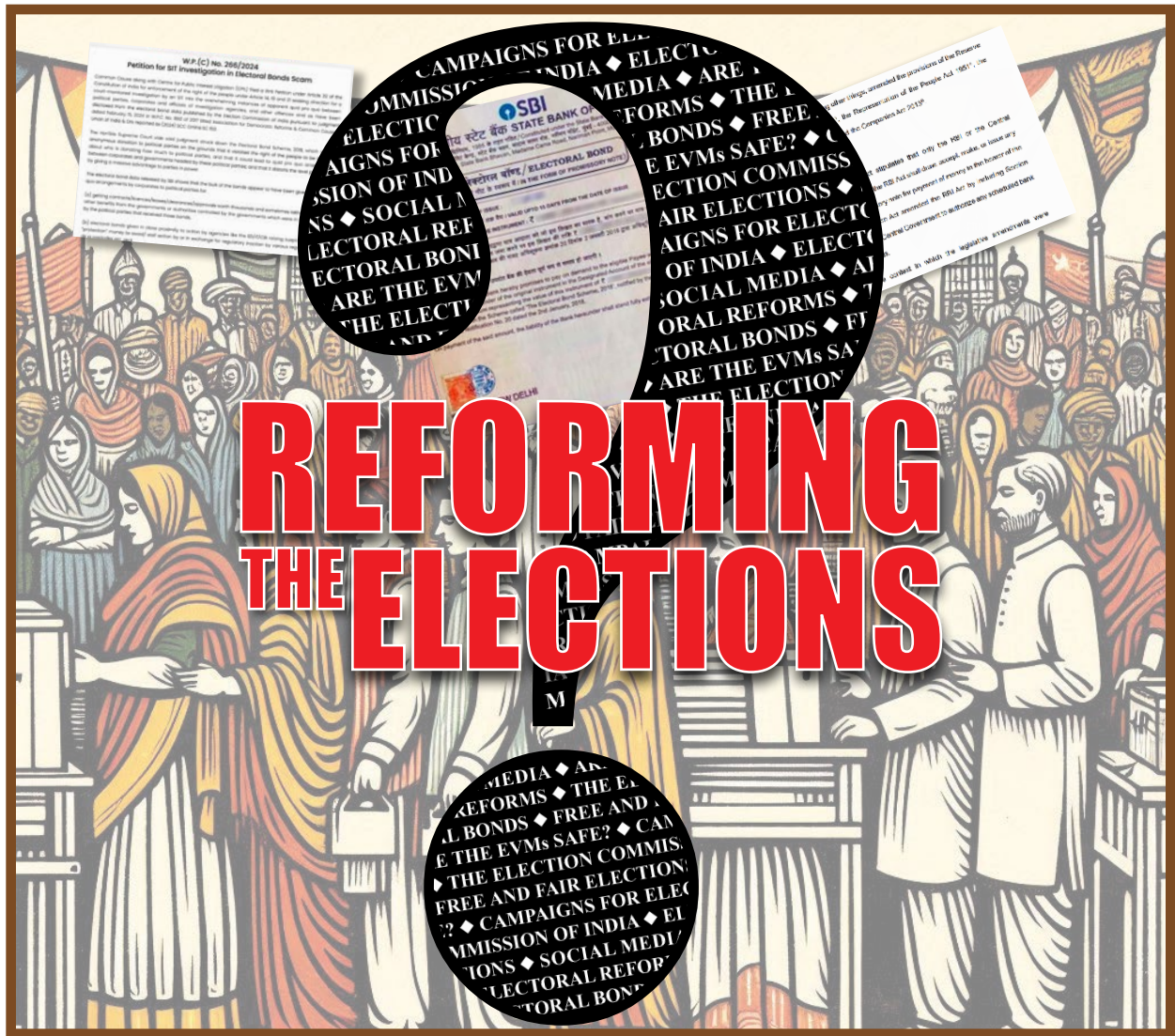


# COMMON CAUSE

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POLICY-ORIENTED JOURNAL SINCE 1982



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# EVM AND THE INTEGRITY OF ELECTIONS

## The ECI Must Come Clean on Discrepancies

Dear Readers,

Why are we discussing free and fair elections just after the process got over? Well, partly because the elections took place amid allegations of serious anomalies and partly because many troubling questions remain unanswered. What made matters worse was that the referee of the game, the Election Commission of India (ECI), did little to dispel doubts and seemed hesitant when required to take firm action. So, it is as good a time as any to examine the legal, technical, and procedural lapses – lest we forget yet again, as is our wont.

That is why, this issue of your journal is dedicated to Electronic Voting Machines (EVMs) and the integrity of Indian elections. The point is not that the polls were majorly rigged but it is that the recurring doubts must be cleared and the ECI must come clean. The attempt here is to examine the mystery around the EVMs, right from their installation and loading of symbols to the counting of the votes. We also analyse other vital issues such as campaign expenditure, misuse of public-funded advertisements, organised fake news and disinformation, and the inscrutable case of the electoral bonds now declared unconstitutional.

The polling we witnessed recently was as stormy as it was humongous. Over 64 crore people, roughly about eight per cent of the global population voted in 28 states and eight UTs. This was facilitated by more than one crore polling officials who crisscrossed the country to install around 20 lakh EVMs, according to official figures. While all this was happening in seven phases, the Supreme Court had to intervene several times amid charges of irregularities and data obfuscation.

Our biggest concern is that the ECI failed to reassure people about its own credibility and the reliability of the process under its watch. It should have answered questions that voters don't easily understand i.e. the integrity of the software which runs EVMs along with the Voter-Verified Paper Audit Trail (VVPAT) and the control units, and the procedure of loading symbols or burnt memory. There were also issues about the storage and safekeeping of reserve EVMs and their transportation.

But above all, many activists and civil society organisations have flagged serious discrepancies between the number of votes polled on the EVMs and the number of votes counted. An unusual hike has been reported in the number of votes counted in every phase of the elections. The ECI must explain why there was a spike or fall in the final voter turnout, which, according to some estimates, could have influenced the verdict.

There is no denying that the buck stops at the ECI. But the constitutional authority has not exactly wrapped itself in glory. It failed to act against star campaigners who incited hatred and polarised voters. It also failed to check organised disinformation on digital platforms and act against sections of the media which purveyed falsehood and motivated propaganda. Its silence on the discrepancies is deafening.

We also believe that free and fair elections need an impartial appointment of the election commissioners. Most mature democracies do this through collegiums or parliamentary oversight and not unilaterally by the government of the day. This was corrected by an apex court verdict which was unfortunately overturned through legislation. All this must be discussed and addressed because at stake is the legitimacy of India's democracy.

