

**IN THE HON'BLE SUPREME COURT OF INDIA**

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019

**(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

**VERSUS**

1. ELECTION COMMISSION OF INDIA  
THROUGH ITS SECRETARY  
NIRVACHANSADAN, ASHOKA ROAD  
NEW DELHI-110001 .... RESPONDENT NO. 1
  
2. UNION OF INDIA  
THROUGH THE CABINET SECRETARY  
CABINET SECRETARIAT  
RASHTRAPATI BHAWAN  
NEW DELHI-110004 ...RESPONDENT NO. 2

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioners have filed the instant Public Interest Litigation under Article 32 of the Constitution of India to ensure that democratic process is not subverted by electoral irregularities and to ensure free and fair elections and rule of law and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. The instant writ petition highlights dereliction of duty on part of the Election Commission of India (ECI) in declaring election results (of the Lok Sabha and

State Legislative Assemblies through Electronic Voting Machine (EVMs) based on accurate and indisputable data which is put in public domain.

The petitioner seeks a direction from this Hon'ble Court directing the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. The petitioner further seeks a direction from this Hon'ble Court to the ECI to evolve an efficient, transparent, rational and robust procedure/mechanism by creating a separate department/grievance for investigation of discrepancies in election data and for responding to the elector's queries on the same. The prayers as sought for in the instant writ petition have been envisaged by this Hon'ble Court in landmark cases such as *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 and *People's Union for Civil Liberties & Anr., Lok Satta and Ors. and Association for Democratic Reforms v. Union of India (UOI) and Anr.*, (2003) 4 SCC 399.

At the very outset, the petitioner organizations submit that through the instant writ petition, the petitioners are not challenging or questioning the final result of 2019 General Elections or the election process in the country. However, the issues and irregularities that arose in the conduct of the election are being cited as arguments for seeking the prayers sought in the petition for effectuating free and fair elections, survival of democracy and for the enforcement of fundamental rights.

1A. That Petitioner No. 1 herein is Association for Democratic Reforms (ADR), a Trust registered with Registration No. F/9/9339/AHMEDABAD. ADR has been at the forefront of electoral reforms in the country for the last 20 years from wide-ranging activities including advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political

parties including their income-tax returns. It was on ADR's petition that this Hon'ble Court ordered all election candidates to declare their criminal records and financial assets. The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950. Under the practice followed by ADR, the Founder-Trustee Prof. Jagdeep S Chhokar is authorised to institute proceedings on behalf of petitioner no. 1. The Registration Certificate of Petitioner No.1 and authority letter are being filed along with the Vakalatnama. The petitioner organization's annual income is Rs. \*\*\* (PAN No.\*\*\*. Petitioner No. 1 not being an individual does not have a National UID number.

Petitioner No.2 herein is Common Cause, a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization fighting for an accountable, transparent and corruption-free system. Dr Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the Vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately Rs. \*\*\* (PAN number:\*\*\*). The Society does not have a UID number. The petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL.

### **The Case in Brief**

2. That the elections to the 17<sup>th</sup> Lok Sabha were conducted by the Respondent No. 1 in seven phases and covered all 542 constituencies in seven phases starting from April 11, 2019. The results were announced on May 23, 2019. That the elections are

governed by the Representation of People Act 1951, the statutory rules framed under the Act viz. Conduct of Election Rules 1961, and The Conduct of Election (Amendment) Rules 2013. That the elections were held using the Electronic Voting Machines (EVM) with Voter Verified Paper Audit Trail (VVPAT) for random sampling of mandatory verification of VVPAT paper slips from 05 (five) polling station in each constituency.

3. *That Rule 49S and Rule 56C (2) of the Conduct of Election Rules, 1961, provide that presiding officer is to prepare an account of votes recorded in form 17C (Part I) and the returning officer is to record the number of votes in favour of each candidate (part II of the Form 17). The said two provisions are given hereinbelow:*

**Rule 49S.Account of votes recorded.—**

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

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

**Rule 56C . Counting of votes.—**

*(1)After the returning officer is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked "Result" provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit.*

(2)As the votes polled by each candidate are displayed on the control unit, the returning officer shall have,—

(3)(a) the number of such votes recorded separately in respect of each candidate in Part II on Form 17C; Provided that the test vote recorded, if any, for a candidate, as per item 5 in Part I of Form 17C, shall be subtracted from the number of votes recorded for such candidate as displayed on the control unit.

(b) Part II of Form 17C completed in other respects and 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 20 and the particulars so entered in the result sheet announced.

A copy of Conduct of Election (Amendment) Rules, 2013 dated 15.10.2013 containing Form 17C is annexed herewith as **Annexure P1** Pages (\_\_\_\_\_to\_\_\_\_\_).

4.The relevant provisions of Representation of People Act 1951 are as follows-

**S. 64. Counting of votes.—**

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

**S. 66. Declaration of results.—**

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

**S. 67. Report of the result.—**

*As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.*

**S. 67A. Date of election of candidate.—**

*For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53 or section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate.*

5. That as per the Handbook for the Returning Officer issued by the ECI dated February 2019:

**64. Declaration of result of election and return of election.—**

The returning officer shall, subject to the provisions of section 65 if and so far as they apply to any particular case, then—

(a) declare in Form 21C or Form 21D, as may be appropriate, the candidate to whom the largest number of valid votes have been given, to be elected under section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer; and

(b) Complete and certify the return of election in Form 21E, and send signed copies thereof to the Election Commission and the chief electoral officer.

A copy of the provisions of Declaration and Publication of Result is stated in the Chapter 16 of the Handbook For Returning Officer, February 2019 is annexed herewith as **Annexure P2** (page \_\_\_\_ to \_\_\_\_).

6. In February 2019, Respondent No.1 issued a Manual on Conduct of Elections with EVM-VVPAT along with a series of Circulars and Instructions. Chapter 3 of the said Manual lays down the legal provisions for the use of EVMs and VVPATs while Chapter 16 of the Manual lays down instructions regarding counting of votes and largely covers all situations and contingencies anticipated in the Counting of votes. However, the manual does not provide for a situation where there are discrepancies during the counting process. A copy of the relevant chapters of the Manual on Conduct of Elections with EVM-VVPAT dated February 2019 is annexed herewith as **Annexure P3** Pages (\_\_\_\_\_to\_\_\_\_\_).
7. According to the Manual, the number of votes recorded has to be delivered in Form 17C issued by the Presiding Officer of the Polling Station in PART I and result of counting declared under the signatures of Returning Officers. The manual also prescribes the declaration of the result of mandatory verification of paper slips of VVPAT of 1 randomly selected polling station in the format given as Annexure 31 to this manual by the Returning Officer. However, it is to be noted that after the judgment dated 08-04-2019 of this Hon'ble Court in W.P (C) No. 273/2019 titled *N. Chandrababu Naidu & others vs. Union of India and Others* the VVPAT count was increased to five.
8. That the Statutory Rules as well as the Manual issued by the Respondent No.1 in February 2019, however, have no provisions for dealing with large number of discrepancies arising out of the Counting process in the elections and therefore, is left to the arbitrary discretion of the Officials of the Election Commission.
9. That the Respondent No.1 has not laid down any prescribed system for compiling, reconciliation and publishing of poll data and therefore, has been evading placing the methodology followed by it, in public domain. The Respondent No.1 neither

does share the quantum of discrepancies encountered in the entire election process nor the methodology adopted by it for resolution of the same. The Press Releases of the Respondent No.1 are the only source of information to general public on the subject, which under the circumstances at best, are misleading.

