled out from plethora of judgments such as *Mardia Chemicals v. Union of India* (2004) 4 SCC 311, *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261, *S R. Bommai v Union of India* (1994) 3 SCC 1.

- J. Financial burdens imposed on poor sections is a matter of concern in the context of Article. 14 of the Constitution of India:** It is respectfully submitted that the financial burden imposed on the poor sections of society by denying them remote access to vote through postal ballot etc. results in their exclusion from political participation in the democratic process. This results in indirect discrimination and is violative of Article 14 of the Constitution of India. The other categories of persons, who are outside of their constituency and denied of remote voting facility also are subjected to this type of discrimination.

- K. Insistence for physical presence by rigid and conventional methods results in breach of Article 19 (1) (d) and Article 19 (1) (g) of the Constitution of India:** It is respectfully submitted that the respondents have, by coercing the citizens outside of their constituency to choose between exercising their right to vote and better employment and facilities, violate their freedom to move freely throughout the country under Article 19(1)(d). This also violates their freedom to practice any profession, or to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution of India.
- L. Exclusion of large number of voters and insistence for their physical presence for voting clearly violates Article. 21 of the Constitution of India:** It is respectfully submitted that since the current mode of rigid, exclusionary and inaccessible conduct of elections causes internal migrant labourers, employees and business professionals stationed outside the constituency, as well as NRIs and overseas migrant labourers to lose out their wages, work and thus livelihood. Thus, the respondents have violated the

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fundamental right to livelihood of the affected persons, as enshrined in Article 21 of the Constitution of India.

- M. Logistic concerns cannot curtail the voting rights:** It is respectfully submitted that logistic concerns are not a ground to curtail the fundamental rights guaranteed under the Constitution. Extension of remote voting facilities to armed forces personnel, service electors and now even to the NRIs shows that there is a logistic possibility in grant of remote voting facilities to migrant labourers, employees, students and business professionals stationed outside their constituency, NRIs and overseas migrant labourers. Thus, the current mode of conduct of elections is not fair as it violates the right to equality under Article 14, freedom of speech and expression under Article 19(1)(a), freedom to move freely throughout the country under Article 19(1)(d) and freedom to practise any profession, or to carry on any occupation, trade or business guaranteed under Article 19(1)(g), right to livelihood under Article 21 and the right to vote under Article 326.
- N. Electoral statutes need an imaginative application in the light of achievements in digital technology:** It is respectfully

submitted that the provisions of 1950 Act, 1951 Act and rules framed there under pertaining to the freedom of voting cannot be made accessible without considering the technological advancements that occurred over time. The lawmakers then could not have foreseen such digital future to avoid redundancy in ensuring the object of the laws, i.e. conduct of free and fair elections is complied with. While interpreting the old statutes, the courts should consider the technological advancements. By such an interpretation, postal ballots mentioned in Section 60 of the 1951 Act will have to be considered as including of remote electronic voting facility. This electronic facility is distinct and different from EPBS (Please see 'State of Maharashtra v. Praful B. Desai (Dr.) (2003) 4 SCC 601, State v. SJ Choudhary (1996) 2 SCC 428, SIL Imports v. Exim Aides Silk Exporters (1999) 4 SCC 567).

- O. **Electoral malpractices negate the idea of freedom of expression of voting:** Electoral malpractices like booth capturing and impersonation results in deprivation of opportunity to express one's voting preferences on an individualistic level.

This is violative of the freedom of expression of voting under Article 19(1)(a) Constitution of India.

- P. The practice of companion vote needs regulation so as to curtail electoral malpractices:** Instances of electoral malpractice in the guise of assisted voting to blind and physically unwell persons are also rampant. The phrase mentioned in Rules 40, 49N and 40A in Conduct of Elections Rules, 1961 as 'companion' who should be not less than eighteen years is too vague. This overbreadth of the phrase causes damage in the situations like booth capturing etc. Also, the possibility of pretending blindness or physical infirmities cannot be overruled. Though in the year 2019, the respondent no.1 has amended the rules by providing the facility of postal ballot voting for such persons, the same is not adequately practised. In addition, only if the respondent no. 2 issues a notification specifying the criteria for the said expression, the possibility of misuse will reduce. The phrase 'companion' should be restricted to only an immediate family member or an officer from booth. Also respondent no.2 is duty bound to issue notification mandating either the disability

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certificate or medical certificate whichever is applicable, to avail the facility of assisted voting. Failure to take effective steps in this regard will amount to violation of fundamental right of such voters and will amount to an electoral malpractice.

- Q. The suggestions posed in the Writ Petition would help the respondents in fulfilling their constitutional obligation to ensure free and fair elections:** In *Raghubir Singh Gill v. Gurcharan Singh Tohra*, (1980) Supp SCC 53, this Hon'ble court held that, "*free and fair elections are the mainspring of a healthy democratic life and a barometer of its strength and vitality.*" Thus, the respondents are bound to take every possible step to ensure that, elections are conducted in a free and fair manner.
4. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.
 5. That the Petitioner craves leave to alter, amend or add to this Petition.

- SS
6. That the Petitioner seeks leave to rely on documents, a list of which, along with true typed copies has been annexed to this Petition.
 7. That this Petition has been made bona fide and in the interest of justice.
 8. That the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.

PRAYERS

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

- (a) Strike down Section 60 (c) of the Representation of the People Act, 1951 to the extent which it says, "not in any other manner" as unjust, illegal, arbitrary and unconstitutional.
- (b) Issue a writ of mandamus directing the respondents to take steps to ensure that, access to voting is ensured to all registered voters who are stationed outside the constituency, like internal migrant workers, internal migrant employees, business personnel,

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students, NRIs and the spouses of these categories stationed with them by:

- i) extension of postal ballot facility and/or Electronically transmitted Postal Ballot System (ETPBS) to all registered voters who are stationed outside their constituency.
- ii) introduction of a secured remote electronic voting system and extending its benefit to all registered voters who are stationed outside their constituency.
- (c) Issue a writ of mandamus directing the respondents to notify further classes under Section 60(c) of the Representation of the People Act, 1951 so that postal ballot facility is extended to all classes and categories of registered voters identified above, who are posted outside their constituency on account of profession, occupation, trade, business, marriage etc.
- (d) Issue a writ of mandamus directing the respondents to ensure conduct of free and fair election by utilising technological advancements to prevent election malpractices by:

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- i) providing a double database for storing the transactions in EVMs, namely a central database and a local database, which would drastically reduce the chance for manipulation of data and EVMs.
- ii) evolving an OTP based system for the purpose of fault free identification of voters without infringing their privacy right section.
- iii) installation of CCTV in all the polling booths across the country so as to ensure probity in the process of voting.
- iv) taking steps to curtail misuse of the assisted voting for blind and physically infirm persons as stated in Rules 40, 49N and 40A of Conduct of Election Rules, 1961 by notifying that a companion to such persons shall be either an immediate family member or an officer from the booth and notify that such persons shall produce either disability certificate/ medical certificate, whichever is applicable to avail the facility of assisted voting.
- v) taking steps to curb multiple voting by introducing double database of registered voters in an electoral roll, (both central and local) and by introduction of a unique identification number or bar code for all the identity cards of an individual enabling cross

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checking at polling booths as to whether that person has voted previously in the same election.

- (e) Pass such other order(s) in favour of the petitioner herein, as this Hon'ble Court may deem fit in and proper in the interest of Justice.

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

SETTLED BY:

KALEESWARAM RAJ, ADVOCATE

DRAWN BY:

**ARUNA A,
THULASI K. RAJ,
MAITREYI S. HEGDE,
MINU VITTORRIA PAULSON,
TELLMY JOLLY,
UTTARA P.V..
ADVOCATES**

FILED BY

DRAWN ON: 23.01.2021

FILED ON: 27.01.2021

(NISHE RAJEN SHONKER)

ADVOCATE-ON-RECORD

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

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WRIT PETITION (CIVIL) No.

OF 2021

IN THE MATTER OF:

K. SATHYAN

...

Petitioner

Versus

UNION OF INDIA & ANR.

...

Respondents

AFFIDAVIT

I, K. Sathyan, aged 61 years, S/o. Krshnan, Souparnika, Naravoor, Kuthuparamba, Kannur, Kerala, (Presently in Delhi), do hereby solemnly affirm and swear this Affidavit as under:

1. That I am the Petitioner and I am as such familiar with the facts of this WP and to swear this affidavit as authorised.
2. That I have read and understood the contents of paragraphs 1 to 8 of the W.P. at pages 1 to 58 and the List of Dates at pages B to M and I say that the facts stated therein are true and correct to my knowledge.
3. That the Annexures filed with the W.P are true and correct copies of their respective original.

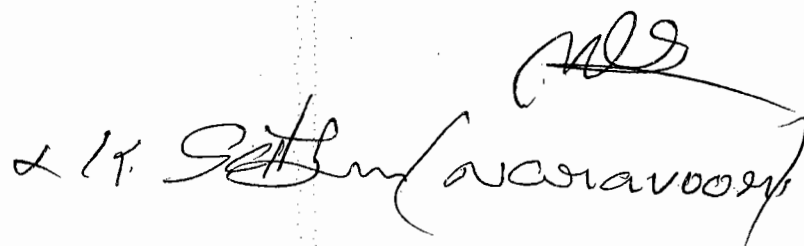
DEPONENT

K. Sathyan Naravoor (MOS)

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VERIFICATION:

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 3 of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from. Verified on this day 25TH January 2021 at New Delhi.

A handwritten signature in black ink, appearing to read 'S. H. Naravane', with a large, stylized flourish above it.

DEPONENT

Appendix :-

THE REPRESENTATION OF THE PEOPLE ACT, 1950 61

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

SECTIONS

1. Short title.
2. Definitions.

PART II
ALLOCATION OF SEATS AND DELIMITATION OF CONSTITUENCIES*The House of the People*

3. Allocation of seats in the House of the People.
4. Filling of seats in the House of the People and Parliamentary Constituencies.
- 5-6. [Repealed.]

The State Legislative Assemblies

7. Total number of seats in Legislative Assemblies and Assembly Constituencies.
- 7A. Total number of seats in the Legislative Assembly of Sikkim and Assembly Constituencies.

The Delimitation of Parliamentary and Assembly Constituencies Order

8. Consolidation of delimitation orders.
- 8A. Delimitation of Parliamentary and Assembly Constituencies in the States of Arunachal Pradesh, Assam, Manipur or Nagaland.
9. Power of Election Commission to maintain Delimitation Order up-to-date.
- 9A. [Repealed.]
- 9B. [Repealed.]

The State Legislative Councils

10. Allocation of seats in the Legislative Councils.
11. Delimitation of Council constituencies.

Provisions as to orders delimiting constituencies

12. Power to alter or amend orders.
13. Procedure as to orders delimiting constituencies.

PART IIA
OFFICERS

- 13A. Chief electoral officers.
- 13AA. District election officers.
- 13B. Electoral registration officers.
- 13C. Assistant electoral registration officers.

Representation of the People Act, 1950
(PART II.—Acts of Parliament)

SECTIONS

- 13CC. Chief electoral officers, district election officers, etc., deemed to be on deputation to Election Commission.

PART IIB
ELECTORAL ROLLS FOR PARLIAMENTARY CONSTITUENCIES

- 13D. Electoral rolls for parliamentary constituencies.

PART III
ELECTORAL ROLLS FOR ASSEMBLY CONSTITUENCIES

- 14. Definitions.
- 15. Electoral roll for every constituency.
- 16. Disqualifications for registration in an electoral roll.
- 17. No person to be registered in more than one constituency.
- 18. No person to be registered more than once in any constituency.
- 19. Conditions of registration.
- 20. Meaning of "ordinarily resident".
- 20A. Special provisions for citizens of India residing outside India.
- 21. Preparation and revision of electoral rolls.
- 22. Correction of entries in electoral rolls.
- 23. Inclusion of names in electoral rolls.
- 24. Appeals.
- 25. Fee for applications and appeals.
- 25A. Conditions of registration as elector in Sangha constituency in Sikkim.

PART IV
ELECTORAL ROLLS FOR COUNCIL CONSTITUENCIES

- 26. *[Repealed.]*
- 27. Preparation of electoral rolls for Council Constituencies.

PART IVA
MANNER OF FILLING SEATS IN THE COUNCIL OF STATES TO BE FILLED BY
REPRESENTATIVES OF UNION TERRITORIES

- 27A. Constitution of electoral colleges for the filling of seats in the Council of States allotted to Union territories.
- 27B-27F. *[Repealed.]*
- 27G. Termination of membership of electoral college for certain disqualifications.
- 27H. Manner of filling of seats in the Council of States allotted to Union territories.
- 27-I. *[Repealed.]*
- 27J. Power of electoral colleges to elect notwithstanding vacancies therein.
- 27K. *[Repealed.]*

PART V
GENERAL

- 28. Power to make rules.
- 29. Staff of local authorities to be made available.
- 30. Jurisdiction of civil courts barred.

Representation of the People Act, 1950
(PART II.—Acts of Parliament)

SECTIONS

- 31. Making false declarations.
- 32. Breach of official duty in connection with the preparation, etc., of electoral rolls.

THE FIRST SCHEDULE.—ALLOCATION OF SEATS IN THE HOUSE OF THE PEOPLE.

THE SECOND SCHEDULE.—TOTAL NUMBER OF SEATS IN THE LEGISLATIVE ASSEMBLIES.

THE THIRD SCHEDULE.—ALLOCATION OF SEATS IN THE LEGISLATIVE COUNCILS.

THE FOURTH SCHEDULE.—LOCAL AUTHORITIES FOR PURPOSES OF ELECTIONS TO LEGISLATIVE COUNCILS.

THE FIFTH SCHEDULE.—[REPEALED.]

THE SIXTH SCHEDULE.—[REPEALED.]

THE SEVENTH SCHEDULE.—[REPEALED.]

THE REPRESENTATION OF THE PEOPLE ACT, 1950
(43 OF 1950)

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[12th May, 1950.]

An Act to provide the allocation of seats in, and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, ¹[the manner of filling seats in the Council of States to be filled by representatives of ²[Union territories]], and matters connected therewith.

BE it enacted by Parliament as follows:—

PART I
PRELIMINARY

1. **Short title.**—This Act may be called the Representation of the People Act, 1950.

2. **Definitions.**—³* * * In this Act, unless the context otherwise requires,—

(a) "article" means an article of the Constitution;

(b) "Assembly constituency" means a constituency provided ⁴[by law] for the purpose of elections to the Legislative Assembly of a State;

(c) "Council constituency" means a constituency provided ⁵[by law] for the purpose of elections to the Legislative Council of a State;

⁶* * * * *

(d) "Election Commission" means the Election Commission appointed by the President under article 324;

(e) "order" means an order published in the Official Gazette;

(f) "Parliamentary constituency" means a constituency provided ⁷[by law] for the purpose of elections to the House of the People;

⁸* * * * *

(g) "person" does not include a body of persons;

(h) "prescribed" means prescribed by rules made under this Act;

⁹[(i) "State" includes a Union territory;]

(j) "State Government", in relation to a Union territory, means the administrator thereof.

¹⁰* * * * *

1. Ins. by Act 73 of 1950, s. 2.

2. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C States".

3. The brackets and figure "(1)" omitted by Act 103 of 1956, s. 65.

4. Subs. by Act 2 of 1956, s. 2, for "by order made under section 9".

5. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "by order made under section 11".

6. Cl. (cc) ins. by Act 73 of 1950, s. 3 and omitted by Act 103 of 1956, s. 65.

7. Subs. by Act 2 of 1956, s. 2, for "by section 6 or by order made thereunder".

8. Cl. (ff) ins. by Act 67 of 1951, s. 2 was omitted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974, s. 3 and Sch. (w.e.f. 21-1-1972).

9. Subs. by s. 3 and Sch., *ibid.*, for the former cl. (i) (w.e.f. 21-1-1972).

10. Sub-section (2) omitted by the Adaptation of Laws (No. 2) Order, 1956.

Representation of the People Act, 1950
(PART II.— Acts of Parliament)

¹[Provided that "qualifying date", in relation to the preparation or revision of every electoral roll under this Part in the year 1989, shall be the 1st day of April, 1989.]

15. Electoral roll for every constituency.—For every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission.

16. Disqualifications for registration in an electoral roll.—(1) A person shall be disqualified for registration in an electoral roll if he—

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt² * * * practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

³[Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be re-instated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal.]

17. No person to be registered in more than one constituency.—No person shall be entitled to be registered in the electoral roll for more than one constituency⁴ * * *.

18. No Person to be registered more than once in any constituency.—No person shall be entitled to be registered in the electoral roll for any constituency more than once.

⁵[**19. Conditions of registration.**— Subject to the foregoing provisions of this Part, every person who —

(a) is not less than ⁶[eighteen years] of age on the qualifying date, and

(b) is ordinarily resident in a constituency,

shall be entitled to be registered in the electoral roll for that constituency.]

20. Meaning of "ordinarily resident".—⁷[(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

1. Ins. by Act 21 of 1989, s. 3 (w.e.f. 28-3-1989).

2. The words "and illegal" ins. by Act 73 of 1950, s. 4 and omitted by Act 58 of 1960, s. 3 and Sch. II.

3. Ins. by Act 73 of 1950, s. 4.

4. The words "in the same State" ins. by Act 2 of 1956, s. 12 and omitted by Act 58 of 1958, s. 6.

5. Subs. by Act 58 of 1958, s. 7, for s. 19.

6. Subs. by Act 21 of 1989, s. 4, for "twenty-one years" (w.e.f. 28-3-1989).

7. Subs. by Act 58 of 1958, s. 8, for sub-section (1).

Representation of the People Act, 1950
(PART II.— Acts of Parliament)

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(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.]

(2) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

¹[(3) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.]

(4) Any person holding any office in India declared² by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply,³ * * * shall be deemed to be ordinarily resident⁴ * * * on any date in the constituency in which, but for the holding of any such office⁵ * * *, he would have been ordinarily resident⁶ * * * on that date.

(5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the prescribed manner, that⁷ [but for his having the service qualification] or but for his holding any such office⁸ * * * as is referred to in sub-section (4) he would have been ordinarily resident in a specified place⁹ * * * on any date, shall, in the absence of evidence to the contrary, be⁷ [accepted as correct].

(6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall if she be ordinarily residing with such person¹⁰ * * * be deemed to be ordinarily resident on¹¹ * * * in the constituency specified by such person under sub-section (5).

¹²[(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.]

1. Subs. by Act 47 of 1966, s. 8, for sub-section (3) (w.e.f. 14-12-1966).

2. The following offices have been declared by the President by Notification No. S.O. 959, dated the 18th April, 1960: —

1. The President of India.
2. The Vice-President of India.
3. Governors of States.
4. Cabinet Ministers of the Union or of any State.
5. The Deputy Chairman and Members of the Planning Commission.
6. The Ministers of State of the Union or of any State.
7. Deputy Ministers of the Union or of any State.
8. The Speaker of the House of the People or of any Legislative Assembly.
9. The Chairman of any State Legislative Council.
10. Lieutenant Governors of Union territories.
11. The Deputy Speaker of the House of the People or of any State Legislative Assembly.
12. The Deputy Chairman of the Council of States or of any State Legislative Council.
13. Parliamentary Secretaries of the Union or of any State.

3. Certain words omitted by Act 47 of 1966, s. 8 (w.e.f. 14-12-1966).

4. The words "during any period or" omitted by Act 2 of 1956, s. 14.

5. The words "or employment" omitted by Act 47 of 1966, s. 8 (w.e.f. 14-12-1966).

6. The words "during that period or" omitted by Act 2 of 1956, s. 14.

7. Subs. by Act 47 of 1966, s. 8, for certain words (w.e.f. 14-12-1966).

8. Certain words omitted by s. 8, *ibid.* (w.e.f. 14-12-1966).

9. The words "during any period or" omitted by Act 2 of 1956, s. 14.

10. The words "during any period" omitted by s. 14, *ibid.*

11. The words "during that period" omitted by s. 14, *ibid.*

12. Sub-section (7) omitted by Act 2 of 1956, s. 14 and ins. by Act 47 of 1966, s. 8 (w.e.f. 14-12-1966).

Representation of the People Act, 1950
(PART II.— Acts of Parliament)

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(8) In sub-sections (3) and (5) "service qualification" means—

- (a) being a member of the armed forces of the Union; or
- (b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or
- (c) being a member of an armed police force of a State, who is serving outside that State; or
- (d) being a person who is employed under the Government of India, in a post outside India.

¹[20A. **Special provisions for citizens of India residing outside India.** — (1) Notwithstanding anything contained in this Act, every citizen of India—

- (a) whose name is not included in the electoral roll;
- (b) who has not acquired the citizenship of any other country; and
- (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not),

shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence in India as mentioned in his passport is located.

(2) The time within which the name of persons referred to in sub-section (1) shall be registered in the electoral roll and the manner and procedure for registering of a person in the electoral roll under sub-section (1) shall be such as may be prescribed.

(3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency.]

²[21. **Preparation and revision of electoral rolls.** — (1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

³[(2) The said electoral roll—

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

- (i) before each general election to the House of the People or to the Legislative Assembly of a State; and
- (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.]

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

⁴[22. **Correction of entries in electoral rolls.**—If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

- (a) is erroneous or defective in any particular,

1. Ins. by Act 36 of 2010, s. 2 (w.e.f. 10-2-2011).

2. Subs. by Act 2 of 1956, s. 15, for ss. 21 to 25.

3. Subs. by Act 47 of 1966, s. 9, for sub-section (2) (w.e.f. 14-12-1966).

4. Subs. by Act 58 of 1958, s. 9, for s. 22.

Representation of the People Act, 1950
(PART II.—Acts of Parliament)



(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry ¹[after proper verification of facts in such manner as may be prescribed]:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him ¹[after proper verification of facts in such manner as may be prescribed].]

²[23. **Inclusion of names in electoral rolls.**— (1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein ³[after proper verification of facts in such manner as may be prescribed]:

Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll ³[after proper verification of facts in such manner as may be prescribed].

(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.]

⁴[24. **Appeals.**—An appeal shall lie within such time and in such manner as may be prescribed—

(a) to the ⁵[district magistrate or additional district magistrate or executive magistrate or district collector or an officer of equivalent rank], from any order of the electoral registration officer under section 22 or section 23 ⁶***.

⁷[(b) to the chief electoral officer, from any order of the district magistrate or the additional district magistrate under clause (a)]

25. Fee for applications and appeals.— Every applications under section 22 or section 23 and every appeal under section 24 shall be accompanied by the prescribed fee which shall, in no case, be refunded.]

⁸[25A. **Conditions of registration as elector in Sangha constituency in Sikkim.**—Notwithstanding anything contained in sections 15 and 19, for the Sangha constituency in the State of Sikkim, only the Sanghas belonging to monasteries, recognised for the purpose of the elections held in Sikkim in April, 1974, for forming the Assembly for Sikkim, shall be entitled to be registered in the electoral roll, and the said electoral roll shall, subject to the provisions of sections 21 to 25, be prepared or revised in such manner as may be directed by the Election Commission, in consultation with the Government of Sikkim.]

1. Ins. by Act 36 of 2010, s. 3 (w.e.f. 10-2-2011).

2. Subs. by Act 47 of 1966, s. 10, for s. 23 (w.e.f. 14-12-1966).

3. Ins. by Act 36 of 2010, s. 4 (w.e.f. 10-2-2011).

4. Ins. by Act 40 of 1961, s. 3 (w.e.f. 20-9-1961). S. 24 ins. by Act 60 of 1956, s. 2 and was omitted by Act 58 of 1958, s. 10.

5. Subs. by Act 41 of 2009, s. 2, for certain words (w.e.f. 1-2-2010).

6. The word "and" omitted by Act 47 of 1966, s. 11 (w.e.f. 14-12-1966).

7. Cl.(b) omitted by Act 47 of 1966, s. 11 (w.e.f. 14-12-1966) and Ins. by Act 41 of 2009, s. 2 (w.e.f. 1-2-2010).

8. Ins. by Act 10 of 1976, s. 2 and Sch. (w.e.f. 9-9-1975).

THE REPRESENTATION OF THE PEOPLE ACT, 1951

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

SECTIONS

1. Short title.
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PART II QUALIFICATIONS AND DISQUALIFICATIONS CHAPTER I.—*Qualifications for Membership of Parliament*

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(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

the returning officer shall forthwith report the matter to the Election Commission.

(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

Explanation.—In this section, "booth capturing" shall have the same meaning as in section 135A.]

59. Manner of voting at elections.—At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, ¹[and, save as expressly provided by this Act, no votes shall be received by proxy:]

²[Provided that the votes at every election to fill a seat or seats in the Council of States shall be given by open ballot.]

³[**60. Special procedure for voting by certain classes of persons.**—Without prejudice to the generality of the provisions contained in section 59, provision may be made, by rules made under this Act, for enabling,—

(a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 20 of the Representation of the People Act, 1950 (43 of 1950), (hereinafter in this section referred to as the 1950-Act) to give his vote either in person or by postal ballot or by proxy, and not in any other manner, at an election in a constituency where poll is taken;

(b) any of the following persons to give his vote either in person or by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:—

(i) any person as is referred to in clause (c) or clause (d) of sub-section (8) of section 20 of the 1950-Act;

(ii) the wife of any such person to whom the provisions of sub-section (3) of section 20 of the 1950-Act apply and such wife being ordinarily residing with that person in terms of sub-section (6) of that section;

(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirement as may be specified in those rules.

(d) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfilment of such requirements as may be specified in those rules.]

1. Subs. by Act 24 of 2003, s. 2 (w.e.f. 22-9-2003).

2. Ins. by Act 40 of 2003, s. 3.

3. Subs. by Act 24 of 2003, s. 3, (w.e.f. 22-9-2003).

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¹[**61. Special procedure for preventing personation of electors.**—With a view to preventing personation of electors provision may be made by rules made under this Act:—

(a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950 (43 of 1950), electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station.]

²[**61A. Voting machines at elections.**—Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation.—For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.]

62. Right to vote.—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

1. Subs. by Act 58 of 1958, s. 25, for s. 61.

2. Ins. by Act 1 of 1989, s. 11 (w.e.f. 15-3-1989).

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(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

¹[(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorised to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.].

63. [*Method of voting.*] *Rep. by the Representation of the People (Amendment) Act, 1961 (40 of 1961), s. 14 (w.e.f. 20-9-1961).*

CHAPTER V.—*Counting of Votes*

64. Counting of votes.—At every election where a poll is taken, votes shall be counted by, or under the ²[supervision and direction] of, the returning officer, and each ³[contesting candidate], his election agent and his ⁴[counting agents], shall have a right to be present at the time of counting.

⁵[**64A. Destruction, loss, etc., of ballot papers at the time of counting.**—(1) If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

(2) Thereupon, the Election Commission shall, after taking all material circumstances into account, either—

(a) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the returning officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

(3) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

65. Equality of votes.—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

66. Declaration of results.—When the counting of the votes has been completed, the returning officer ⁶[shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare] the result of the election in the manner provided by this Act or the rules made thereunder.

67. Report of the result.—As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a

1. Ins. by Act 24 of 2003, s. 4 (w.e.f. 22-9-2003).

2. Subs. by Act 27 of 1956, s. 36, for "supervision".

3. Subs. by Act 58 of 1958, s. 26, for "candidate".

4. Subs. by Act 27 of 1956, s. 36, for "counting agent".

5. Ins. by Act 47 of 1966, s. 34 (w.e.f. 14-12-1966).

6. Subs. by s. 35, *ibid.*, for "shall forthwith declare" (w.e.f. 14-12-1966).

House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

¹[**67A. Date of election of candidate.**—For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53, ^{2***}, ^{3***} or section 66, to be elected to a House of Parliament or of the Legislature of a State ^{4***} shall be the date of election of that candidate.]

CHAPTER VI.—*Multiple Elections*

68. Vacation of seats when elected to both Houses of Parliament.—(1) Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission ⁵[within ten days from the date, or the later of the dates, on which he is so chosen, intimate] in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(2) In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

(3) Any intimation given under sub-section (1) shall be final and irrevocable.

⁶[(4) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.]

69. Vacation of seats by persons already members of one House on election to other House of Parliament.—(1) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, ⁷[on the date on which he is so chosen], become vacant.

(2) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, ⁷[on the date on which he is so chosen], become vacant.

***70. Election to more than one seat in either House of Parliament or in the House or either House of the legislature of a State.**—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats ⁸[by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed], all the seats shall become vacant.

CHAPTER VII.—*Publication of election Results and Nominations*

⁹[**71. Publication of results of elections to the Council of States and of names of persons nominated by the President.**—After the elections held in any year in pursuance of the notifications issued under section 12, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the

1. Ins. by Act 27 of 1956, s. 37.

2. The word and figures "section 54" omitted by Act 40 of 1961, s. 15 (w.e.f. 20-9-1961).

3. The word, figures and letter " section 55A " omitted by Act 58 of 1958, s. 27.

4. Certain words omitted by Act 103 of 1956, s. 66.

5. Subs. by Act 27 of 1956, s. 38, for certain words.

6. Ins. by s. 38, *ibid.*

7. Subs. by s. 39, *ibid.*, for "on the publication in the Gazette of India of the declaration that he has been so chosen".

8. Ins. by s. 40, *ibid.*

9. Subs. by s. 41, *ibid.*, for ss. 71 to 75.

* See rule 91 of the Conduct of Election Rules, 1961 (page 76 of Vol. II). In relation to Prohibition relating to membership both of Parliament and of a House of the Legislature of a State, see also the Prohibition of Simultaneous Membership Rules, 1950 published under articles 101(2) and 190(2) of the Constitution *vide* Notification No.F.46/50—C, dated 26th January, 1950, in the Gazette of India, Extraordinary, page 678 (Pages 140 of Vol. I).

*THE CONDUCT OF ELECTIONS RULES, 1961¹

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PART I Preliminary

1. Short title and commencement.—(1) These rules may be called the Conduct of Elections Rules, 1961.

(2) They shall come into force on the 25th day of April, 1961:

Provided that these rules shall not apply to or in relation to any election called but not completed before that date and the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, shall continue to apply to or in relation to any such election as if these rules had not been made.

2. Interpretation.—(1) In these rules, unless the context otherwise requires,—

(a) "Act" means the Representation of the People Act, 1951 (43 of 1951);

(b) "ballot box" includes any box, bag or other receptacle used for the insertion of ballot paper by voters;

²[(ba) "counterfoil" means the counterfoil attached to a ballot paper printed under the provisions of these rules;]

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(c) "election by assembly members" means an election to the Council of States by the elected members of the Legislative Assembly of a State by the members of the electoral college of a Union territory, or an election to the Legislative Council of a State by the members of the Legislative Assembly of that State;

(d) "elector", in relation to an election by assembly members, means any person entitled to vote at that election;

(e) "electoral roll", in relation to an election by assembly members, means the list maintained under section 152 by the returning officer for that election;

(f) "electoral roll number" of a person means—

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates;

⁴[(g) "Form" means a Form appended to these rules and in respect of any election in a State, includes a translation thereof in any of the languages used for official purposes of the State;

* Rules amended *vide* Notifin. No. S.O. 272(E), dated the 27th February, 2004.

1. Published with the Ministry of Law Notifin. No. S.O. 859, dated the 15th April, 1961, *see* Gazette of India, Extraordinary, Part II, Section 3(ii), Page 419.

2. Ins. by Notifin. No. S.O. 5573, dated the 23rd December, 1971.

3. Ins. by Notifin. No. S.O. 3875, dated the 15th December, 1966 and omitted by Notifin. No. S.O. 1294(E), dated the 11th November, 2003.

4. Subs. by Notifin. No. S.O. 3450, dated the 9th November, 1966, for cl. (g).

¹[(gg) "marked copy of the electoral roll" means the copy of the electoral roll set apart for the purpose of marking the names of electors to whom ballot papers are issued at an election;]

(h) "polling station", in relation to an election by assembly members, means the place fixed under section 29 for taking the poll at that election;

(i) "presiding officer" includes—

(i) any polling officer performing any of the functions of a presiding officer under sub-section (2) or sub-section (3) of section 26; and

(ii) any returning officer while presiding over an election under sub-section (2) of section 29;

(j) "returning officer" includes any assistant returning officer performing any function he is authorised to perform under sub-section (2) of section 22;

(k) "section" means a section of the Act.

(2) For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if—

(a) he has placed a mark on such instrument or other paper in the presence of the returning officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission, and

(b) such officer on being satisfied as to his identity has attested the mark as being the mark of that person.

(3) Any requirement under these rules that a notification, order, declaration, notice or list issued or made by any authority shall be published in the Official Gazette shall, unless otherwise expressly provided in these rules, be construed as a requirement that it shall be published in the Gazette of India if it relates to an election to, or membership of, either House of Parliament or an electoral college, and in the Official Gazette of the State, if it relates to an election to, or membership of, the House or either House of the State Legislature.

(4) The General Clauses Act, 1897 (10 of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

PART II

General provisions

3. Public notice of intended election.—The public notice of an intended election referred to in section 31 shall be in Form 1 and shall, subject to any directions of the Election Commission, be published in such manner as the returning officer thinks fit.

4. Nomination paper.—Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

²[**4A. Form of affidavit to be filed at the time of delivering nomination paper.**—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.]

1. Subs. by Notifin. No. S.O. 5573, dated the 23rd December, 1971, for cl.(gg).

2. Ins. by Notifin. No. S.O. 935 (E), dated the 8th September, 2002.

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(7) Where an elector is not allowed to vote under sub-rule (6), a remark to the effect that voting procedure has been violated shall be made against the elector's name in the register of voters in Form 17A by the presiding officer under his signature.

49MA. Procedure in case of complaint about particulars printed on paper slip.—(1) Where printer for paper trail is used, if an elector after having recorded his vote under rule 49M alleges that the paper slip generated by the printer has shown the name or symbol of a candidate other than the one he voted for, the presiding officer shall obtain a written declaration from the elector as to the allegation, after warning the elector about the consequence of making a false declaration.

(2) If the elector gives the written declaration referred to in sub-rule (1), the presiding officer shall make a second entry related to that elector in Form 17A, and permit the elector to record a test vote in the voting machine in his presence and in the presence of the candidates or polling agents who may be present in the polling station, and observe the paper slip generated by the printer.

(3) If the allegation is found true, the presiding officer shall report the facts immediately to the returning officer, stop further recording of votes in that voting machine and act as per the direction that may be given by the returning officer.

(4) If, however, the allegation is found to be false and the paper slip so generated under sub-rule (1) matches with the test vote recorded by the elector under sub-rule (2), then, the presiding officer shall—

- (i) make a remark to that effect against the second entry relating to that elector in Form 17A mentioning the serial number and name of the candidate for whom such test vote has been recorded;
- (ii) obtain the signature or thumb impression of that elector against such remarks; and
- (iii) make necessary entries regarding such test vote in item 5 in Part I of Form 17C.]

49N. Recording of votes of blind or infirm electors.—(1) If the presiding officer is satisfied that owing to blindness or other physical infirmities an elector is unable to recognise the symbol on the balloting unit of the voting machine or unable to record his vote by pressing the appropriate button thereon without assistance the presiding officer shall permit the elector to take with him a companion of not less than eighteen years of age to the voting compartment for recording the vote on his behalf and in accordance with his wishes:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule that person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any other polling station on that day.

(2) The presiding officer shall keep a record in Form 14A of all cases under this rule.

49O. Elector deciding not to vote.—If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17A and has put his signature or thumb impression thereon as required under sub-rule (1) of rule 49L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.

49P. Tendered votes.—(1) If a person representing himself to be a particular elector seeks to vote after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be, instead of being allowed to vote through the balloting unit, supplied with a tendered ballot paper which shall be of such design, and the particulars of which shall be in such language or languages as the Election Commission may specify.

(2) Every such elector shall before being supplied with tendered ballot paper write his name against the entry relating to him in Form 17B.

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party records his vote on a ballot paper and before such elector inserts that ballot paper into the ballot box, allow the authorised agent of that political party to verify as to whom such elector has cast his vote:

Provided that if such elector refuses to show his marked ballot paper to the authorised agent of his political party, the ballot paper issued to him shall be taken back by the presiding officer or a polling officer under the direction of the presiding officer and the ballot paper so taken back shall then be further dealt with in the manner specified in sub-rules (6) to (8) of rule 39A as if such ballot paper had been taken back under sub-rule (5) of that rule.

(2) Every political party, whose member as an elector casts a vote at a polling station, shall, for the purposes of sub-rule (1), appoint, in Form 22A, two authorised agents.

(3) An authorised agent appointed under sub-rule (2) shall be present throughout the polling hours at the polling station and the other shall relieve him when he goes out of the polling station or *vice versa*.]

¹[40A. *Recording of votes of illiterate, blind or infirm electors.*— (1) If an elector is unable to read the ballot paper or to record his vote thereon in accordance with rule 37A by reason of illiteracy, blindness or other infirmity, the presiding officer shall, on being satisfied about such illiteracy, blindness or infirmity, permit the elector to take with him a companion of not less than ²[eighteen] years of age who is able to read the ballot paper and record the vote thereon on behalf of, and in accordance with the wishes of, the elector and, if necessary, to fold the ballot paper so as to conceal the vote and insert it into the ballot box:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any polling station on that day:

³[Provided also that at an election by assembly members no such companion shall be an elector at that election.]

(2) The presiding officer shall keep a record in Form 14A of all the cases under this rule.

(3) The presiding officer shall, when he is so requested by the companion of an elector, explain to him the instructions for the recording of votes.];

(iii) in lieu of rule 44, the following rule shall apply:—

"44B. *Sealing of ballot box after poll.*—As soon as practicable after the close of the poll, the ⁴[presiding officer] shall, in the presence of any polling agents who may be present, close the slit for insertion of ballot papers of each ballot box or where the box does not contain any mechanical device for closing the slit, seal up the slit and secure the ballot box:

Provided that it shall not be necessary to seal the slit or secure the ballot box if the counting of votes is to begin immediately after the close of the poll.;"

⁵[(iv) in rule 46, in sub-rule (1), in lieu of clauses (b) and (c), the following clauses shall apply:—

"(b) the ballot papers signed in full by the presiding officer under sub-rule (1) of rule 38A but not issued to the voters;

(c) the ballot papers cancelled for violation of voting procedure under rule 39A."].

1. Ins. by Notifin. No. S.O. 1520, dated the 25th April, 1968.

2. Subs. by Notifin. No. S.O. 542 (E), dated the 13th July, 1989.

3. Added by Notifin. No. S.O. 5573, dated the 23rd December, 1971.

4. Subs. by Notifin. No. S.O. 2912, dated the 21st August, 1964.

5. Subs. by Notifin. No. S.O. 286(E), dated the 8th May, 1974, for cl. (iv).

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ANNEXURE 10/1

Political Inclusion of Seasonal Migrant Workers in India: Perceptions, Realities and Challenges



Aajeevika Bureau (Udaipur)

With

GDS (Lucknow), GSVS (Ajmer), Disha (Nashik), GPSVS (Madhubani)

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Political Inclusion of Seasonal Migrant Workers in India: Perceptions, Realities and Challenges¹

Do seasonal migrants in India vote? If not, how do they ensure that they remain politically relevant in the villages they leave behind? In cities, where they spend a large part of their working life, what are the ways in which they get their voices heard? This study looks at the participation of migrant workers in political processes – both through the institutionalized electoral process and through other lesser-known avenues of asserting political agency. Done in a multi-location format it covers respondents from 15 locations spread across five states of India – Bihar, Uttar Pradesh, Gujarat, Rajasthan and Maharashtra

Keywords: migrant workers, political inclusion, internal migration in India

1. Background

In the usually bustling street on Santacruz west, Mumbai there is a sudden wave of hyperactivity. A number of hawkers start rolling up their plastic sheets, pack up and run to find a safe abode for their merchandise. I turn back to find a municipality van approaching slowly. As the van turns left, within 5-10 minutes, business is as usual – close to 700 hawkers selling vegetables, fruits and everyday utility items on a street not longer than 200 meters. What makes this group of hawkers unique is that they are all migrants to the city, coming from Uttar Pradesh, Bihar, Rajasthan and Orissa, the key labor exporting states of India. Some of them have been in Mumbai for more than 25-30 years but remain foreigners to the city, struggling for an identity and basic citizenship rights. Their average day is defined by a struggle to protect their livelihood from the state; who in this case is represented by the civic authority, the Brihan Mumbai Municipal Corporation [BMC]. Most lack access to basic amenities – water, sanitation and shelter; they sleep on the pavements and are frequently crushed to death by callous, drunken drivers. While they struggle to claim a 'human' existence in cities, their families lose out on access to basic entitlements and government subsidies in the villages. This group constitutes the large floating population of the rapidly growing economy of India. Despite contributing heavily to its growth as cheap labor working in the construction, mining, and services sector it gets compromised; rather too often. They have limited voice and no constituency. Quite often, they fail to vote and participate in the electoral processes because of their high mobility.

The quantum of internal movement in India is large. While the official estimates provided by Ministry of Statistics and Programme Implementation (MOSPI) suggest a number of 30 million per year (NSS

¹ The study was carried out in partnership by 5 NGOs – Aajeevika Bureau, Udaipur, Grameen Development Services (GDS), Lucknow, Grameen Evam Samajik Vikas Sansthan (GSVS), Ajmer, Disha, Nasik, and Ghoghardiha Prakhand Swarajya Vikas Sangh, Madhubani. The financial support for the study was provided by Sir Dorabji Tata Trust and Sir Ratan Tata Trust.

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64th round), sector wise employment estimates show that more than 100 million people move every year from rural areas in search of livelihood (Deshingkar & Akhter, 2009). Quite often these migrant workers are away from home at the time of elections. The current voting regulation does not allow them to send their votes through postal ballots.² Working in the informal unorganized sector of the Indian economy and earning meager wages, migrants find it difficult to make a trip home only to cast their votes. In cities where they go to work, they lack voting rights. Betwixt and between, migrants miss out on participating in the only institutional mechanism in the country, the elections, to raise their political views/concerns. They also fail to carry with them the basic entitlements guaranteed by the state such as access to low cost food, health, subsidized education and shelter.

The question of political inclusion of migrant workers has received significant attention in case of international migration. It has also taken various forms such as cross-cultural integration debates (Rex and Singh, 2003), discussion on granting voting and citizenship rights to migrants (Taramoto, 2003) and debates on the merits of extra-territorial voting (Collyer & Vathi, 2007). It is rare that the topic is discussed for people moving within the boundaries of a nation-state, save a few exceptions such as the literature on internal migrants in Mexico by Cornelius (1974) and Abbas (2010). This study aims to raise this question in the context of India, where internal migrants face the problem of political exclusion within their country.

2. Key Research Questions and Methodology

What shape does the question of political inclusion take in a country such as India – where, people are not able to vote because of their mobility, and are denied their citizenship rights and entitlements? Learning from the field and the literature, *Political inclusion* for the study was defined as the right and ability to vote freely, the right to access basic public services and the right to have one's concerns reflected in local/state/central level policy documents. Conceptually, the inquiry was divided into three parts – one aiming at understanding migrants' actual voting behavior, the other two focused on understanding the level of political activism at the source and at the destination³. The key questions of the study were –

- Are seasonal migrant able to vote?
- Where do they feature in the three-tier democratic system?

² The regulations of the Indian Election commission do not seem to pay much heed to the rising incidence of internal mobility in the country. There is a system of postal ballots, wherein citizens can send their votes by post. However, this facility is not available to all citizens. The Conduct of Election Rules, 1961 says that *postal ballots can be exercised by service personnel, people under preventive detention, migrants from Jammu & Kashmir and Bru and Reang tribal migrants from Mizoram and Tripura*. In addition to above, staff deputed on election duty outside the place where they are registered as voters, offices of the President, Vice-president, governors and state ministers can also make use of postal ballots, if required (Ministry of Law and Justice, 1961).

³ It is important to state that the study operates with the premise that the ability to exercise voting rights is a prerequisite and essential to accessing basic citizenship rights. Rather than testing a hypothesis, the investigation focuses on characterization of political participation of migrant workers.

-Who are the key stakeholders in ensuring their political inclusion? and,

-In the cities, how do migrants assert their political agency in the absence of voting rights?

The study was carried out in 15 locations spanning 5 states – UP, Bihar, Maharashtra, Rajasthan and Gujarat (refer Fig 1). The data collection method was primary, using tools such as questionnaires, FGDs and case study collection. Using both quantitative and qualitative methods, the multi-location data collection exercise was complemented with an in-depth case study in Mumbai. The total sample size for the study was 686⁴.

The average age of the respondents was 33 years, most of who belonged to SC/ST (47%) and OBC (31%) categories and had completed education up till the primary or secondary level; 30 percent were illiterate. A significant number (68 per cent)

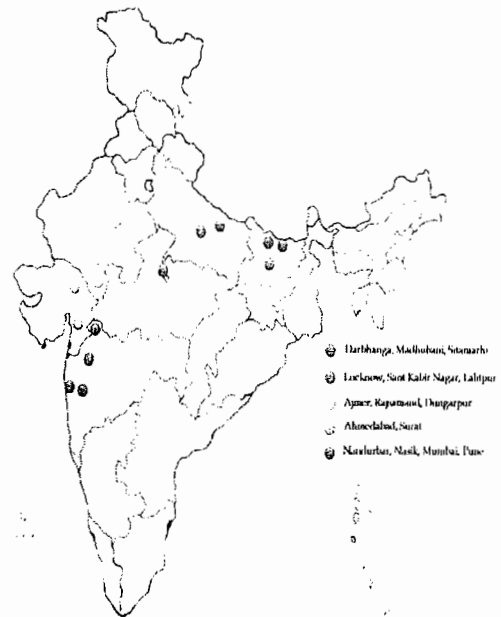


Figure 1: Locations covered in the Study

owned land; however, their key source of livelihood was income from migration. Most of our respondents were male [93 per cent]. The predominant nature of migration observed within the group was individual male migration for a period of 7 months a year, on an average. In most cases, we observed inter-state movement save a few cases such as those of Nasik, Masooda, and Nandurbar, where people found employment within their home state. The largest numbers were employed within the construction sector and most migrants worked as unskilled labor (52%). The average income from migration was reported around Rs. 4000 per month and the average duration for which migrants were working at their current destination was 10 years.

3. Do seasonal migrants vote?

The first question that the study looked at was whether migrants were counted as voters. In India, every voter is issued a voter ID, which has a unique number and it certifies the person's right to vote. In absence of a voter ID or name in the voter list, a person is not eligible to vote. The study found that 78 per cent of the respondents reported to possess voter IDs or have their names in the voter list⁵. Of

⁴ The study focused on first generation migrants. An age bar of 21 was put for a migrant to be considered a respondent. In India, people get the right to vote after the 18 and the study required the respondents to have some voting experience.

⁵ This figure is for the long distance migrants. We have made such a distinction as some of the questions of political inclusion do not remain as acute in case of short distance movement, where people either fall within the boundaries

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greater significance was the fact that close to 60 per cent of respondents had missed voting in elections at least once because they were away from home seeking livelihood options. When adjusted for short distance movement, where it was easier for migrants to come home during elections, the percentage of migrants missing voting rose to 83 per cent.⁶

Migrants were also asked to recall the number of times they had voted. The average for this came to 5 times. There was a highly significant correlation between age of the respondents and number of times voted, with a correlation coefficient of 0.63 ($p < 0.01$). 18 per cent of the respondents reported to have never voted in their life-time. It is notable that many migrants leave their home at an age as early as 13-14. The voter ID is issued at an age of 18 or more. When they become eligible to get a voter ID, their work life is at its peak and their trips to home short in duration. Many migrants reported to not have the time to get their voter IDs made. Some said to have their names in the voter list but did not have a proof by way of an ID card.


4. India's three tier democratic system – where does migrant's vote feature?

Data gathered on the question, "Did you vote in the last election?" revealed that 65 per cent of the respondents had voted in the last Panchayat elections. Compared to this, participation in Lok Sabha elections was 48 per cent (the national average voter turnout for general elections in 2009 was 59.7 per cent). There was a significant drop in participation rates from Panchayat to Lok Sabha elections. We find that as one moves from Panchayat to Vidhan Sabha to Lok Sabha elections, the participation rate comes down by 10.5 per cent at each step. The difference became more pronounced, rising to 14 per cent, when short distance movements were taken off the sample (Figure 2). In case of long distance movement, participation in election ranges from 59 per cent in case of Panchayat election to 31 per cent in Lok Sabha elections.

of their state and/or can easily come back during elections. For the overall sample, voter ID ownership stood at 82 per cent.

⁶ While asking this question, care was taken to clarify that the query related to their absence for livelihood reasons. However, it is unlikely that the rest 17 per cent never missed voting because of migration. At some locations, such as Mumbai, all migrants interviewed said that they had missed voting once or more. There may be issues with the way the question was asked to the respondent.

Table 1: Migrant Workers' Participation in Elections ⁷



Location	Voted in Last Elections			Returning to vote	Source-Destination Distance (Km)
	Panchayat	Vidhan Sabha	Lok Sabha		
Madhubani	51	35	24	25	1200-1500
Pune	36	7	19	25	1200-1500
Surat	49	47	22	39	500-550
Nanddest	70	73	70	40	1000-1200
Darbhanga	54	50	41	41	1200-1500
Sitamarhi	60	58	44	43	1200-1500
S K Nagar	70	42	40	44	1200-1500
Nasik	55	66	61	45	1000-1200
Lucknow	69	38	32	46	300-500
Mumbai	50	28	7	50	1200-1500
Nandurbar	89	93	78	63	300-500
Ahmedabad	41	29	19	67	300-500
Kelwara	66	69	50	69	400-500
Lalitpur	100	100	95	76	200-300
Aspur	84	46	20	76	200-300
Masooda	96	90	82	94	200-300
Average	65	54	44	54	-

Source: Primary survey, 2010-11, Figures in percentages

As part of the study, we asked the migrants if they had ever taken a special trip home to cast their votes during elections. 54 per cent respondents said to have returned to their native villages with the specific purpose of voting during election time. Table 1 provides a break-up across locations on percentage respondents returning home during elections. Higher incidence of return is for short distance movements where it was relatively convenient to return, both in terms of time and money. Of the ones returning home to vote, 74 per cent returned specifically for Panchayat elections, again highlighting the importance attributed to Panchayat elections.

The most commonly cited reason for higher participation in Panchayat elections was social pressure, where a close relative or member from the same community was contesting the elections and participation of the migrant was sought as a duty towards his brethren. Further, since Panchayat election was a close fight in numbers, and people often won or lost by a small margin, it was important for the candidates to reach out to as many persons as possible. The size of migrant streams in these areas was

⁷ In some locations, there isn't much difference between the Panchayat, Vidhan Sabha and Lok Sabha elections. It is mostly in case of short distance movements. There are also some extreme values such as close to cent per cent participation in Panchayat elections in case of Lalitpur and Masooda. A cross-check was done to ascertain if there were problems in data collection. It was found that in both cases the destination was quite near and the candidates were quite active in seeking migrant votes. Nevertheless, one does not completely rule out problems in data collection such as biased sample selection, which might very much be there.

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too significant to ignore. Thus, in case of Panchayat elections, candidates were found to be actively seeking migrant votes and pursuing migrants, not only through their families at source but also at the destination. Reaching out to migrants in cities and funding their return was found to be a significant trend, particularly in case of short distance movements. Close to 50 per cent of the respondents said that their return during elections was funded by the candidates. Migrants were also promised kickbacks as liquor and cash. During our fieldwork in Rajasthan, UP and Maharashtra, we came across elaborate systems where migrant workers were brought home in jeeps and buses at the time of elections. When speaking to some migrants from UP in Mumbai, they revealed that many received return train tickets, while some were brought home in a *Marshall*, a road journey that took 3 days.

5. Political Participation at Source

An important question in the study was how migrants ensured that they are politically relevant in the villages they leave behind and if they lose out on entitlements because of their long absences⁸. When asked in an FGD, if their long absence from home and the inability to vote was of concern to them, one of the migrants said – “*Chinta ka Vishay to hai bin, Zinda Aadmi ko maar daalte hain*” (It is indeed a reason for concern, they declare us dead by scratching our names off the voter lists). Such instances were frequently reported in informal discussions, on how preparation of voter lists was ridden with politics, where people were selectively chosen, or their names struck off, without explanation. Some migrants, when asked why they returned home to vote said that it was a give-and-take relationship. In return of their vote they received access to government schemes. Some also expressed anxiety that if they did not return to vote, the schemes they were eligible for would go to someone else.

We asked a few questions related to migrant's interface with the state and its agents in the villages at source. A particularly revealing observation was that 89 per cent of respondents remembered the name of their Sarpanch; this was true even for people who had been away from their village for more than 25-30 years. A good number reported to have approached the village Sarpanch for some issue or the other (Table 2); in comparison, the incidence of approaching any government officer was lower. The issues for which migrants reported to have approached the Sarpanch/ward member were ration cards, IAY, NREGS payment, drinking water, BPL cards, and land titles/disputes. A small number from Bihar reported to have approached the Sarpanch for voter ID or inclusion of their name in the voter list. During a discussion with a Sarpanch in Bihar, we discovered that migrants frequently approached them for a letter certifying their identity.

⁸ One interesting case from Darbhanga, Bihar, revealed how in areas with high male migration, election results were determined by non-migrant female voters. In one village Bela Navada from Ranipur, one of the polling booths with a voting population of 871 voters, only 250-300 had voted in the last Vidhan Sabha elections while the rest were away at work. This one-third voting population comprised of women primarily.

Table 2: Interface with Elected Leaders and Government Officials

	Yes, once	At several Occasions	Family members did	Yes	No
Ever approached Sarpanch/ward member	15	22	5	43	57
Ever approached a Government Officer	10	16	4	31	69
Ever approached a Corporator at destination	-	-	-	13	87
Ever approached a Govt. Officer at destination	-	-	-	10	90

Source: Primary Survey, 2010-11, Figures in Percentages

During the study, we came across sporadic instances where migrants played a crucial role in the determination of election results in the villages. In Mumbai, a group of migrant hawkers from UP narrated how they had once grouped against a Rajput candidate during Panchayat elections. Migrants had supported one candidate from a backward community and helped him win by returning home to vote in the elections in large numbers. In another context in Bihar, the resentment that PRI members held for migrants was telling. During a discussion with PRI members, a Sarpanch from Darbhanga pointed out “this group is a nuisance, all are absent at the time of voting but are the first ones to ask questions... their names should be taken off the voter list.”

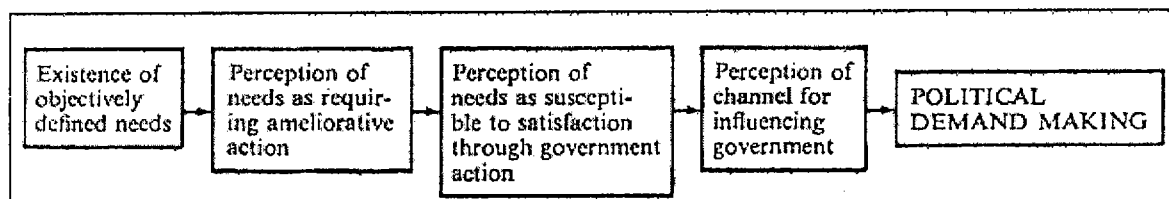
It was visible that migrants were relatively aware and also active in getting their problems resolved by reaching out to the state at their home locations. In contrast, knowledge about the polity at the destination, and instances of reaching out to them was much less (Table 2), an issue that we would delve on in the next section.

6. Asserting political agency in the absence of voting rights

“Because migrants are only entitled to vote in their home location, and not the location of migration, their political agency is limited and their concerns are rarely raised effectively at their destination.” Bird and Deshingkar (2009, p. 5)

Conventional wisdom suggests that migrants have limited political agency at the destination because they do not have voting rights. Some scholars such as Cornelius (1974), however, propose that migrants do assert their political agency, if not through voting then through ‘political demand making’. In his study of internal migrants to Mexico city, Cornelius (1974) makes a differentiation between electoral participation which is a system through which citizens aim to influence resource allocation “by replacing or retaining the incumbent authorities” and political demand making which is defined as “individual or collective activities aimed at extracting certain types of benefits from the political system by influencing the decisions of incumbent government officials” (ibid, p. 1125). However, not all objectively felt needs get translated into political demands (ibid). A number of preconditions need to be fulfilled and stages crossed before a need becomes a political demand (Figure 3). It is important for the migrant workers to first perceive that their needs were “susceptible to satisfaction by government action” and then accordingly pick the channel that would help them obtain the desired outcome.

Figure 2: Stages in Process of Political Demand Creation



Source: Cornelius, 1974, p. 1128

This study made an attempt to identify the various avenues available to migrants in cities to raise their concerns and get their voices heard. It looked at how frequently they sought resolution to their problems and what was the preferred medium, if they chose to make demands on the city and the state.

Migrants were asked to enumerate three problems that concerned them the most in the cities and pick one out of the three which was most hurting. The most common problems referred to were harassment by police officials, harassment by municipality staff (in case of hawkers/vendors) and irregularity of employment. Some also cited problems of shelter and water. Most migrants did not access the government health facility as it cost them the day's wages. In most cases they turned to quacks for a quick relief. Few had access to bank accounts both in the city and at the source and a fewer number had access to the public distribution system.

Table 3: Access to State Services

	Access to PDS	Access to Bank Accounts		Use of State Health Services
		Either in City or Village	Both in city and village	
Ahmedabad	8	50	4	15
Aspur	6	76	8	36
Darbhanga	15	55	6	32
Kelwara	2	67	17	32
Lalitpur	0	68	0	46
Lucknow	6	49	2	40
Madhubani	6	30	0	31
Masooda	18	76	4	46
Mumbai	18	62	7	43
Nandurbar (dest)	17	59	7	57
Nandurbar	4	33	7	74
Nasik	22	51	2	79
Pune	8	46	0	23
S K Nagar	7	56	5	24
Sitamarhi	4	41	4	35
Surat	2	61	4	13
Overall Average	8	56	5	39

Source: Primary Survey, 2010-11, Figures in percentages

They were also asked if they had taken any steps for their resolution. There weren't many instances where people had attempted a resolution of their problems, either individually or as a collective (refer Table 2). Contrary to the source region, where migrants remembered the name of their Sarpanch and reached out to him/her with specific concerns, in the cities, only 18 per cent of the migrants knew who the local Corporator (representative of the local self governance body) was. Fewer workers had approached the Corporator. Wherever migrant workers approached the Corporator, the concerns were related to work place issues, shelter and water primarily. The instance of reaching out to government officials was lesser, at 11 per cent.

10 per cent of the respondents reported to possess voter IDs at the destination while 8 per cent had voted at the destination. In most cases these voter IDs were enabled with the help of local leaders who were running for elections and wanted their voter base increased. There were several anecdotes on the opportunistic political inclusion efforts on how political parties carried out special drives for increasing their membership and migrants served as an easy target for the same. There were also stories on political parties offering voter IDs to Bangladeshi immigrants to increase their voter base.

Table 4: Issues for which migrants approach local Politicians

Migrants Approached the Corporator for...	
Shelter	20
Electricity	12
Water	15
Education	3
Work Place Issues	30
Physical/Verbal Abuse	5
Theft	3
Others	12

Source: Primary Survey, 2010-11, n = 151, figures in per cent

During discussions with migrants at the work place, they shared that their main concern was to earn as much money as possible and send it home; after a long day of hard manual labor they hardly had any energy left to worry about local politics - "14-14 ghante ki masbakkat ke baad kiske shareer mein itni jaan bachti hai ki ghar aur pam ki samasya ko lekar corporator ke paas jaaye... hum yehan do roti kamaane aaye hain, rajniti karne nabin" (None of us have any energy left in our bodies after 14 hours of hard labor, we have come here to earn subsistence for our families, not to do politics).

It was important to understand, to whom migrants reached out in case of an emergency. Harris (2005) in his study of the urban poor in Delhi and the instance of problem solving within that community says that poor in the slums did not exhibit much initiative to solve their problems. The ones, who did, reached out to their political representatives more than any other group. There were hardly any civil society representatives or labor unions in the frame and the poor trusted the local politicians for resolution of their problems. In this study, when asked who they reached out to in case of need or an emergency, most migrants cited the names of their contractor or their employer. It was through this group that the migrants negotiated with the state and its agents. There is one interesting case that deserves a mention –

In Santacruz east, we came across an interesting case of Rambabu that deserves a mention here. Rambabu is a 70 plus migrant from UP who enjoys great reputation within the local migrant hawker community. He hosted information on arrival

or municipality vans and often informed hawkers in advance to take necessary safeguard. He also served as the channel through which bribes were routed to government officers. If a certain hawker was held by the municipality he helped them negotiate and strike a deal. The amount of influence Rambabu wielded in the community was remarkable. One day we came across one instance where goods of one new migrant from UP, Laxman got burnt because of a spark from a government construction site. Laxman's goods were lying below the skywalk, where the welding activity was being carried out. Rambabu, who was the gatekeeper for this group made a strong case in front of the municipality commissioner and got a reimbursement of Rs. 3000." It would not have been possible in absence of Rambabu who often acted as a liaisioning agent and problem solver for the migrant community in the area.

Compared to the place of origin, where migrants show a reasonable degree of political awareness and participation, the engagement with political processes at the destination was significantly low. In the cities, migrants were mostly found to be resigned to fate, not seeing much merit in engaging with the state. Initiatives to solve problems, individually or as a collective, were few to come by. These were the only two instances of collectivization that we came across during the study. This small group which said to have shown some pro-activeness in addressing their own problems was concentrated in Maharashtra – one was a collective in Santacruz (east) and one union in Nashik. The formation of one collective was triggered by a threat to their livelihood, while the other was triggered by threat to shelter. In general, migrants were found to have negligible interface with politicians or civic authorities in cities; if there was an interface it was a forced interface, when their right to livelihood was threatened.

7. Conclusion

The study shows that a large number of migrants are unable to participate in the electoral process, both at the source, and at the destination. In Panchayat elections, which are often a closer fight in numbers, there are special efforts by candidates, to bring home migrants at the time of elections; more if it's a case of short distance movement. However, these are all instances of opportunistic political inclusion, where migrants are seen as a ready-to-tap vote bank. Such inclusion does not give them any political voice or reach to policy. During the study one hardly came across instances of migrants' concerns being raised by political candidates. Though migrants exhibited a relatively greater political agency at the source, the expression was related to addressing day to day concerns such as installation of hand pumps, access to Indira Awas, NREGS etc. and not for broader issues such as fairness in the process of disbursing state subsidies, creating transparent public information systems so that their families have a better access to schemes etc.

At the destination, where migrants live under sub-human conditions, one again did not see any initiatives for problem resolution. The few instances of collectivisation that came up were mostly related to livelihood, either to demand better wages or to protect ones livelihood. It is noteworthy that wherever migrants have mobilized themselves, it has been on the issue of livelihood, suggesting that the engagement of migrants is predominantly economic and that is how the city and the migrant both visualize it.

There is an inherent dichotomy between pursuing one's livelihood and exercising one's voting franchise. In the workshop held to present this study, the keynote speaker Dr. Jagdeep Chhokar pointed out


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"Being a registered voter, by definition, implies stability, whereas migration or "being a migrant" implies mobility. There is a dichotomy between "stability" for voting and "mobility" for livelihood and the choice between voting and livelihood is obvious. The question, however, is whether people have to necessarily opt between the two? And, if a solution can be worked out which would enable political inclusion of migrant workers?

Sainath (2005) was the first to bring the issue of political exclusion of seasonal migrant workers in India to public notice. He suggested that election timings be made in sync with migration cycles. With the variety in migration cycles, this doesn't sound like a realistic proposition. It would require reflection on what the possible strategies could be – Can it be resolved through a better voting infrastructure? Can the system of postal ballots be extended to the migrant community? Given the large numbers (~ 100 million voters), it would require a very high level of scrutiny and also demand a large resource provisioning. Creating electoral and political literacy and awareness among migrant communities would also have to be undertaken alongside.

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Ukrainian style



Annexure - P/2

Indian Constitutional Law and Philosophy.

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ELECTIONS / ELECTIONS AND VOTING RIGHTS / FREE SPEECH

Guest Post: Migrant Workers and the Right to Vote

✓ SEPTEMBER 21, 2020

✓ GAUTAM BHATIA

✓ 1 COMMENT

[This is a guest post by **Radhika Goyal** and **Sharvari Kothawade**.]

An unplanned fallout of the COVID-19 lockdown was a gargantuan migrant worker crisis which, six months down the road, is met with no accountability (<https://www.ndtv.com/india-news/no-data-on-migrant-deaths-so-no-compensation-government-to-parliament-2295409>) from the Parliament. Some have argued that the wilful ignorance on the part of governments is directly attributable to migrants' inability to cast their vote and form a concrete electoral base whose interests must be seen to be served (here <https://indianexpress.com/article/opinion/columns/election-comission-right-to-vote-migrant-workers-6511095/>), and here (<https://thewire.in/rights/postal-ballot-votes-migrant-workers>)).

In this post we argue that the lack of *access* to the vote by migrant workers constitutes a violation of their fundamental freedom to vote, read under Art. 19(1)(a) of the Indian Constitution. To that end we, (i) argue that migrants, particularly circular migrants, should constitute a separate class of voters; (ii) demonstrate that this class of voters have a fundamental freedom to access the vote, which is being denied to them; (iii) analyse the existing mechanism of the ballot, including the postal ballot; and (iv) suggest ways to mould it to effectively serve the migrants' freedom to access the vote.

Migrants as a separate 'class' of voters

Migrant workers, especially circular or short-term migrants, constituting tens of millions of citizens, are some of the least represented groups in the ballot (here <https://www.countercurrents.org/ie-sainath150304.htm>) and here (<https://www.thehindu.com/news/national/migrant-labourers-are-the-most-disenfranchised-invisible-citizens/article31717502.ece>)). Circular migrant workers, distinguished from permanent migrants both of the formal and the informal sector, are a predominantly mobile class who alternate between their home states of residence and their host cities of work, throughout the year. A report of the National Commission for Enterprises in the Unorganized Sector in 2007, observed that SC/ST/OBCs who were often landless and lacking in formal education were overrepresented in the group of circular migrant workers (at pgs 96, 128 and 136 (https://dcmsme.gov.in/Condition_of_workers_sep_2007.pdf)). Seasonal patterns of harvest and general rural distress requires that they temporarily move to the city for work but many continue to maintain long term familial relationships with their home states. For them, working at host cities are

mean to maximize savings so as to invest in their long-term futures back home (at page 30 (<http://www.aajeevika.org/assets/pdfs/Unlocking%20the%20Urban.pdf>)). This constantly mobile citizenry is at odds with the sedentary nature of citizenship-based entitlements that are available from the State (such as ration cards), in this case the entitlement of the vote.

Freedom to access the vote

Every eligible voter is registered with a singular ID at a particular constituency in order to participate in elections to the Lok Sabha, the State Legislative Assemblies and the Panchayat/Municipal elections. The issue of disenfranchisement, faced by circular migrant workers, is not one arising out of the denial of the right to vote understood as a statutory right (<https://indiankanoon.org/doc/46932/>) and conferred under Article 326 of the Indian Constitution, but as a systemic denial of their freedom to access the vote. The Supreme Court, in the 2003 case of *People's Union of Civil Liberties v. Union of India* (<https://indiankanoon.org/doc/15059075/>) has drawn a distinction between the "conferment of the right to vote" and the "culmination of that right in the final act of expressing choice towards a particular candidate." The Court, in a series of cases, including the 2006 case of *Kuldip Nayyar* (<https://indiankanoon.org/doc/1903935/>) and 2013 case of *People's Union of Civil Liberties* (<https://indiankanoon.org/doc/58263027/>) has elevated the latter to a fundamental freedom under Article 19(1)(a) holding that "Freedom of voting as distinct from right to vote is thus a species of freedom of expression."

Fundamental freedoms guaranteed under the Indian Constitution also carry corresponding duties on the State to ensure conditions that enable its enjoyment. The Supreme Court, in the 2019 case of *Indibilty Creative v. Government of West Bengal* (<https://indiankanoon.org/doc/55820570/>), has recognized this principle and directed the state machineries of West Bengal to ensure adequate protection that would *aid and enable* the petitioner to truly exercise their freedoms under Art.19(1)(a) and screen their movie.

This fundamental right to access the vote is denied to circular migrant workers in two key ways: first, a voter may only be enrolled to vote in the constituency in which they are 'ordinarily resident'; and second, they can only access their franchise through in-person voting at their registered constituency. While these are rooted in considerations of electoral efficiency and preventing voter duplication, their underlying assumptions of a sedentary population end up excluding circular migrant workers in obvious ways.

Problems and Possible Solutions

A registered voter has the option to change their constituency after having ordinarily resided in the same. However, circular migrant workers, as temporary visitors, often may not qualify as 'ordinarily resident' (as defined in Section 20, Representation of People Act, 1950 read with Form 6, Registration of Electors' Rules, 1961) in their host cities where they stay for uncertain periods of time. While there is no codified threshold for duration of stay, there is a practical difficulty of obtaining any proof of ordinary residence in their host cities, where they often live in makeshift temporary housing, open settlements and access entitlements like water and gas through a variety of uncertain sources. Their reality is invisibilized in the requirement of documentary proof such as a passbook, rent agreement, and utility bills, none of which may be accessible to them. Circular migrant workers also hesitate to go through this complicated and often hostile process of registering or transferring their vote if they are only temporary visitors.

A potential solution to the problem would be to amend this process to reflect the needs of migrant workers. For instance, the Election Commission of India, has provided an exception from documentation for homeless people, and allowed for verification through block officers in Form 6 of the Registration of Electors' Rules, 1961. Similar solutions must be explored so that circular migrant

workers are provided a voice in the governance of the cities they help build. This would be an important step for those circular migrant workers that come to the same host city for work, year after year. It would also have the benefit of giving migrant workers a direct voice in cities where much of their precarity and marginalization is experienced.

However, it is uncertain whether this would fit with the logic of circular migrant workers who choose to maintain long-term connections in their home states and may travel across various cities for work.

A [study](http://www.aajeevika.org/assets/pdfs/Political%20Inclusion%20of%20Migrant%20Workers%20in%20India.pdf) (<http://www.aajeevika.org/assets/pdfs/Political%20Inclusion%20of%20Migrant%20Workers%20in%20India.pdf>), conducted by Aajeevika Bureau, showed that migrant workers are more likely to be enrolled in their home states than host cities. The report also showed that circular migrant workers had many electoral concerns back in their home states, such as improper removal of names from electoral rolls and continued access to government schemes. In this context, the requirement to vote in-person means that circular migrant workers have to travel to their home states to cast their vote, at great personal cost in terms of their time and money, resulting in dismal voting turnouts.

We argue that access to the existing scheme of electronically-transmitted postal ballot (ETPB), will allow that subset of circular migrant workers who are enrolled as voters in their home states, and prefer to continue being so, to access the vote. While it will not give migrant workers a direct voice in their city of work, it will introduce the circular migrant workers as a key political constituency in their home states, by enabling participation and representation at the home state and national elections. Political parties, at both the state and national level, will be consequently compelled to take on their cause, through inter-state or centre-state dialogue.

Extending the Existing Mechanism for Postal Ballots

Section 60(c) of the Representation of People Act, 1951 empowers the Election Commission of India, in consultation with the Government, to notify “classes” of voters who are unable to vote in-person at their constituencies owing to their physical or social circumstances. Once notified, the voters are eligible for the ETPB system (<https://eci.gov.in/it-applications/web-applications/etpbs-r7/>), which is a one-way electronic transmission of ballots, where the ballot is both system-generated and protected by dual encryption in order to safeguard against voter fraud. In addition, the postal ballot is subject to oversight by the Returning Officer and through more traditional ways of redressal. This mechanism operates separately from the regular process of in-person voting and doesn’t preclude the opportunity or incentive to permanently migrate and change one’s constituency after having ordinarily resided in the same.

Over the years, there have been several notifications that have attempted to identify new classes of voters, thereby upholding the spirit of free and fair elections for all. Postal ballots have been extended to defence personnel, persons with disabilities and people over 80. In the 2019 general elections, the ETPB system was accessed by 18 lakh (<https://eci.gov.in/it-applications/web-applications/etpbs-r7/>) defence personnel across the country. In 2019, in the backdrop of a PIL before the Supreme Court, a bill was floated to extend a similar remote voting possibility to over 3.1 crore NRIs in order to “boost their participation in nation-building”.

The challenge before the Election Commission is to effectively identify circular migrant workers, in which they can be guided, but not limited, by the framework of the Inter-State Migrant Workmen Act, 1979.

Constitutional mechanisms must adapt to societal change, in order to remain relevant. At the time of independence, the universal vote represented a commitment to subversion of economic power structures through political access. In the First Roundtable Conference held on December 12, 1930, Dr. B.R. Ambedkar, staunchly opposing any restrictions on suffrage rights, had stated: “Just as the

capitalist must have the power, if he is to have any constitution, to dictate how he shall live on terms of associated life with the labor, surely the laborer is entitled also to have the power to regulate the terms on which he shall live with his capitalist master." In the globalized world we presently inhabit, it would be a constitutional infirmity, if a mobile working class is effectively denied their franchise due to their socio-economic location. The Prime Minister responded to an established claim for portability of welfare entitlements (<https://www.thehindu.com/news/national/what-is-ration-card-portability/article29363067.ece>), by working towards universalizing the ration card. In a similar vein, it is incumbent upon the constitutional machinery to re-infuse meaning into the enduring commitment of- "One person, one vote. One vote, one value (<https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today>)".

[This post was informed by the authors' research for the Citizens for Justice and Peace's migrant voter rights initiative.]

➤ FREEDOM TO VOTE, MIGRANTS, RIGHT TO VOTE, VOTING RIGHTS

One thought on "Guest Post: Migrant Workers and the Right to Vote"

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1/23/2021

Teesta Setalvad writes: The post COVID-19 India needs to recall this rich history



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ANNEXURE-A/3

1-01

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The Indian EXPRESS

Saturday, January 23, 2021

Home / Opinion / Columns / The migrant's right to vote: EC must ensure optimal conditions for exercise of this freedom

The migrant's right to vote: EC must ensure optimal conditions for exercise of this freedom

Teesta Setalvad writes: India's gaze has, for the first time, been turned towards the "migrant labourer". For Indian democracy to learn the right lessons from the plight that a sudden lockdown caused this vast section of Indians, a condition that has been brought before the more settled and privileged sections, including politicians, one crucial element must surely be to secure to them the right and facility to vote.

Written by **Teesta Setalvad** | New Delhi | Updated: July 18, 2020 2:51:20 pm



A 2012 study showed that 78 per cent of migrant labourers surveyed possessed voter ID cards and had names on voters lists in their home cities.

"The Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule, and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort, and the decent living of the common man" — Alladi Krishnaswamy Ayyar

While the US granted universal adult franchise incrementally, India moved from a restrictive 15 per cent of Indians having (limited) voting rights to universal adult franchise, driven by the transformative impetus of the national movement and the ideals of equality and non-discrimination that it threw up.

When it came to voting rights, it was B R Ambedkar's clarity of vision that resulted in Article 326 of the Constitution, which not only provided that elections be held on the basis of universal adult franchise, but ensured that elitist notions of qualifications — such as property ownership — did not exclude individuals from either voting or standing for elections. Ambedkar had influenced public opinion on the matter for decades, giving evidence before the Southborough committee, which was recording evidence on designing representative institutions for the Indian Dominion in 1919. He emphasised that, ultimately, a democratic government was inseparable from the right to vote, and it was voting that would prove to be (one of) the harbinger(s) of political education.

ALMA MATER WORLD DEBATE

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Opinion | We need to provide undivided attention to the working conditions of migrants

The post COVID-19 India needs to recall this rich history. It is the will of all the Indian people getting reflected in policy and the choices of parties of governance through the ballot that epitomises the very foundations of a representative democracy. With all attendant ills of unchecked money power in politics, class, caste and community interests overshadowing a modern and truly transparent electoral process, India cannot look itself in the eye and explain how such a large section of its population — simply by virtue of its work definition, which is being away from home — is excluded from this basic constitutional right.

India's gaze has, for the first time, been turned towards the "migrant labourer". For Indian democracy to learn the right lessons from the plight that a sudden lockdown caused this vast section of Indians, a condition that has been brought before the more settled and privileged sections, including politicians, one crucial element must surely be to secure to them the right and facility to vote.

The Constitution guarantees freedom of movement to every citizen and freedom to reside in any part of the country. According to the latest 2011 Census, the number of internal migrants stand at 450 million (45 crore), a 45 per cent surge from the 2001 census. Among these, 26 per cent of the migration, that is, 117 million (11.7 crore), occurs inter-district within the same state while 12 per cent of the migration, that is, 54 million (5.4 crore), occurs inter-state. Both official and independent experts admit that this number is underestimated. Circular migration accounts for those migrants who have not permanently relocated to host cities, and instead circulate between host and home cities. For instance, short-term and circular migration could itself amount to 60-65 million migrants (6-6.5 crore), which including family



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Opinion | Society needs to regain moral compass, address plight of people in cities whose precarious livelihoods keep them at My Account 'om destitution

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Migrant labourers mostly hail from most poverty-driven rural areas and from among the most marginalised sections (SC/STs and OBCs, and other minorities, including Muslims). They are mostly uneducated, and lack assets including land. As of 2011, Uttar Pradesh and Bihar were the largest source of inter-state migrants, with 83 lakh and 63 lakh migrants respectively.

Most migrant voters have voter cards for their home constituency. A 2012 study showed that 78 per cent of migrant labourers surveyed possessed voter ID cards and had names on voters lists in their home cities. Economic constraints disable a majority of them from voting as they cannot, in the midst of harsh work cycles, commute to their home states on the polling day. One survey shows that only 48 per cent of those surveyed voted in the 2009 Lok Sabha elections, when the national average was 59.7 per cent. These patterns have stayed consistent. In the 2019 Lok Sabha polls, major sender states such as Bihar and UP had among the lowest voter turnout rates at 57.33 per cent and 59.21 per cent respectively, while the national average was 67.4 per cent.

Given the nature of migration being circular and seasonal, migrants are not permanent/long-term residents in host cities and do not satisfy the requirements of being an “ordinary resident” under Section 20 of the Representation of People Act, (RP Act), in the host state, to obtain voter cards. They are, therefore, unable to transfer their constituency. Only 10 per cent of migrant labourers surveyed possessed voter IDs in their host cities.

The Inter-State Migrant Workmen Act, 1979 was passed to ensure guarantees against the exploitation of migrant labourers. This law requires the Centre (and states) to maintain updated records of such work. This data needs to be accurately maintained and sourced by the Election Commission of India (ECI).

The ECI has under Section 60(c) of the RP Act the power to notify a certain class of persons to vote via postal ballot. The ECI's much proclaimed mission to ensure “no voters are left behind” has resulted in attempts to ensure a secure system of postal



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The Supreme Court has interpreted the right to vote as an extension of the fundamental right of the freedom of expression. The My Account th it a positive obligation on the ECI to ensure optimal conditions for the exercise of this freedom. Ensuring this fundamental freedom to the Indian migrant worker, regardless of caste, gender, creed, ethnicity or faith, therefore, is a constitutional obligation of the ECI. The failure to ensure that this "class of Indians" is legitimately allowed to exercise its franchise is tantamount to invisibilising their security, dignity and overall well-being from the political discourse of the country.

Ambedkar's prescience on right to vote for "Untouchables" bears note. He had observed that, "the right of representation and the right to hold office under the State are the two most important rights that make up citizenship". India would do well to extend this vision to a long invisibilised section of Indians to ensure that they, too, are educated into political life.

This article first appeared in the print edition on July 18 under the title "The migrant's right to vote."

The writer is secretary, Citizens for Justice and Peace. She received research assistance from Sanchita Kadam, Radhika Goyal and Sharvari Kothawade, all lawyers. The subject matter of the article was part of a collective memorandum submitted to the ECI by Citizens for Justice and Peace (cjp.org.in) on July 10, 2019, which has been co-signed by the Lok Shakti Abhiyan, Odisha, the All India Union of Forest Working Peoples (AIUFWP), Bangla Sanskriti Mancha and Bharatiya Nagarik Adhikar Suraksha Manch, Assam

Opinion | A migrant's voice: 'In the city I feel no fear... there is nothing in the village'



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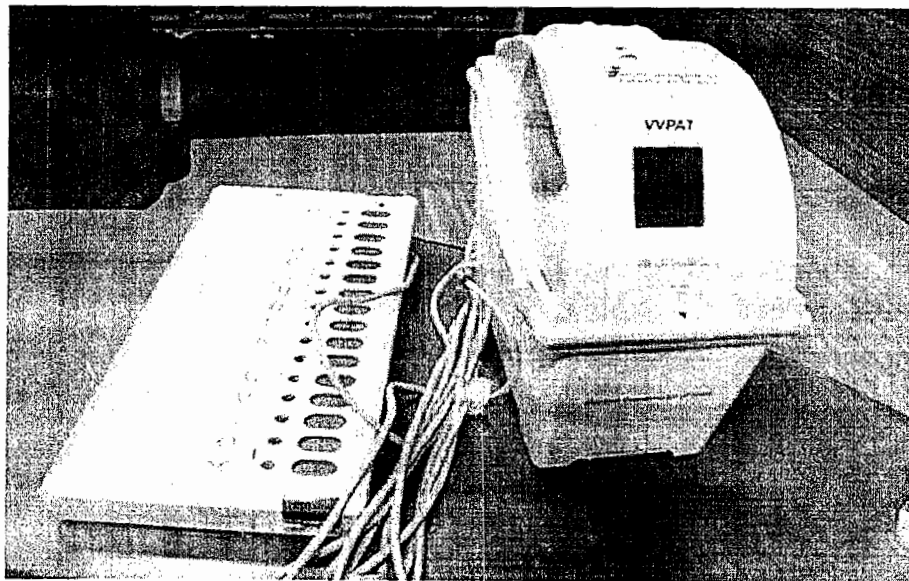
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ANNEXURE - P/4

10/6

Policy Watch

No. 6



Making Electronic Voting Machines Tamper-proof: Some Administrative and Technical Suggestions

K. Ashok Vardhan Shetty



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Cover Photo: An Electronic Voting Machine and VVPAT unit displayed during a press conference at the Deputy Commissioner's office in Mangaluru, Karnataka, on April 3, 2018. File Photo: H.S. Manjunath.

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**Making Electronic Voting Machines Tamper-proof:
Some Administrative and Technical Suggestions**

K. Ashok Vardhan Shetty



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ABSTRACT

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The Election Commission of India (ECI) has been consistently claiming that its Electronic Voting Machines (EVMs) are unique and that tampering is not feasible *under real election conditions* with its security protocol and administrative safeguards in place.

Notwithstanding the ECI's claims, at various points in time, the entire spectrum of political parties in India [including BJP and Congress] have expressed their reservations about the integrity of its EVMs. There have also been demands to revert to paper ballots. Confidence in the integrity of EVMs is important for voters to trust the outcomes of elections. The ECI cannot allow this confidence to be eroded.

It is true that Indian EVMs cannot be hacked because they are not connected to any network and their software is 'burnt' into the CPU and cannot be rewritten after manufacture. But what if dishonest insiders and criminals get physical access to the EVMs and replace the EVM's non-hackable CPU with a *look-alike but hackable CPU* that can be programmed to count votes dishonestly together with an embedded Bluetooth device that allows it to be remote controlled? All the features and safeguards relied on by the ECI can be easily negated by *insider fraud* for which there is scope at three stages: (1) at the EVMs manufacturing stage, (2) at the district level, during the long non-election period, when the EVMs are stored in archaic warehouses in multiple locations with inadequate security systems, and (3) at the stage of 'first level checks' prior to an election when the EVMs are serviced by authorised technicians from the EVM manufacturers.

The threats are real but luckily, the remedies are simple and effective: (1) use of Authentication Units *before the polls* to weed out counterfeit/tampered EVMs, and (2) effective use of Voter Verified Paper Audit Trail (VVPAT) system *at the time of counting* to guard against EVM tampering or malfunction. Both are essential. But the ECI has dragged its feet since 2006 in procuring Authentication Units, and has prescribed a minuscule sample of one EVM per Assembly Constituency for hand-counting of VVPAT slips which *is grossly inadequate, statistically unsound, and nearly as bad as not implementing VVPAT at all*.

In this Policy Watch, **K. Ashok Vardhan Shetty**, a former Indian Administrative Service (IAS) officer, examines the vulnerabilities of EVMs in the light of the ECI's claims thereof, the adequacy of its security protocol and administrative safeguards, and the risks due to the perfunctory implementation of VVPAT systems as done in the recent Assembly Elections. He provides several practical administrative and technical suggestions to make Indian EVMs tamper-proof. His interest in this matter is strictly apolitical and nothing more than preserving the integrity of India's electoral process and enhancing its credibility in the eyes of political parties and voters.

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V. PERFUNCTORY IMPLEMENTATION OF VVPAT

Ideally, the controversy over EVMs should have been laid to rest once the Supreme Court had ordered the implementation of EVMs with VVPAT in 2013. If this has not happened, it is partly due to the inordinate delay in procurement of VVPAT units and partly due to the ECI's questionable action of prescribing a minuscule sample of EVMs for hand-counting of VVPAT slips.

After some initial press reports stating that VVPAT slips may be counted in respect of 10 per cent or 5 per cent of the EVMs, the ECI threw a bombshell by ordering the hand counting of VVPAT slips *only for one randomly chosen polling station (i.e. one EVM) per Assembly Constituency* in the Assembly Elections for Gujarat and Himachal Pradesh held in December 2017 and Karnataka in May 2018. This worked out to just 182 out of 50,128 polling stations (or 0.36 per cent of the EVMs) in Gujarat; to just 68 out of 7,521 polling stations (or 0.90 per cent of the EVMs) in Himachal Pradesh; and to just 224 out of 56,696 polling stations (or 0.40 per cent of the EVMs) in Karnataka. *Such a low percentage defeats the very purpose of introducing VVPAT and is fraught with all the risks of conducting elections with paperless EVMs.*

Statistically Unsound: Consider a hypothetical example where 4 Assembly Constituencies P, Q, R and S have 50, 100, 200 and 300 polling stations in them respectively. The ECI's action of prescribing a uniform sample size of "one polling station (EVM) per Assembly Constituency" cannot obviously be correct for all the 4 constituencies. Since the number of polling stations in an Assembly Constituency varies widely from State to State and even within a State, the sample size should clearly be different for different Assembly Constituencies and bear a relation to the number of polling stations in the constituency.

In fact, there cannot even be a uniform percentage for sample size for all Assembly Constituencies as per standard statistical sampling theory. As we shall show shortly, if 'N' is the Population Size and 'n' the Sample Size, then the smaller the value of N, the greater will be the value of n/N (i.e. the Sample Size relative to the Population Size). Thus, smaller States and smaller constituencies will have *relatively* larger Sample Sizes when expressed as a fraction of Population Sizes.

There are ready reckoners based on *standard statistical sampling theory* which can tell us as to what would be the *Margin of Error* for the chosen Sample Size for a given *Population Size* and a given *Confidence Level*.⁶ Taking the total number of polling stations in the State as the Population Size and the total number of EVMs taken up for hand counting of paper slips (which is equal to the number of Assembly Constituencies in the State) as Sample Size, and assuming Confidence Levels of 95 per cent and 99 per cent, Table 1 shows the resulting Margins of Error for the ECI-prescribed sample size in respect of Gujarat, Himachal Pradesh and Karnataka.

Table 1
Margins of Error for ECI-prescribed Sample Size

State	Population Size (Total Number of Polling Stations)	Sample Size (Number of EVMs chosen for hand counting = Total number of Assembly Constituencies)	Confidence Level (%)	Margin of Error (%)
Gujarat	50,128	182	95	7
			99	10
H.P	7521	68	95	12
			99	16
Karnataka	56,696	224	95	7
			99	9

It is evident that the ECI-prescribed sample size for hand-counting of VVPAT slips is far too small leading to very high margins of error which are unacceptable in a democracy. It is open to legal challenge on this score. The ECI seems to have chosen the sample size arbitrarily when, in fact, its selection should have been grounded in standard statistical sampling theory.

Ready reckoners based on standard statistical sampling theory can also tell us as to *what should be the statistically significant Sample Size*⁷ for a given *Population Size*, a given *Confidence Level* and the chosen *Margin of Error*.

⁶ A Web-based ready reckoner which can calculate the *Margin of Error* for a given *Population Size*, *Sample Size* and *Confidence Level* based on standard statistical sampling theory is available at https://www.surveymonkey.com/mp/margin-of-error-calculator/?utm_source=mp&utm_source2=sample_size_calculator

⁷ A Web-based ready reckoner which can calculate the statistically significant *Sample Size* for a given *Population Size*, *Confidence Level* and the chosen *Margin of Error* based on standard statistical sampling theory is available at

It is suggested that the ECI should choose the Population Size (N), the Confidence Level and the Margin of Error in such a way that the *resulting* Sample Size (n) is *reasonable* (neither too small nor too large), *statistically sound* and *administratively viable*.

- The Population Size (N) can be either the total number of polling stations in the State as a whole or the total number of polling stations in each Assembly Constituency.
- The Confidence Level can be either 99 per cent or 95 per cent but not less. In my opinion, a Confidence Level of 95 per cent would be adequate.
- The Margin of Error can be either 1 per cent or 2 per cent but not more. In my opinion, a Margin of Error of 2 per cent is adequate.

For our hypothetical Assembly Constituencies P, Q, R and S (having 50, 100, 200 and 300 polling stations in them respectively), if we assume a Confidence Level of 95% and a Margin of Error of 2%, then as seen from **Table 2**, the resulting sample size is nearly as large as the population size. *So an Assembly Constituency is not an appropriate unit for the purpose of Population Size*

Table 2
Statistically Significant Sample Sizes if Assembly Constituency is
the unit for Population Size

For Confidence Level of 95% and Margin of Error of 2%

ASSEMBLY CONSTITUENCY	POPULATION SIZE (N) [TOTAL NUMBER OF POLLING STATIONS IN THE CONSTITUENCY]	SAMPLE SIZE (N) [NUMBER OF EVMS TO BE HAND COUNTED]
P	50	49
Q	100	97
R	200	185
S	300	267

Hence the ECI should treat the State as a whole as the unit for the purpose of Population Size, and arrive at the Sample Size (using the ready reckoner) for a Confidence Level of 95 per cent, and a Margin of Error of 2 per cent. **Table 3** suggests the sample sizes under these conditions.

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Since this sample is for the State as a whole, the ECI must do stratified sampling by treating each Assembly Constituency as a 'stratum' and apportion the total sample among the various Assembly Constituencies in proportion to the number of polling stations in each Constituency.

Table 3
**Statistically Significant Sample Sizes if the State as a whole is
the unit for Population Size**

For Confidence Level of 95% and Margin of Error of 2%

State	Population Size (N) [Total Number of Polling Stations in the State as a Whole]	Sample Size (N) Required for the State as a Whole [Number Of EVMs to be chosen for Hand Counting]	% of Sample Size W.R.T. Population Size	Average Number of EVMS to be Hand Counted Per Assembly Constituency
Gujarat	50,128	2,292	5	13
H.P	7,521	1,821	24	27
Karnataka	56,696	2,304	4	10

The *average number of EVMS to be hand counted per Assembly Constituency* has been indicated so as to give an 'order-of-magnitude' figure vis-a-vis the present figure of one EVM per constituency. For example, in Karnataka, *on an average*, 10 EVMS *should* have been hand counted per Assembly Constituency instead of the 1 EVM that was actually hand counted. As already stated, the *actual number* will vary from constituency to constituency.

If the ECI desires, it may refine the stratified sampling further by identifying appropriate *sub-strata* in order to make the samples truly representative of the constituency as a whole. A typical Assembly Constituency may have several different groups (or 'sub-strata') of polling stations each with *different levels of vulnerability*: urban, semi-urban, rural, those in remote hilly/desert/forest areas, those with very heavy voter turnout (> 80 per cent), those with moderate voter turnout (50 per cent to 80 per cent), those with low voter turnout (<50 per cent), and so on. (There could be some overlapping among these groups).

Let us say that the following sub-strata are chosen: (1) polling stations with heavy voter turnout (>80%), (2) polling stations with moderate voter turnout (between 50% and 80%), and (3) polling stations with low voter turnout (< 50%). The ECI may further apportion an Assembly Constituency's sample among these 3 sub-strata in proportion to the number of polling stations falling within each of the sub-strata.

It is best that the ECI do the necessary calculations and communicate to the Chief Electoral Officer (CEO) of the State the sample size for hand counting of EVMS' VVPAT slips (1) for the State as a whole, (2) for each Assembly Constituency, and (3) for each of the sub-strata within the constituency (if any prescribed)

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Why is the ECI reluctant? What could be the reasons for the ECI's reluctance to order the counting of VVPAT slips for a larger sample of EVMs? I see a few plausible justifications (in italics) and have offered my responses to the same:

- *The EVMs used in India are reliable and tamper-proof and counting VVPAT slips of more than one polling station per Assembly Constituency is a waste of time and effort.*

Any electronic equipment is *inherently* subject to equipment malfunction and too much trust in the EVM's reliability would be misplaced. Hand counting of an adequate sample of VVPAT slips offers protection not just against the possibility of EVM tampering but also against the possibility of EVM malfunction which can result in wrong totalling and change of election outcomes just as EVM tampering can. Administrative safeguards notwithstanding, why trust paperless EVMs which lack transparency and verifiability? After all, VVPAT is an additional safeguard, a very critical safeguard, which can help detect frauds that would otherwise go undetected. Conducting elections without VVPAT is like trying to eliminate accounting frauds and mistakes by eliminating the ability to detect them i.e. by eliminating the audit department whereas choosing a minuscule sample of EVMs for hand counting VVPAT slips is like severely downsizing the audit department so as to render it ineffective!

- *The hand counting of a larger sample of VVPAT slips can lead to delays of several hours or even a couple of days in the announcement of results.*

Surely, in something as important as ensuring the integrity of the election process, a delay of a few hours or even a couple of days shouldn't matter at all? When the entire election process, from the date of announcement to the date of counting, lasts for 2-3 months, there is no reason why unseemly hurry should be shown only in the case of counting. In the rush to declare results and the winners, the ECI cannot turn a blind eye to the possibilities of wrong totalling due to EVM malfunction or EVM tampering.

- *Why count a larger sample of VVPAT slips when the voters have already verified their VVPAT slips at the time of polling?*

Video recordings of voter behaviour during actual elections in India and elsewhere have revealed that most voters do not verify their choices by reading the VVPAT slip after casting their vote. There are many illiterate voters, and even among the literate voters, many are not techno-savvy, and may not verify the VVPAT slip within the window of 7 seconds available.

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It will require plenty of voter training to make the voters verify the VVPAT slip immediately after casting their vote. So, the absence of complaints from voters must not be treated as evidence that the EVMs are functioning properly.

According to some critics, the ECI is perhaps afraid that too much transparency and pro-active counting of VVPAT slips for a larger percentage of polling stations may show up many EVMs to be faulty and do great harm to the prestige of the Commission and raise a question mark about the sanctity of past elections! They allege that the ECI's action of ordering the counting of VVPAT slips for less than 1 per cent of the EVMs for the Gujarat, Himachal Pradesh and Karnataka Assembly elections must be seen in this light! I am sure that this is not the case.

Wrong signal: When only one EVM per Assembly constituency is chosen for the counting of VVPAT slips, the ECI is sending the wrong signal to the election personnel, from the District Magistrate—cum-District Election Officer (DM-DEO) downwards, that *it is not serious about VVPAT and regards it as an unwanted appurtenance thrust upon it by the Supreme Court at the behest of certain conspiracy theorists*. The Presiding Officers and the Polling Officers in several polling stations are likely to be negligent in repairing/replacing the VVPAT machines then and there, and may try to chance their

In the past, on an average, about 15 per cent of the VVPAT units did not function properly.

luck by hoping that their particular polling station will not get picked for counting of the VVPAT slips. The danger is greater in villages and in remote areas. My enquiries with DM-DEOs and Election

Observers have revealed that in the past, on an average, about 15 per cent of the VVPAT units did not function properly on polling day, and that the ECI had orally instructed them to carry on with the polling without VVPAT in case of shortage of replacements.

It is important that the Supreme Court's order of 2013 must be implemented properly both in letter and spirit in all future elections. The ECI must therefore direct DM-DEOs to strictly ensure that all the VVPAT systems in every polling station function properly, failing which there shall be repolling.

Some suggestions: The following related suggestions are proposed for the kind consideration of the ECI.

- There should *not* be a uniform sample size of EVMs for the hand counting of VVPAT slips for all Assembly Constituencies. The ECI should arrive at the statistically significant sample size for the *State as a whole* for a Confidence Level of *not less than* 95 per cent and a Margin of Error of *not*

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more than 2 per cent using a ready reckoner. This sample may then be apportioned among the various Assembly Constituencies in proportion to the number of polling stations in each Constituency. The sample size becomes very large if the adopted Confidence Level is 99 per cent or the Margin of Error is 1 per cent and may be administratively unviable.

- The random sample of polling stations for the hand counting of VVPAT slips should be decided by draw of lots on the morning of the counting day (or as close to the counting day as possible). The lots should be drawn by the DM-DEO in the presence of the candidates or their authorised representatives.
- The hand counting of VVPAT slips of the chosen sample of polling stations should be commenced at the same time as the electronic counting and run parallel to it.
- The Election Manual permits the losing candidate to apply to the Returning Officer (RO) for a recount with the VVPATs, but it is not mandatory for the RO to accept. The RO may reject the request in writing whereupon the losing candidate has to follow the usual appeal procedure which is time consuming and unproductive. If the margin of victory is less than, say, 2 per cent, the ECI may make it mandatory for the RO to order a hand recount with VVPAT slips of all the polling stations.
- Irrespective of the margin of victory, if the discrepancy between the machine-counting total and the hand counting total in respect of the selected sample of EVMs taken together is considered statistically significant as per standard methods of statistical Hypothesis Testing, then the ECI may order the hand counting of VVPAT slips in all the polling stations.

The ECI will be doing the nation and itself a favour if it accepts the above suggestions, especially with regard to increasing the sample size for hand counting of VVPAT slips. They must be implemented from the next batch of Assembly Elections due in December 2018-January 2019. The downside is that it may take a little longer to complete the counting process but it is a non-issue. *The upside is that it will reinforce the confidence of the voters in the electoral process and effectively silence the critics of the ECI.* If the ECI persists with its minuscule sample of EVMs for hand counting VVPAT slips, an adverse inference is liable to be drawn against it and it may lose the perception battle.

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VI. THE VULNERABILITY OF INDIAN EVMs

In 2010, a team led by J. Alex Halderman, Professor of Computer Science, University of Michigan, US, managed to get hold of an Indian EVM unofficially and published a paper titled "*Security Analysis of India's Electronic Voting Machines*"⁸. This was the first, independent, rigorous assessment of the security risks associated with Indian EVMs. It described the EVM's design and operation in detail, and evaluated its security in light of relevant election procedures. It pointed out many vulnerabilities that the ECI's "Technical Experts Committee" had failed to do.

According to the paper, while the simple hardware design and the minimal software of Indian EVMs made certain software-based attacks less likely than in their counterpart Direct Recording EVMs in the West, they made a different set of highly dangerous attacks far easier. Such attacks which can steal votes and violate the secrecy of the ballot can be carried out by dishonest election insiders or other criminals with only brief physical access to the machines. The authors also demonstrated two such attacks. They observed:

"Using EVMs in India may have seemed like a good idea when the machines were introduced in the 1980s, but science's understanding of electronic voting security and of attacks against it has progressed dramatically since then, and other technologically advanced countries have adopted and then abandoned EVM-style voting. Now that we better understand what technology can and cannot do, any new solutions to the very real problems election officials face must address the problems, not merely hide them from sight."

The ECI and the two manufacturers of EVMs (BEL and ECIL) dismissed the findings of the research paper by Prof. Halderman *et al* with the standard reply that while it may be possible to tamper with an isolated EVM in a laboratory, tampering with a large number of machines is not feasible *under real election conditions* with the security protocol and various administrative safeguards that the ECI has put in place.

It is therefore necessary to examine the various features of the Indian EVMs (of the non-VVPAT variety) and the adequacy or otherwise of the ECI's security protocol and administrative safeguards. This assumes significance in the light of the perfunctory implementation of VVPAT systems by the ECI in the recent Gujarat, Himachal Pradesh and Karnataka Assembly Elections. In this

⁸ Halderman, J.A. et al. 2010. *Security Analysis of India's Electronic Voting Machines* is available at https://indiaevm.org/evm_tr2010.pdf

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connection, the ECI's "*Status Paper on Electronic Voting Machines*"⁹ and its press release titled "*FAQs on Security Features of the ECI-EVMs*"¹⁰ are worth reading.

It is true that ECI's (paperless) EVMs are stand-alone, non-networked machines that are not connected to the Internet at any point of time and cannot therefore be hacked. But then, the paperless EVMs (or DREs) used all over the world are also "stand-alone" machines like Indian EVMs and are not part of any network though they may differ in certain other features. As German software expert Dr. Ulrich Weisner, who won the case against EVMs in Germany leading to their ban, observed:

"(EVMs)...banned in the Netherlands, Ireland and Germany are not networked...they were similar to the Indian EVMs and worked stand-alone with no connection to Internet or other networks during the election and counting phase. The lack of the network connection was one of the (invalid) reasons given by the vendor and by authorities in the three countries why the machines could not be hacked. The vendor also claimed that his devices were not real computers but 'special purpose devices' which were designed to only count votes and could not be used for any other purpose....It is common sense that someone who has sufficient access to open the Indian EVMs and replace the software or hardware can implement virtually any functionality, including vote stealing functionality, that is only activated under certain circumstances and would not be spotted in tests."¹¹

The ECI is largely correct when it claims that the software ('firmware') of its EVMs cannot be manipulated in any manner. The greater the lines of code, the greater the scope for manipulation. The software of Indian EVMs is *minimal*, and it is *One Time Programmable (OTP)* that is 'burned' into the EVM's CPU and cannot be re-written after manufacture. But this design also has certain disadvantages.

The flip side of the minimalist software is that it does not attempt to cryptographically protect the *voting data* stored in the electronic memory of the EVM's Control Unit which are therefore *unsecured*. Even though some of the world's best brains develop the software of Microsoft, Apple and Google, there are still several bugs and security issues in their software which are corrected (and new features

⁹ Election Commission of India. 2017. *Status Paper on Electronic Voting Machine (EVM)* is available at http://eci.nic.in/eci_main1/current/StatusPaperonEVM_09052017.pdf

¹⁰ Election Commission of India. 2017. Press release dated April 9, 2017 on *FAQs on Security Features of the ECI-EVMs*. Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=160754>

¹¹ Quoted in G.V.L. Narasimha Rao's book (page 25) vide Note 4 above.

added) by software updates that are automatically downloaded via the Internet and installed. The flip side of OTP software and EVMs not being part of any network including the internet is that bugs and security issues cannot be fixed and new features cannot be added until a new *generation* of EVMs is developed. These bugs may cause occasional (non-malicious) equipment malfunction such as flipping of votes, loss of votes, wrong totalling etc. which can change election outcomes just as EVM tampering can and which cannot be detected and corrected without VVPAT.

Further, the software used in ECI's EVMs is 'burnt' into the CPU by *two foreign chipmakers* (Microchip Technology Inc., US and Renesas Electronics Corporation, Japan), after which they are shipped to India for assembly into the EVMs. This is a rather serious supply chain vulnerability. The EVM manufacturers (BEL & ECIL) cannot 'read back' their contents to verify the integrity of the software. They can only carry out 'functionality tests' on the EVMs to check whether they are working properly. This is called '*black box testing*'. According to Arnold B. Urken, who founded the first voting-machine testing lab called Election Technology Laboratories, '*white-box testing*'—eyes-on examination of the firmware of the EVMs—should be mandatory if certification is to mean anything. Indian EVMs do not fulfil this condition, a shortcoming highlighted by Rao in his book¹².

While it is true that Indian EVMs cannot be hacked because they are not connected to any network including the internet and their software is OTP that cannot normally be manipulated after it is 'burnt' into the CPU, *this holds good only so long as the EVMs retain their physical integrity*. In other words, their strengths can be easily negated by the simple act of replacing the non-hackable CPU with a look-alike hackable one! Further, by embedding a Bluetooth device or a micro-transmitter in the substitute, look-alike CPU, it will be possible for an attacker to manipulate the EVM through remote devices. *Once these two things are done, EVM security goes out the window.*

Indian EVMs cannot be hacked
only as long as they retain their
physical integrity.

Prof. Halderman *et al* have shown that such replacement of CPU can be done very easily if dishonest insiders and criminals can get physical access to the EVMs even for a short while. Since Indian EVMs use cheap generic chips rather than the more secure customised chips, the replacement is rendered easier. The substitute, look-alike CPU could have a Trojan embedded inside it. This Trojan can remain dormant till the elections, be activated during the elections to steal votes, and be made

¹² Ibid.

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to 'disappear' after elections. This would result in the 'perfect election fraud' that Roger Penrose had envisaged, one that can neither be detected before the elections nor proved after the elections, unless VVPAT is used.

The researchers have stated that not just the CPU, but the *Motherboard* (card which contains the CPU) can also be replaced *with a look-alike but dishonest Motherboard*. What is more, attackers can also build *identical looking but dishonest Ballot Units and Control Units* and substitute them for the Commission's EVMs. Even if the CPU is genuine, the attackers can build a *dishonest Display Board* replacing the real Display Board in the Control Unit by adding a hidden microcontroller (chip) that can intercept vote totals and substitute fraudulent results. Prof. Halderman *et al* demonstrated physically how the "dishonest display attack" can be done. Since the voting data stored in the electronic memory of the Control Unit is *unsecured* (due to the minimalist software of the CPU), it can be manipulated by the *temporary application* of a malicious hardware. The researchers also demonstrated physically how a "clip-on device" can manipulate the electronic memory, steal votes and violate ballot secrecy.

Some other possibilities of fraud can also be envisaged:

- Replacing the cable (connecting the Ballot Unit and the Control Unit) with a dishonest look-alike cable carrying a tiny embedded chip with a Bluetooth device that can be programmed with vote stealing software and operated remotely. While fiddling with the CPU, Motherboard or Display Board in the Control Unit may attract some suspicion, replacing the cable connector can be a simple and smooth affair for those who want to subvert elections. It can be done relatively easily by couching it as routine maintenance and it will not excite the suspicion of potential whistle-blowers. Furthermore, cables are not considered high security items and therefore can be manufactured locally, through outsourced private suppliers, who could be more easily compromised.
- Embedding a vote-stealing Trojan in the chips supplied to BEL and ECIL. This mischief can be done by rogue employees at the foreign chipmakers' end, and BEL and ECIL may not be in a position to detect the same.
- Hacking the databases of voters in States (which typically have few IT support staff and little, if any, cybersecurity expertise) so as to modify the printed voter lists that are prepared from these databases. Selectively omitting the names of small groups of voters – by community, caste or locality, for example – can play havoc on polling day. This is alleged to have been the *modus operandi* of Russian interference in the 2016 U.S Presidential Election.

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Many computer scientists can list dozens of other plausible ways to compromise EVMs. *Thus, the ECI's claims about Indian EVMs being 'different' and 'tamper proof' do not seem to withstand rigorous scrutiny.* There are a startlingly large number of security issues that render its EVMs susceptible to fraud and which can alter election results without the ECI being any the wiser.

It must be noted that the fact that certain vulnerabilities (as pointed out above) exist in the EVMs doesn't necessarily mean that the EVMs have been tampered with or the attacks have already happened. It only means that the *potential* for attacks exists and the vulnerabilities must be suitably addressed. While protecting a Head of State, security officials will have to find all possible vulnerabilities and protect him or her against everything whereas the potential assassin has to find only one unprotected vulnerability. The same logic applies to EVM security. The ECI should adopt a policy of "Better safe than sorry". EVM security is nearly as important as national security.

The ECI would be making a serious mistake if it underestimates the kind of ingenious electronic security breaches that are possible or if it thinks that Indian politicians are not 'hi-tech' enough to resort to such manipulations. Given the high stakes involved, the possibility of our political parties engaging the best brains in India and abroad to perpetrate such 'hi-tech' frauds cannot be ruled out! The recent controversy over the manipulation of personal data from *Facebook* by the UK-based firm *Cambridge Analytica* for election campaigning, and reports that *Cambridge Analytica* may have worked with political parties in India have triggered a massive political row, with both the Congress and the BJP accusing the other of having used its services.

VII. THREE SECURITY LOOPHOLES

The ECI's strategy to prevent electoral fraud relies on the physical security of EVMs, the secrecy of their firmware, the integrity of election insiders, and various administrative safeguards (such as randomisation of allotments of EVMs to States and polling stations, among others). While the strategy looks impressive *on paper*, it will succeed only if the election insiders can be fully trusted.

Insider Fraud: The ECI appears to ignore or underestimate the danger that *these administrative safeguards can be easily negated by insider fraud*. As in currency printing presses, banking, insurance, gambling casinos, university examinations, etc., insider fraud is an insidious and ever-present danger with EVMs, and the best laid plans of the ECI can go awry! There is no justification to trust insiders in the election ecosystem any more than trusting the insiders in currency printing presses, banking, insurance, gambling and examinations ecosystems where sophisticated frauds continue to occur despite equally good safeguards as the ECI's being in place, if not better ones.

The recent *Punjab National Bank-Nirav Modi scam* (involving issue of thousands of fraudulent Letters of Undertakings causing a loss of about Rs.13,000 crores) is a good example. Notwithstanding the many 'safeguards' theoretically in place – periodic reconciliations, internal audit, statutory audit, RBI inspections, Ministry representatives and independent Directors on PNB's Board etc - a massive scam went on for nearly seven years before coming to light. This scam was rendered possible by the collusion between bank insiders and Nirav Modi, with the former even sharing the top-secret SWIFT password with the latter and not making the relevant entries in the Core Banking System!

In my assessment, there is scope for insider frauds at three stages:

- A. At the EVMs manufacturing stage.
- B. At the district level, during the non-election period, when the EVMs are stored in archaic warehouses in multiple locations with inadequate security systems.
- C. At the stage of 'first level checks' prior to an election when the EVMs are serviced by 'authorised technicians' from BEL and ECIL.

Each of these security loopholes will be discussed in greater detail below.

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A. EVM manufacturing stage: In the US, all EVM-manufacturers are in the private sector and some of them are big donors to the Republican Party. Doubts have been expressed as to whether the manufacturers can be trusted to play fair, especially in a scenario where their frauds cannot be detected (as with paperless EVMs). In an article in *"The Hindu"* titled *"Are electronic voting machines tamper-proof?"* (2010)¹³, BJP leader Subramanian Swamy had stated: "After Hugo Chavez won the 2004 election in Venezuela, it came out that the government owned 28 per cent of Bizta, the company that manufactured the voting machines." Now, if you can't fully trust a company of which government is a part owner, can you trust companies of which government is full owner?!

The ECI's argument that unlike other countries where EVMs are manufactured in the private sector, Indian EVMs are manufactured by "the reliable" Central public sector undertakings (BEL and ECIL) is not fully correct. *First*, the key process of 'burning' of the EVM firmware has been

The argument that EVMs are manufactured only by reliable Central public sector undertakings is not fully correct.

outsourced to two private, that too foreign, chip-making companies (Microchip Technology Inc., USA and Renesas Electronics Corporation, Japan).

Second, it is naïve to believe that with public sector undertakings (PSUs), secrecy will be maintained and insider frauds cannot happen! (Let us not forget that Punjab National Bank is a public sector bank)! Knowing how PSUs work in India and the huge interference in their functioning by the concerned Ministries of the Government of India where even a Joint Secretary pushes the top officers of the PSU around and where the threat of harassment by CBI and CVC looms large over those who don't toe the Ministry's directives, I am of the strong opinion that BEL and ECIL are as vulnerable as, if not more than, a private manufacturer. I think that there is a non-zero probability of occurrence of any of the following scenarios without the ECI's knowledge:

- *Scenario 1:* Enormous political pressure is brought to bear upon the top management of BEL and ECIL by the ruling party of the day in the Centre to secretly manufacture a certain percentage of EVMs in which the regular non-hackable CPU is replaced with a *look-alike but hackable CPU* that can be programmed with vote stealing software; it will also have an embedded Bluetooth device so that it can be operated remotely. These altered EVMs may be passed off as a new batch. If only a few key employees collude, such a fraud would be difficult

¹³ Swamy, S. 2009. Are electronic voting machines tamper-proof? *The Hindu*, June 17. Available at <https://www.thehindu.com/todays-paper/tp-opinion/Are-electronic-voting-machines-tamper-proof/article16579547.ece>

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to detect. Going by the general administrative culture prevailing in the government or PSUs in India, it would take a rare CEO indeed to withstand that kind of political pressure.

- *Scenario 2:* A few *key employees* of the two EVM manufacturers, driven by the same ideology as the ruling party of the day in the Centre or any other political party, may resort to this kind of tampering *without the knowledge of the top management of BEL and ECIL*. These 'key employees' could be those engaged in the development of the EVMs' firmware or in the assembly of the EVMs.
- *Scenario 3:* A few *rogue employees* of the two PSUs may do it for the sake of money, *again without the knowledge of the top management*. Rao cited instances of politicians being approached by technocrats from the 2 PSUs promising to rig the EVMs for a fee. While we don't know if there is any truth in these allegations, they are not impossible to envisage.
- *Scenario 4:* The vendors (many of them with political affiliations) supplying key components – Display Board, cable connector, etc - to BEL and ECIL can be compromised. This includes the two foreign private chip makers who have been assigned the security-sensitive job of fusing the firmware onto the CPUs that go into the EVMs. *This can also happen without the knowledge of the top management.*

In my opinion, there is a major loophole at the EVM manufacturing stage which can potentially be exploited by the ruling party of the day in the Centre. Due to its lack of familiarity with technical matters, the ECI has delegated a number of crucial functions regarding the conduct of elections – like manufacturing, checking and maintenance

of EVMs – to the EVM manufacturers. It has reposed blind trust in the two PSUs and has no means of verifying if they are playing foul. It is naïve to believe that things cannot go wrong in

BEL and ECIL and that they will police themselves. (By this logic, things cannot go wrong in PSU banks or in University examinations). The concerned personnel of the EVM manufacturers together with their suppliers and other authorised agencies have also become 'election insiders', and the ECI's lax administrative and technical control over them makes insider frauds easier to commit and difficult to detect. As Rao observed in his book:

There is a major loophole which can be exploited by the ruling party of the day in the Centre.

"All this begs a simple question: are we running "faith based" elections that we should "trust" all these insiders and not question their actions shrouded in mystery? We cannot pride ourselves



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being a vibrant democracy if our election results are reduced to merely our faith in agencies involved in the conduct of elections.”¹⁴

Eight years after Rao wrote the above, things are pretty much the same.

B. During storage at the District level: The second security loophole is at the district level when EVMs are stored during the long non-election period in archaic warehouses in several locations in the district. This decentralised way of storing EVMs and the long periods of non-use increases the risk of theft and tampering and reduces the chances of detection.

As compared to the two EVM manufacturers and related agencies, the ECI exercises far greater control over the *election officials* of various States but only during the period of conduct of elections. It is during the long non-election period when ECI’s supervision is light that such frauds may happen.

Finding suitable storage places is very difficult in some backward districts and the quality of the rented warehouses is highly variable. Notwithstanding the ‘strong room’ and the ‘double lock system’ and the ‘annual physical verification of the EVMs’, it is not unreasonable to presume that some election officials in the district – from the security staff upwards - can collude with the ruling party of the day in the State (or any other political party if it is more techno-savvy) to allow access, steal some EVMs, and skilfully replace the seals on the locks of the warehouse with or without the knowledge of the DM-DEO.

In a country like India renowned for its ‘jugaad’ where duplicates of anything and everything are made, it would be naïve on anybody’s part to think that counterfeit EVMs can never be made *by*

It would be naïve on anybody’s part to think that counterfeit EVMs can never be made by reverse engineering.

reverse engineering the stolen EVMs. Reverse engineering of the EVM hardware as a whole or any individual component thereof is rather easy. But can the secret firmware of the EVMs also be reverse engineered?

The ECI’s claim is that the secret firmware is OTP and ‘burnt’ into the CPU and it cannot be read, copied out, altered and re-fed into the CPU at all. But according to Prof. J. Alex Halderman *et al*, reverse engineering the secret firmware is possible given enough time and resources, and it could be revealed by one well-funded attacker with access to a single EVM. To quote the authors:

¹⁴ Vide Note 4 above.

“While more involved than modifying source code, reverse engineering firmware of such low complexity is not difficult and has been done (sometimes within a few weeks) with other voting systems in the context of academic research”.¹⁵

The feasibility of reverse engineering firmware even though it is ‘burnt’ into the CPU has been recognised by the U.S Court of Appeals, Ninth Circuit, in the case of “*Syntek Semiconductor Co., (Taiwan) versus Microchip Technology Inc., (USA)*” in April 2002¹⁶. Thus the ‘unreadable and unalterable’ secret firmware is also not a fool proof security feature as claimed by the ECI. It may be noted that Microchip Technology Inc., USA, is one of the two foreign chip makers for Indian EVMs.

Once an EVM is stolen, and given that reverse engineering of both the hardware and the software are feasible, it is possible to manufacture as many dishonest look-alikes as needed (with suitable modifications to the hardware and software to facilitate manipulation and steal votes), and substitute these counterfeit/tampered EVMs for the real EVMs in the warehouses during the non-election period, with insider collusion, and without the ECI suspecting that anything is amiss.

We can also visualise an alternative scenario where a few skilled technicians gain access to a warehouse for several days or nights in a row, with insider collusion, and working on-site, they replace the regular CPU with the dishonest look-alike CPU (programmed with a vote-stealing Trojan and with an embedded Bluetooth device) in respect of a certain percentage of EVMs.

In my opinion, there is a major security loophole during storage at the district level which can potentially be exploited by the ruling party in the State. The fact that Prof. Halderman was able to get hold of an EVM unofficially proves that

the strong security for the storage of EVMs can be breached. Moreover, RTI replies given by the Commission reveal that its EVM inventory management leaves much to be desired. According

There is a major security loophole during storage at the district level which can be exploited by the ruling party in the State

to an article dated December 12, 2017 in *The Wire* and titled “RTI Response raises serious questions about Security, Handling of EVMs”, the ECI has admitted to at least 70 cases of theft of EVMs across three

¹⁵ Vide Note 9 above.

¹⁶ United States Court of Appeals, Ninth Circuit. Judgment dated April 8, 2002 in *Syntek Semiconductor Co., versus Microchip Technology Incorporated*.

States – Chhattisgarh, Gujarat and Madhya Pradesh – over successive elections¹⁷. Till date, no one has been convicted for theft of EVMs.

The RTI reply also revealed that there was a *very big discrepancy* between the number of EVMs that were *manufactured* by ECIL and BEL and those actually *procured* by the ECI with no satisfactory explanation as to what happened to the ‘missing’ EVMs. (Exports run to a few

There is no proper system for periodic reconciliation and no satisfactory answer as to how old EVMs are disposed of.

thousand machines only). For example, the discrepancy in the case of ECIL was 1,97,368 units of Control Units and 3,55,747 units of

Ballot Units! This shows that there is no proper system in place for periodic reconciliation. There was also no satisfactory reply to the question as to how the old EVMs were disposed of. *So the possibility of large numbers of EVMs being out there in the wrong hands cannot be ruled out.*

The ECI has issued instructions only in October 2017 for tightening security in warehouses including installation of CCTVs but it is understood that these instructions are yet to be implemented properly by most States.

C. At the stage of ‘first level checks’ prior to an election: The third loophole available to tamper with EVMs is when - prior to elections - all the machines are subject to ‘*first level checks*’ in the field by ‘authorised technicians’ deputed by BEL and ECIL in order to detect and remedy hardware problems. These authorized technicians are also sometimes involved at various later stages of the election, such as preparing EVMs for polling and assisting officials during the count. This means a group of technically skilled insiders has full access to the machines and they could open and manipulate hardware during these checks without the knowledge of the EVM manufacturers or the ECI or the election officials. Since a large number of diverse players are involved, maintaining secrecy may not be easy but there is no gainsaying the fact that a clear vulnerability exists.

Even more alarming is the fact that there is no proper vetting of these technicians by the ECI or the EVM manufacturers. According to the same article dated 6.12.2017 in *The Wire* (referred to earlier) there is the alarming finding that ECIL had not deputed its own technical personnel but had deputed technical personnel from (outsourced) private entities and had also deputed several

¹⁷ Bhatnagar, G.V. 2017. Article titled *RTI Response raises serious questions about Security, Handling of EVMs* and dated December 6, *The Wire*. Available at <https://thewire.in/government/cvm-tampering-rti>

unauthorised non-technical persons for the 'first level checks' of EVMs - in brazen violation of the administrative and security protocol mandated by the ECI¹⁸.

One can *anticipate* the ECI's likely comments (in italics) on the three types of security loopholes narrated in paras A, B and C above. My responses are also given below.

- (i) *Administration operates on 'trust' and the ECI has to have faith in the integrity of the election insiders unless something adverse comes to its notice.*

The problem could be that EVM fraud may never come to the ECI's notice or it may come to its notice rather late - by which time enormous damage could have been done. The Russians have a saying: "*Trust but verify*". The ECI cannot afford to repose blind trust in myriad players over whom it has minimal administrative control and technical control and has no means of verifying if they are playing foul. This applies specially to the two EVM manufacturers and their authorised agents.

- (ii) *There are far too many persons involved and any one of them can become a whistle-blower and make information public on any such misadventures.*

The fraud may be known to only a few members of a tightly knit group and may not come out. The recent PNB scam shows how several insiders can collude for a long time without anyone blowing the whistle. In fact, this is true of most scams within government; they seldom come out. Moreover, the experience of whistle-blowers world-wide has been that they run a very high risk of being victimised and of their mission not succeeding, and so many a potential whistle-blower may choose to simply keep quiet.

- (iii) *The various scenarios of 'insider frauds' cited are far-fetched with very low probability of their occurring.*

The probability is non-zero. In other words, these insider frauds with EVMs are *not impossible*. There is a common human tendency to equate the 'very difficult' with the 'impossible'. Climbing Mount Everest solo and without supplemental oxygen may seem impossible but it is 'merely' very difficult and has been done by several mountaineers. Likewise, merely because committing a fraud is very difficult, it doesn't mean that it is impossible. The only things that are impossible are those which are forbidden by the laws of nature. There is a famous saying of Sherlock Holmes: "When you have eliminated the impossible, whatever remains, however

¹⁸ Ibid.

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improbable, must be the truth".¹⁹ We may modify this to come up with the following maxim:
"Since EVM tampering is not physically impossible, someone, somewhere, at some time, will find a security loophole and exploit it however improbable the tampering scenario may seem at first sight." And, once the security is breached, the probability of EVM fraud recurring will increase greatly with time.

Remedial Measures: In my opinion, there is a fairly good chance of fraud occurring at the EVM manufacturing stage and during storage at the District level and, to a lesser extent, at the stage of "first level checks" prior to an election. The ECI will be committing a grave mistake if its strategy to prevent fraud relies too much on the integrity of the officials of BEL and ECIL and the district election officials. It needs to put in place additional systems that will help check fraud at all the 3 stages indicated above.

1. Procurement and supply of "Authentication Units" to detect Counterfeit EVMs:

In the electronics industry, counterfeit components and devices are a big problem. Many of the components appear genuine but are actually substandard and compromise the efficiency and functionality of the final product in which they are used. There are ways of testing electronic components and devices, and either determine that they are counterfeit or authenticate them as genuine.

At present, the ECI and the election officials have no means of sifting the genuine EVMs from the counterfeit ones. To detect such fraud, the post-2006 second generation (M2) EVMs have a provision to interface with an *Authentication Unit*. Although the EVM manufacturers had developed and tested such an Authentication Unit way back in 2006, the ECI mysteriously shelved the project.

The ECI claims that the post-2013 third generation (M3) EVMs have certain new features for (i) Mutual authentication among all components of EVMs such as Ballot Unit, Control Unit and

The ECI must procure and supply one or more Authentication Units to each district.

VVPAT and (ii) Automated self-diagnostics. These new features are obviously worthless if some of the tampered EVMs were supplied by the EVM manufacturers themselves! Even when the tampering is done at the district level, if the machines were to do any such authentication *themselves*, a Trojan can be easily designed to clear this self-test. So, these *self-authenticating* features in the M3

¹⁹ The quote is from Sir Arthur Conan Doyle's "The Adventure of the Blanched Soldier", a 1926 Sherlock Holmes story.

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machines may not be of much avail to prevent fraud. What are needed are *external* Authentication Units that can interface with EVMs.

Just as counterfeit currency detector machines are imperative for verifying the genuineness of currency notes, the ECI must procure and supply one or more Authentication Units to each district to help election officials verify whether the EVMs being used in their districts are genuine EVMs supplied by BEL/ECIL or counterfeit EVMs. Not only can Authentication Units detect and weed out the counterfeit EVMs, if any, in circulation, but they will also act as a *deterrent* because the knowledge of their existence will scare off potential fraudsters. *If VVPAT can help detect frauds at the counting stage, Authentication Units can help detect counterfeit EVMs even before polling. Both systems are essential.*

Normally, the Authentication Units are supplied by the manufacturers of the electronic components/equipment. But in this case, the Authentication Units should *not* be manufactured by BEL & ECIL (since there is scope for tampering of EVMs by them) but by an independent third-party manufacturer. For this purpose, the ECI will have to direct BEL & ECIL to place their EVM models at the disposal of the third-party manufacturer who shall be bound by a confidentiality agreement.

The authentication verifications should be arranged by the DM-DEO in the presence of the contesting candidates after the 'first level checks' are over and before the date of polling. *If it turns out that all the EVMs are genuine, then it will reinforce the confidence of the voters in the electoral process and will effectively silence the critics of the Election Commission.*

The days of reposing
blind faith in election
insiders are over.

The days of reposing blind faith in election insiders are over. So, the procurement and supply of one or more Authentication Units to each district is an absolute imperative that brooks no further delay.

2. Completely overhauling the present method of storing EVMs during the non-election period.

There are 640 districts in India (according to the Census of India, 2011), some of them in remote, hilly, and forested areas. As mentioned earlier, finding suitable storage places for EVMs is very difficult and the quality of the rented warehouses is highly variable across districts. We have seen that the storage of EVMs during the non-election period in multiple locations in each district in archaic warehouses with poor security systems in place is a *weak link* that increases the risk of EVM tampering.

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It is suggested that the ECI should move towards a kind of "2-bin storage system" wherein the long-term storage of the EVMs in between two elections shall be in a few large, high-security, *regional warehouses* and the short-term storage immediately before or during an election in the current *district warehouses*.

The ECI must invest in building 2 or 3 regional warehouses in each State. The cost of constructing such modern regional warehouses in each State is not much, and in any case, cost should not be a

Cost should not be a consideration
in ensuring the integrity of the
electoral process.

consideration in ensuring the integrity of our electoral process. It is obviously much easier to monitor on a long-term basis 2 or 3 large warehouses than 100-and-odd smaller warehouses scattered across a State. The fewer regional warehouses also

make it much easier for the Commission to manage the *logistics* of randomization/shuffling of EVMs from one State to another.

These regional warehouses must be modern buildings with CCTVs and sophisticated electronic locking systems for the strong rooms where EVMs are stored, and they should be provided with 365x24x7 *police security* of the kind given to bank vaults or mints. The Chief Electoral Officer (CEO) of each State must be made responsible for the overall custody of the regional warehouses. He can be assisted in this important function by a full-time Joint CEO drawn from the IAS or IPS.

The 'codes' for these sophisticated electronic locks should remain with the ECI or the CEO. There should be mechanisms for alerting the (local) DM-DEO, the CEO as well as the ECI through SMS and email whenever the locks are opened, closed or tampered with and for maintaining an electronic log of all activities. Necessary precautions against hacking of these electronic locking systems should be taken by engaging the best experts in the field.

The 'first level checks' of the EVMs and VVPATs that are carried out by the 'authorised technicians' of BEL and EVM before an election *must be done only in these regional warehouses under CCTV*. Written declarations of the changes, if any, carried out must be obtained from each authorised technician before his exit and counter-checked by another authorised technician so as to fix responsibility. If there are serious discrepancies between machine-counting and hand-counting in respect of a polling station, and if the forensic examination of the EVM shows that it has been tampered with, then the concerned 'authorised technicians' and their supervisors in BEL and ECIL must be taken to task. At present, control mechanisms are extremely lax.

It should be possible to implement this suggestion within three years.

3. Engaging the services of a credible electronic security firm

In place of, or in addition to, the present system of assessing the security of EVM hardware and software through a 'Technical Experts Committee' consisting of a few Professors, the ECI must consider engaging the services of a top electronic security firm of international standing and credibility (bound by a confidentiality agreement) to conduct periodic ethical hacking and other modes of attack on its electoral systems and processes, identify loopholes if any, and certify their robustness. It must also send its EVMs for ethical hacking to the Annual DEF CON Conference in Nevada, US, to check if they are really tamper-proof and get valuable insights and suggestions for their improvement.

The ECI must face the truth that BEL and ECIL are not Apple and Google, and have not exactly fired the imagination of the industrial and commercial world with their products! If Apple and Google, which engage some of the best minds in the world, are willing to pay "bugs bounty" to ethical hackers for pointing out the glitches in their products, it would be naïve to place too much trust in the EVMs manufactured by BEL and ECIL when they have not been subjected to ethical hacking. "*Build a better mousetrap, and the world will beat a path to your door*" is a well-known saying. If the EVMs manufactured by BEL and ECIL were really all that 'perfect', they would have been flooded with orders from many countries whereas their annual exports run to only a few thousands, mostly to less developed countries.



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VIII. ECI's ADMINISTRATIVE SAFEGUARDS ARE NOT FOOLPROOF

In the previous chapter, we examined issues relating to physical security of EVMs, the secrecy of their firmware and the integrity of election insiders. In this chapter, we will examine the efficacy or otherwise of the administrative safeguards that the ECI has put in place to prevent electoral fraud.

The fallacy of 'safety in numbers': A favourite argument of the ECI is that there is "safety in numbers", and physically tampering with a large number of EVMs is difficult because there are so many of them. This is not correct. *A small number of closely contested seats (or 'marginal constituencies') often determine which party holds a majority in a Legislative Body, and hence it would be enough to tamper with only a small percentage (3 per cent ? 5 per cent ? 10 per cent ?) of EVMs.* A party will not put the 'counterfeit EVMs' to use in constituencies where it is very confident of winning and also in constituencies where it has no hope of winning; it may put them to use only in marginal, closely fought constituencies.

In the Hollywood movie "*The Imitation Game*", based on the real-life story of the famous British mathematician and code breaker Alan Turing, the British were trying to decrypt the *Enigma* machine which the Nazis were using to send coded messages. Turing and his team had succeeded in decrypting Enigma but the British realised that they could not act on every decoded message or else, the Germans would realise that the Enigma had been broken. So, the British used the decoded messages to avert German attacks only on *some select high value targets* and permitted German attacks on other targets to continue in the larger interest of making Germans believe that Enigma was intact.

The same logic applies to EVM tampering. If a party resorts to it large scale or wins in constituencies where it is known to be weak, its cover will be blown! So EVM tampering will be done very selectively with only a few machines. Like computer hacking, phone tapping, secret code cracking or other similar undercover activity, EVM tampering is successful only when the victim trusts the system and continues to use the tampered system.

Randomisation of allotments: The ECI believes that the randomisation of allotments of EVMs at the national level from the EVM manufacturers to various States, and the randomisation of

allotments within a district to various polling stations are sufficient safeguards against misuse. Of late, the ECI has been diverting the EVMs used in one State election – wholly or partly – to another State to prevent mischief. It must be noted that the unique identifying number of each EVM helps, not just the ECI, but also the attackers to keep track of the movements of tampered EVMs!

Randomisation needs to be done but it is not sufficient to prevent fraud. *Randomisation will ensure only the uniform distribution of the counterfeit EVMs among all constituencies rather than their skewed distribution among a few constituencies.* If, say, N per cent of the total number of EVMs have been tampered with – in the manner discussed in paras A, B and C of chapter 7 – then randomisation of allotments will merely ensure that, *on an average*, N per cent of the EVMs in all the constituencies are likely to be counterfeit! *With the assistance of insiders in BEL/ECIL and in the district administration, and since each EVM has a unique identifying number, the attacker can know precisely which tampered EVM has been allotted to which State and district, and within a district to which polling station.* (If the attacker is also the ruling party of the day in the Centre or the States, this task is relatively easier).

Randomisation poses no problem to national parties like BJP and Congress which have a significant presence in most of the States. If they have with them the unique identifying numbers of the

Randomisation is not really a protection against a smart and determined attacker aided by insiders.

tampered EVMs that have been diverted, they can track them and use them in the receiving State also. It is only the regional parties which have a presence in only one State/UT that may be handicapped due to randomisation. Hence,

randomisation is not really a protection against a smart and determined attacker aided by insiders.

Candidate Ordering: To the question “*Can ECI-EVMs be manipulated by Manufacturers?*”, the ECI’s reply is as follows:

“Not possible . . . The manufacturers are in no position to know several years ahead which candidate will be contesting from a particular constituency and what will be the sequence of the candidates on the Ballot Unit . . . So, any manipulation at manufacturing stage is ruled out.”²⁰

But this reply is misleading. It is nobody’s case that BEL and ECIL can rig the machines to favour particular candidates several years ahead. What the 2 EVM manufacturers can do is to secretly manufacture a certain percentage of ‘remotely operable and hackable machines’ with

²⁰ Vide Note 11 above. Reply to Q.3 of FAQs.

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look-alike but dishonest hardware and software that can be put to use at any time in the future by whoever has knowledge of which machines they are and where they are. As discussed in para A of Chapter 7, the danger is very real and it can happen without the knowledge of the ECI and may even be done by some rogue employees without the knowledge of the top management of BEL and ECIL.

The names of the contesting candidates are arranged in alphabetical order in the Ballot Unit of an EVM – first, candidates of recognised National and State political parties, then, candidates of registered but unrecognised political parties, and finally independent candidates. The final list of candidates is published only about 14 days before the date of the polling and this is the earliest a potential attacker would know the precise order of any party's candidate on the Ballot Unit. It is sometimes argued that this window is too short for an attacker to develop a Trojan and execute his plan.

The mistake with this line of reasoning is that it assumes that the tampering of the EVMs takes place just before or during polling and just before or during counting. Since the supervision gets tighter once the election schedule is announced, it makes far more sense for an attacker to do the tampering of EVMs well before the elections, as described in paras A, B and C of chapter 7, when the supervision is lax or non-existent. Hence, tightening the supervision only after the election schedule is announced may well be like the proverbial closing of the stable doors after the horse has bolted. But the *actual perpetration* of the vote stealing fraud - with the help of the tampered EVMs - may take place unnoticed on the polling day or any time before the counting begins.

The ECI seems to have assumed a particular mode of attack for which the attacker triggering the Trojan to steal the votes has to know the precise sequence of the candidates on the Ballot Unit. *But it is perfectly possible to steal votes with a simple Trojan even if the attacker doesn't know the precise sequence of candidates on the Ballot Unit.* This is because, in most constituencies, *the fight is between two major parties only* and the rest don't really matter.

Let us suppose that Party X and Party Y are the only 2 serious contestants in a constituency and that Party X knows precisely which polling stations have the tampered EVMs, and among these polling stations, it knows fairly accurately in which polling stations it is likely to come a clear first, in which polling stations it is likely to come a clear second, and in which polling stations the margin may be too close to call. An agent of Party X can trigger off the Trojan in the tampered EVM in a polling station through a remote device to become active around, say, 5.30 pm on the polling day. This Trojan could have been so programmed that pressing a button on the remote device transfers,

say, 10 per cent of the votes from the party that has polled the highest number of votes to the party that has polled the second highest number of votes. In polling stations where Party Y is likely to come first and Party X a reasonably close second, the attacker will press the button that will make the Trojan transfer 10 per cent of the votes from Y to X. When things can be done this way, it is not necessary to know the precise sequence of the party's candidate on the Ballot Unit. It is necessary to know only whether the party is likely to come first or second in the area covered by the particular polling station which field functionaries of political parties would normally know with a high degree of precision. While such vote stealing can also be done anytime during the period when the ballot boxes are stored after polling is over and counting is yet to start, it can be done easiest towards the fag end of the polling day.

The precise mode of vote stealing depends upon how the Trojan has been programmed. With a more advanced Trojan, and with the 14-day window during which the sequence of the candidates on the Ballot Unit is known, various kinds of vote transfers between candidates can be done on the polling day. It would be a grave mistake to underestimate the technical prowess of the attackers. The Trojan can also be programmed to self-destruct after doing its mischief.

Thus, the administrative safeguards that the Election Commission relies on are not foolproof and are not sufficient to prevent attacks by any determined attacker with assistance from an insider. From a conjoint reading of chapters 6, 7 and 8, it will be clear to any unbiased reader that, *even under election conditions and with all the security features and administrative safeguards in place*, it is possible to tamper with EVMs and steal votes on a scale large enough to change election outcomes. Luckily, the remedies are simple and effective: use of Authentication Units before the polls to weed out counterfeit/tampered EVMs and effective use of VVPAT at the time of counting to guard against wrong counting due to EM tampering.

IX. SUMMARY OF FINDINGS AND RECOMMENDATIONS

Let us quickly recapitulate what we have discussed so far:

- The controversy over the security of paperless EVMs is not something new (it dates back to the early 2000s) and is not confined to India (it is world-wide).
- A consensus has emerged that paperless EVMs are “black boxes” that lack transparency and verifiability. Like all electronic equipment, they are prone to equipment malfunction and tampering but the mistakes or frauds are undetectable and the losers are left with no means to challenge the results.
- There is an imperative need for an additional verifiable physical record of every vote cast, in the form of voter verified paper trail (VVPAT), a portion of which should be hand counted and compared with the corresponding machine count to see if the two totals tally. In 2013, the Supreme Court of India held that VVPAT is necessary for the conduct of free and fair elections and to restore confidence among voters that their votes have been correctly recorded and counted.
- For reasons best known to it, the Election Commission of India (ECI) has given the impression that it is not serious about VVPAT. There is inordinate delay in procurement of VVPAT units. Until June 2018, the ECI had received from BEL and ECIL *only 22 per cent of the VVPAT units* that it had placed orders for.
- The ECI’s action of prescribing a minuscule sample of EVMs for hand-counting of VVPAT slips (only one EVM per Assembly Constituency, which worked out to just 0.36 per cent, 0.9 percent and 0.40 per cent respectively for the Gujarat, H.P and Karnataka Assembly Elections) is questionable, statistically unsound, and is nearly as bad as not implementing VVPAT at all. The ECI seems to have chosen the sample size arbitrarily when, in fact, its selection should have been grounded in standard statistical sampling theory. It is open to legal challenge.
- The ECI should arrive at the *statistically significant sample size* for the State as a whole for a Confidence Level of *not less than* 95 per cent and a Margin of Error of *not more than* 2 per cent using a ready reckoner. This sample may then be apportioned among the various Assembly Constituencies in proportion to the number of polling stations in each Constituency.

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- There is need for stratified sampling with a random sample of one or more polling stations drawn from each of the following groups (or 'strata') of an Assembly Constituency: urban, semi-urban, rural, those in remote hilly/desert/forest areas, those with very heavy voter turnout (> 80 per cent), those with moderate voter turnout (50 per cent to 80 per cent), those with low voter turnout (<50 per cent), and so on.
- If the margin of victory of a candidate is less than, say, 2 per cent, and irrespective of the margin of victory, if the discrepancy between the machine-counting total and the hand counting total in respect of the selected sample of EVMs *taken together* is considered statistically significant as per standard methods of statistical Hypothesis Testing, then the ECI may make it mandatory to order the hand counting of VVPAT slips for all the polling stations.
- When the entire election process, from the date of announcement to the date of counting, lasts for 2-3 months, there is no reason why unseemly hurry should be shown only in the case of counting. In the rush to declare results and the winners, the ECI cannot turn a blind eye to the possibilities of wrong totalling due to EVM malfunction or EVM tampering.
- The ECI's claims that its EVMs are "unique" and that its security protocol and administrative safeguards are "foolproof" are exaggerated. All the features and safeguards relied on by the ECI can be easily negated by *insider fraud*.
- There is no justification to trust insiders in the election ecosystem any more than trusting the insiders in currency printing presses, banking, insurance, gambling and examinations ecosystems where sophisticated frauds continue to occur despite equally good safeguards as the ECI's being in place, if not better ones.
- The ECI has reposed excessive trust in BEL and ECIL and it has no means of verifying if they are playing foul. 'Trust but verify' should be the Election Commission's motto. To do this, the ECI must equip itself to exercise greater administrative and technical control over them in so far as the manufacture, checking and servicing of EVMs are concerned.
- The inventory management of EVMs leaves much to be desired and, besides thefts, there are huge discrepancies in figures of EVMs (running to lakhs!) between the ECI and the two EVM manufacturers as per RTI replies.

MAKING ELECTRONIC VOTING MACHINES TAMPER-PROOF:
SOME ADMINISTRATIVE AND TECHNICAL SUGGESTIONS

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- Once an EVM is stolen, and given that reverse engineering of both the hardware and the software are feasible, it is possible to manufacture as many dishonest look-alikes as needed (with suitable modifications to the hardware and software to facilitate manipulation and steal votes).
- It is possible to substitute large numbers of tampered/counterfeit EVMs for genuine EVMs without the knowledge of the ECI at three stages: (i) at the EVMs manufacturing stage in BEL and ECIL; (ii) at the district level, during the non-election period when the EVMs are stored in archaic warehouses in multiple locations with inadequate security systems; and (iii) at the stage of 'first level checks' prior to an election when the EVMs are serviced by 'authorised technicians' from BEL and ECIL. There is a *fair chance* of fraud occurring at the first two stages and, to a lesser extent, at the third stage.
- The threats to the integrity of our electoral process need not come only from ruling parties of the day in the Centre or the States; they could come from foreign attackers also. Other potential attackers are terrorists who may wish to disrupt elections in order to spread confusion and distrust or rogue employees of EVM manufacturers who may do it for money.
- The "safety in numbers" argument is not correct because a potential attacker would try to steal votes and change election outcomes very selectively, with only a few machines, and only in marginal, closely fought constituencies.
- Randomisation of allotments of EVMs at the national level and within a district needs to be done but it poses no problem to national parties like BJP and Congress. If, with insider help, they have with them the unique identifying numbers of the tampered EVMs that have been diverted, they can track them and use them in the receiving State also.
- The ECI's claim that EVM manufacturers are in no position to know several years ahead which candidate will be contesting from a particular constituency and what will be the sequence of the candidates on the Ballot Unit, and so, any manipulation at manufacturing stage is ruled out, is misleading. What the 2 EVM manufacturers can do is to secretly manufacture a certain percentage of 'remotely operable and hackable machines' with look-alike but dishonest hardware and software that can be put to use at any time in the future by whoever has knowledge of which machines they are and where they are.
- In most constituencies, the fight is between two major parties only. A simple Trojan which can steal, say, 10% of the votes from the party securing the highest number of votes and transfer



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it to the party securing the second highest number of votes in a polling station can be conceived of. For this, the attacker doesn't need to know the precise sequence of candidates on the Ballot Unit at all. With a more advanced Trojan, various kinds of vote transfers between candidates can be done. The precise mode of vote stealing will depend upon how the Trojan has been programmed.

- BEL and ECIL are not Apple and Google, and have not exactly fired the imagination of the industrial and commercial world with their products! The ECI would be making a grave mistake if it overestimates the security features of its EVMs and its administrative safeguards, and underestimates the technical prowess of the attackers, or if it thinks that Indian politicians are not 'hi-tech' enough to resort to such manipulations.
- *Authentication Units* can help election officials verify whether the EVMs being used in their districts are genuine EVMs supplied by BEL/ECIL or counterfeit EVMs. They also act as a *deterrent* because the knowledge of their existence will scare off potential fraudsters. They should *not* be manufactured by the EVM manufacturers (BEL & ECIL) but by an independent third-party manufacturer. (The self-authenticating features of the post-2013 M3 EVMs are not a substitute for authentication by an external device).
- Contrary to the ECI's claim, even under election conditions and with all the security features and administrative safeguards in place, it is possible to tamper with EVMs and steal votes on a scale large enough to change election outcomes. Luckily, the remedies are simple and effective: use of Authentication Units before the polls to weed out counterfeit/tampered EVMs and effective use of VVPAT at the time of counting to guard against wrong counting due to EM tampering. Both systems are essential.
- So, two immediate and important courses of action before the ECI are (1) to adopt the correct sample size of EVMs per Assembly Constituency for hand counting of VVPAT slips based on standard statistical sampling theory, and (2) to procure and supply one or more Authentication Units to *each district*. If the VVPAT and Authentication Units show that all the EVMs are genuine, then it will reinforce the confidence of the voters in the electoral process and effectively silence the critics of the Election Commission.
- Confidence in the integrity of EVMs is important for voters to trust the outcomes of elections and the legitimacy of governments formed as a result of them. The ECI cannot allow this confidence to be eroded. But if the ECI persists with its minuscule sample of EVMs for hand

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**MAKING ELECTRONIC VOTING MACHINES TAMPER-PROOF:
SOME ADMINISTRATIVE AND TECHNICAL SUGGESTIONS**

counting VVPAT slips or drags its feet in the procurement of Authentication Units, then an adverse inference is liable to be drawn against it and it may lose the perception battle.

- In place of, or in addition to, the present system of assessing the security of EVM hardware and software through a 'Technical Experts Committee' consisting of a few Professors, the ECI must consider engaging the services of a top electronic security firm of international standing and credibility (bound by a confidentiality agreement) to conduct periodic ethical hacking and other modes of attack on its electoral systems and processes, identify loopholes if any, and certify their robustness.
- The ECI must also send its EVMs for ethical hacking to the Annual DEFCON Conference in Nevada, US, to check if they are really tamper-proof and get valuable insights and suggestions for their improvement.
- Over the next three years, the ECI should consider moving towards a kind of "2-bin storage system" wherein the long-term storage of the EVMs in between two elections will be in a few large, high-security, *regional warehouses* (one to three for each State) and the short-term storage immediately before or during an election in the current *district warehouses*.
- In the long-term, the ECI may consider phasing out VVPAT EVMs as and when they get old and switching over to machine-readable paper ballots that can be counted rapidly with OMR technology. This is because the latter has all the advantages of paper ballots ('gold standard of voting') minus the delay in counting and can protect voter anonymity which VVPAT EVMs can't. In machine-readable paper ballots, the primary ballots are in paper form and the secondary ballots are in electronic form whereas in EVMs with VVPAT, the primary ballots are in electronic form and the secondary ballots are in paper form. Machine-readable paper ballots are superior to EVMs with VVPAT as paper is more secure than electronic memory and primary paper ballots are superior to secondary paper ballots. In fact, the ECI can trial machine-readable paper ballots straight away for the postal ballots that are cast by polling staff and servicemen working outside the places where they are registered as voters.

[This article was updated on October 3, 2018 after it was originally published on August 30, 2018].

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ANNEXURE - P/S

BY FAX/SPEED POST

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

AK MAJUMDAR
SECRETARY

NO. 447/2007-PLN-IV

DATED:

17.01.07

To,

All Chief Secretaries
All Chief Electoral Officers

Subject: Use of Videography and digital cameras during elections – Consolidated Instructions thereon;

Sir,

I am directed to state that in supersession of its earlier instructions on the subject cited above, the Commission hereby issues the following consolidated instructions.

2. In order to enable the Commission to have a true, faithful and concurrent record of the violations of the election law and the standing instructions of the Commission and to assess the impact of its corrective measures, the Returning Officer of each constituency shall make arrangements to record through Videography of critical events during the process of electioneering, including but not restricted to the period of public campaign, the day of poll, the transport and receipt of polled ballot boxes and other materials, counting of votes and the declaration of results in an independent intelligent and purposeful manner.
3. For this purpose, the Returning Officers may make use of video cameras and crew available with the Governmental or semi-Governmental agencies within their jurisdiction or hire local private professional videographers.
4. The Returning Officer shall, while programming the itinerary of the Video teams, take into account the number of electors, the size of the constituency, the number of sensitive polling stations, previous history of booth capturing and other malpractices, the general law and order situation, the likelihood of commission of corrupt practices and electoral offences and other related factors.
5. On the basis of his assessment, the Returning Officer should decide the number of video teams needed. The Commission has not prescribed any maximum or minimum number of video teams for an assembly/parliamentary constituency and has left it to the discretion of the Returning Officers on a correct appreciation of the factors mentioned in paragraph 4 above.

6. The Commission has issued the following instructions in the matter of selection of videographers and their deployment:-

6.1 The private videographers to be hired shall be screened thoroughly as to their professional competence, track record, financial viability and other related factors.

6.2 The videographers should not belong to any political party and should not be known sympathizers or supporters or close relatives of any of the contesting candidates or any of the leaders of any political party or should not have been hired by any political party or contesting candidate.

6.3 The Returning Officer is required to provide tea, snacks food etc. to the videographers and they shall not be left to fend for themselves while on duty. It shall be ensured that the videographers DO NOT accept the hospitality of any contesting candidate or political party or their workers.

6.4 Video teams should be under the personal supervision and guidance of a senior election related officer.

6.5 As and when required the video teams may be asked to accompany the General/Election Expenditure Observers so that all critical events observed by them may also be videotaped.

6.6 The videographers shall be impressed that the principle behind the scheme is to record and videotape critical events only which are likely to vitiate the poll and not to just videotape all events in a routine manner in order to fill the cassette.

7. Following items should be considered for special watch and videography -

- Meeting addressed/attended by Ministers, top national/State level leaders of recognized parties.
- Riots or riotous situations or commotions brick batting, free-for-all etc.
- Violent incidents, damaging of property, looting, arson, brandishing of arms etc.
- Booth capturing.
- Intimidation of voters.
- Inducement / bribing of voters by distribution of items like saree, dhoti, blankets etc.
- Canvassing within 100 metres of polling stations.
- Vulgar display of expenditure like huge cutouts etc.
- Movement and activities of candidates with doubtful / criminal records
- Hypersensitive & sensitive polling stations

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- Important events such as nomination, scrutiny and withdrawal of candidatures
- Preparation of EVMs by ROs
- Closure of strong room after deposit of EVMs therein
- Opening of strong rooms before taking out the EVMs for counting
- Counting process

Note: These are illustrative and not exhaustive. All video and digital photography should be done with date and time recording so that the real time and date can be verified

8. The video films thus prepared shall be viewed by the Returning Officer immediately to identify whether any of the organizers / speakers or other participants of the public meeting has committed any violations or infractions of statutory provisions and directions of the Commission or Model Code of Conduct relating to the conduct of elections.

9. In cases where the Returning Officer is himself competent, immediate corrective action including disciplinary action against all those found guilty shall be taken and the Commission informed of the same.

10. In cases of serious infringements, which the Returning Officer in his judgment decides to report to the Commission, a copy of the videotape concerned will be forwarded to the Commission by quickest means possible. The tapes will be carefully indexed and accompanied by a brief explanatory note of the infringement towards which the attention of the Commission is proposed to be invited. The explanatory note shall invariably mention the broad details of the violations, the persons responsible for the same and the action recommended.

11. The videographic clippings are required to be shown to one of the Observers available in the Constituency on a daily basis to enable him apprise the Commission of the situation prevailing in a particular constituency so that remedial measures, if any needed, can be taken promptly.

12. While seeking the clearance of the Commission for taking up of the counting of the votes and declaration of the results, the Returning Officer must include a categorical statement to the effect that all infringements observed in the videographed events have been appropriately and completely disposed of.

VIDEO/DIGITAL PHOTOGRAPHY OF PROCEEDINGS INSIDE THE POLLING STATION

13. In deference to the suggestions of Supreme Court, contained in its judgment dated 11th January 2005 in Civil Appeal No.9228 of 2003 - (Janak Bingham Vs. Das Rai and Other) the Commission directs that photography may now be carried inside the polling stations to photograph electors and cover poll proceedings without compromising the secrecy of voting. For

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such photography, arrangements will be made by the respective District Election Officer (DEO) in consultation with the Chief Electoral Officer.

- 13.1 In particular cases where the Commission has specifically directed video/digital photography of voters in identified area/assembly segments/polling stations, care should be taken to ensure that faces of all electors coming to cast their vote but not having EPIC or other ECI approved photo identity card, is captured in same sequence as they are entered in form 17-A i.e. Register of Voters. The photograph of electors shall be taken immediately after an entry has been made in form 17-A.
- 13.2 Critical events in and around the polling station should also be captured on video/digital camera in such polling stations. For example,
 - Mock poll and sealing of EVM before commencement of polls
 - Positioning of voting compartment
 - Presence of polling agents
 - Voters waiting outside at the close of scheduled hour of poll and the last voter in queue
 - Visits of sector officers, observers and other electoral functionaries etc.
- 13.3 The District Election Officers will issue digital cameras to the trained officers selected for the purpose under proper receipt for covering the specified polling station. These officers will capture the photographs of electors as indicted above during the period of poll and at the end of poll shall issue a certificate that **"I have captured photographs of all electors who voted at polling station number____on date_____ and total number of photographs in the camera are_____"**.
- 13.4 After completion of poll the officer who did the photography shall deposit the camera along with the above certificate at a separate counter to be erected for the purpose at collection center. These officers will be given proper duty passes to enable them to do photography inside the polling station. On receipt of such cameras District Election Officer shall make arrangements for downloading the photographs and their comparison. The Returning Officers and Observers will use the results of photo matching while making the recommendations for repoll. The downloaded data in respect of all polling stations will be kept by the DEOs in CDs for later use. The cameras will be cleared after downloading the

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photographs and their comparison for use in subsequent phases or elections as per the instructions issued by the Chief Electoral Officer in this respect.

- 13.5 The training of personnel who will be engaged in digital photography inside the polling stations shall be arranged by the Chief Electoral Officer. The Chief Electoral Officer/District Election Officers will make sure that enough batteries are available for operation of cameras in remote areas. All 2nd Polling Officers, all Presiding Officers, all AROs/ ROs/ DEOs/ Observers/ Candidates and political parties should be apprised of these arrangements.

INSPECTION AND SUPPLY OF COPIES (Prints) OF VIDEO TAPES

14. Requests have been received from contesting candidates, office bearers of political parties and others interested for inspection and supply of copies (prints) of the video tapes produced in compliance with the above mentioned orders of the Commission.

15. The Commission considers it necessary to lay down some uniform guidelines and a standard procedure in this regard.

16. After careful consideration of all relevant factors, the Commission lays down the following procedure:

16.1 Each and every video cassette produced in compliance with the orders of the Commission shall form a part of the record of the concerned election and stored as such with due precautions for its safety until it is weeded out with the prior written approval of the Commission and in the manner prescribed, as in the case of other records of the election.

16.2 All such video-cassettes will be in the custody of the District Election Officer concerned as in the case of all other election related records.

16.3 Each videotape shall be indexed with a uniform code number in the following standard formulation: State/District/AC/Date of recording/Gist of event videographed

16.4 The locking seal of cassettes will be kept in tact and not broken, so that copying of the contents of cassette on another cassette does become impossible, but shall be covered by a tape before consigning the cassette for storage with a view to preventing accidental erasing of contents, editing, manipulation, etc.

16.5 In pursuance of rule 93(2) read with section 76 of the Indian Evidence Act, 1872 the Commission has issued the following directions-

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16.5.1 Inspection - (a) Every application for inspection of a videocassette shall be made in writing and should contain the full particulars concerning the cassette of which inspection is required, (b) an inspection of the cassette shall be allowed to any person applying for the same on payment of Rs. 25/- per hour of inspection or part thereof unless inspection is required to be made urgently in which case the fee shall be Rs. 50/- (c) Inspection on an ordinary application shall be allowed on the date following the date on which the application is made or on a subsequent day and inspection on an urgent application shall be made on the same day.

16.5.2 Certified copy - (a) Certified print of the video cassette shall be given to any person applying for the same on payment of Rs. 25/- as application fee and the actual cost of copying as may be locally applicable. The application should establish the right of the applicant for inspection or for supply of certified copies-(prints) and for that purpose should clearly disclose that the applicant has a direct and tangible interest in the videocassette and the nature of such interest. (b) No fee shall be charged when inspection or certified copy (print) of a cassette is required for official purposes. To avoid removal of any footage of the cassette or damage or mutilation of the cassette, effective supervision by officials shall be ensured and simultaneous inspection by a large number of persons shall not be allowed.

16.6 the video cassettes will be made available for inspection in the office of the District Election Officer or Chief Electoral Officer as the case may be;

16.7 No guarantee for authenticity and veracity of the contents of the cassettes will be undertaken under any circumstances and these will be made available on 'as is' basis.

17. The contents of the letter may be brought to the notice of all political parties and contesting candidates at every election to the House of the People and to the State Legislative Assembly.








18. Kindly acknowledge receipt.

Sd/-

(A.K. MAJUMDAR)

4-11-11

ANNEXURE - P/6
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 ഭാരത സർക്കാർ Government of India		 ആധാർ Unique Identification Authority of India	
	കെ സത്യൻ K Sathyan	<p>മേഖലീയം: S/O: കൃഷ്ണൻ, സോപർണിക നരവൂർ, കുത്തുപറമ്പ്, കുതുപരമ്പ, കണ്ണൂർ കേരളം, 670643</p> <p>Address: S/O: Krishnan, Souparnika, Naravoor, Kuthuparamba, Kannur, Kuthuparamba, Kerala, 670643</p>	
	ജനന വർഷം/Year of Birth: 1959 പുരുഷൻ / Male		
			
8546 5775 2635		8546 5775 2635	
ആധാർ - സാധാരണക്കാരന്റെ അവകാശം		 1800 300 1947	
		 help@uidai.gov.in	
		 www.uidai.gov.in	

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