Please let us know what you think. As always, your views and comments are welcome at [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com)

Vipul Mudgal  
Editor

# HOW SAFE ARE THE ELECTRONIC VOTING MACHINES?

Doubts Continue to Persist About the Veracity of the EVMs and the VVPAT System

Udit Singh\*

Elections are an essential feature of a functioning democracy. It is through elections that citizens, the real sovereign, transfer their power to the candidate of their choice.<sup>1</sup> Being a well-functioning democracy not only requires holding free and fair elections but also requires enactment of the rule of law and respect for the Constitution and its institutions. One can argue about the autonomy of India's democratic institutions but the conduct of relatively free and fair elections has never been in doubt since Independence. Unfortunately, even this is shrouded in doubt today.<sup>2</sup>

One such concern is about the availability of a level playing field to all political parties participating in the elections. Several civil society organisations, including Common Cause, have approached the Supreme

**“The EVM has been often viewed with mistrust and claims have been made by political parties and other stakeholders that it could be hacked or tampered with.**

”

Court with PILs to ensure that such a level-field is provided to all candidates and parties and the due process of law is followed during the elections. Some of these PILs include those raising the validity of the electoral bonds scheme<sup>3</sup>, contempt petition for directions to SBI to disclose electoral bonds data<sup>4</sup>, plea challenging Election Commissioners Act<sup>5</sup>, 100 per cent EVM votes with VVPAT verification<sup>6</sup>, uploading of Form 17C to disclose absolute voter turnout<sup>7</sup> and petition for SIT investigation in electoral bonds scam<sup>8</sup>.

India recently concluded elections to the 18<sup>th</sup> Lok Sabha. Among the most important issues raised by the Opposition, apart from those of corruption, unemployment and the lack of welfare schemes, was the matter of the integrity of the voting system, including the possibility of tempering of the Electronic Voting Machines (EVMs), Voter Verifiable Paper Audit Trails (VVPAT) and the disclosure of the voter turnout data by the Election Commission of India (ECI).

Since its introduction in the 2004 Lok Sabha elections, the EVM has been often viewed

with mistrust and claims have been made by political parties and other stakeholders that it could be hacked or tampered with.<sup>9</sup> There is considerable doubt about the integrity of the EVMs used by the ECI and the verifiability of compliance with democratic principles. This has inevitably generated disquiet during the elections, especially during the 2019 parliamentary elections.<sup>10</sup> However, it is also true that the parties tend to complain about the veracity of the polling process when they are in the Opposition, and this includes both the major parties, the Congress and the BJP.

Soon after the declaration of 2024 Lok Sabha election results, Prime Minister Narendra Modi took a dig at the opposition INDIA bloc, asking if the EVM were 'dead or alive'. He further alleged that the Opposition tried to blame the EVMs and thus weaken the ECI.<sup>11</sup>

However, one prominent Opposition leader, Akhilesh Yadav of the Samajwadi Party (SP), said while speaking on the Motion of Thanks to President's Address: "Even if I win all 80 seats in Uttar Pradesh, I still won't have any faith in EVMs."<sup>12</sup> Obviously, doubts still

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persist about the veracity of the electronic voting system in India.

## History of EVM in India

EVM was first conceived in 1977. Two years later, in 1979, its prototype was developed by the Electronics Corporation of India Ltd. (ECIL), Hyderabad, a PSU under the Department of Atomic Energy. It was demonstrated by the ECI before the representatives of political parties on August 6, 1980.<sup>13</sup>

On May 19, 1982, EVM was first used by the ECI in 50 polling stations for election to No. 70 Parur assembly constituency in Kerala. Voting through EVM was done in pursuance of the direction issued by the ECI under Article 324 of the Constitution, by virtue of a notification published in the Kerala Gazette on May 13, 1982. However, prior to issuing the notification, the Commission had sought sanction of the Government of India, which was refused. Thus, the said use of EVM and election of the returned candidate was challenged in *A.C. Jose v. Sivan Pillai*<sup>14</sup>, wherein the Supreme Court held that ECI's order regarding casting of ballot by machines in some of the polling stations was without jurisdiction. As a result, the election of the returned candidate with respect to the 50 polling stations where the EVMs were used was set aside.

The law was amended by Parliament in December 1988 and a new Section 61A was

“***The parties tend to complain about the veracity of the polling process when they are in the Opposition, and this includes both the major parties, the Congress and the BJP.***”

included in the Representation of the People Act 1951, thereby empowering the ECI to use EVM. The amendment came into force on March 15, 1989.

In 1998, EVMs were used in 16 legislative assembly constituencies across three states of Madhya Pradesh, Rajasthan, and Delhi.

The use of EVMs further expanded in 1999 to 46 parliamentary constituencies, and later, in February 2000, EVMs were used in 45 assembly constituencies in Haryana state polls. In 2001, the assembly

elections in Tamil Nadu, Kerala, Puducherry and West Bengal were completely conducted using EVMs. All state assembly elections thereafter witnessed the use of EVMs.

Finally, in 2004, the EVMs were used in all 543 parliamentary constituencies for elections to the 14<sup>th</sup> Lok Sabha. On August 14, 2013, the amended conduct of Election Rules, 1961, were notified by which VVPAT was introduced. They were first used in the by-election for 51-Noksen assembly seat in Nagaland.

## Features of an EVM

An EVM consists of two Units – a Control Unit and a Balloting Unit – joined by a five-meter cable. The Control Unit is placed with the Presiding Officer or a Polling Officer and the Balloting Unit is placed inside the voting compartment. Instead of issuing a ballot paper, the Polling Officer in-charge of the Control Unit releases a ballot by pressing the Ballot Button on the Control

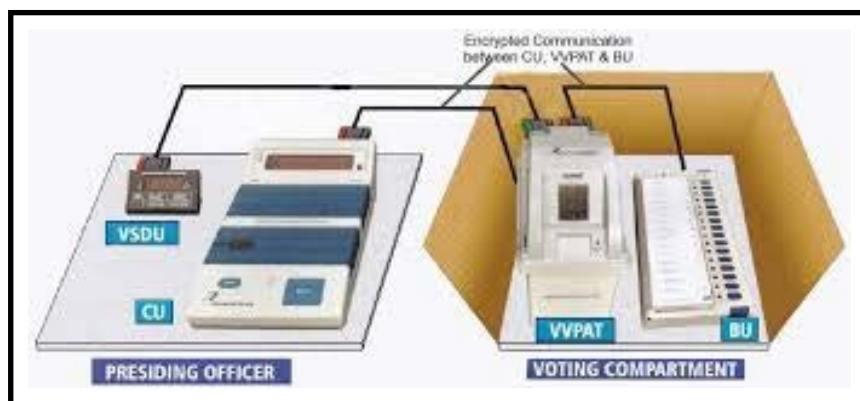


Image Credit- The India Forum: A Journal-Magazine on Contemporary Issues, April 01, 2019.

Unit. This enables the voter to cast his vote by pressing the blue button on the Balloting Unit against the candidate and symbol of his choice.<sup>15</sup>

The Control Unit is connected to the VVPAT printer, which is then connected to the Balloting Unit. The VVPAT printer and the Balloting Unit are kept in the voter booth. The VVPAT Status Display Unit (VSDU) is kept with the Presiding Officer and displays the status of the VVPAT printer. These different components authenticate each other using digital certificates. The system is designed to stop functioning if paired with unauthorised components.

The communication between components is encrypted. It is a stand-alone system with supposedly no external communication channels, either wired or through radio. It only has designated interfaces for input and output of data according to specific protocols. As per the ECI mandate, it should be stand-alone, i.e., not computer-controlled and 'one-time programmable' (OTP).

### Is Hacking Possible?

One of the major concerns about EVM is that it can be hacked. In 2017, the ECI had thrown a challenge to the political parties, asking them to crack its EVMs.<sup>16</sup> The Citizens' Commission on Elections' (CCE) Report on EVMs and VVPAT observed that the onus should be on the ECI and their experts to convince

people beyond doubt that their design is secure, rather than illogically claiming it to be secure because the system has not yet been hacked. That is not how computer security is conventionally defined.

The report further noted that testing can usually detect malfunctioning of an equipment but is known to be inadequate for detection of backdoor Trojan attacks, simply because the possibilities are too many. An EVM system composed of its various components can exist in one of a very large number of internal states, which, almost surely, is an exponential function of the configuration parameters. Examination of such large systems is an intractable problem, which often compels the examiners to rely on weaker forms of verification such as quality assurance (QA) methods -- for instance, testing. The report further highlighted the possibilities of side-channel attacks and raised doubt over the OTP aspect of the EVM.

“ *Some scholars have raised concern over the VVPAT system too. The VVPAT protocol should be to allow voters to approve the VVPAT slip before the vote is cast and provide an option to cancel their vote if they think there is a discrepancy.* ”

The long-time window--over the cycle of design, implementation, manufacture, testing, maintenance, storage and deployment—may provide ample opportunities for insiders or criminals to attempt other means of access. There is an overwhelming requirement of trust on such custody chains; such (often implicit) assumptions of trust in various mechanisms make the election process unverifiable.

Some scholars have raised concern over the VVPAT system too. The VVPAT protocol should be to allow voters to approve the VVPAT slip before the vote is cast and provide an option to cancel their vote if they think there is a discrepancy. There is no clear protocol for dispute resolution if a voter complains that a VVPAT print-out is incorrect, as there is no non-repudiation of a cast vote.

### Supreme Court Rulings

The Supreme Court and several High Courts in India have time and again dealt and delivered significant rulings on the issues related to EVM and VVPAT. The Supreme Court in *PUCL v. Union of India* ruled that Rules 41(2) and (3) and Rule 49-O of the Rules are ultra vires Section 128 of the Representation of the People Act, 1951 and Article 19(1)(a) of the Constitution to the extent they violate secrecy of voting. The Court further directed the ECI to provide NOTA button in EVMs so that the

voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy.

The Apex Court in *Subramanian Swamy v. Election Commission of India* noted that “paper trail” is an indispensable requirement of free and fair elections. It was held that 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 VVPATs system because vote is nothing but an act of expression which has immense importance in a democratic system.

The Supreme Court in *N. Chandrababu Naidu v. Union of India* again ruled that the number of EVMs (random selection) that would now be subjected to verification so far as VVPAT paper trail is concerned would be 5 per assembly constituency or assembly segments in a parliamentary constituency instead of what is provided by Guideline No. 16.6, namely, one machine per assembly constituency or assembly segment in a parliamentary constituency.

Recently, the Supreme Court in *Association for Democratic Reforms (ADR) v. ECI & Anr.* rejected the pleas seeking 100 per cent cross-verification of EVMs data with VVPAT records. ADR in its plea prayed for the following directions:

- a. return to the paper ballot system; or
- b. that the printed slip from the VVPAT machine be given to the voter to verify, and put in the ballot box, for counting; and/or
- c. that there should be 100 per cent counting of the VVPAT slips in addition to electronic counting by the control unit.

The Court rejected the said plea. Justice Dipankar Dutta in his judgment observed:

*“Instead, a critical yet constructive approach guided by evidence and reason should be followed to make room for meaningful [inference] and to ensure the system’s credibility and effectiveness.”*

However, the Court issued two important directions:

- a. That on completion of the symbol loading process in the VVPAT, undertaken

**“The CCE report has recommended that EVM should be redesigned to be software and hardware independent in order to be verifiable or auditable so that even if a voting machine is tampered with, it should be possible to detect so in an audit.”**

on or after 01.05.2024, the Symbol Loading Unit (SLU) shall be sealed and secured in containers. The candidates or their representatives shall sign the seal. The sealed containers containing the SLUs shall be kept in the strong rooms along with the EVMs at least for a period of 45 days post the declaration of results. They shall be opened and examined and dealt with as in the case of EVMs.

- b. The burnt memory/microcontroller in 5 per cent of the EVMs -- the Control Unit, Balloting Unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency -- shall be checked and verified by the team of engineers from the manufacturers of the EVMs post the announcement of the results for any tampering or modification, on a written request made by second and third runner up candidates.

In May, 2024, Common Cause and ADR again approached the Apex Court by filing an interim application in the writ petition filed by it in 2019 seeking directions to the ECI to publish booth-wise absolute numbers of voter turnout and upload the Form 17C records of votes polled on its website.

The Court, while not expressing any opinion on the merits, denied to grant any relief and

adjourned the application to be heard with original writ petition, by observing that grant of relief, as claimed, would amount to grant of final relief claimed in the writ petition.

## Conclusion

In a nutshell, EVM is a machine and nobody can give 100 per cent assurance that it is hack-proof. Although the Apex Court has bestowed its trust on the ECI regarding the safeguard features of the EVM, but can it be said with certainty that it cannot be rigged, considering its physical access and custody chain to various stakeholders? The CCE report has recommended that EVM should be redesigned to be software and hardware independent in order to be verifiable or auditable so that even if a voting machine is tampered with, it should be possible to detect so in an audit.

The overall correctness of voting is established by the correctness of three steps: (i) 'cast-as-intended', indicating that the voting machine has registered the vote correctly; (ii) 'recorded-as-cast', indicating the cast vote is correctly included in the final tally; and, (iii) 'counted as recorded', indicating that final tally is correctly computed.<sup>36</sup>

Also, the ECI should physically verify the paper slips of the VVPATs with the number of votes in the EVM.

## References

- 1 Devasahayam, M. G. (2024, May 14). Machine's whim versus people's will. *Frontline*. <https://bit.ly/4ddIX6l>
- 2 A not-so-level playing field: Our free and unfair elections. (2024, April 13). *Deccan Herald* <https://bit.ly/4fdsgKq>
- 3 Das, A. (2024, February 14). Supreme Court Strikes Down Electoral Bonds Scheme As Unconstitutional, Asks SBI To Stop Issuing EBs. *LiveLaw*. <https://bit.ly/3Wxu6OK>
- 4 Das, A. (2024, March 11). Supreme Court Ruling On Electoral Bond Scheme: SBI Must Disclose Details by March 12. *LiveLaw*. <https://bit.ly/3YfcJDL>
- 5 Supreme Court Refuses To Stay Election Commissioners' Act Dropping CJI From Selection Panel. (2024, March 21). *Live Law*. <https://bit.ly/4cX4Pn1>
- 6 Jain, D. (2024, April 25). Supreme Court Rejects Pleas Seeking 100% EVM-VVPAT Cross Verification, Issues Directions To Seal Symbol Loading Unit. *LiveLaw*. <https://bit.ly/3SHzzAz>
- 7 Das, A., & Jain, D. (2024, March 21). Supreme Court Refuses To Stay Election Commissioners' Act Dropping CJI From Selection Panel. *Live Law*. <https://bit.ly/4cX4Pn1>
- 8 Live Law Network. (2024, April 23). Plea In Supreme Court For SIT Probe Into Electoral Bonds 'Scam', Alleges Quid Pro Quo Between Corporates & Political Parties. *LiveLaw*. <https://bit.ly/3WwHFhz>
- 9 Mishra, S. (2024, March 31). Are EVMs credible? Here's what ECI and former commissioners told THE WEEK. *The Week*. Retrieved May 20, 2024, from <https://bit.ly/3Wfn3ZR>
- 10 Lokur, M., Habibullah, W., Hariparanthaman, Kumar, A., Banerjee, S., Philipose, P., Dayal, J., Burra, S., & Devasahayam, M. G. (2022, January 15). Citizens' Commission on Elections' Report on EVMs and VVPAT. *Economic and Political Weekly*, LVIII(3), 35-41.
- 11 "Is EVM Dead Or Alive?": PM Modi Takes Swipe At Opposition. (2024, June 7). *NDTV*. Retrieved June 8, 2024, from <https://bit.ly/3LwG45G>
- 12 Sehran, S. (2024, July 02). Akhilesh Yadav's EVM dig at Election Commission: 'Even if I win... Don't trust'. *Hindustan Times*. Retrieved July 03, 2024, from <https://bit.ly/3WxVPPm>
- 13 Legal History of EVMs Inner PGE\_13\_09\_2022.indd. (2022). Election Commission of India. Retrieved May 26, 2024, from <https://bit.ly/4f8FAzL>
- 14 1984 SCR (3) 74.
- 15 FAQ : EVM and VVPAT. (n.d.). CEO Madhya Pradesh. Retrieved May 29, 2024, from <https://bit.ly/3zVhmc7>
- 16 Election Commission dares parties to hack its EVM from June 3, sets 7 conditions. (2017, May 20). *The Economic Times*. Retrieved May 30, 2024, from <https://bit.ly/3SHAoJf>

# THE ROLE OF THE ELECTION COMMISSION OF INDIA

## Is it Maintaining Fairness and Safeguarding Democratic Ethos?

Rishikesh\*

The legitimacy of democracy is rooted in the credibility of its elections. When the outcomes of elections are questioned, it is often because the institutions responsible for ensuring their validity are themselves under scrutiny. Elections are a fundamental mechanism through which voters exercise their constitutional right to choose their representatives. Democracy cannot survive without elections that are both free and fair. This means voters must be well-informed and able to freely make their choices, with voting serving as a form of speech and expression.

The Election Commission of India (ECI) stands as a pivotal institution under the principle of separation of powers as outlined in Article 324 of the Indian Constitution. As an autonomous constitutional authority, the ECI is tasked with overseeing the conduct of elections to Parliament, the state legislatures, and the offices of the President and Vice President of India.

Ensuring that elections, the fundamental test of democracy, are free and fair is a significant responsibility entrusted to the ECI. The ECI's role extends beyond mere supervision; it involves implementing electoral reforms, ensuring compliance

“ ***The ECI's role extends beyond mere supervision; it involves implementing electoral reforms, ensuring compliance with legal frameworks, and upholding the integrity of the electoral process.*** ”

with legal frameworks, and upholding the integrity of the electoral process. By maintaining transparency, impartiality, and fairness, the ECI helps to reinforce public confidence in the democratic system. The Commission also plays a crucial role in addressing electoral malpractices and adapting to emerging challenges such as the influence of social media, technological advancements, and evolving political landscapes.

However, the success of elections in our nation relies on effective communication and coordination among the electorate, candidates, political parties, and the electoral system.

### **The Evolution of ECI**

The Election Commission initially

operated as a single-member body from its inception until 1988. On October 7, 1989, a notification by the President of India led to the appointment of two additional Election Commissioners (ECs) on October 16, 1989. This change was reversed on January 1, 1990, returning to a single-member commission. Then, on October 1, 1993, an ordinance from the President reinstated the multi-member structure, adding two ECs to work alongside the Chief Election Commissioner (CEC).

The ECI has a distinguished history, with the first general election being a significant achievement given that the majority of India's electorate at the time was largely illiterate. However, in recent years, the ECI's reputation has faced considerable challenges. The Commission has been criticised for delaying decisions, reducing data transparency, and neglecting legitimate complaints from various candidates, especially those from the opposition parties.

The Dinesh Goswami Committee on Electoral Reform (1990) and the Law Commission in its 225th report on Electoral Reform (2015) recommended that the CEC and ECs be appointed by a committee comprising the

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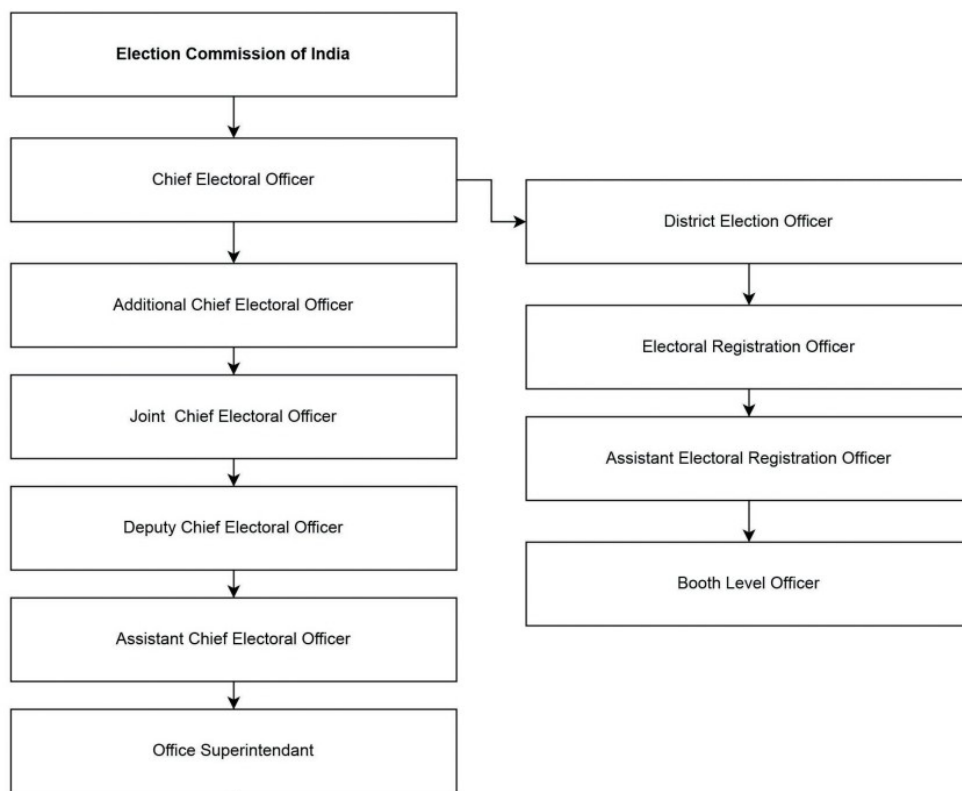
Prime Minister, the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha. This interim mechanism was proposed until Parliament could enact relevant legislation.

It was recommended that the CEC and ECs be selected from individuals who hold or have held positions equivalent to the rank of Secretary to

the Government of India. Recently, a new law stipulates that the President appoints the CEC and ECs based on the recommendations of a selection committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha, and a Union Cabinet Minister nominated by the Prime Minister. This marks the first instance

where Parliament has established a formal mechanism for identifying suitable candidates for the positions of CEC and ECs. Notably, this new legislation excludes the Chief Justice of India from the selection process, a departure from the procedure outlined in the Anoop Baranwal case.

# ORGANISATIONAL STRUCTURE



**Administration**  
 --Conduct of Elections  
 --E-rolls  
 --Polling Stations  
 --Court Cases  
 --Any other matter related to conduct to elections

**SVEEP**  
 -- SVEEP Initiatives  
 --Media Cell  
 --Social Media Cell  
 --Fake News Concept

**Statistical Section**  
 --Data Management  
 --Election History  
 --AMF  
 --Other Statistical Data of Polling Stations and Voter Turnout

**Accounts Section**  
 --Budget Management  
 --Procurement  
 --An other matter related to accounts

**IT Section**  
 -- Website Maintenance  
 -- All IT initiatives in the Office

Credit: Election Commission of India

**“ The Commission has been criticised for delaying decisions, reducing data transparency, and neglecting legitimate complaints from various candidates, especially those from the opposition parties.**

”

## **Role of Returning Officer**

Returning Officers (ROs) are designated by the ECI to oversee the electoral process within each Lok Sabha and state legislative assembly constituency. The ECI, in consultation with the state governments or Union Territories, appoints Returning Officers and Assistant Returning Officers for each constituency. This appointment is made under Sections 21 and 22 of the Representation of the People Act, 1951<sup>1</sup>. Typically, ROs are chosen from among senior government officials, often holding significant positions such as those in the Indian Administrative Service (IAS) or District Magistrates. Although occasional appointments of private individuals occur, these are infrequent due to a perceived lack of requisite experience in electoral management.

The role of ROs is pivotal in ensuring the smooth conduct of elections. They are entrusted

with various responsibilities, including the scrutiny of candidate nominations, arrangement of polling stations, deployment of electoral staff, and oversight of voting procedures. ROs also play a critical role in maintaining the integrity and transparency of the electoral process -- from the acceptance and scrutiny of nomination papers to the accurate counting of votes.

The ROs also contribute significantly to voter education initiatives, ensuring that the voters are informed about their rights and the electoral procedures. Post-election, ROs compile and declare constituency-level results, thereby finalising the democratic exercise in their respective constituencies.

In essence, ROs serve as custodians of electoral integrity and procedural fairness, appointed by the ECI to uphold democratic principles and facilitate free and fair elections at both parliamentary and state legislative levels.

## **Key Responsibilities of the Returning Officer**

**Electoral Roll Management:** ROs oversee the maintenance and updating of electoral rolls, including the incorporation of elector photographs, management of the Booth Level Officer system, and distribution of Electoral Photo Identity Cards and Voter Information Slips.

**Technology and Training:** They manage the deployment of Electronic Voting Machines (EVMs) with Voter Verifiable Paper Audit Trail (VVPAT) systems, ensure their proper functioning, and conduct comprehensive training for staff on their operation, as well as other aspects of the electoral process.

**Nomination Process and Symbol Allocation:** ROs administer the nomination, scrutiny, and withdrawal of candidatures, and oversee the allotment of election symbols, ensuring compliance with all legal requirements and instructions of the Commission.

**Code of Conduct and Expenditure Monitoring:** They are responsible for implementing and rigorously enforcing the Model Code of Conduct and the Compendium of Instructions on Expenditure Monitoring, collaborating with Observers to

**“ The role of ROs is pivotal in ensuring the smooth conduct of elections. They are entrusted with various responsibilities, including the scrutiny of candidate nominations, arrangement of polling stations, deployment of electoral staff, and oversight of voting procedures.**

”

maintain electoral integrity and curb undue financial influence.

**Media Regulation and Public Communication:** ROs enforce guidelines on media advertisements, address instances of paid news, maintain positive media relations, and effectively communicate electoral measures to the public to build confidence in the process.

**Stakeholder Engagement:** They conduct regular meetings with political party representatives and candidates to disseminate information, address concerns, and preempt potential conflicts.

**Legal Compliance and Documentation:** ROs have to maintain thorough knowledge of electoral laws, ensure adherence to Commission's instructions, and keep accurate records of all electoral processes and decisions.

**Security and Crisis Management:** Coordination with law enforcement is part of ROs' responsibilities so as to ensure a secure electoral environment, develop contingency plans, and make prompt decisions to address emergent issues during the electoral process.

**Observer Coordination and Reporting:** They collaborate with General and Expenditure Observers appointed by the ECI, facilitate their monitoring role, and provide timely reports as required.

*Accessibility and Inclusivity:* ROs implement measures to ensure

polling stations are accessible to all voters, including those with disabilities and from marginalised groups, and oversee the entire polling and counting process to ensure a free and fair election.

## Role of Presiding Officer

The Presiding Officer (PO) plays a pivotal role in the electoral process, as stipulated by Sections 26 and 28A of the Representation of the People Act, 1951. During the electoral period, which spans from the announcement of the election to the declaration of results, the PO, along with other designated officials, is considered to be on deputation to the ECI. This arrangement ensures that these officials operate under the Commission's direct supervision, control, and guidance throughout the electoral process<sup>2</sup>.

As the primary authority at a polling station, the PO's paramount duty is to safeguard the integrity of the voting process, ensuring it remains free, fair, and transparent. To fulfill this crucial role effectively, the PO

“ *The origin of the MCC dates back to 1960 when a small set of dos and don'ts for the assembly election in Kerala were released.* ”

must possess a comprehensive understanding of the relevant legal framework, procedural guidelines, and directives issued by the ECI.

The PO's responsibilities cover a wide range of tasks within the polling station. These include, but are not limited to, overseeing the voting process, addressing any issues that may arise, and maintaining order and decorum. To execute these duties proficiently, the PO is vested with substantial legal authority to manage and control all activities within their designated polling stations.

POs' duties can be broadly categorised into three phases -- pre-poll, during the polling process, and post-poll.

In the pre-poll phase, they are tasked with ensuring the proper setup of polling stations and conducting mock polls on EVMs and VVPATs to verify their functionality.

During the polling process, their responsibilities include:

- Informing candidates and polling agents about vote secrecy protocols.
- Publicly reading declarations and obtaining necessary signatures.
- Maintaining accurate records in Form 17A.
- Regularly reconciling vote totals with Form 17A entries.
- Communicating polling status updates to the Returning Officer.

- Documenting significant events in the Presiding Officer's diary.

As the polling period concludes, the presiding officer must ensure timely closure of the poll; activate the 'close' function on the control unit after the final vote is cast; meticulously complete all required forms; and, deactivate the control unit and disconnect the VVPAT from the ballot unit.

Throughout this process, Sector Officers serve as intermediaries between Presiding Officers and Returning Officers, facilitating communication and support.

## Model Code of Conduct

The Model Code of Conduct (MCC) is a set of guidelines agreed upon by all stakeholders and implemented during elections to ensure that the campaigning, polling, and counting processes are orderly, clean, and peaceful. It also aims to prevent any misuse of state resources and finances by the ruling party. Although it lacks statutory authority, the Supreme Court has consistently upheld its importance. The MCC helps the ECI in fulfilling its mandate, given by Article 324 of the Constitution, of supervising and conducting free and fair elections. The Commission has full authority to investigate any violations of the code and impose penalties accordingly.

The origin of the MCC dates back to 1960 when a small set of

dos and don'ts for the assembly election in Kerala were released. It was first circulated by the ECI to recognise political parties during the 1962 Lok Sabha General Elections, with state governments requested to ensure its acceptance. It was adhered to in the 1967 Lok Sabha and Assembly elections. In 1968, the ECI engaged with political parties at the state level to maintain minimum standards of behaviour for free and fair elections. The code was again circulated during the 1971-72 General and State Assembly elections. In 1974, it was issued to political parties in states with upcoming general elections.<sup>3</sup>

In 1979, the ECI expanded the code in consultation with political parties, adding restrictions on the ruling party to prevent the misuse of power. The code was consolidated and re-issued in 1991, evolving into its current form. Judicial recognition came in 2001 when the

“ ***The Model Code of Conduct (MCC) is a set of guidelines agreed upon by all stakeholders and implemented during elections to ensure that the campaigning, polling, and counting processes are orderly, clean, and peaceful.*** ”

Supreme Court, in the *Union of India vs. Harbans Singh Jalal* case, ruled that the code would be enforced once the Commission issues a press release announcing the elections, settling the issue of its enforcement date.

## Controversies Surrounding the ECI

Over the last few years the working of ECI has come under a cloud with a number of questions and doubts being raised on its impartiality. These are:

The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Terms of Office) Bill, 2023, was first introduced during the monsoon session in August and came months after a Constitution Bench of the Supreme Court ruled in March that Election Commissioners should be appointed by the President based on advice from a committee comprising the Prime Minister, the Leader of Opposition (LOP) in the Lok Sabha and the Chief Justice of India (CJI). The new legislation states that the CEC and the ECs (the number of ECs will be determined periodically by the President) will be appointed by the President based on the recommendations of a selection committee comprising the Prime Minister, a cabinet minister and the LOP in the Lok Sabha (or the leader of the single largest opposition party). The legislation

has raised questions about overriding executive control over the poll body<sup>4</sup>.

- The role of the ECI has come under the scanner in the wake of the Supreme Court declaring unanimously electoral bonds as “unconstitutional”. The ECI’s shifting stance on electoral bonds has raised concern. Initially, before the scheme’s introduction in 2018, the Commission cautioned the Ministry of Law, stating that electoral bonds could enable political parties to obscure illegal foreign donations and potentially escalate the use of black money in political funding through shell companies. However, in 2021, the EC reversed its position and opposed a Supreme Court plea to halt the issuance of new electoral bonds ahead of assembly elections in West Bengal, Kerala, Tamil Nadu, Assam, and Puducherry. Between 2017-2018 and 2022-2023, electoral bonds worth Rs 12,008 crore were

sold, with the ruling BJP receiving nearly 55 per cent or Rs 6,564 crore.<sup>5</sup>

- Opposition parties have raised questions on the use of EVMs and urged the Commission to intervene. ECI’s use of VVPAT tallies has faced scrutiny since their nationwide implementation in the 2019 Lok Sabha elections. VVPATs, which display a paper slip for seven seconds to verify the vote before dropping it into a sealed box, cover all EVMs. The Supreme Court mandates verification of VVPAT slips from five randomly selected polling stations per assembly constituency. Despite a promise in Parliament, the Union government has not responded in four years regarding potential discrepancies between EVMs and VVPATs from the 2019 elections.
- Former CEC Arun Goel’s resignation in March 2024 raised serious questions. His appointment too was not free of controversy.

- The ECI is embroiled in a controversy concerning the transparency of voter turnout data. The poll body decided not to post Form 17C. The ECI asserted before the Apex Court: “It is submitted that there is no legal mandate to provide Form 17C to any person other than the candidate or his agent.”

## References

- 1 Election Commission of India. (2009). HANDBOOK FOR RETURNING OFFICERS (At Elections where Electronic Voting Machines are used). In *Nirvachan Sadan, Ashoka Road, New Delhi-110 001*. <https://bit.ly/3Lz3A1d>
- 2 Presiding officer hadbook. (n.d.). In <https://bit.ly/3A5aLvu>
- 3 Singh, U. K., & Roy, A. (2018). Regulating the electoral domain: the Election Commission of India. *Indian Journal of Public Administration/Indian Journal of Public Administration*, 64(3), 518–530. <https://doi.org/10.1177/0019556118788497>
- 4 *Five reasons There’s a dark cloud over Election Commission’s transparency and functioning*. (n.d.). The Wire. <https://bit.ly/4fgineN>

# THE CURIOUS CASE OF ELECTORAL BONDS

## Political Funding, Democracy & the Rule of Law

Vipul Mudgal\*

Much of politics is about omissions and commissions. But what is kept hidden can sometimes reveal more than what is hyped. Two such omissions mark the controversial Electoral Bonds Scheme, now scrapped as unconstitutional. First, it was passed in Parliament avoiding a statutory debate, and second, the State Bank of India (SBI) concealed its data even after the Supreme Court ordered a complete disclosure. The information tumbled out only after the Association for Democratic Reforms (ADR) and Common Cause, the original petitioners in the matter, filed and won a contempt of court petition against the SBI.

In February 2024, the historic and somewhat surprising judgment confirmed what many people had suspected— that the Electoral Bonds legalised corruption by allowing secret and unlimited corporate funding to political parties.<sup>1</sup> The court said while striking down the scheme that the anonymity of donors violated the citizens' right to know and that a secretive scheme like this could lead to underhand deals between anonymous donors and ruling parties. The court confirmed that the scheme provided an undue advantage to parties in power against their rivals.

The tax-free and anonymous Electoral Bonds were introduced as part of the Union Budget of 2017 with the stated objective of attracting clean money into politics. The then Finance Minister Arun Jaitley was upbeat when he said in his budget speech that donations made through banking channels will infuse transparency in political funding. A lot of hype was created around this aspect of the scheme while concealing that every bond carried a unique number invisible to the naked eye. This fact was revealed only after Poonam Agarwal, an investigative journalist, bought a bond of her own volition and did a forensic examination using ultraviolet light. Until then, it was not known that the bonds could be tracked by the authorities making the donors vulnerable and that the ruling party at the centre had a way of knowing

“ ***The tax-free and anonymous Electoral Bonds were introduced as part of the Union Budget of 2017 with the stated objective of attracting clean money into politics.*** ”

“ ***Out of a total amount of Rs 16,492 crore redeemed through the bonds, the BJP received Rs 8,252 crore which was more than what was received by 20 others.*** ”

who was supporting whom and to what extent.

### No Level-Playing Field

No wonder the ruling BJP garnered the lion's share of the funds collected through Electoral Bonds and the rest was divided among almost all other important parties, according to the news website *Scroll*. Out of a total amount of Rs 16,492 crore redeemed through the bonds, the BJP received Rs 8,252 crore which was more than what was received by 20 others.<sup>2</sup>

The main opposition party, the Indian National Congress (INC), got under 10 per cent followed by the Trinamool Congress or TMC. The other parties ruling in the states also got generous donations. The actual amounts were much larger as parties and candidates in India are known to receive payments in cash or kind.

\* Vipul Mudgal heads Common Cause India

**“ It became quite apparent that the purchase of the bonds may have been linked to actions or raids by federal authorities. ”**

The judgment was also substantial because a Constitution Bench of the Supreme Court passed it. It directed the SBI to disclose all data in its possession and came down heavily when the bank dragged its feet under one pretext or the other. The bank officials pleaded for an unreasonable amount of time to ‘decipher and match’ a large number of datasets involved. The civil society petitioners, ADR and Common Cause, later filed an instant contempt of court petition against SBI for its wilful non-compliance with the court’s order. Acting on the petition, the Court ordered immediate disclosures by the bank by the next day, March 12, 2024.

However, once made public, the disclosures showed that the bulk of the bonds could have been trade-offs for favours like receiving lucrative government contracts or for influencing policies. It became quite apparent that the purchase of the bonds may have been linked to actions or raids by federal authorities. Several investigative media reports later confirmed that dozens of companies bought Electoral Bonds after

facing actions by the ED, CBI, or tax authorities.<sup>3</sup> But before we come to that, let us examine the bizarre sequence of events related to the Electoral Bonds Scheme as they unfolded.

### **Many Red Flags Raised**

The first red flag went up when the bonds were introduced in Parliament, along with five statutory amendments, under the ruse of a budgetary provision meant for matters of financial governance. This novelty circumvented the requirement of a debate in Rajya Sabha, the Upper House of Parliament, where the ruling BJP did not have a majority then. The Speaker of Lok Sabha, the Lower House, cleared the way for its passage by rejecting the Opposition’s demands for a wider debate and deliberations through parliamentary committees. In effect, a consequential decision like this was neither discussed adequately nor contested.

The second red flag was raised when the subsequent rules removed the upper limit of political donations by private companies irrespective of whether they were running into profits or losses. This opened floodgates of corporate funding to parties. Earlier, only profit-making companies could donate up to 7.5 per cent of their average profits of the past three years to parties of their choice. However, the new rules allowed even loss-making companies

to donate their entire worth, including capital and reserves. This encouraged floating of shell companies whose raison d’être was to fund political parties. Even the court commented: “...it is more plausible that loss-making companies will contribute to political parties with quid pro quo...”

One of the most egregious aspects of the scheme was that it opened a backdoor for foreign companies to fund Indian elections. The new amendments to the Foreign Contributions Regulation Act (FCRA) allowed foreign companies with Indian subsidiaries to fund political parties, effectively opening Indian democracy to international lobbyists. This was bizarre as Prime Minister Narendra Modi has been blaming foreign powers for trying to undermine India’s autonomy and national security.

It was noteworthy that the Court refused to buy the government’s plea that the scheme’s objective was to bring clean money into politics merely because it was

**“ Many donations were made by the contractors or businesses closer to the dates of getting licenses, leases, contracts or clearances worth hundreds of crores of rupees, equal to billions of dollars. ”**

“ ***It has now been revealed that at least 14 out of 30 donors had faced raids by enforcement agencies, described as ‘hafta vasooli’ by some opposition politicians.*** ”

routed through the banks and that the donors deserved privacy. The judgment upheld that the voters’ right to know must prevail over the donors’ right to privacy. It was important for the voters to know the facts, it said, to be able to make informed choices in the elections.

## Connecting the Dots

The disclosures opened a Pandora’s box of kickbacks, quid pro quo and suspected misuse of enforcement agencies. Many donations were made by the contractors or businesses closer to the dates of getting licenses, leases, contracts or clearances worth hundreds of crores of rupees, equal to billions of dollars. In some cases, the Bonds seemed to have been purchased as payoffs for favourable policy changes. A money trail can now be linked to suspicious favours and omissions.

Some donations flagrantly violated the laws governing private companies. For instance, the Companies Act allows political donations by companies which have been in existence for more than three years but at

least 20 donations were made by entities that were barely a few months, or even a few days, old.

Yet another shocking exposure was that the federal agencies raided or investigated individuals or companies for serious offences but the charges were mysteriously stalled or dropped after donations were made through Electoral Bonds. The same agencies have been unusually tough and prompt against politicians of BJP’s rival parties. A case in point is the arrests of chief ministers of Delhi and Jharkhand, Arvind Kejriwal of the Aam Aadmi Party (AAP) and Hemant Soren of Jharkhand Mukti Morcha (JMM), respectively, under charges of corruption which could best be described as vague. Both the elected Chief Ministers and a few of Delhi’s cabinet ministers were booked under stringent offences like money laundering, meant primarily for terrorists and drug mafias.

It has now been revealed that at least 14 out of 30 donors had faced raids by enforcement agencies, described as ‘hafta vasooli’ by some opposition politicians.<sup>4</sup> The Congress party has charged that the raids by multiple federal agencies were conducted to first target the entities and then coerce them into making donations.

There was also an extraordinary twist in the tale. Actions in several serious cases of corruption were dropped against

at least 23 out of 25 politicians who switched over to the BJP deserting their own parties, most probably to escape action.<sup>5</sup> The BJP has denied the charge and claimed that the enforcement agencies are doing their job without interference.

## Business As Usual?

The exposures also reveal the real cost of doing business in India and the lack of accountability of its regulatory agencies. The promoters of donor companies were allowed to maintain secrecy from their shareholders, which undermined principles of the free market. Some revelations are shocking even by India’s slack regulatory standards. It turns out that seven large pharmaceutical companies whose drugs failed quality tests, a serious and punishable offence, donated millions of dollars through Electoral Bonds apparently to escape action.<sup>6</sup> One such company which donated in bonds three times of its annual profits after tax has stated in its annual report and its annual general meeting that the bonds were purchased to protect

“ ***The BJP has already announced that it will reintroduce such a scheme which is likely to bring the political executive on a collision course with the judiciary.*** ”

the interests of all stakeholders or to 'sort out' tax-related issues.<sup>7</sup>

The biggest single donor who bought the Electoral Bonds worth Rs 1,368 crore was not one of India's Fortune-500 companies but a shadowy and virtually unknown business called Future Gaming and Hotel Services. Its owner, known as the "Lottery King" of India, went on an 'electoral bonds buying spree' within 10 days of the federal government alerting the states of the company's "frauds" and "irregularities".<sup>8</sup> The largest portion of its donations went to the TMC and the Dravida Munnetra Kazhagam (DMK) the ruling parties in West Bengal and Tamil Nadu, followed by at least four other regional parties, besides the Congress and the BJP.

The second biggest donor, Megha Engineering and Infrastructure Ltd, bought bonds worth Rs 980 crore, the biggest portion of which went to the BJP, followed by Bharatiya Raksha Samiti (BRS), then the ruling party in Telangana. The company was awarded projects worth thousands of crores of rupees in roughly the same period.

In a recently submitted report, the Comptroller and Auditor General (CAG) submitted a scathing report on one of the company's projects where the original agreed cost went up by 400 per cent at the time of the project's completion.<sup>9</sup>

While a handful of investigative journalists are still connecting

the dots, the revelations in the past few months have far-reaching consequences for India's electoral funding, its free and fair elections, and its claims about the ease of doing business. The revelations also show that BJP could be using the same tactics of receiving kickbacks and indulging in money laundering which it accuses the opposition politicians of doing. Far from going on the defensive, the BJP has already announced that it will reintroduce such a scheme which is likely to bring the political executive on a collision course with the judiciary.

However, the issue of Electoral Bonds is far from over even for now as the Supreme Court has admitted a new PIL on April 23, 2024, seeking a court-monitored probe into the disclosures made so far, particularly the overwhelming instances of apparent quid pro quo between political parties, private companies, and officials of investigating agencies. It is concerning that these disclosures have come soon after the Democracy 2024 report of the V-Dem Institute described India as one of the worst autocracies in the last 10 years.<sup>10</sup> The only saving grace is that a series of exposes after the landmark court order has put the spotlight on corruption soon after a deeply polarised election campaign. India's fight against corruption will certainly get a boost if the Supreme Court decides to form a court-monitored SIT to look into the Electoral Bonds Scheme.

## References

- 1 ADR India. (n.d.). ELECTORAL BONDS AND OPACITY IN POLITICAL FUNDING. ELECTORAL BONDS AND OPACITY IN POLITICAL FUNDING. Retrieved July 23, 2024, from <https://bit.ly/3Smuk9c>
- 2 Rajendran, D., & Sharma, S. (2024, March 19). Not just electoral bonds, the BJP is biggest beneficiary of all forms of political finance. Scroll.in. <https://bit.ly/3Yy4oLN>
- 3 Newslaundry. (2024, March 15). Raid to electoral bond pipeline: How companies raided by central agencies went on to purchase electoral bonds. Newslaundry. <https://bit.ly/4cRMMPa>
- 4 Economic Times. (2024, March 15). Hafta vasooli, shell companies & kickbacks: Congress claims poll bond details open a can of worms. The Economic Times. <https://bit.ly/3yae83S>
- 5 Tiwary, D. (2024, April 3). Since 2014, 25 Opposition leaders facing corruption probe crossed over to BJP, 23 of them got reprieve. The Indian Express. <https://bit.ly/3Wwggwf>
- 6 Barnagarwala, T. (2024, March 18). Seven firms that failed drug quality tests gave money to political parties through electoral bonds. Scroll.in. <https://bit.ly/4cQfdNb>
- 7 <https://bit.ly/4bTckFC>
- 8 Sarin, R. (2024, March 15). After Centre alerted states on his fraud in 2019, Donor No 1 Santiago Martin went on electoral bonds buying spree. The Indian Express. <https://bit.ly/4dav20Z>
- 9 Srinivas, V. (2024, January 10). KLIS: Re-engineering Quadrupled Project Cost, Says CAG. Deccan Chronicle. <https://bit.ly/3y7lfdS>
- 10 V-Dem Institute. (2024, March 10). Democracy Winning and Losing at the Ballot. V-Dem. <https://bit.ly/3LBMwYA>

# COMMON CAUSE CAMPAIGNS FOR ELECTORAL REFORMS

## Legal Interventions Filed in the Supreme Court Since 1995

By Common Cause Team

Common Cause has been working for electoral reforms for nearly three decades. It has made several democratic interventions to bring accountability in the process of conducting free and fair elections. The idea of electoral reforms for the organisation is a consistent process and not a one-time event.

Common Cause noted with concern that the excessive use of money and muscle power has consistently weakened democracy. The number of candidates and elected representatives with criminal cases pending against them is rising with each successive election. As a civil society watchdog, Common Cause has been making representations with the authorities concerned about cleaning the system. It has filed several writ petitions in the public interest in the Supreme Court of India.

The organisation has continued its crusade for better transparency and accountability in the electoral system despite the reluctance of successive governments to implement electoral reforms. CC's main legal interventions for cleaner elections are:

### **Petition for Maintenance and Audit of Accounts of Political Parties**

CC approached the Supreme Court (SC) in 1995 (*Common Cause v. Union of India & Ors.*<sup>1</sup>) to bring transparency to the election funding and source of expenditure incurred by the political parties and candidates in the election process. