

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 927 of 2017

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Versus

Union of India & Anr.

...Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT

NO. 2 [ELECTION COMMISSION OF INDIA]

ADVOCATE FOR THE RESPONDENT NO.2: PRATEEK

KUMAR

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INDEX

S. No.	Particulars	Page No.
1.	Counter Affidavit on behalf of Respondent No.2	1-25
2.	<u>ANNEXURE-C/1</u> A true copy of the Common Order dated 12.01.2018 passed by this Hon'ble Court in Writ Petition (C) No. 422 of 2014 (<i>Yogesh Gupta v. Election Commission of India & Anr.</i>)	26-28
3.	<u>ANNEXURE-C/2</u> A true copy of the letter dated 21.11.2008 issued by the Election Commission of India to the Secretary, Ministry of Law and Justice	29-36
4.	<u>ANNEXURE-C/3</u> A true copy of relevant extracts of the Background Paper on Electoral Reforms published in	37-38

	December 2010 by the Core-Committee on Electoral Reforms, constituted by the Ministry of Law and Justice, Government of India	
5.	<u>ANNEXURE-C/4</u> A true copy of the letter dated 13.08.2013 issued by the Election Commission of India to then Law Minister, Government of India	39-40
6.	<u>ANNEXURE-C/5</u> A true copy of relevant extract of the 255 th Report of the Law Commission of India, on electoral reforms	41-53
7.	<u>ANNEXURE-C/6</u> A true copy of relevant extract of the Proposed Electoral Reforms issued by the Election Commission of India in December, 2016	54-58
8.	Proof of Service	59

Filed By

Date: 31.08.2026

Place: New Delhi



PRATEEK KUMAR

Counsel for Respondent No.2

1

IN THE SUPREME COURT OF INDIA

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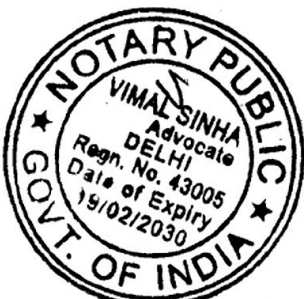
... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT

NO. 2

I, B. C. Patra , S/o Purusottam Patra, aged 53 years, currently posted as Secretary, Election Commission of India, having office at Nirvachan Sadan, Ashoka Road, New Delhi-110001, do hereby solemnly affirm and state as under:

1. I am the Secretary of the Election Commission of India and as such am well acquainted with the facts and circumstances of the case and competent to affirm the present counter affidavit on behalf of the Respondent No. 2 ("the Answering Respondent").
2. I state that I have read and understood the contents of the List of Dates and Writ Petition and the reply thereto is as under.



2

3. At the outset, I deny all the averments, submissions, contentions as well as the allegations contained in the present Writ Petition to the extent they relate to the Answering Respondent, save and except those that are expressly and specifically admitted hereinafter. No part of the Writ Petition shall be deemed to be admitted for non-traverse.
4. At the outset, the Answering Respondent craves leave of this Hon'ble Court to make preliminary submissions relevant to the subject matter of the present Writ Petition as under.

PRELIMINARY SUBMISSIONS

5. It is submitted that the present Writ Petition under reply has been filed by the Petitioner under Article 32 of the Constitution of India, seeking the following reliefs:

"Keeping in view the above stated facts and circumstances and the huge public money and man-power used in the elections, it is the most respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in nature of mandamus to:

- a) *direct the Central Government and Election Commission to take appropriate steps to use Common Electoral Rolls for Parliament, State Assembly and Local Body Elections;*



3

- b) *direct the Central Government and Election Commission to take appropriate steps to use Totalizer for counting the votes of Parliament, State Assembly, Local Body Elections;*
- c) *direct the Central Government and Election Commission to ascertain the feasibility of using the Post Offices as the Nodal Agency for voter registration and verification;*
- d) *direct the Central Government and Election Commission to ascertain the feasibility of holding the Parliament, State Assembly, Panchayat and Municipal elections on Sunday;*
- e) *take such other steps as this Hon'ble Court may deem fit to save public money and manpower used in the elections, avoid victimization discrimination and intimidation and ensure free and fair election in spirit of Article 324 of the Constitution and allow the cost of petition to petitioner."*

6. At the outset the Answering Respondent submits that the present Writ Petition was listed before this Hon'ble Court on 12.01.2018 along with other connected matters with Writ Petition (C) No. 422 of 2014 (*Yogesh Gupta Vs. Election Commission of India & Another*) being the lead matter, wherein this Hon'ble Court was pleased to pass a common Order, wherein among other things it was provided that:



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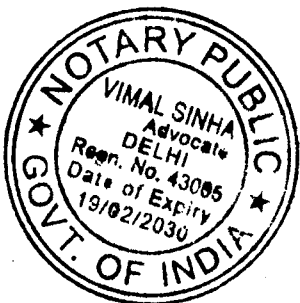
“.....Be it clarified, in all these writ petitions, for the present, we shall only address the issue of introduction of totaliser...”

A true Copy of the common Order dated 12.01.2018 passed by this Hon’ble Court in Writ Petition (C) No. 422 of 2014 titled as *Yogesh Gupta Vs. Election Commission of India & Another* is annexed herewith and marked as ANNEXURE-C/1 at pages to

7. In view of the aforesaid common Order dated 12.01.2018 passed by this Hon’ble Court and the contents of the present Writ Petition thereto, the Answering Respondent is confining its present reply in terms of the above Order passed by this Hon’ble Court and craves leave of this Hon’ble Court to file further reply, if so required, pertaining to other prayers in the present Writ Petition.

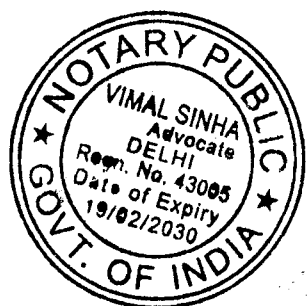
ABSENCE OF CONSTITUTIONAL OR STATUTORY MANDATE

8. It is most humbly submitted that the Election Commission of India conducts the elections strictly according to the mechanisms prescribed under the Constitution of India and the Representation of the People Act, 1950 and 1951 as well as the Conduct of Elections Rules, 1961.
9. The present petition has been filed seeking the extraordinary remedy of the grant of discretionary writ of mandamus against the Respondents to introduce Totaliser for counting of votes.



5

10. However, there is no provision in the Constitution of India and the Representation of the People Act, 1950 and 1951 as well as the Conduct of Elections Rules, 1961, nor any allied enactment presently in force, contains any provision recognizing, regulating, or otherwise governing the use of a Totaliser in the counting of votes.
11. Thus, there is no legal right that is being infringed in the present case and there is no corresponding non-performance any legal duty on part of the Answering Respondent. This Hon'ble Court has held time and again [*Director of Settlements, A.P. & Ors. vs M. R. Apparao and Another, (2002) 4 SCC 638*] that the discretionary writ of mandamus can only be issued when this primary threshold is crossed and not in the absence of it.
12. It is most humbly submitted that therefore the present Writ Petition deserves to be dismissed on this very ground.
13. It is further humbly submitted that the introduction of the Totaliser would necessarily require substantive amendments to the extant law, together with a corresponding revision of the statutory procedure governing the counting of votes. On the subject of election law, such an exercise is neither simple nor capable of being undertaken within a short span of time. The implementation of Totaliser, in the absence of a legal framework, without the underlying rules being first put in place would be premature and legally unsustainable.
14. It is further most humbly submitted that when the Election Commission of India had introduced the Electronic Voting Machines in 1982 in the absence of necessary statutory



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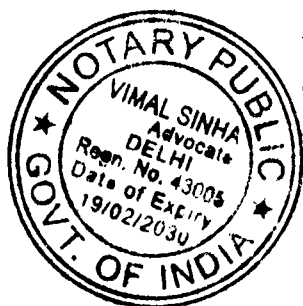
backing, it led to the judgment of *A. C. Jose vs Sivan Pillai (1984) 2 SCC 656*] wherein this Hon'ble Court not only held such introduction of the EVM machine under Article 324 to be bad in law but even the election conducted with the use of EVMs without the sanction of law was set aside by this Hon'ble Court.

WHAT IS TOTALISER

15. A Totalizer is a proposed machine, which will connect a cluster of 14 Control Units of EVMs used at 14 polling stations via a cable, which in turn will provide a consolidated result for each candidate in that group of EVMs.

DEVELOPMENT OF TOTALIZER

16. The Answering Respondent submits that the concept of Totalizer was demonstrated before the Election Commission of India by M/s Bharat Electronics Limited (BEL) and M/s Electronics Corporation of India Limited (ECIL), Public Sector Undertakings of the Union of India, in August 2007. Subsequently, in November 2007, the Totalizer was demonstrated before the Election Commission of India (in short, ECI), the Technical Expert Committee of ECI and the Officials of Ministry of Law and Justice. Thereafter, the proposal for introducing Totalizer for counting of votes recorded in the EVMs was first made by the Answering Respondent (i.e. ECI) *vide* letter dated 21.11.2008 addressed to the Secretary, Ministry of Law and Justice, wherein the Answering Respondent recommended for amending the Conduct of Election Rules, 1961 to provide for the use of a



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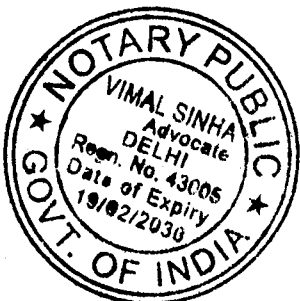
Totalizer for counting of votes recorded in the EVMs during the elections.

A true copy of the letter dated 21.11.2008 issued by the Election Commission of India to the Secretary, Ministry of Law and Justice is annexed herewith and marked as ANNEXURE-C/2 at pages to

17. The Answering Respondent further submits that the aforesaid proposal of the Election Commission of India, dated 21.11.2008, addressed to the Secretary, Ministry of Law and Justice, was referred to a Parliamentary Committee in 2009. The Core-Committee on Electoral Reforms, constituted by the Ministry of Law and Justice, Government of India, in its 'Background Paper on Electoral Reforms' published in December 2010, examined the proposal of the Election Commission of India, However, in the Status/Remarks column, as against the said proposal, it was stated that no view had been taken on the aforesaid issue.

A true copy of relevant extracts of the Background Paper on Electoral Reforms published in December 2010 by the Core-Committee on Electoral Reforms, constituted by the Ministry of Law and Justice, Government of India is annexed herewith and marked as ANNEXURE-C/3 at pages to

18. It is submitted that the Election Commission of India (Answering Respondent herein) requested the then Law Minister Government of India vide letter dated 13.08.2013



8

to consider the proposal put forth by the Election Commission of India in 2008 for amending the Conduct of Election Rules, 1961 to provide for the use of Totalizer for counting of votes.

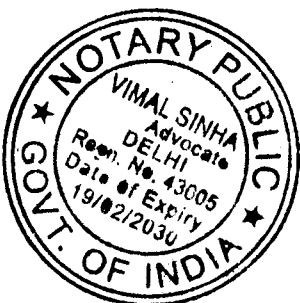
A true copy of the letter dated 13.08.2013 issued by the Election Commission of India to the then Law Minister Government of India is annexed herewith and marked as ANNEXURE-C/4 at pages to .

19. In the meantime, a Writ Petition came to be filed before this Hon'ble Court being Writ Petition No. 422 of 2014 (*Yogesh Gupta vs. Election Commission of India & Another*), wherein *inter alia* the Petitioner sought the following relief:

“ Issue a Writ in the nature of mandamus issuing direction to the respondent to declare the results of every Parliamentary Constituency as a whole and to not declare results of every voting machine separately, so as to preserve the right of privacy in voting.”

20. That during the pendency of the aforesaid Writ Petition (*Yogesh Gupta vs. Election Commission of India & Another*), the Law Commission of India in March 2015 endorsed the proposal of the Election Commission of India in its 255th Report wherein the Law Commission of India recommended as follows:

“...13.6 For all these reasons, the Law Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in EVMs. Similar to the existing Rule 59A,



9

the Commission proposes to amend Rule 66A to empower the ECI to decide when, and in which constituency and polling booths, to employ a totaliser, after taking into consideration the context of the elections and any threats of intimidation or victimization.

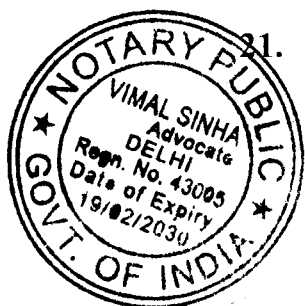
Recommendation

13.7 Thus, in Rule 66A of the Election Rules, 1961, in Rule 56C, the Law Commission recommends that:

After sub-section (2), a new sub-section (2A) may be inserted with the following words:

“(2A) In the appropriate case, where the Election Commission apprehends intimidation and victimisation of electors in any constituency, and it is of the opinion that the votes recorded in the voting machines should be mixed before counting, it may by notification in the Official Gazette, specify such constituency where the returning officer shall use a totaliser for the counting of votes recorded in a group of electronic voting machines.”

A true copy of relevant extract of the 255th Report of the Law Commission of India, on electoral reforms is annexed herewith and marked as ANNEXURE-C/5 at pages to .

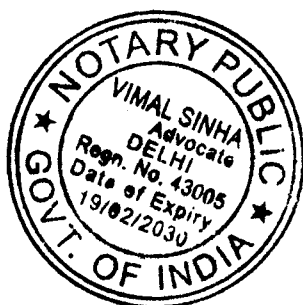


21. It is further submitted that, the ECI (Answering Respondent herein) thereafter held a meeting with all recognized National and State Political Parties on 19.03.2016 to discuss

10

some of the important issues on electoral reforms and conduct of elections. All the 6 National Parties and 29 State Parties attended the aforesaid meeting, wherein *inter alia* the use of “Totalizer” for counting of votes recorded in the EVMs was discussed. A demonstration of the functioning of a “Totalizer” was also made before the representatives of the aforesaid political parties. **It is pertinent to mention herein that, 50% i.e. 3 out of 6 National Parties and 62% i.e. 18 out of 29 State Parties opposed the idea of Totalizer.**

22. Thereafter, the Government of India constituted a Team of Minister (TOM) in September 2016 to examine the Election Commission’s proposal for introducing Totalizer for counting of votes. However, the Team of Ministers disagreed with the proposal put forth by the ECI for introduction of Totalizer. The Team of Ministers stated that, revelation of booth wise voting patterns would have a beneficial effect in increasing development activities and helping parties to improve their performance.
23. The Answering Respondent (i.e. the Election Commission of India) in December 2016, once again sent a set of 27 proposals (encapsulated in 10 chapters) on Electoral Reforms to the Government of India, where in Chapter IV provided for proposals in respect of ‘Election Officials And Logistics’. It is submitted that Proposal 4 of the said Chapter IV deals with ‘Use of “Totaliser” for counting of votes’.

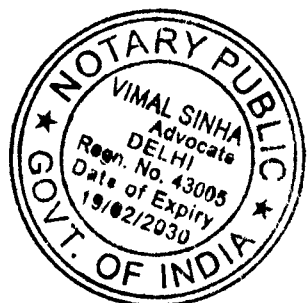


A true copy of relevant extract of the Proposed Electoral Reforms issued by the Election Commission of India in December 2016 is annexed herewith and marked as ANNEXURE-C/6 at pages to

24. Thereafter, this Hon'ble Court in March 2018, while hearing the present Writ Petition under reply, orally directed the ECI to look into the aspect of introduction of Totalizer and revert back to this Hon'ble Court. In view of the aforesaid direction of this Hon'ble Court, the ECI set up Working Group comprising of Chief Election Officers of various State/UTs and ECI officers to comprehensively analyze the technical aspects on the use of Totalizer. The aforesaid Working Group flagged various administrative, procedural, logistical and technical issues. However, in view of legal impediments as noted in the present Affidavit, no further steps were taken in this regard.

COUNTING OF VOTES : THE CONCURRENT AUDIT MECHANISM THROUGH FORM 17C

25. It is submitted that the contention of the Petitioner as regards prayer (b) in the present Writ Petition is that Totalizer should be introduced for counting of votes recorded in the Electronic Voting Machines (hereinafter referred to as EVMs) based on the above noted recommendations. In this regard, the Answering Respondent most humbly submits that for the introduction of Totalizer for counting of votes in the EVM, necessary amendment in the Conduct of Election Rules, 1961 is required. However, certain aspects that need evaluation in

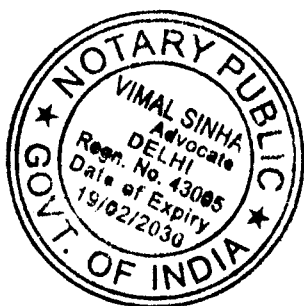


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this respect are being noted below for the consideration of this Hon'ble Court.

26. The Answering Respondent submits that, in the prevailing EVM based voting system, the counting of votes is done through the retrieval of candidate-wise vote count stored in the Control Unit of the EVM for each Polling Station. The total votes secured by each candidate are subsequently compiled for all the polling stations and the result are declared after comparing the cumulative votes scored by each candidate.
27. It is pertinent to note that this Hon'ble Court while dealing with the issue of doubts against the EVM system in *Association for Democratic Reforms vs. Election Commission of India & Anr.* [(2025) 2 SCC 732], noted the entire process of poll in great details to make the operation of the entire scheme under the Representation of the People Act, 1951 as well as the Conduct of Elections Rules, 1961 clear and to show how the entire scheme taken together results in a poll that is conducted fairly and reflects the true mandate of the people. The relevant procedure as observed by this Hon'ble Court is noted below:

“49. Under Rule 49-S of the 1961 Rules, at the time of close of the poll, the Presiding Officer furnishes attested true copy of the account of votes recorded in Part I of Form 17-C to the polling agents of the candidates. He also retains a receipt of the same from the polling agent.



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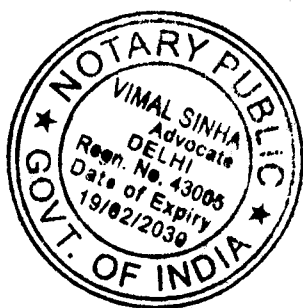
50. Before start of counting of votes, the serial number of the EVMs and the paper seals affixed on the EVMs are verified with details mentioned in Form 17-C and are shown to the counting agents. The total votes displayed by pressing the “total” button on the control unit is also tallied with the total votes polled as per Form 17-C.

51. The counting is done in the presence of the polling agents/candidates by pressing the “result” button on the control unit. The total votes polled and the total votes polled by each candidate is thereupon displayed on the display panel.

52. In terms of the directions issued by this Court in N. Chandrababu Naidu [N. Chandrababu Naidu v. Union of India, (2019) 15 SCC 377] , the VVPAT slips of five polling stations per Assembly constituency/Assembly segment of the parliamentary constituency, are randomly selected and counted. The results are then tallied with the electronic results of the control unit.

53. It may be relevant here to also refer to Rule 56-D of the 1961 Rules, which reads as under:

“56-D. Scrutiny of paper trail.—(1) Where printer for paper trail is used, after the entries made in the result sheet are announced, any candidate, or in his absence, his election agent or any of his counting agents may apply in writing to the Returning Officer to count



14

the printed paper slips in the drop box of the printer in respect of any polling station or polling stations.

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

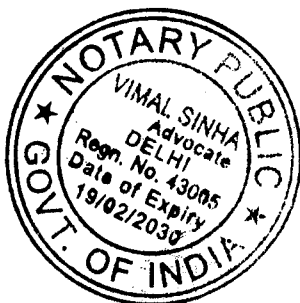
(3) Every decision of the Returning Officer under sub-rule (2) shall be in writing and shall contain the reasons therefor.

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

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

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

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



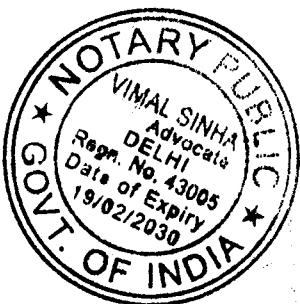
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(d) complete and sign the result sheet."

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

55. As per the ECI guidelines, in case there is any mismatch between the total number of votes recorded in the control unit and Form 17-C on account of non-clearance of mock poll data or VVPAT slips, in terms of Rule 56-D(4)(b) of the 1961 Rules, etc. the printed VVPAT slips of the respective polling stations are counted and considered if the winning margin is equal to or less than total votes polled in such polling stations".

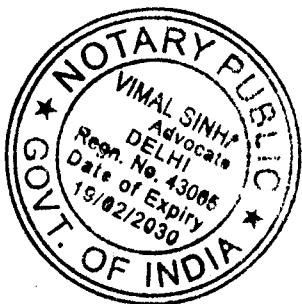
28. Therefore, it can be seen that in the present scheme of the Representation of the People Act, 1951 the polling as well as counting is conducted in the presence of the candidates and their agents and they are provided an opportunity to



16

confirm through the matching of Form 17 C Part I filled at the close of poll at the polling station with Form 17C Part II filled at the time of counting to see that there is no mismatch. Candidates have a right to ask for the counting of VVPAT slips in respect of any polling station or polling stations, under Rule 56-D of the 1961 Rules and in case of a discrepancy in the votes displayed in the Control Unit and the counting of the VVPAT paper slips, the Returning Officer shall amend the result sheet in Form 20 as per the paper slips count. Further, as per Rule 63 of the 1961 Rules, a candidate or his election agent or a counting agent may apply to the Returning Officer for recount of votes either wholly or in part, and if allowed by the Returning Officer, the result sheet is amended in Form 20 to the extent necessary after such recount.

29. In this system of counting, polling booth-wise distribution of votes in the election becomes known to the candidates and political parties that fielded their candidates from the concerned constituencies. However, this transparency of the mechanism is necessary to give credence to the outcome of the elections. This knowledge of booth level voting pattern may be utilized by some political parties to improve their outreach program in the booths where they have not performed up to their expectation and make organizational decisions accordingly and by others in some vexatious manner. However, the mere possibility of vexatious use of information may not be a sufficient justification to create a system where polling booth wise information is not shared with candidates or their agents with respect to their

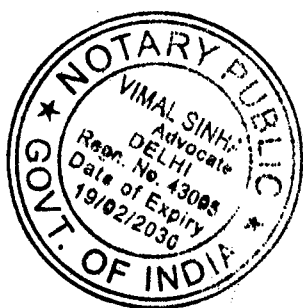


17

performance and they are not able to confirm about the polling as well as counting process through the mechanism of Form 17C.

LOWERING OF TRANSPARENCY — DEFEAT OF THE FORM 17C SAFEGUARD

30. That, independent of the constitutional, statutory and judicial concerns set out hereinabove, the introduction of the Totaliser would also result in a material and substantive lowering of transparency in the counting process, having specific regard to the statutory safeguard presently embodied in Form 17C prescribed under the Conduct of Election Rules, 1961.
31. That Form 17C is maintained in two parts. Part I of Form 17C is prepared by the Presiding Officer at each individual polling station, under Rules 49S and 56C of the Conduct of Election Rules, 1961, at the close of the poll. It records, booth-wise, the identification number of the EVM used at that station, the total number of electors assigned to the booth, the total number of voters who cast their votes as recorded in Form 17A, the number of voters who did not vote despite signing the register, the number of voters not allowed to vote, the number of test votes recorded, and the total number of votes recorded in that very EVM. A signed copy of Part I is handed over, to the polling agent of every candidate present at the booth, and thereby becomes a contemporaneous, booth-specific and candidate-verified record of the votes polled on that EVM.

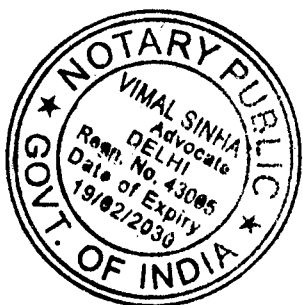


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32. That Part II of Form 17C is filled up at the counting centre. Upon the 'Result' button of the Control Unit of a particular EVM being pressed by the Returning Officer or the counting supervisor, the candidate-wise votes recorded in that specific EVM are displayed and thereafter entered in Part II, in the presence of counting agents. Critically, the total of votes so obtained candidate-wise in Part II, for that EVM/booth, is required to correspond with the total votes recorded in Part I of Form 17C for the very same EVM/booth, which the polling agents already hold from the day of polling. Any variance between the two figures can be immediately pointed out by the counting agents at the time of counting itself, and, if unresolved, may form the basis of a challenge in an election petition.

33. **That it is this one-to-one, booth-wise and EVM-wise correspondence between Part I and Part II of Form 17C which constitutes the backbone of the self-verifying and transparent character of the present counting process.** Each polling booth retains a distinct and separately identifiable figure, fixed at the close of polling and already in the custody of the candidates' polling agents, against which the result of that very booth, declared at the counting table, can be checked in real time.

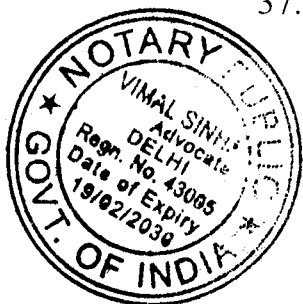
34. That the Totaliser, by its inherent design and function, would combine and homogenise the votes recorded in individual EVMs/polling booths at a single point, before the result of any one of those constituent EVMs is individually displayed or declared. Once such combination takes place, it would no longer be possible for the Returning Officer, the counting



19

staff, or the counting agents to record, in Part II of Form 17C, a distinct candidate-wise figure attributable to each of the constituent booths; only a single, aggregated figure for the entire batch of booths would be generated and displayed at the end of the process.

35. That, as a direct consequence, the candidates and their polling/counting agents would be deprived of the elementary and long-standing safeguard of matching the booth-wise total in Part II with the corresponding booth-wise total already recorded in Part I of Form 17C for that very booth. Any discrepancy — whether arising from a technical malfunction, human error, or otherwise — occurring in respect of any one of the EVMs so clubbed together would stand concealed within the aggregate figure, and would become incapable of being identified, or independently verified by any party to the election.
36. That this would also adversely affect the adjudication of election disputes, inasmuch as Form 17C data is routinely relied upon before Election Tribunals and courts to demonstrate discrepancies, if any, between the votes polled and the votes counted at a given polling station. The introduction of the Totaliser, by permanently merging booth-level figures prior to the declaration of any individual result, would foreclose this avenue of scrutiny in respect of all booths clubbed together, thereby narrowing the scope for correction even through subsequent legal recourse.
37. That the effect of the Totaliser would work a substantive change in the very character of the counting process — from

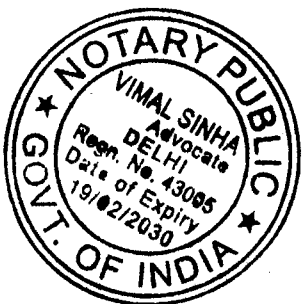


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one that is booth-wise transparent, contemporaneously verifiable through Form 17C, and self-correcting at the counting table itself, to one that is aggregated, opaque, and incapable of verification. Such a change would lower, rather than enhance, the overall transparency of the counting process and would render both verification and dispute resolution considerably more complicated than at present.

**CONFLICT WITH THE MANDATORY DIRECTIONS
OF THE HON'BLE SUPREME COURT**

38. That this Hon'ble Court, in *N. Chandrababu Naidu & Ors. v. Union of India & Anr.* [reported at (2019) 15 SCC 377], vide order dated 08.04.2019, directed that physical verification of the Voter Verifiable Paper Audit Trail (VVPAT) slips of five randomly selected EVMs/polling stations per Assembly Constituency/Assembly Segment of a Parliamentary Constituency shall be mandatorily carried out.
39. That thereafter, this Hon'ble Court, in *Association for Democratic Reforms & Anr. v. Election Commission of India & Anr.*, reported at 2024 INSC 341, further directed that the burnt memory/microcontroller of the Ballot Unit (BU), Control Unit (CU) and VVPAT of 5% of the EVMs per Assembly Segment of a Parliamentary Constituency shall be mandatorily checked and verified after the declaration of results.
40. That compliance with both the aforesaid directions necessarily presupposes the availability of votes cast and recorded on a distinct, booth-wise and machine-wise basis, so that the particular EVMs/VVPATs required to be verified



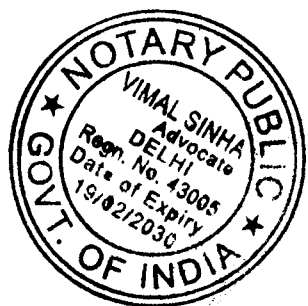
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can be identified with certainty and their results independently traced.

41. That the Totaliser, by its very design, aggregates the votes recorded across polling booths at a single point without preserving a distinct booth-wise, machine-wise trail. Once such aggregation takes place, the identification, tracing, and independent verification of the results of specific EVMs/VVPATs — as mandated in both the judgments referred to above — would become either impossible or, at the very least, exceedingly difficult to carry out with the requisite certainty. It is pertinent to add that the concept of totalizer was mooted at a time when the concept of VVPAT was not on the horizon. However, after introduction of VVPAT, the operational feasibility of totalizer may not be convincing.
42. That, in lieu of the aforesaid directions of the Hon'ble Court, the introduction of the Totaliser would prevent the Election Commission of India from effectively complying with the safeguards and verification requirements put in place by this Hon'ble Court in *N. Chandrababu Naidu v. Union of India* [(2019) 15 SCC 377] and *Association for Democratic Reforms vs Election Commission of India* [(2025 2 SCC 732)].

THE ISSUE OF PUBLIC TRUST & CONFIDENCE IN THE ELECTORAL SYSTEM

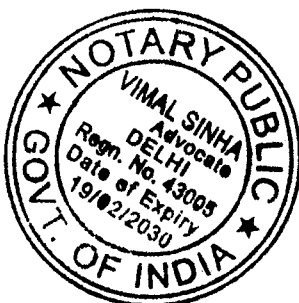
43. That it is also relevant to state that the present time is one in which the functioning and integrity of Electronic Voting Machines are still a subject of frequent public questioning, despite this Hon'ble Court having ruled out in *Association*



22

for Democratic Reforms vs Election Commission of India
[(2025 2 SCC 732)] the possibility of any mischief in its use after a thorough examination of the machine's design as well as the statutory mechanism put in place for its use.

44. In such a climate, the introduction of a new and, as yet, legally unregulated mechanism such as the Totaliser could give rise to fresh allegations and controversy, thereby further complicating public confidence in an already sensitive area of the electoral process.
45. That public confidence is the bedrock of democratic legitimacy. In recent electoral cycles, the integrity of EVMs and counting mechanisms has faced intense public scrutiny, persistent litigation, and widespread misapprehensions. The ECI has consistently instituted rigorous, transparent protocols (including multi-tier mock polls, administrative sealing in the presence of candidate agents, and end-to-end physical paper verification) to dispel doubts and reinforce faith in the sanctity of the poll process.
46. That introducing an intermediate aggregating device like the Totaliser—which adds a layer of algorithmic pooling between individual EVMs and the final tally—would inevitably:
- a) Generate fresh anxieties, misgivings, and allegations regarding data integrity, machine tampering, and transmission glitches.



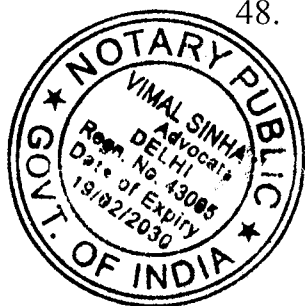
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b) Make the counting process significantly opaque and more complex for grassroots polling agents and ordinary citizens to observe and verify.

c) Heighten systemic friction at counting centers, where simplicity and immediate booth-level clarity are essential to maintain peace, order, and acceptance of the outcome.

47. It is therefore most humbly submitted that the introduction of Totaliser ought to involve a political consensus followed by the introduction of suitable legislative changes that deal with all concerns of all parties alike to ensure that there is no scope of levelling baseless allegations on the electoral process which erodes the trust of the people from the working of their democracy. Subsequently, comprehensive, systematic and multiple rounds of training of polling officials, stakeholders particularly, the counting staff and counting agent of the contesting candidates will need to be carried out by the Election Commission of India on a large scale. A nation-wide 360 degree multi-modal awareness and education campaign about the use of Totalizer and its features and functioning must be carried out to inform, educate and orient the voters and various stakeholders particularly political parties, media etc to instill sense of complete confidence and credibility in the Totalizer and to remove any misgivings and skepticism about a new electronic machine being introduced in the election framework.

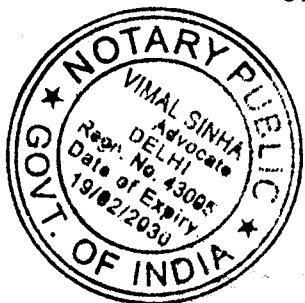
48. The answering Respondent submits that, the idea of totalizer which is akin to the mixing of votes in the paper ballot



24

system, however the experience of litigations has revealed that the present system which includes a simultaneous audit by the candidates is necessary to ensure that frivolous and baseless allegations do not cloud the outcome of elections merely because they happen to be unsavory.

49. That, for the reasons stated hereinabove, the Answering Respondent – i.e. the Election Commission of India is of the considered and humble opinion that Totaliser ought not to be introduced as of now, and that its introduction, if considered necessary by the Parliament / Government of India, in future, must be preceded by (i) the requisite legislative and policy amendments conferring legal sanction upon it, and (ii) the evolution of a mechanism capable of ensuring full and continued compliance with the mandatory directions of this Hon'ble Court in *N. Chandrababu Naidu v. Union of India* [(2019) 15 SCC 377] and *Association for Democratic Reforms vs Election Commission of India* [(2025 2 SCC 732)].
50. That the present affidavit is filed bona fide, and in furtherance of the Election Commission of India's constitutional obligation to safeguard the free, fair, and transparent conduct of elections.
51. The Answering Respondent craves leave of this Hon'ble Court to file a further detailed additional affidavit, if so required or deemed fit besides making detailed submissions at the time of hearing.
52. Hence, it is prayed that this Hon'ble Court may be pleased to record the above position in so far as Answering Respondent (i.e. Respondent No. 2) is concerned and pass such order as



25

this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and, thus, render justice.



DEPONENT

IDENTIFIED

VERIFICATION

बी. सी. पात्रा / B. C. PATRA
प्रधान सचिव / Principal Secretary
भारत निर्वाचन आयोग
Election Commission of India
निर्वाचन सदन / Nirvachan Sadan
अशोक रोड / Ashoka Road
नई दिल्ली-110001/New Delhi-110001

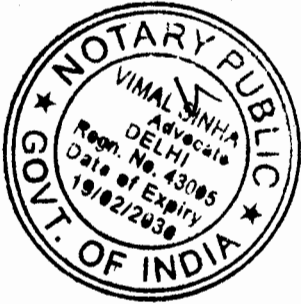
I, the deponent above named, do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge no part of it is false and nothing material has been concealed thereof.

Verified at New Delhi, on this day of August, 2026.

31 AUG 2026



DEPONENT



बी. सी. पात्रा / B. C. PATRA
प्रधान सचिव / Principal Secretary
भारत निर्वाचन आयोग
Election Commission of India
निर्वाचन सदन / Nirvachan Sadan
अशोक रोड / Ashoka Road
नई दिल्ली-110001/New Delhi-110001

ATTESTED
NOTARY PUBLIC DELHI
GOVT. OF INDIA
Mob. No. : 9213778773

WP(C)No.422/14 etc.etc.

1

ITEM NO.13

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s).422/2014

YOGESH GUPTA

Petitioner(s)

VERSUS

THE ELECTION COMMISSION OF INDIA & ANR.

Respondent(s)

WITH

W.P. (C) No.585/2014 (PIL-W)

W.P. (C) No.927/2017 (PIL-W)

Date : 12-01-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.Gopal Sankaranarayana, Adv.
(In WP(C)927/17) Mr.Shrutanjy Bhardwaj, Adv.
Mr.Veera Mahale, Adv.
Mr. R. D. Upadhyay, AOR

In WP(C)422/14 Mr.Kawaljyot Singh, Adv.

Mr. Balbir Singh Gupta, AOR

Petitioner-in-person (NP)

For Respondent(s) Mr.K.K.Venugopal, AG
Mr.Maninder Singh, ASG
Ms.Kiran Suri, Sr.Adv.
Ms.Rashmi Malhotra, Adv.
Mr.Rohit Bhatt, Adv.
Mr. Mukesh Kumar Maroria, AOR

Ms.Meenakshi Arora, Sr.Adv.

Mr. Mohit D. Ram, AOR

Mr.Amit Sharma, Adv.

Mr.Mohit D.Ram, Adv.

Mr.Dipesh Sinha, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Heard Mr.Gopal Sankaranarayana, learned counsel for the petitioner in WP(C)No.927 of 2017 and Mr.Kawaljyot Singh, learned counsel for the petitioner in W.P.(C)No.422 of 2014.

It is submitted by the learned counsel for the petitioners that the Central Government and the Election Commission should take appropriate steps to use the method of totaliser for counting the votes in Parliament, State Assembly and local bodies elections. It is urged by him that if the method of totaliser is used, the voters would feel safe and never have the feeling of being victimised. According to him, when the voting pattern becomes identifiable in respect of a particular polling booth, there are local problems in praesenti, and that deserve to be looked at.

Mr.Maninder Singh, learned Additional Solicitor General appearing for the Union of India submitted that a Group of Ministers has considered this aspect on 07.09.2016 in consultation with all other national political leaders and the Election Commission and a decision has been taken not to go for introduction of totaliser in the present existing system.

Mr.K.K.Venugopal, learned Attorney General for India submitted that he has a different perception in the matter as the Court has issued notice to him to assist the Court. He would submit that prior to insertion of Rule 59A of the Conduct of Election Rules, 1961, the Election Commission used to mix all the ballot papers for the purpose of counting.

Ms.Meenakshi Arora, learned senior counsel, Mr.Mohit D.Ram and Mr.Amit Sharma, learned counsel appearing on behalf of

the Election Commission of India would submit that a time has come for introduction of totaliser for counting of the votes. It has been brought to our notice that recommendation in that regard has been given to the Law Commission of India. It is submitted by the learned counsel appearing for the Election Commission that the secrecy of the ballot, privacy of the individual and further the right of the people staying in a particular locality should not be exposed, and any kind of prejudice or discrimination because of the voting pattern should be avoided. Therefore, there is need for considering the aspect of introduction of totaliser.

Be it clarified, in all these writ petitions, for the present, we shall only address the issue of introduction of totaliser.

Let all these matters be listed for final disposal on 12.02.2018 at 2.00 P.M.

(Chetan Kumar)
Court Master

(H.S.Parasher)
Assistant Registrar



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ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

A

No. 3/4/2008/JS-II

Dated: 21st November, 2008

To

The Secretary to the
Government of India,
Ministry of Law and Justice,
Legislative Department,
Shastri Bhavan,
New Delhi.

Subject:- Amendments to the Conduct of Elections Rules, 1961 to provide for use of Totaliser for counting of votes recorded in Electronic Voting Machines – regarding.

Sir,

I am directed to state that from 2000 onwards at all elections to the House of the People and State Legislative Assemblies, poll has been taken using the Electronic Voting Machines (EVMs). The use of EVMs has simplified the poll and counting process considerably, apart from saving huge quantity of paper required in elections using ballot papers and ballot boxes. The present system of counting of votes in the elections using EVMs, is that the votes recorded for each candidate in each polling station are ascertained polling station-wise and the votes so ascertained for each candidate in all polling stations of the Constituency are totalled and the result declared. Attention is invited to Rule 66A read with Rules 55C, 56C and 57C of the Conduct of Elections Rules, 1961.

2.0 In this system of counting of votes, the candidates and parties are able to know precisely the number of votes polled by them in each polling station covering a limited polling area. There have been complaints that such a situation can, in some cases, leads to a post-election vindictive attitude/action against the electors of the area where candidates and parties have not fared well. This system can, in some cases, also give rise to pre-election intimidation of

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electors. Such complaints have been made to the Commission from time to time including in the last UP general elections of 2007 when voters in certain dacoit affected areas of the state brought up this issue.

3.0 The Commission has considered this issue and is of the view that there should be provisions in the Rules enabling the counting of votes by mixing the votes recorded in more than one polling station so as not to reveal the candidate-wise votes polled in individual polling stations where the Commission apprehends the possibility of any such intimidation or victimisation of electors. It may be noted that there are analogous provisions in Rule 59A relating to counting of votes by mixing of ballot papers at elections using 'ballot papers and ballot boxes'. For enabling similar counting procedure in elections using EVMs, at the instance of the Commission, the two firms manufacturing the EVMs for the Commission, viz, the ECIL and the BEL, have developed an electronically operated gadget called 'Totaliser' which is an interface to which a group of 12 to 15 Control Units of EVMs can be connected simultaneously, and the consolidated result of votes cast for each candidate in that group of EVMs can be obtained, by pressing the result button in the Totaliser, but without, however, disclosing the votes polled by a candidate polling station-wise. Before showing such consolidated result of counting, the Totaliser will first show the total no. of votes recorded in each EVM individually alongwith the unique identification numbers of the individual EVMs to demonstrate that the total votes in each of the EVMs in that group tallies with the figures mentioned in Part I of the 'Account of Votes Recorded' maintained by the Presiding Officers at the respective polling stations. The Totaliser will display this polling station-wise total no. of votes polled, while transferring the data from the individual EVMs to the Totaliser.

2. The use of Totaliser, wherever the Commission so decides for good and sufficient reasons to count the votes recorded in more than one EVM in this manner, would enable counting of votes without revealing the voting pattern in individual polling stations as in the

case of counting by mixing of ballot papers. This will help allay the fears of the electors against any pre-election intimidation or post-poll victimisation intimidation and will be in the interest of free and fair election.

3. For operationalising the use of Totaliser in counting of votes, appropriate enabling provisions are required to be incorporated in the Conduct of Elections Rules, 1961. The Commission, therefore, desires that the following amendments by way of inserting new Rules may be made in the Conduct of Elections Rules, 1961.

4. After Rule 66A, and Rules 55C, 56C and 57C as applied thereunder, the following new rules may be inserted, viz:

"66AA: Counting of votes in specified constituencies at elections using electronic voting machines :- Where the Election Commission apprehends intimidation and victimization of electors in any constituency and it is of the opinion that it is absolutely necessary that votes recorded in the EVMs used in a group of polling stations in that constituency should be counted together, by means of a Totaliser, it may, by notification in the Official Gazette, specify such constituency or constituencies, and for counting of votes in such constituency or constituencies,-

(i) the provisions of rules 50 to 54, and in lieu of rules 55C, 56C and 57C, the following rules, shall apply, namely:-

"55CC: Scrutiny and inspection of voting machines:-

(1) Subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, the Returning Officer may have the control units of the voting machines used at more than one polling station taken up for scrutiny and inspection simultaneously and total votes recorded in such units counted together by connecting them to a Totaliser.

- (2) Before counting of votes together by connecting the control units of the EVMs to the Totaliser under sub rule (1), the candidates or their election agents or their counting agents present at the counting table shall be allowed to inspect the paper seal and such other vital seals as might have been affixed on the control units and to satisfy themselves that the seals are intact.
- (3) The Returning Officer shall satisfy himself that none of the voting machines used has in fact been tampered with.
- (4) If the Returning Officer is satisfied that any voting machine has in fact been tampered with, he shall not count the votes recorded in the machine and shall follow the procedure laid down in section 58 or section 58A or section 64A, as may be applicable, in respect of the polling station where the machine was used.

Explanation: For the purpose of these Rules, "Totaliser" means a machine or apparatus operated electronically or otherwise, to which a group of control units of the voting machines can be connected simultaneously, and the consolidated result of votes cast for each candidate in that group of voting machines can be obtained, by pressing the appropriate result button provided therein. The Totaliser shall be of such design as may be approved by the Election Commission.

56CC Counting of votes in the specified constituencies where counting is done by using the Totaliser :-

- (1) After the Returning Officer is satisfied that voting machines, other than those referred to in sub-rule(4) of rule 55CC, have not been tampered with, he shall connect or cause to be connected such number of control units of voting machines, as may be directed by the Election Commission, to the Totaliser in

each round, and have the votes recorded in such control units counted together round-wise by pressing the appropriate button marked "Accept" provided in the Totaliser.

- (2) After the specified number of control units, as directed by the Election Commission under sub-rule(1), have been connected to the Totaliser in each round, the result button in each control unit so connected to the Totaliser, shall be pressed upon which the Totaliser will display the unique identification number of the control units one by one and also the total number of votes recorded in the control units and the Returning Officer shall have the number of votes so displayed control unit-wise recorded in Part II of Form 17CC pertaining to the polling station concerned and a corresponding entry made in Form 17D.
- (3) After the no. of votes polled in each of such control unit is recorded in Part II of Form 17CC and Form 17D under sub-rule (2), the "Accept" button on the Totaliser shall be pressed, upon which the Totaliser will display the total number of votes recorded, for each candidate, in all the control units connected to the Totaliser and also the total cumulative number of votes polled by each of the candidates.
- (4) As the votes polled by each candidate are displayed on the Totaliser under sub-rule(3), the Returning Officer shall have-
 - (a) the number of votes displayed in respect of each candidate entered in Form 17D in respect of each round of counting;
 - (b) Form 17D completed in all respects and got signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and

- (c) corresponding entries made in a result sheet in Form 20AA and the particulars so entered in the result sheet announced.

57CC- Sealing of Voting Machines and Totalisers (1):- After the result of voting recorded in all control units of voting machines has been ascertained and candidate-wise result entered in Form 17D and Form 20AA under rule 56CC, the Returning Officer shall-

- (a) reseal the control units with his seal and the seals of such of the candidates or their election agents present who may desire to affix their seals thereon so however that the result of voting recorded in the unit is not obliterated and the unit retains the memory of such result;
 - (b) seal the Totaliser with his seal and seals of such of the candidates or their election agents present who may desire to affix their seals thereon.
- (2) The control units so sealed shall be kept in specially prepared boxes on which the Returning Officer shall record the following particulars, namely:-
- (a) the name of the constituency;
 - (b) the particulars of polling station where the control unit has been used;
 - (c) serial number of the control unit;
 - (d) date of poll, and
 - (e) date of counting.

(3) The Totaliser sealed under sub-rule (1) shall be kept in specially prepared box on which the Returning Officer shall record the name of the constituency and the date of counting.

(ii) the provisions of rules 60 to 66 shall, so far as may be, apply in relation to voting by voting machines and any reference in those rules to -

(a) ballot paper shall be construed as including a reference to such voting machine;

(b) any rule shall be construed as a reference to the corresponding rule in Chapter II of Part IV or, as the case may be, to rule 55CC or 56CC or 57CC."

5 In Rule 92, after sub-rule (1A), the following sub-rule may be added:-

"(1B) The Totaliser used for counting of votes at an election shall be kept in the custody of the concerned District Election Officer."

6 In rule 93, for sub-rule (1A), the following sub-rule may be substituted:-

"(1A) The control units and the Totalisers sealed under rule 57C or rule 57CC, as the case may be, shall not be inspected by, or produced before, any person or authority except under the orders of a competent court."

7 In Rule 94, after sub-rule (aa), the following sub-rule may be added:-

"(aaa) the Totalisers kept in the custody of the District Election Officer under sub-rule (1B) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission."

- 8 -

8. In pursuance of the aforesaid new rule 57CC, the following statutory Forms are required to be incorporated in the Conduct of Elections Rules 1961:

- (i) Form 17CC - Form for account of votes recorded;
- (ii) Form 17D - Form for totaling round-wise result of counting;
- (iii) Form 20AA - Final result sheet.

9. A copy each of the new proposed Forms 17CC, Form 17 D and Form 20AA is enclosed herewith.

10. The Commission desires that the above proposals for amendment/incorporations in Rules/Forms may be considered by the Government on priority basis.

Yours faithfully,



(K.F. WILFRED)
SECRETARY



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BACKGROUND PAPER ON ELECTORAL REFORMS

(PREPARED BY THE CORE-COMMITTEE ON ELECTORAL REFORMS)

LEGISLATIVE DEPARTMENT
MINISTRY OF LAW AND JUSTICE
GOVERNMENT OF INDIA

CO-SPONSORED
BY
THE ELECTION COMMISSION OF INDIA

December, 2010

The Election Commission recommends that abovementioned provisions should be reconsidered.

6.15 Totalizer for counting of votes

Currently votes are tallied by individual EVMs at individual polling stations. This exposes the trend of voting in a particular voting station, making the electorate of that area vulnerable to backlash by candidates or elected officials in retribution.

❖ Recommendations

The Election Commission recommends an amendment be made to the Conduct of Elections Rules to provide for the use of 'totalizer' for counting of votes cast at more than one polling station where EVMs are used, so that the trend of voting in individual polling station areas does not get divulged and the electors may not be subjected to any harassment or victimization on that account.

6.16 Re-examination of the provision of Teachers' and Graduates' Constituencies

Under Article 171 (3) (b) & (c) of the Constitution, one-twelfth of the seats in the Legislative Councils are to be filled up by graduates and another one-twelfth by teachers who have been engaged in teaching in educational institutions not lower in standard than that of a secondary school. As per the provisions of this Article, a teacher teaching in the lower primary section in a secondary school is eligible to be enrolled as an elector for the Teachers' constituency, whereas a teacher teaching in the middle school in a middle/primary school will not be eligible to be an elector.

❖ Recommendations

The Election Commission recommends that the provisions of Article 171 (3) (c) should be amended so as to provide that all teachers of specified institutions irrespective of the level of the school would be eligible to be electors for the Teachers' constituency. Furthermore, the Commission is of the view that the concept of special representation for graduates and teachers should itself be reconsidered.

6.17 Victimization of officers drafted for election duties

The Election Commission utilizes the services of a large number of government officers for election duties, who perform important statutory functions in connection with preparation of electoral rolls and conduct of elections. The Election Commission has observed many of these officers are later subjected to humiliation and even vindictive disciplinary action by the government.

❖ Recommendations

The Election Commission recommends that in the case of the government officers performing statutory functions in connection with preparation of electoral rolls, or in the conduct of elections, consultation with the Election Commission and its concurrence should be made compulsory before initiating any disciplinary/legal proceedings by the government. In the case of those officers who have ceased to hold election related

P. Kumar
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V. S. SAMPATH

Chief Election Commissioner of India



भारत

Election Commission of India

D.No. 3/4/2009/SDR/392

Dated : 13th August, 2013

Dear Law Minister,

This is to invite your attention to the proposal moved by the Commission in 2008 for amendments in the Conduct of Elections Rules, 1961, to provide for the use of a device called 'totalizer' for counting of votes on the Electronic Voting Machines.

Under the existing provisions of the Rules, counting of votes on EVMs has to be, per force, polling station wise with the result that the voting pattern of each polling station area is known to everyone. This could contribute to malpractices such as bribing of voters, undue influence, intimidation etc. as the overall pattern of voting of individual pockets is known to the political parties and candidates. There are also complaints of likely victimization and reprisal as a post poll threat against the people of particular areas where a particular party or candidate may not have done well.

By using the Totalizer, EVMs of a group of 12 to 15 polling stations can be counted together by connecting them to the Totalizer without revealing the votes polled in individual EVMs. The Commission is convinced that the use of Totalizer can play a very important role in aiding free and fair elections. In this context, I also have to bring to your notice that the Madras High Court, in an order dated 1st August, 2011, in Writ Petition No. 11919 of 2011, had directed the Union of India to consider the Commission's recommendation on the use of Totalizer and to take decision for necessary amendments in the Rules as expeditiously as possible.

On 8th November, 2011, the Law Ministry had enquired from the Commission whether the Commission would be in a position to operationalize the use of Totalizer in the then ensuing Assembly Elections and if not, how much time would be required to roll out the use of Totalizer. It was mentioned in the letter that this information was required for the Government to take a decision in the matter and to carry out the necessary amendments in the Rules. The Commission had promptly conveyed its keenness on using



the Totalizer for the Assembly Elections in 5 States due then in the early part of 2012 and that for manufacturing the required number of Totalizers for those elections a lead period of 4 months would be required for the manufacturing firms, viz. Bharat Electronics Ltd., and Electronics Corporation of India Ltd. The Commission also had informed that once decision on amendments was assured and funds made available, the Commission would place firm orders with the two manufacturing firms. However, in a subsequent letter dated 22nd December, 2011, the Law Ministry informed that the proposal regarding Totalizer was one of the agenda items to be discussed in a meeting of political parties and whenever a decision was taken, the same would be communicated to the Commission. There has been no further information on this since then.

I would request you to take this proposal forward and carry out the requisite amendments considering the likely impact this can have in enhancing the purity of elections. You would appreciate that if the Commission is to consider using the Totalizer atleast in selected States/places in the forthcoming Lok Sabha elections, the amendments will need to be carried out urgently. I enclose herewith copies of the previous correspondences in this matter for convenience of your reference.

With regards,

Yours Sincerely,

V. S. Sampath

(V S Sampath)

To

Sh. Kapil Sibal,
Minister of Law & Justice
New Delhi.

" 1/c "

P. Kumar

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GOVERNMENT OF INDIA

**LAW COMMISSION
OF
INDIA**

Report No.255

Electoral Reforms

March 2015

CHAPTER XIII

TOTALISER FOR COUNTING OF VOTES

13.1 In 2008, the ECI *vide* letter dated 21.11.2008 to the Secretary, Ministry of Law and Justice, recommended amending the Election Rules to provide for the use of a totaliser for the counting of votes recorded in EVMs at elections. As per the ECI's suggestion, the results of votes polled in a group of 14 EVMs (hence, in 14 polling stations) would be calculated and announced together, in a change from the current practice of counting votes by each polling station.⁵³⁹ This is based on technological constraints.

13.2 The underlying rationale behind the ECI's proposal was that the current system revealed the voting trends in each polling station, thus leaving the voters in that vicinity open to harassment, intimidation and post-election victimisation. Prior to the introduction of EVMs, ballot papers could be mixed, wherever it was considered "absolutely necessary" under Rule 59A of the Election Rules in light of "apprehend[ed] intimidation and victimisation of electors" However, EVMs do not permit this. Using a totaliser would increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.

13.3 A totaliser would also help in situations such as witnessed in the 2014 Lok Sabha elections in Hoshangabad, where an EVM at the Mokavada polling station in Sohagpur area malfunctioned just minutes before voting was to conclude at 6 pm. A lone voter, who arrived at the polling station at 5:50 pm then had to cast their vote in a newly installed EVM. The ECI issued a clarification that this single vote had to be counted, even if it compromised on the voter's secrecy and instead stated that one way of dealing with such situations in the future is the introduction of a totaliser machine to count the votes recorded on several EVMs contemporaneously.⁵⁴⁰

13.4 Although the ECI's proposal was referred to a Parliamentary Committee in 2009, no action was taken on it. In August 2014, the ECI moved the Law Ministry on this issue again.⁵⁴¹ Subsequently in September 2014, the Supreme Court in a PIL in *Yogesh Gupta v ECI*⁵⁴² issued directions to the government to issue to clarify why no steps were taken pursuant to the ECI's 2008 proposals. Noting that the issue had been referred to the Law

⁵³⁹ ECI Important Electoral Reforms, *supra* note 497, at 5.

⁵⁴⁰ Raghvendra Rao, *Lone vote in Hoshangabad EVM to be counted, even if it blows voter's cover*, INDIAN EXPRESS, 14th May 2012, <<http://indianexpress.com/article/india/india-others/lone-vote-in-hoshangabad-evm-to-be-counted-even-if-it-blows-voters-cover/99/>>.

⁵⁴¹ Election Commission wants to use 'Totaliser' to enhance vote secrecy, ECONOMIC TIMES, 17th August 2014, <http://articles.economictimes.indiatimes.com/2014-08-17/news/52901387_1_law-ministry-ballot-paper-secrecy/>

⁵⁴² WP (Civil) No. 422/2014 order of the Supreme Court on 08.09.2014.

3

Commission for consideration, the three-judge bench of the Court asked the government what concrete steps it had taken on the ECI's suggestions of using a totaliser to prevent (or reduce) instances of intimidation or victimisation.⁵⁴³ In its latest order on 16th January, the Court records the Government's submission that it would seek the views of the Law Commission, and the submission of an interim report on the issue.

13.5 The ECI's proposal has also been supported in the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010.⁵⁴⁴ Moreover, as the ECI has itself clarified, a "totaliser" has already been developed by EVM manufacturers to connect several control units at a time to indicate the total number of votes polled and recorded in the specified number of polling stations.⁵⁴⁵ Thus, administratively it is not difficult to collect information about the number of votes polled by each candidate for a whole group of polling stations, thus hiding the pattern of voting in each individual booth.

13.6 For all these reasons, the Law Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in EVMs. Similar to the existing Rule 59A, the Commission proposes to amend Rule 66A to empower the ECI to decide when, and in which constituency and polling booths, to employ a totaliser, after taking into consideration the context of the elections and any threats of intimidation or victimisation.

Recommendation

13.7 Thus, in Rule 66A of the Election Rules, 1961, in Rule 56C, the Law Commission recommends that:

After sub-section (2), a new sub-section (2A) may be inserted with the following words:

- "(2A) In the appropriate case, where the Election Commission apprehends intimidation and victimisation of electors in any constituency, and it is of the opinion that the votes recorded in the voting machines should be mixed before counting, it may by notification in the Official Gazette, specify such constituency where the returning officer shall use a totaliser for the counting of votes recorded in a group of electronic voting machines."

⁵⁴³ Can totaliser be used for counting votes, asks SC, THE HINDU, 10th September 2014, <<http://www.thehindu.com/news/national/can-totaliser-be-used-for-counting-votes-asks-supreme-court/article6398304.ece>>.

⁵⁴⁴ Background paper, *supra* note 230, at para 6.15.

⁵⁴⁵ Electronic Voting Machine, <<http://pib.nic.in/elections2009/volume1/Chap-39.pdf>>.

4

CHAPTER XVIII**SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

Below is a summary of conclusions and recommendations of the Commission on various issues discussed in the report. The amendments to the Constitution, RPA, Election Rules and any other laws have been made in track changes in the **Annexure** appended to this Report.

18.1 Election Finance

The Law Commission has proposed wide ranging reforms on the issue of candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections.

- a. Section 77 of the RPA, regulating the election expenses incurred or authorized by candidates or their election agents, currently extends from the date of nomination to the date of declaration of results. This period should be extended by amending section 77(1) to apply from the date of notification of the elections to the date of declaration of results.

[Para 2.31(a)1]

- b. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution from the company's funds to a political party at the company's Annual General Meeting (AGM) instead of its Board of Directors.

[Para 2.31(a)2]

- c. The existing disclosure obligations of individual candidates are limited to maintaining an account of electoral expenses under sections 77 and 78, RPA. This is sought to be amended by inserting a new section 77A to require candidates or their election agents to maintain an account and disclose the particulars (names, addresses and PAN card numbers of donors and amounts contributed) of

- i. any individual contribution received by them from any person or company, not being a Government company and
- ii. any contribution by the political party from the date of notification of elections, which have to be made by the party by a crossed account payee cheque or draft or bank transfer.

[Para 2.31(b)3]

5

- d. Section 78 should be amended in light of the proposed amendment to section 77A above, and the reference to more than one returned candidate should be removed.

[Para 2.31(b)4]

- e. A new section 78A should be inserted requiring the district election officer to make publicly available, on his website or on file for public inspection on payment of prescribed fee, the expenditure reports submitted by every contesting candidate under section 78.

[Para 2.31(b)5]

- f. Political parties should be required to maintain and submit annual accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor Général, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.

[Para 2.31(b)6]

- g. Disclosure provisions governing political parties has been substantially recast, with the existing 29C being deleted and replaced by a new section 29D requiring all parties to:

- i. mandatorily disclose all contributions in excess of Rs. 20,000;
- ii. include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope;
- iii. disclose the names, addresses and PAN card numbers (if applicable) of these donors along with the amount of each donation above Rs. 20,000;
- iv. disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20 % of the party's total contributions, whichever is less. Consequential amendments will need to be made to the Election Rules and the IT Act.

[Para 2.31(b)7]

- h. A new section 29E to be inserted in the RPA requiring the ECI to make publicly available, on its website or on file for public inspection on payment of prescribed fee, all the contribution reports submitted by all political parties under section 29D.

[Para 2.31(b)8]

- i. ECI's transparency guidelines prescribing, *first*, a "statement of election expenditure" to be filed with it, by every party contesting an election within 75 days of the Assembly elections and 90 days of the General elections election; and *second*, expenses incurred by political parties to be usually in the form of cheque or draft, unless banking facilities are

6

not easily available or the payment is made to a party functionary in lieu of salary or reimbursement, should be given a statutory basis *vide* a newly inserted section 29F.

[Para 2.31(b)9]

- j. The disqualification of a candidate for a failure to lodge an account of election expenses and contributions reports under section 77 and proposed 77A should be extended from the current three period up to a five year period, so that a defaulting candidate may be ineligible to contest at least the next elections.

[Para 2.31(c)10]

- k. Express penalties, apart from losing tax benefits, should be imposed on political parties *vide* section 29G for the non-compliance with the disclosure provisions of proposed section 29D of the RPA. This should include a daily fine of Rs. 25,000 for each day of non-compliance, with the possibility of de-registration if the default continues beyond 90 days. Further, ECI may levy a fine of up to Rs. 50 lakhs if its finds any particulars in the party's statements as having been falsified.

[Para 2.31(c)11]

- l. A new section 29H should be inserting penalising parties that contravene the stipulations of section 29B, RPA and section 182 of the Companies Act in terms of accepting contributions from impermissible donors, by levying a penalty of five times the amount so accepted.

[Para 2.31(c)12]

- m. A new Part IVB, section 29I should be inserted to the RPA dealing with the "Regulation of Electoral Trusts", and detailing provisions pertaining to their entitlement to accept contributions, disclosure obligations, and penal provisions (apart from losing income tax exemptions) so that the RPA can be amended in line with the changes already made to the IT Act and the ECI guidelines on "Electoral Trust Companies" of 2013.

[Para 2.31(c)13]

- n. The Commission does not consider a system of complete state funding of elections or matching grants to be feasible, given the current conditions of the country. Instead, it supports the existing system of indirect in-kind subsidies, with section 78B of the RPA being possibly amended in the future to expand these subsidies.

[Para 2.31(d)1-4]

18.2 Regulation of Political Parties and Inner Party Democracy

- a. The Commission recommends amending sub-section (5) of section 29A of the RPA requiring that the accompanying memorandum/rules/regulations with the party's application under sub-section (1). This accompanying document, by whatever name it is called, should also contain a specific provision stating that the party would shun violence

7

for political gains, and would avoid discrimination or distinction based on race, caste, creed, language or place of residence.

[Para 3.17.4, 1]

- b. A new Chapter IVC should be inserted dealing with the "Regulation of Political Parties" and incorporating the Commission's previous recommendations in its 170th Report with certain modifications. Thus, sections 29J to 29Q will deal with internal democracy, party Constitutions, party organisation, internal elections, candidate selection, voting procedures, and the ECI's power to de-register a party in certain cases of non-compliance.
- c. Another section, section 29R should be inserted in the same Part, providing for the de-registration of a political party for failure to contest Parliamentary or State elections for ten consecutive years.

[Para 3.17.4, 2]

18.3 Proportional Representation

18.3.1 It is clear that both the electoral systems come with their own merits and demerits – proportional representation theoretically being more representative, while the FPTP system being more stable. It is also clear, from the experience of other countries that any changes in India's electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections. This, in turn will necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning.

[Para 4.19.1]

18.3.2 As a result, the Law Commission recommends that the findings of the 170th Law Commission Report on the proportional system may be examined by the Government to determine whether its proposals can be made workable in India at present.

[Para 4.19.2]

18.4 Anti Defection Law in India

The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution, which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman), who shall act on the advice of the ECI. This would help preserve the integrity of the Speaker's office.

[Para 5.22]



18.5 Strengthening the office of the Election Commission of India

The ECI should be strengthened by *first*, giving equal constitutional protection to all members of the Commission in matters of removability; *second*, making the appointment process of the Election Commissioners and the CEC consultative; and *third*, creating a permanent, independent Secretariat for the ECI.

- a. Article 324(5) of the Constitution should be amended to equate the removal procedures of the two Election Commissioners with that of the Chief Election Commissioner. Thus, equal constitutional protection should be given to all members of the ECI in matters of removability from office.

[Para 6.9]

- b. The appointment of all the Election Commissioners, including the CEC, should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister; the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength); and the Chief Justice of India. Elevation of an Election Commissioner should be on the basis of seniority, unless the three member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit. Amendments should be made in the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 to reflect this.

[Para 6.12.5]

- c. A new sub-clause (2A) should be added to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution. This will further improve the independence of the ECI.

[Para 6.19 & 6.20]

18.6 Paid News and Political Advertisements

The issue of paid news and political advertisements should be regulated in the RPA in the following manner:

- a. The definitions of "paying for news", "receiving payment for news" and "political advertisement" should be inserted in section 2 of the RPA.

[Para 7.48.4 & 7.48.5]

b. The consequences attached to those indulging in such practices should be delineated by creating

- i. an electoral offence of "paying for news" / "receiving payment for news" in a newly inserted section 127B of the RPA - Not only will the incorporation of this electoral offence make paying for news / receiving payment for news penal, the stringent punishment will ensure that if the candidate themselves are found guilty, then, in all likelihood, they will be disqualified pursuant to section 8(3) of the RPA;

[Para 7.49.1]

- ii. a corrupt practice of paying for news under newly inserted sub-clause (iii) in section 123(2)(a) of the RPA.

[Para 7.50]

c. In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media. The purpose of disclosure is two fold; *first*, to help the public identify the nature of the content (paid content or editorial content); and *second*, to keep the track of transactions between the candidates and the media. Thus, a new section 127C should be inserted in the RPA to deal with the non-disclosure of interests in political advertising. The ECI can regulate the specifics of the disclosure required.

[Para 7.51.2]

18.7 Opinion Polls

Section 126(1)(b) of the RPA, which prohibits the display of any election matter forty-eight hours before polling begins, is limited to display by means of "cinematograph, television or other similar apparatus"; and does not deal with the independence and robustness of the opinion polls themselves. Thus:

- a. The ban on opinion polls in the electronic media does not extend to the print media and section 126(1)(b) should be amended to prevent the publication, publicity, or dissemination of any election matter by print or electronic media.

[Para 8.27.1]

- b. Section 126(1)(b) should also provide for cognizance being taken only on the basis of a complaint made by order of, or under authority from, the ECI or the Chief Electoral Officer of the State.

[Para 8.27.2]

- c. The regulation of opinion polls is necessary to ensure that *first*, the credentials of the organisations conducting the poll is made known to the public; *second*, the public has a chance to assess the validity of the methods used in conducting the opinion polls; and *third*, the public is made adequately aware that opinion polls are in the nature of forecasts

10

or predictions, and as such are liable to error. Consequently, new sections 126C and 126D should be inserted in the RPA.

[Para 8.28.3]

18.8 Compulsory Voting

The Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

[Para 9.24]

18.9 Election Petitions

Wide-ranging reforms have been suggested to Part VI of the RPA dealing with "disputes regarding elections" and the proposed amendments have been drafted in the annexure appended to this Report. These include, *inter alia*:

- a. The introduction of one or more "election benches" in each High Court, designated so by the Chief Justice of the particular High Court, exercising jurisdiction over all election disputes under the RPA. A single Judge shall ordinarily exercise such jurisdiction, although the Chief Justice can assign more judges, if they so desire.
- b. The procedure for presenting election petitions should be made simpler and less formalistic by:
 - i. requiring election petitions to be ordinarily filed in the Principal seat of the relevant High Court, although this can be shifted to another bench or place in the interest of justice;
 - ii. removing requirement of impleading those candidates who have lost their security deposit as respondents to an election petition, if the petitioner makes an additional declaration that he himself or any candidate has been duly elected; and
 - iii. removing non-compliance with section 117's stipulation of security for costs as a ground for summarily dismissal under section 86.
- c. The trial of election petitions by the election bench of the High Court should be expedited by providing for
 - i. daily trial;
 - ii. minimising adjournments, with the possibility of imposing exemplary costs;
 - iii. a time limit of 45 days to file a written statement, with a further extension of 15 days, after which such right shall be forfeited;

- d. The trial should be concluded within six months from the date of presentation of the petition; otherwise, a report should be sent to the Chief Justice of the High Court explaining the reasons for the delay.
- e. The election bench of the High Court should pass its order under section 98 within ninety days from the conclusion of arguments.
- f. A new provision, section 98A, should be inserted pertaining to the collection of data (such as the number of election petitions filed and pending, the status of each petition, the names of the parties, and designated election bench) by the High Court and uploading it on its website. The ECI has been mandated to prepare an annual report after compiling such data from all the High Courts across the country.
- g. Appeals to the Supreme Court should now only be on the basis of a question of law, instead of the earlier provision permitting questions of fact or law as grounds for appeal. This appeal should be filed within 30 days of the High Court's order, although an extension of a maximum of 30 more days can be granted, with nothing thereafter. The Supreme Court should try and conclude the appeal within three months from the date of appeal.
- h. The security for costs has been increased from the existing Rs. 2000 to Rs. 10,000, although section 117 has been amended to empower the election bench of the High Court to grant an extension of time, as considered reasonable, to deposit this new security amount.

[Para 10.37]

18.10 NOTA and the Right to Reject

The Law Commission currently rejects the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option. This is premised on the fact that, *first*, the underlying premise of the Supreme Court's decision in *NOTA* was the importance of safeguarding the right to secrecy, and this secrecy rationale does not pre-empt the right to reject. *Second*, good governance, the motivating factor behind the right to reject, can be successfully achieved by bringing about changes in political horizontal accountability, inner party democracy, and decriminalisation. However, the issue might be reconsidered again in the future.

[Para 11.15]

18.11 The Right to Recall

The Law Commission is not in favour of introducing the right to recall in any form because it can lead to an excess of democracy, undermines the independence of the elected candidates, ignores minority interests, increases instability and chaos, increases chances of misuse and abuse, is difficult and

12

expensive to implement in practice, especially given that India follows the first past the post system.

[Para 12.20]

18.12 Totaliser for Counting of Votes

18.12.1 The Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in electronic voting machines to prevent the harassment of voters in areas where voting trends in each polling station can be determined. Prior to the introduction of EVMs, ballot papers could be mixed under Rule 59A of the Election Rules, although this was not permitted for EVMs. Using a totaliser would increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.

18.12.2 Thus, similar to the existing Rule 59A, the Commission proposes to amend Rule 66A to empower the ECI to decide when, and in which constituency and polling booths, to employ a totaliser, after taking into consideration various factors and the overall context of the elections.

[Para 13.7]

18.13 Restriction on Government Sponsored Advertisements

18.13.1 The Commission recommends regulating and restricting government sponsored advertisements six months prior to the date of expiry of the House/Assembly to maintain the purity of elections; prevent the use of public money for partisan interests of, *inter alia*, highlighting the government's achievements; and ensure that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair elections.

18.13.2 This can be achieved by inserting a new Chapter VIIB in Part V of the RPA prohibiting State/Central government sponsored advertisements in the print or electronic media or by way of banners and hoarders, six months prior to date of expiry of the term of the Lok Sabha/Vidhan Sabha. However, an exception has been carved out for advertisements highlighting the government's poverty alleviation programmes or any health related schemes

[Para 14.6]

18.14 Restriction on the Number of Seats from which a Candidate May Contest

The Commission recommends an amendment of section 33(7) of the RPA, which permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies. In view of the expenditure of time and effort; election fatigue; and the

harassment caused to the voters, section 33(7) should be amended to permit candidates to stand from only one constituency.

[Para 15.4]

18.15 Independent Candidates

The Law Commission recommends that independent candidates be disbarred from contesting elections because the current regime allows a proliferation of independents, who are mostly dummy/non-serious candidates or those who stand (with the same name) only to increase the voters' confusion. Thus, sections 4 and 5 of the RPA should be amended to provide for only political parties registered with the ECI under section 11(4) to contest Lok Sabha or Vidhan Sabha elections.

[Para 16.16&16.17]

18.16 Preparation and Use of Common Electoral Rolls

The Law Commission endorses the ECI's suggestions regarding the introduction of common electoral rolls for Parliamentary, Assembly and local body elections. However, given that introducing common electoral rolls will require an amendment in the State laws pertaining to the conduct of local body elections, the Central Government should write to the various States in this regard. We hope that the States will consider amending their laws based on the suggestions of the ECI and the Law Commission.

[Para 17.6]

Sd/-

[Justice A.P. Shah]
Chairman

Sd/-

[Justice S.N. Kapoor]
Member

Sd/-

[Prof. (Dr.) Mool Chand Sharma]
Member

Sd/-

[Justice Usha Mehra]
Member

Sd/-

[Dr. S.S. Chahar]
Member-Secretary

Sd/-

[P.K. Malhotra]
Ex-officio Member

Sd/-

[Dr. Sanjay Singh]
Ex-officio Member

PROPOSED ELECTORAL REFORMS**2016****ELECTION COMMISSION OF INDIA****FOREWORD**

India's democratic setup is a paradigm for many countries in the world due to its remarkable success over the past six decades. The heart of India's democratic system witnesses regular elections with the participation of the largest electorate in the world. In order to safeguard the core values of fair and free elections in this dynamic scenario, it is important to have a just and unbiased electoral process with a greater citizen participation. Thus, in accordance to the responsibility bestowed upon by the Constitution of India, the Election Commission of India has always remained actively involved in finding out ways through which the purity and integrity of the election process is preserved.

However, there are certain challenges and issues that electoral system has faced over the years. Trust and confidence of citizens in electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Election Commission of India after conducting extensive study and research recommends certain changes that need to be taken up expeditiously to amend certain provisions of law. Taking forward a step in this direction, the Commission have made several electoral proposals to remove the glaring lacunae in the law. Many of these proposals have been already put forth by the Commission have remained unresolved. Some of the proposals pertain to areas, which have not been taken up previously by the Commission but arose due to the implementation of certain laws or on the directions issued by the Supreme Court and the High Courts. Commission considers it necessary to put all proposals on electoral reforms in public domain for the benefit of people.

The Commission sincerely believes that these suggested reforms will prove to be extremely useful in addressing the existing issues and challenges and would go a long way in enhancing the quality of democracy in India.

Dr. Nasim Zaidi**December, 2016****Chief Election Commissioner**

FOREWORD

One of the notable features for which India is known to the world is its electoral Democracy. However, in order to call a system truly Democratic, it is necessary that it must respect the political and socioeconomic aspirations of its people.

The issue of electoral reforms has been taken up by Parliament, the Government, the Judiciary, the Media and the Commission on numerous occasions. The Commission during all these times has striven to bring positive changes in the electoral system for better implementation. There have been various correspondence exchanged between the government and the Commission to ensure that the required electoral reforms are brought in place. However, for strengthening the existing system and removing the difficulties arising in ensuring free and fair elections the Commission stresses that various steps are required to be taken for the better practice in election related matters.

Maintaining the purity and transparency of election process is a very challenging job and involves a lot of inherent complexities. However, the Commission in its endeavour has always tried to ensure the fairness in elections by putting in tremendous efforts in line with all stakeholders. Therefore, these proposals besides giving a perspective on the challenges faced during the elections, seek to provide a comprehensive framework about the ways in which these challenges can be effectively dealt.

A.K. Joti

December 5, 2016

Election Commissioner

the hours, for taking poll in the said polling area or areas, and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) Where the poll has already taken place in the affected polling area or areas on the date previously appointed under clause (d) of section 30, declare the poll so taken as void, appoint a day, and x the hours, for taking fresh poll in that polling area or areas and notify the date so appointed and hours so fixed in such manner as it deem t; or

(c) If satisfied in view of the large number of polling areas involved in the incidents of bribery, the result of the election in the constituency is likely to be affected, countermand the election in that constituency. Explanation.-(1) in this connection, 'bribery' shall have the same meaning as in clause (1) of section 123.

(3) in this section and section 58A, the expression countermand the election" shall mean rescinding of the entire electoral process in the constituency *ab initio* so that the election in the constituency may be called anew in all respect.

CHAPTER-IV : ELECTION OFFICIALS AND LOGISTICS

1. SECTION 13CC & 28A OF THE REPRESENTATION OF PEOPLE ACT

Background

Section 13CC of the Representation of the People Act, 1950 states that:

"**13CC.** Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission- The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

Section 28A of the Representation of the People Act, 1951 states that:

"**28A.** Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission- returning officer, assistant returning officer, presiding officer, polling officer, and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

Reason for proposed amendment

Transfer of election officials on the eve of elections can disturb the election preparedness. Proposed amendment Section 13CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951 should be amended to provide a ban on the transfer of officers referred to in these sections during a period of 6 months before the expiry of the term of the House.

2. SECTION 160 OF THE REPRESENTATION OF PEOPLE ACT, 1951

Background

Section 160(1)(a) of the Representation of the People Act, 1951 provides that a state government may, in connection with an election, requisition any premises that are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken.

The Allahabad High Court in *Maa Bhagwati Nirashrit Samaj Sewa Sansthan v. Election Commission of India*, 2014 (104) ALR 806 quashed an order passed by the District Election Officer, Kanpur Nagar, under section 160 for requisitioning a guest house for housing of paramilitary forces for the elections. The Court held that:

"4. Consequently, it is clear that the power to requisition under section 160(1)(a) of the Act covers 'any premises' which are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken. Once Parliament has specified the grounds for requisitioning, it is not open to the Election Officer to requisition any premises for a purpose extraneous to, or for a purpose other than that which is covered by Clause (a) of section 160(1) of the Act."

Reason for proposed amendment

The election process requires requisition of premises for purposes other than polling stations and storage of ballot boxes, such as for providing accommodation to employees, paramilitary forces and observers etc.

Proposed amendment

Section 160 of The Representation of the People Act, 1951 should be amended to widen its scope such that requisition of premises for any election should not be restricted to the purpose of setting of a polling station or for storage of ballot boxes after a poll has been taken. Sub-section (1) (a) should be amended to read "any premises that are needed or are likely to be needed for any purpose related to conduct of election, or."

3. EMPOWERING THE DISTRICT ELECTION OFFICER TO REQUISITION

Background

Section 159(1) of The Representation of the People Act, 1951 states that:

"159. Staff of certain authorities to be made available for election work- (1) The authorities specified in subsection (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election."

Reason for proposed amendment

Section 26 of The Representation of the People Act, 1951 empowers the District Election Officers to appoint Presiding Officers and Polling Officers for polling stations falling in his district. Further, under section 20A of the 1951 Act, the District Election Officer is required to coordinate and supervise all work in the District in connection with conduct of elections. Therefore, for convenience, there should be express provisions empowering the District Election Officers to requisition staff for conduct of election under section 159 of the 1951 Act.

Proposed amendment

Section 159 of The Representation of the People Act, 1951 should be amended to empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties.

4. USE OF TOTALIZER FOR COUNTING OF VOTES

Background

EVM totalizer can count votes of multiple Electronic Voting Machines (EVMs) simultaneously. This way the results of votes in a group of EVM can be taken without ascertaining the result in individual EVM corresponding to polling booth. Totalizer is connected to EVMs via cable and it can do sum of all votes recorded for each of the candidates in 14 EVMs simultaneously.

Reason for proposed amendment

As per the present provisions in The Conduct of Elections Rules, 1961, votes in the EVMs are to be counted polling station wise, which leads to situations where voting pattern in various localities/pockets become known to everyone. There is a view that this can result in victimization and/or discrimination and intimidation of electors of particular localities. This issue can be addressed by use of totalizer that can be used for taking out the results of voting in a group of 14 EVMs without revealing the votes in individual EVMs.

Proposed amendment

Provisions for counting of votes of a group of EVMs taken together using Totaliser should be made in The Conduct of Elections Rules, 1961, and Form 20 appended to the said Rules should be suitably amended so as to suit the requirements of counting using Totaliser.

P. Kumar