10. That the petitioners see no valid justification in declaring the election results before releasing the final data on vote count. To maintain the veracity of elections and to uphold voter's confidence a statutory valid election result should be given importance over a few days of delay. That election results based on estimates and assumptions and without any statutory backing defeats the very purpose of elections.

11. That the election results declared before the actual authentic data on vote count has no statutory validity and this view is itself recognized by the Election Commission of India in the disclaimer of 'Result sheet' as available on the website of Election Commission. That the language used in the disclaimer of 'Result sheet' clearly indicates that these election figures are provisional, based on estimates which are subject to change and has no statutory validity that "the data is estimated and subject to change". The disclaimer states as follows:

*“The trends displayed are based on the data entry done by ARO/RO as when they complete these rounds and is subject to change. Only Result signed and declared by Returning officer has the statutory validity.”*

A copy of the “Result Sheet’ as available on the website of Election Commission dated NIL is annexed herewith and marked as **Annexure P4**(Page\_\_\_\_\_to\_\_\_\_\_).

12. That based on both the EVM votes and Postal Ballots counted, the Returning Officer prepares Form 21C/Form 21D, Form 21E and Index Card in which the breakup of voter



turnout, including tendered votes for the Constituency, is tallied to get the final voter turnout for each Constituency. Form 21C or Form 21D, as may be appropriate, contains the declaration the candidate to whom the largest number of valid votes have been given, to be elected under Section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer. Form 21E is the return of election as specified under Rule 64 of the Conduct of Election Rules, 1961, for which the sole authority is the Returning Officer concerned. Also, Index Card which is in use since last five decades, is prepared by the Returning officer to furnish the voting data (including postal ballot data), polled and counted, after the declaration of the Result, which becomes the final authenticated data for all purposes including analysis and research.

13. That for General Elections 2019, the Election Commission had already directed all the Returning Officers on 26th March 2019 to send the INDEX CARDS within 15 days of the declaration of the Result. That the Election Commission vide its press release dated 01-06-2019 (annexed) had itself admitted that due to the innovative IT initiatives taken by the Commission this time, the final data on votes counted has been made available within a few days of declaration of results unlike the previous elections where it used to take months to collect authenticated election data from all the ROs.

#### **Discrepancies and “My Voter Turn Out” App**

14. That the Respondent No.1 introduced for the first time, in the Lok Sabha General Elections 2019, a real-time reporting of the voter turnout for every single constituency that went to polls. The reporting was done on the basis of actual voting at booth level at any given point of time which was consolidated and put up on a mobile app called the “My Voter turnout App”. That the Respondent No.1 through this mobile app published data of actual voting on real time basis for the first Six phases

of election in actual numbers of votes polled at every booth in any constituency. The said app displayed the number of voters at every single constituency that went to polls. While for the first 6 phases of the election the app displayed the exact number of voters. However in the last phase i.e. the 7th phase of voting only percentage figures were given and previous data was removed by the Respondent No. 1.

15. That as per the research conducted by a team of experts with the petitioner organization there have been serious discrepancies between the number of voters in different constituencies (i.e. the voter turnout data collated and provided by the Election Commission) and the number of votes counted. That the study of the discrepancy patterns in all the constituencies based on the data made available on the main website of the Respondent No.1 and so also the 'My Voters turnout App' has given the following conclusions:

- a) That the Master summary of 542 constituencies shows discrepancies in 347 seats. 195 seats are without discrepancies whatsoever.
- b) The discrepancies range from 1 vote (lowest) to 101323 votes @ 10.49% of the total votes (highest).
- c) There are 6 seats where the discrepancy in votes is higher than the winning margin.
- d) The total volume of discrepancies is in the nature of 739104 votes put together.
- e) There is no particular co-relation with any party in respect of discrepancy is observed in the Petitioner's analysis.

A true and correct copy of this master data summary dated NIL of all constituencies is annexed herewith as **Annexure P5** Pages (\_\_\_\_\_to\_\_\_\_\_).

16. That as per the initial data collected by the petitioners on 28-05-2019 through 'My Voter Turnout App', it was found that there were six constituencies where discrepancy was more than winning margin. Till date on the ECI's website the total votes polled and the winning margin are reproduced in the table below:

*Discrepancy more than the winning margin (As per Old Voter Turnout Data)*

|        |                 |               | Data as per Voter Turnout App (As on 28-05-2019) |                | Data as per Voter Turnout App (As on 30-06-2019) |                | Data as per ECI Website |              |             |             |                |
|--------|-----------------|---------------|--|----------------|--|----------------|-------------------------|--------------|-------------|-------------|----------------|
| Phase  | State           | PC Name       | Total Elector                                    | Voter Turn Out | Total Elector                                    | Voter Turn Out | EVM Votes               | Postal Votes | Total Votes | Discrepancy | Winning Margin |
| Phase1 | Andhra Pradesh  | Guntur        | 1704431  | 1339228        | 1704431  | 1346210        | 1346210                 | 5264         | 1351474     | 6982        | 4205           |
| Phase1 | Andhra Pradesh  | Visakhapatnam | 1825769  | 1228070        | 1825769  | 1233026        | 1233026                 | 6728         | 1239754     | 4956        | 4414           |
| Phase3 | Jammu & Kashmir | Anantnag      | 1049496  | 84937          | 1049496  | 80972          | 114683                  | 10213        | 124896      | 29746       | 6676           |
| Phase5 | Jharkhand       | Khunti        | 1199512  | 828961         | 1199512  | 830426         | 830426                  | 1951         | 832377      | 1465        | 1445           |
| Phase1 | Odisha          | Koraput       | 1433850  | 1072133        | 1433850  | 1076372        | 1076372                 | 3789         | 1080161     | 4239        | 3613           |
| Phase6 | Uttar Pradesh   | Machhlishahr  | 1845484  | 1027983        | 1845484  | 1032111        | 1032111                 | 2814         | 1034925     | 4128        | 181            |

17. That after the new version of 'My Voter Turnout App' was released by Respondent No. 1 on 13-06-2019, it was found that there was still one case where discrepancy was more than the winning margin and it is also observed that the voter turnout has decreased from 84937 to 80972. The table reproduced below shows the detailed analysis:

*Discrepancy more than the winning margin*

|        |                 |          | Data as per Voter Turnout App (As on 28-05-2019) |                | Data as per Voter Turnout App (As on 30-06-2019) |                | Data as per ECI Website |              |             |                                  |                |
|--------|-----------------|----------|--|----------------|--|----------------|-------------------------|--------------|-------------|----------------------------------|----------------|
| Phase  | State           | PC Name  | Total Elector                                    | Voter Turn Out | Total Elector                                    | Voter Turn Out | EVM Votes               | Postal Votes | Total Votes | Discrepancy (As per Latest Data) | Winning Margin |
| Phase3 | Jammu & Kashmir | Anantnag | 1049496  | 84937          | 104946   | 80972          | 114683                  | 10213        | 124896      | 33711                            | 6676           |

18. That the Respondent No.1 was requested for details of the data captured under statutory Form 17 C through an RTI Application under the Right to Information Act 2005. However, the same has not been received from the Respondent No.1 till date and oral queries with the Respondent No.1 revealed that the same is sealed along with the EVMs after counting and thus cannot be shared.
19. That the Respondent No.1 declared results in all constituencies on 23<sup>rd</sup> May 2019 and itself admitted in its press note dated 01 June 2019, that .....*”the final data on votes counted has been made available within a few days of declaration of results.....”* thereby admitting that the declaration of results was not on the basis of authenticated and verified results.
20. That even though the results for all constituencies were declared by the Respondent No. 1 on 23 May 2019, the Respondent No. 1 itself admitted on June 01, 2019 that the Index forms of all 542 PCs are expected to reach the Respondent No.1 from Returning Officers shortly thereby admitting that upto June 01, 2019 the Respondent No. 1 has not received the actual data and that the declaration of results was not on the basis of recorded data by R.O.
21. That the Respondent No. 1 declared results of the Election on provisional figures and without determining the exact Ballot count and without due reconciliation of the discrepancies in various constituencies.
22. That the Respondent No.1 has a statutory duty to collate and publish accurate data relating to the elections held by it. This data is captured in Form 17C [Rules 49S & 56 C(2)] (Account

of Votes Recorded) at every polling Station and displayed in final result sheet in form 20 [Rule 56 (7)].

23. That the Respondent No.1 therefore, has statutory duty to explain satisfactorily the resolution process, along with the methodology adopted for resolution of the discrepancies recorded during the course of election based on actual figures recorded in the abovementioned statutory forms at each polling stations. Admittedly the Respondent No. 1 itself acknowledged in their Press Note No. ECI/PN/61/2019 dated 01 June 2019 that

*“In earlier elections, it used to take months to collect such authenticated election data from all the ROs. Even in 2014, it took between 2 to 3 months after the declaration of results to collect and collate such data in authenticated form. Due to the innovative IT initiatives taken by the Commission this time, the final data on votes counted has been made available within a few days of declaration of results. The reconciliation of voters’ data for all PCs have been completed in all states and the Index Forms of all 542 PCs are expected to reach ECI from Returning Officers shortly, which after compilation, shall be immediately be made Public by the Election Commission.”*

A copy of ECI press release dated 01.06.2019 is annexed herewith as **Annexure P6**Pages (\_\_\_\_\_to\_\_\_\_\_).

24. It is submitted that Respondent No.1’s explanation on discrepancies vide its press release dated 01 June 2019 is general, vague and evasive without any specific details on the discrepancies observed in the entire election process. It is also submitted that till date the Respondent No.1 has failed to place the actual data in public domain.

25. It is submitted that in the 07<sup>th</sup> phase of the 2014 General Elections the methodology of putting out actual numbers of votes polled was changed arbitrarily and without any explanation to display the actual voting having taken place, in percentage figures rather than absolute numbers. The discontinuation of publication of actual numbers of votes

polled at any booth/constituency and replacing it with a percentage figure abruptly in the seventh phase of the election was seemingly done, to cover up the large number of unexplained discrepancies being recorded in majority of the Constituencies.

26. That the Respondent No. 1 has neither published the information on votes polled in all constituencies based on the above said statutory forms nor allowed access on request to the said information. It has given no convincing reasons for not sharing the statutory data under forms 17C and 20 in public domain.
27. That the Respondent No.1 has, in fact, deleted the data from its main website from 24<sup>th</sup> May, 2019 onwards which appeared without reconciliation with the 'My Voter Turnout App' and instead of explaining the discrepancies in each case, based on actual figures of a particular constituency, the Respondent No.1 has sought to resolve the mismatch through updating of fresh figures the source of which is not related to Form 17C.
28. That the cleaning of data was done by the Respondent No.1 without reconciliation and seemingly in haste of announcing the election results. The only evidence left thereafter of the discrepancy data is in the nature of Screenshots of such cleanup of data as preserved by the Petitioners, which the Petitioners crave leave to refer and rely upon as and when necessary and produced. A copy of one such screenshot in news report dated 31.05.2019 published in The Quint is annexed herewith as **Annexure P7** (Pages \_\_\_\_\_ to \_\_\_\_\_).
29. That the recent elections to all the 542 constituencies spread over two months was marked by a large number of news reports in diverse media all over country relating to missing

and unaccounted EVMs, their transportation in violation of the prescribed methods and EVMs being found outside their storage areas at unauthorized places.

- A copy of news report dated 08.04.2019 published in 'FirstPost.' is annexed herewith as **Annexure P8**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report regarding "phantom votes" published in the 'Newslick.com' dated 01.06.2019 is annexed herewith as **Annexure P9**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 23.04.2019 published in 'The Quint' is annexed herewith as **Annexure P10**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 30.04.2019 published in 'Sabrangindia.in' is annexed herewith as **Annexure P11**Pages(\_\_\_\_\_to\_\_\_\_\_).
- A copy of newsreport dated 28.05.2019 published in 'Newslick.com' is annexed herewith as **Annexure P12**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 22.05.2019 published in 'TheWire.com' is annexed herewith as **Annexure P13**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 08.06.2019 published in 'Newslick.com' is annexed herewith as **Annexure P14** Pages(\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 21.10.2019 published in 'The Quint' is annexed herewith as **Annexure P15**Pages (\_\_\_\_\_to\_\_\_\_\_).
- A copy of news report dated 23.10.2019 published in 'The Quint' is annexed herewith as **Annexure P16**Pages (\_\_\_\_\_to\_\_\_\_\_).

30. That former-IAS officer Kannan Gopinath, who resigned from IAS recently, also wrote a detailed letter dated 02.10.2019 to the Chief Election Commissioner regarding concerns about the serious loopholes and vulnerabilities in the use of VVPAT machines making EVMs susceptible to potential hacking. A copy of the letter dated 02.10.2019 sent by Kannan Gopinath to the Chief Election Commissioner is annexed herewith as **Annexure P17**Pages(\_\_\_\_\_ to\_\_\_\_\_).

31. That the lack of reasoned explanation by the Respondent No.1 on mismatch and the cleanup of certain data from its website has therefore, caused serious doubts in the mind of citizens about the entire process of counting and result declaration.

32. That the Constitution envisages elections as an integral part of the formation of Legislature and the consequent Executive. The most significant function of elections is to establish the legitimacy of the elected officials in the eyes of the citizens. That in order to uphold and preserve the sanctity of elections, it is undeniably imperative that election results are accurate. It is not only sufficient that election results are accurate; the public must also know that the results are accurate. The entire electoral process is damaged if elections are not credible even in the absence of a demonstrable scam.

33. That declaration of election results with alacrity should not be a priority at the altar of accuracy and integrity of elections.



Several serious lapses can go unnoticed in the counting process in the rush to declare results and the winners. Conduct of Parliamentary elections in our country is a gigantic exercise spread over two-three months. To be able to announce accurate results great deliberation is required, hence to expect and want the counting process to be over in just few hours is not desirable. That this unwarranted urgency of concluding counting process on mere assumptions and conjectures shorn of the genuine authenticated data is a strictly flawed notion and therefore requires an immediate attention of this Hon'ble Court.

34. That it won't be out of place to mention the mechanism of election results practiced in the United Kingdom. The electoral procedures are overseen by an independent Electoral Commission, the responsibility of certifying and publishing the electoral results of each constituency lies on the Returning Officers. At the end of each election day, the functionaries of the poll station deliver the ballots and their reports with the number of total voters (and special cases of disabled and assisted voters or rejected voters) to the local returning officer who proceeds to the scrutiny on the same day. At the end of this procedure, the returning officer proclaims and publishes the results, including the number of the registered voters, the number of the blank/invalid votes and the turnout percentage. A copy of the 'Declaration of Poll Result' dated 08.06.2017 duly signed and acknowledged by the returning

officer as well as Article 50 of United Kingdom's Representation of People Act, 1983 are annexed herewith and marked as **Annexure P18**(Pages\_\_\_\_\_to\_\_\_\_\_).

35. That even in France, the responsibility for the proclamation of the electoral results lies on the Central Electoral Bureau, which receives from the poll stations the electoral report filled with the list of entitled voters, the number of casted votes, the number of valid votes, the number of invalid and blank/invalid votes, and the votes obtained by each candidate. Once these results are verified, the president of the Central Electoral Bureau proclaims all the results (including the number of entitled voters and the number of votes cast) to the public. A copy of the 'Voting operations under the Electoral Code of France; Article 67, 68 & 69' dated NIL is annexed herewith and marked as **Annexure P19**(Pages\_\_\_\_\_to\_\_\_\_\_).
36. That in Peru, the proclamation of the results and the publication of the electoral acts are divided in two different moments. The proclamation of the results is up to the local election bureau, which proclaims the votes obtained by the lists/candidates at the end of the scrutiny, sending the official report to the National Office for Electoral Procedures. The next day, a Special Electoral Jury reviews the reports and publish the official results of each district, including in the proclamation the number of voters registered, the number of invalid or blank votes, and the voted obtained by each list/candidate.

37. That in Brazil, the day after the conclusion of the electoral procedures, the body responsible for the scrutiny proceeds to the count of the votes. At the end, they issue an official document which includes the total number of voters, the votes obtained by each candidate and the invalid or blank votes. A copy of the 'Report of the Electoral Observation Mission' on 'First Round Of The Brazil Presidential and Legislative Elections' dated October 1<sup>st</sup>, 2006 is annexed herewith as **Annexure P20**(Pages        to       ).

38. That purely electronic voting machines do not allow voters to verify that their votes have been accurately recorded, and do not allow observers to witness that the ballots have not been tampered with. Electronic voting machines are especially vulnerable to malicious changes by insiders such as designers, programmers, manufacturers, maintenance technicians, etc.

39. That the Election Commission of India has been largely dismissive of the serious misgivings spun around elections; primarily the manner in which the votes are counted and the results are declared. Elections are all about trust. If the citizens do not trust the election results and there is no basis to show that their fears are unfounded, the legitimacy of election results would remain perpetually under a cloud.

40. That whereas 'Right to Vote' is a legal right given under the Representation of People Act, 1951, however the mechanism of exercising such right by a voter and if his/her choice is accurately and impartially reflected in the election results is voter's individual expression and this expression is adequately

covered by Article 19 (1) (a) of the Constitution of India. It is this fundamental right, the very basic right of a voter which is required to be preserved and expanded.

41. That the people of this country have a right to know every public act, everything that is done in a public way by the public functionaries. In *State of Uttar Pradesh v. Raj Narain and Others* [(1975) 4 SCC 428], the Constitution Bench of this Hon'ble Court had observed that "the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security". This Court had pertinently observed as under:

*"74. According to Wigmore, the extent to which this privilege has gone beyond "secrets of State" in the military or international sense is by (1) Lord Parker of Weddington in The Zemor [1916] 2 A C 77, at 107. no means clearly defined and therefore its scope and bearing are open to careful examination in the light of logic and policy. According to him, in a community under a system of representative government, there can be only few facts which require to be kept secret with that solidity which defies even the inquiry of courts of justice. (1) In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. (2) To cover with veil*

*secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”*

42. That in *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and others*[(1995) 2 SCC 161], this Hon'ble Court considered the issue and thereafter summarized the law on the freedom of speech and expression. The relevant paragraph of the judgment is reproduced below:

*"44. The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-fulfilment. It enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy.”*

43. That this Hon'ble Court had also observed that a successful democracy posits an 'aware' citizenry" and held in Para 82.

*"82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry*

*which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organization."*

44. That it would not be out of place to mention the 2002 judgment of this Hon'ble Court in a petition filed by the petitioner organization *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 pertaining to disclosure of assets and the criminal background of contesting candidates at the time of elections. In the aforementioned judgment, this Hon'ble Court while emphasizing on the importance of citizen's 'Right to Know' had held that the voter has the right to know the antecedents of the candidates before making his/her choice so that the choice is not mechanical but an informed choice. This Hon'ble Court had held as follows;

*"Under our Constitution, Article 19(1) (a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy."*

45. That the emphasis of the Election Commission should be on making this right absolutely free and transparent devoid of hurdles created by time lapses and procedural technicalities. Every voter has the right to know that the vote exercised as a part of freedom of expression to further the democratic principles has actually gone in favor of the candidate whom he/ she has chosen.

46. That this very fundamental and unalienable right of the voter as envisaged under Article 19(1)(a) was completely forgotten

and overlooked by the Election Commission of India as per their 'Press Release on Voter Turnout' dated 01-06-2019.

47. That it would also not be out of place to refer the language adopted in the Preamble to our Constitution. The Preamble of the Constitution of India clearly states "*WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens.*" That the word 'Sovereignty' signifies supreme and ultimate power and this power is vested upon the elected representatives of the people by the will of the people. That the term 'Democratic' indicates that the Constitution has established a form of government which gets its authority from the will of the people expressed in an election.
48. That the words 'We the People of India' resonating in the opening words in the Preamble clearly indicates in unambiguous terms that the Constitution has been adopted, enacted and given to themselves by the People of India. It emphasizes the sovereignty of the people in a democratic form of government and the fact that all powers of government flow from the people. It is the 'People of India' on whose authority the Constitution rests. The Preamble surmises that it is the people of this country who are the main stakeholders.
49. That the Preamble to Indian Constitution is not merely a beautifully worded prologue. Rather our Preamble records the aims and aspirations of the 'People of India' which have been translated into the various provisions of the Constitution and contains the basic ideals, objectives, and philosophical postulates the Constitution of India stands for. In ***Kesavananda Bharati*** this Hon'ble Court while tracing back the history of the drafting and ultimate adoption of the Preamble had attached much importance to the Preamble. It was observed;

*“No authority has been referred before us to establish the propositions that what is true about the powers is equally true about the prohibitions and limitations. Even from the Preamble limitations have been derived in some cases. It seems to me that the preamble of our Constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble.”*

50. That the basic principle of democracy in a civilization governed by the ‘Rule of Law’ is not only to respect the will of the majority but also to prevent the despotism by the majority. That in reaffirmation to this democratic principle our Constitution was enacted, accepted and adopted by the Constituent Assembly in the name of, and for “We, the People of India.”
51. That in a sovereign democratic republic, citizen should be able to have a true say in elections. The only legitimate source of government is the people's mandate. In an electoral process where citizens act as co-sovereigns in selecting their representatives any denial of this universal idea as enshrined in our Constitution is discriminating and undemocratic.
52. That while striking down the law permitting the use of EVMs in the elections in Germany, the Federal Constitutional Court in a landmark judgment in March, 2009 cited the principle of ‘**public examinability**’ of all essential steps in the conduct of elections in that country which is guaranteed under the Constitution except when other constitutional interests justify otherwise.
53. That on 8th October, 2013, in a Public Interest Litigation matter, this Hon’ble Supreme Court had directed the Election Commission to introduce the VVPAT system in a phased manner. This Hon'ble Court, in Dr. Subramaniam Swamy Vs Election Commission of India (2013) 10 SCC 500 had held



that paper trail is an "indispensable requirement" of free and fair elections, thereby making paper trail inherent in and intrinsic to the basic structure. The relevant portion of the judgment is reproduced below:

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

54. That this Hon'ble court again while emphasizing on the need to generate the greatest degree of satisfaction in all with regard to the full accuracy of the election results in *W.P (C) 273/2019 in N. Chandrababu Naidu & others vs. Union of India and Others*, Page No. 8 had stated;

*"It is possible and we are certain that the system ensures accurate electoral results. But that is not all. If the number of machines which are subjected to verification of paper trail can be increased to a reasonable number, it would lead to greater satisfaction amongst not only the political parties but the entire electorate of the Country."*

55. That Rule 49MA to the Conduct of Election Rules, 1961, prescribes the standard procedure in cases of complaints about incorrect VVPAT slips. It stipulates that if someone makes such a complaint, the polling booth's presiding officer must obtain a written declaration from the elector about the allegation, after warning them of penal consequences if it is

found to be false. The elector is then required to conduct a test vote in the presence of a polling officer, who must either stop the polling process, if the complaint is genuine, or record an entry for test votes that must be reduced from the total tally, if it is false. That rule 56D (4)(b) of the Conduct of Election Rules, 1961, if there is any discrepancy between the EVM count and VVPAT count the latter prevails.

56. That a group of over a thousand international technical experts under the Verified Voting Foundation have subscribed to a "Resolution on Electronic Voting" that categorically asserts; *"Election integrity cannot be assured without openness and transparency. But an election without voter-verifiable ballots [physical proof of voting] cannot be open and transparent: The voter cannot know that the vote eventually reported is the same as the vote cast, nor can candidates or others gain confidence in the accuracy of the election by observing the voting and vote counting processes. There is no reliable way to detect errors in recording votes or deliberate election rigging with these machines. Hence, the results of any election conducted using these machines are open to question."*

A copy of the "Resolution on Electronic Voting" dated NIL on the website of Verified Voting Foundation is annexed herewith and marked as **Annexure P21 (Pages \_\_\_\_\_ to \_\_\_\_\_)**.

57. That in a 2005 report titled 'Building Confidence in U.S. Elections', Jimmy Carter (former president of the United States) and James Baker III (former secretary of state), co-chairs of the 'Bipartisan Commission on Federal Election Reform' stated, *"There is no need to trust the insiders in the election industry any more than in other industries, such as gambling, where sophisticated insider fraud has occurred despite extraordinary measures to prevent it."* It was further suggested in the report that all electronic voting machines be

equipped with a voter-verifiable paper audit trail (VVPAT) for the following four reasons namely;

- a) To increase citizens' confidence that their vote will be counted accurately.
- b) To allow for a recount.
- c) To provide a backup in cases of loss of votes due to malfunction.
- d) To test – through a random selection of machines – whether the paper result is the same as the electronic result.

A true and correct copy of the relevant portion of the book is annexed herewith and marked as **Annexure P22(Pages to )**.

58. That declaration of election results based on an actual and accurate data would ensure the basic principles of *transparency, verifiability* and *accountability*. That it would also remove the 'trust deficit' in the system, allow the voters to exercise their 'sovereign and democratic' power confidently.
59. That Indian election is an enormous exercise and a mammoth venture in terms of money spent. Therefore, it becomes even more imperative to adopt a cautious and careful approach. That universal principle of free and fair elections implies free and fair conduct in every manner and therefore imposes a primary obligation upon the Election Commission, political parties and candidates to remove every category of doubt from the minds of the citizens at large vis-à-vis the manner in which the elections are conducted and the results are declared. That the free and fair elections also demand that the electoral process is more democratic, responsible, accountable and transparent rather than making this enormous election process a dubious and futile task.

60. That present system of declaring the election results before the authenticated data is released by the Election Commission also raises a very important question whether the people's mandate is being truly represented in a democracy.
61. That the present system of declaration of election results raises massive confusion and potential arbitrariness. The infirmities in the existing system of conducting elections by declaring the election results even before the authenticated election data is released by the Election Commission is far more serious and an alarming trend and therefore, cannot be disregarded. That such a protocol is likely to create suspicion, confusion, conflict, and a very discredited electoral process.
62. That Article 324 of the Constitution of India bestows the relevant powers, duties and functions upon the Election Commission of India while Section 14 of the Representation of the People Act, 1951 provides for the conduct of the elections to constitute a new Lok Sabha before the expiry of its current term. Taking into account these Constitutional and legal provisions it is imperative that it is ECI's constitutional mandate to conduct free, fair, credible elections in a free, fair and transparent manner.
63. That the resolution of the discrepancies is the statutory duty of the Election Commission and it must discharge this duty in an objective, transparent and fair manner.
64. That the Election Commission cannot discharge this duty unless it frames suitable rules, guidelines and procedures in its instructional manual for resolving discrepancies and shares the same in public domain with all supporting data.
65. That in public interest the Election Commission of India is duty bound to disclose how the large number of discrepancies in its own system of recording votes has cropped up with details of each discrepancy resolution in terms of the statutory

data captured by it during the election process. That the Election Commission of India is also duty bound to reconcile the data in statutory Form 17C, Form 20 and Form 21 E for each and every constituency and place the same at the earliest in public domain.

66. That the Election Commission of India is not justified in cleaning up its own data and change the methodologies at random and at will so as to reconcile the various figures held by it under different statutory forms.
67. That declaring results on unverified data without reconciliation of discrepancies is arbitrary, unjust, not transparent, illogical and unconstitutional. That the discrepancies are too large in numbers spread across the board that it merits a close scrutiny and system to monitor and resolve for future elections to inspire public confidence in the system.
68. That there are constituencies in which the discrepancies are larger than the winning margin or even beyond the rationale stated without any enquiry on it by the Respondent No. 1. There are also constituencies in which the discrepancy is zero and therefore, implies that where discrepancies have arisen, and reconciliation fails to explain them, systems have somewhere failed during the election process.
69. That the Respondent No. 1 while dealing with the problem has been uncooperative in sharing the statutory data which it is duty bound to do so. Election Commission of India cannot decline to give the data pertaining to elections as requested under Right to Information Act by any citizen and it is duty bound to provide the information requested.
70. That to facilitate such an independent enquiry the Election Commission of India requires to share the statutory data for reconciliation without any cleaning or modification to it.

71. That the present statutory rules on the subject as well as the instructions manual is silent on the procedure/guidelines for dealing with discrepancies and its resolution and therefore, the intervention of this Hon'ble Court is necessary to remove this fallacy.

72. That a series of glaring examples as reported in several newspaper reports will also prove that how a biggest democracy like ours is decaying slowly and steadily. In our current electoral process voters have been reduced to merely people exercising their franchise once in five years and, once the vote is cast, then retiring in passivity.

- That according to a Press Trust of India report, a Former Chief electoral Officer of Gujarat B B Swain at the time had admitted that there were mismatches in one booth on four seats—Vagra, Dwarka, Ankleshwar and Bhavnagar Rural during the Gujrat Assembly elections held in December 2017.
- That a similar incident took place during the Karnataka assembly polls, in May 2018. A press note published by ANI stated that the EVMs had not been cleared after the mock polls, due to which there was a difference of 54 votes in the final tally between the EVM and VVPAT in one polling booth of the Hubli Dharwad constituency. It added that the winning candidate had won by over 20,000 votes, whereas the affected VVPAT recorded only 459 votes, and that it had no effect on the final result.
- That in Telangana's Thungathuruthy constituency, during the 2018 Telangana assembly polls, there appeared to be a significant difference between voter turnout recorded in the Report 22 and the votes recorded in the Form 20. The report recorded 1,98,770 voters, but the form counted 1,99,862

votes—a difference of 1,092 votes. In the constituency's Adluru polling booth alone, there appeared to be a mismatch of 119 votes.

A copy of such report as reported in 'The Caravan Magazine' dated 19.05.2019 is annexed herewith and marked as **Annexure P23**(Pages     to     ).

75. That Section 61A of the Representation of People Act, 1951 not only mandates recording of votes by EVMs and ECI's discretion to prescribe recording of votes by such EVMs as it may deem fit but the section also states that this discretion has to be exercised in a manner to preserve the sanctity of the election process and ensure that the election is conducted in a free and fair manner. A bare reading of Section 61A clearly states;

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

Further Explanation provided Section under 61 A in the RP Act reads as follows:

Explanation.-

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

76. That doubt deserves an equal treatment with dispute and was a recognized concept in article 324 (1) of the Constitution until the 19<sup>th</sup> Constitution Amendment Act in 1966. Hence its statutory resolution through a process is absolutely necessary to inspire public confidence in the election process.

77. That the Government “by the people” “for the people” and “of the people” should normatively deliver an ideal governance but the reality is poles apart. Good governance demands that citizen’s choice is truly reflected at the time of elections and after the declaration of election results. But the fact of the matter is that the electoral process is being tainted at the hands of those in power who leave no stone unturned to stay in power and do not hesitate from adopting ugly tactics/maneuvers in order to stay in power.

78. That in a plethora of judgments this Hon’ble Court has held that there is no substitute for public transparency. This Hon’ble court has time and again recognized the principle of the public nature of elections in a democracy - that all essential steps of an election are subject to the public scrutiny and confidence. Over the years it has been held that people are in a uniquely powerful position in elections, leading to very unique dynamics in voting whereby any non-transparency is a direct denial of people's rights and thus a denial of democracy.

79. That holding of free and fair election by adult franchise in a periodical manner is the heart and soul of the parliamentary system as has been held by this Hon’ble Court in *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others* (1978)1 SCC 405. In the said case, Krishna Iyer, J. quoted with approval the statement of Sir Winston Churchill which is as follows: -



*“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”*

80. That the hallmark of a vibrant democracy is the conduct of free and fair elections with all candidates and political parties having a level playing field. This fundamental principal, however, has become skewed with the deteriorating standards of ethical and moral propriety of India's parliamentary democracy. Criminal elements have been playing a major role in the electoral process in India both as candidates for elections and as party workers. Money has engulfed the whole electoral process. The Constitution of India unmistakably expounds that mass democracy can only function in the form of a representative democracy. It is imperative that the will of the people is truly reflected at the end of the election results. That an absolutely true and correct election results cannot be left to mere chances, assumptions, statistical estimations and random sampling. The right to a verified and authenticated data on vote count is a crucial right of a citizen otherwise it is akin to the state surreptitiously stealing the most fundamental right of a citizen.

81. This Hon'ble Court has sufficient powers to curb this present menace. Therefore, it is the mandate of this Hon'ble Court to safeguard the basic structure of the Constitution and also to ensure that the representative democracy is truly reflected in the form of people's will and mandate.

82. In *Manoj Narula vs. Union of India and others*, W.P (C) No. 289/2005, the concluding remarks by Justice Kurian J. in Para Nos. 3, 6, & 9 would be pertinent to note:

*“3. Court is the conscience of the Constitution of India. Conscience is the moral sense of right and wrong of a person (Ref.: Oxford English Dictionary). Right or wrong, for court, not in the ethical sense of morality but in the constitutional sense. Conscience does not speak to endorse one’s good conduct; but when things go wrong, it always speaks; whether you listen or not. It is a gentle and sweet reminder for rectitude. That is the function of conscience. When things go wrong constitutionally, unless the conscience speaks, it is not good conscience; it will be accused of as numb conscience.”*

*“6. Allegiance to the Constitution of India, faithful and conscientious discharge of the duties, doing right to people and all these without fear or favour, affection or ill-will, carry heavy weight.”*

*“9. Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution.”*

83. In *Rajasthan v. Union of India* AIR 1977 SC 1361, Justice P.N. Bhagwati while dealing with powers and functions of this court, it was observed:

*“149...It is necessary to assert in the clearest terms particularly in the context of recent history, that the constitution is supremelex, the permanent law of land, and there is no department or branch of government above or beyond it. Every organ of the government, be it the executive or the legislature or the judiciary, derives its authority from the constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty can claim that it shall be the*

*sole judge of the extent of its power under the constitution or whether its action is within the confines of such power laid down by the constitution. This court is the ultimate interpreter of the constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits. It is for this court to uphold constitutional values and to enforce constitutional limitations. That is the essence of the Rule of Law."*

It was further held in Para 149

*"149.....Where there is manifestly unauthorized exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. "Tact and wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too". The Court cannot and should not shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this Country. There are indeed numerous decisions of this Court where constitutional issues have been adjudicated upon though enmeshed in questions of religious tenets, social practices, economic doctrines or educational policies. The Court has in these cases adjudicated not upon the social, religious, economic, or other issues, but solely on the constitutional questions brought before it and in doing so, the Court has not been deterred by the fact that these constitutional questions may have such other overtones or facets."*

84. In *Common Cause (A registered society) Vs. Union of India*, AIR 1996, SC 3081, it was observed by this court:

*“39. Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations- that power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify: less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control, as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may system into elected despotism - instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of 'legal guidelines, can call the bluff, quash the action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously.”*

85. That from a cumulative reading of plethora of decisions of this Hon'ble Court it is clear that if the field meant for legislature and executive is left unoccupied and such a void in law is detrimental to the public interest, this Hon'ble Court can issue necessary directions to the executive in larger public interest under Article 32 read with Articles 141 and 142 of the Constitution. To maintain the purity of elections and to bring about transparency in the process of election, this Hon'ble Court has the authority to issue directions to the Election Commission of India to safeguard the will of the people by taking appropriate steps in the right direction so that the election results are accurate and a legitimate winner is declared as people's elected representative.

86. That a declaration as above is necessary and desirable from this Hon'ble Court to uphold the rule of law and the provisions of the Constitution and the Statutes therein applicable.

87. That declaration of the results by the Respondent No. 1 prior to receiving the actual data from all Returning Officers and its reconciliation in a systematic and transparent manner is unconstitutional, illegal, arbitrary and unjust.

88. That the present Petition raises the following vital issues for adjudication by this Hon'ble Court:

- I. Whether not framing the guidelines and procedures for resolving objectively the discrepancies observed in the election process in the Manual on Conduct of Elections with EVM-VVPAT as notified in February 2019 by the Respondent No. 1 is arbitrary and therefore ultravires of the Constitution.

- II. Whether the acts of Respondent No.1 in cleaning up the discrepancy data, not resolving the same in an objective and satisfactory manner and refusing to sharing the same in public domain, is arbitrary and contrary to the mandate of the constitution and the concerned statutes and against public policy.
- III. On what basis – actual or estimated, the Respondent No.1 is required to declare the results?
- IV. Whether Respondent No. 1 is duty bound and it is necessary for it to dispel doubts among the public in relation to the discrepancies recorded in an election held by it.
- V. Whether the Respondent No.1 can decline sharing with the public the statutory data under Form 17C and Form 20 captured by it during the election process.

### **GROUND**

- A. Because the Constitution envisages elections as an integral part of the formation of Legislature and the consequent Executive. The most significant function of elections is to establish the legitimacy of the elected officials in the eyes of the citizens. That in order to uphold and preserve the sanctity of elections, it is undeniably imperative that election results are accurate. It is not only sufficient that election results are accurate; the public must also know that the results are accurate. The entire electoral process is damaged if elections are not credible even in the absence of a demonstrable scam.
- B. Because the discrepancies between the actual voter turnout and provisional data in the 2019 Lok Sabha Elections as

pointed out by the petitioner herein are significant and cannot be set aside without a satisfactory resolution of the same.

C. Because the current statute has a procedure for resolution of a dispute through an election petition but no provision for resolution of the doubts arising out of discrepancies in very large number of constituencies all over the country.

D. Because declaration of election results with alacrity should not be a priority at the altar of accuracy and integrity of elections. Several serious lapses can go unnoticed in the counting process in the rush to declare results and the winners. Conduct of Parliamentary elections in our country is a gigantic exercise spread over two-three months. To be able to announce accurate results great deliberation is required, hence to expect and want the counting process to be over in just few hours is not desirable. That this unwarranted urgency of concluding counting process on mere assumptions and conjectures shorn of the genuine authenticated data is a strictly flawed notion and therefore requires an immediate attention of this Hon'ble Court.

E. Because resolution of doubts and discrepancies in electoral results are as essential for a democracy as resolution of disputes relating to an election exercise. That the original Constitution until the 19<sup>th</sup> Constitutional Amendment Act 1966 recognized doubts and disputes as two different categories requiring independent treatment. The pre- 19<sup>th</sup> Constitutional Amendment provisions read as under:

*“..... including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and the Legislature of States....”*

89.The Petitioners therefore, most humbly submit that it would be just, expedient and in the interest of justice that this Hon'ble Court be pleased to grant the Petitioners following prayers and also the interim reliefs sought by the Petitioners pending the hearing and final disposal of this Petition.

90.The petitioners have not filed any other similar writ petition regarding the matter in dispute before this Hon'ble Court or any High Court.

### **PRAYERS**

In the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Issue an appropriate writ, order or direction directing the Respondent No. 1 to conduct actual and accurate reconciliation of data before the declaration of the final result of any election.
- b. Issue an appropriate writ, order or direction directing the Respondent No. 1 to provide the following information in the public domain for the 2019 Lok Sabha elections and for all future elections: (i) statutory forms 17C, Form 20, Form 21C, Form 21D & Form 21 E.
- c. Issue an appropriate writ, order or direction directing the Respondent No. 1 to investigate the discrepancies which had taken place in the 17<sup>th</sup> Lok Sabha election results.
- d. Issue an appropriate writ, order or direction directing the Respondent No. 1 to formulate a robust procedure for all future elections for the investigation of all discrepancies in election data.



e. Pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

PETITIONER THROUGH

DRAWN BY:

DRAWN & FILED ON:

### **Synopsis**

The Petitioners have filed the instant Public Interest Litigation under Article 32 of the Constitution of India to ensure that democratic process is not subverted by electoral irregularities and to ensure free and fair elections and rule of law and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. The instant writ petition highlights dereliction of duty on part of the Election Commission of India (ECI) in declaring election results (of the Lok Sabha and State Legislative Assemblies through Electronic Voting Machine (EVMs) based on accurate and indisputable data which is put in public domain.

The petitioner seeks a direction from this Hon'ble Court directing the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. The petitioner further seeks a direction from this Hon'ble Court to the ECI to evolve an efficient, transparent, rational and robust procedure/mechanism by creating a separate department/grievance cell for investigation of discrepancies in

election data and for responding to the elector's queries on the same. The prayers as sought for in the instant writ petition have been envisaged by this Hon'ble Court in landmark cases such as *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 and *People's Union for Civil Liberties & Anr., Lok Satta and Ors. and Association for Democratic Reforms v. Union of India (UOI) and Anr.*, (2003) 4 SCC 399.

At the very outset, the petitioner organizations submit that through the instant writ petition, the petitioners are not challenging or questioning the final result of 2019 General Elections or the election process in the country. However, the issues and irregularities that arose in the conduct of the election/result declaration are being cited as arguments for seeking the prayers sought in the petition for effectuating free and fair elections, survival of democracy and for the enforcement of fundamental rights.

### **Brief Facts**

The elections to the 17<sup>th</sup> Lok Sabha were conducted by the Respondent No. 1 in seven phases and covered 542 constituencies in seven phases starting from April 11, 2019. The results were announced on May 23, 2019. That Rule 49S and Rule 56C (2) of the Conduct of Election Rules, 1961, provide that presiding officer is to prepare an account of votes recorded in form 17C (Part I) and the returning officer is to record the number of votes in favour of each candidate (part II of the Form17).

In February 2019, Respondent No.1 issued a Manual on Conduct of Elections with EVM-VVPAT along with a series of Circulars and Instructions. Chapter 3 of the said Manual lays down the legal provisions for the use of EVMs and VVPATs while Chapter 16 of the Manual lays down instructions regarding

counting of votes and largely covers all situations and contingencies anticipated in the Counting of votes. However, the manual does not provide for a situation where there are discrepancies during the counting process.

That the Respondent No.1 introduced for the first time, in the Lok Sabha General Elections 2019, a real-time reporting of the voter turnout for every single constituency that went to polls. The reporting was done on the basis of actual voting at booth level at any given point of time which was consolidated and put up on a mobile app called the "My Voter turnout App". That the Respondent No.1 through this mobile app published data of actual voting on real time basis for the first Six phases of election in actual numbers of votes polled at every booth in any constituency. The said app displayed the number of voters at every single constituency that went to polls. While for the first 6 phases of the election the app displayed the exact number of voters, in the last phase i.e. the 7th phase of voting only percentage figures were given and previous data was removed by the Respondent No. 1.

That as per the research conducted by a team of experts with the petitioner organization, there have been serious discrepancies between the number of voters in different constituencies (i.e. the voter turnout data collated and provided by the Election Commission) and the number of votes counted. That the study of the discrepancy patterns in all the constituencies based on the data made available on the main website of the Respondent No.1 and so also the 'My Voters turnout App' has given the following conclusions:

- a) That the Master summary of 542 constituencies shows discrepancies in 347 seats. 195 seats are without discrepancies whatsoever.

- b) The discrepancies range from 1 vote (lowest) to 101323 votes @ 10.49% of the total votes (highest).
- c) There are 6 seats where the discrepancy in votes is higher than the winning margin.
- d) The total volume of discrepancies is in the nature of 739104 votes put together.
- e) There is no particular co-relation with any party in respect of discrepancy is observed in the Petitioner's analysis.

The Respondent No.1 was requested for details of the data captured under statutory Form 17 C through an RTI Application under the Right to Information Act 2005. However, the same has not been received from the Respondent No.1 till date and oral queries with the Respondent No.1 revealed that the same is sealed along with the EVMs after counting and thus cannot be shared.

That the Respondent No.1 declared results in all constituencies on 23<sup>rd</sup> May 2019 and itself admitted in its press note dated 01 June 2019, that *....."the final data on votes counted has been made available within a few days of declaration of results....."* thereby admitting that the declaration of results was not on the basis of authenticated and verified results.

That even though the results for all constituencies were declared by the Respondent No. 1 on 23 May 2019, the Respondent No. 1 itself admitted on June 01, 2019 that the Index Forms of all 542 PCs are expected to reach the Respondent No.1 from Returning Officers shortly thereby admitting that upto June 01, 2019 the Respondent No. 1 has not received the actual data and that the declaration of results was not on the basis of recorded data by R.O.

That the Respondent No. 1 declared results of the Election on provisional figures and without determining the exact Ballot

count and without due reconciliation of the discrepancies in various constituencies.

That the Respondent No.1 has a statutory duty to collate and publish accurate data relating to the elections held by it. This data is captured in Form 17C [Rules 49S & 56 C(2)] (Account of Votes Recorded) at every polling Station and displayed in final result sheet in form 20 [Rule 56 (7)].

That the Respondent No.1 has statutory duty to explain satisfactorily the resolution process, along with the methodology adopted for resolution of the discrepancies recorded during the course of election based on actual figures recorded in the abovementioned statutory forms at each polling stations. Admittedly the Respondent No. 1 itself acknowledged in their Press Note No. ECI/PN/61/2019 dated 01 June 2019 that:

*“In earlier elections, it used to take months to collect such authenticated election data from all the ROs. Even in 2014, it took between 2 to 3 months after the declaration of results to collect and collate such data in authenticated form. Due to the innovative IT initiatives taken by the Commission this time, the final data on votes counted has been made available within a few days of declaration of results. The reconciliation of voters’ data for all PCs have been completed in all states and the Index Forms of all 542 PCs are expected to reach ECI from Returning Officers shortly, which after compilation, shall be immediately be made Public by the Election Commission.”*

It is submitted that Respondent No.1’s explanation on discrepancies vide its press release dated 01 June 2019 is general, vague and evasive without any specific details on the discrepancies observed in the entire election process. It is also submitted that till date the Respondent No.1 has failed to place the actual data in public domain.

It is submitted that in the 07<sup>th</sup> phase of the 2014 General Elections the methodology of putting out actual numbers of votes polled was changed arbitrarily and without any explanation to display the actual voting having taken place, in percentage figures rather than absolute numbers. The discontinuation of publication of actual numbers of votes polled at any booth/constituency and replacing it with a percentage figure abruptly in the seventh phase of the election was seemingly done, to cover up the large number of unexplained discrepancies being recorded in majority of the Constituencies.

The present Petition raises the following vital issues for adjudication by this Hon'ble Court:

- I. Whether not framing the guidelines and procedures for resolving objectively the discrepancies observed in the election process in the Manual on Conduct of Elections with EVM-VVPAT as notified in February 2019 by the Respondent No. 1 is arbitrary and therefore *ultravires* of the Constitution.
- II. Whether the acts of Respondent No.1 in cleaning up the discrepancy data, not resolving the same in an objective and satisfactory manner and refusing to sharing the same in public domain, is arbitrary and contrary to the mandate of the constitution and the concerned statutes and against public policy.
- III. On what basis – actual or estimated, the Respondent No.1 is required to declare the results?
- IV. Whether Respondent No. 1 is duty bound and it is necessary for it to dispel doubts among the public in relation to the discrepancies recorded in an election held by it.

- v. Whether the Respondent No.1 can decline sharing with the public the statutory data under Form 17C and Form 20 captured by it during the election process.

Therefore, the petitioner is seeking the following reliefs from this Hon'ble Court in public interest:

- a. An appropriate writ, order or direction directing the Respondent No. 1 to conduct actual and accurate reconciliation of data before the declaration of the final result of any election.

An appropriate writ, order or direction directing the Respondent No. 1 to provide the following information in the public domain for the 2019 Lok Sabha elections and for all future elections: (i) statutory forms 17C, Form 20, Form 21C, Form 21D & Form 21E.

- c. An appropriate writ, order or direction directing the Respondent No. 1 to investigate the discrepancies which had taken place in the 17<sup>th</sup> Lok Sabha election results.
- d. An appropriate writ, order or direction directing the Respondent No. 1 to formulate a robust procedure for all future elections for the investigation of all discrepancies in election data.
- e. Any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.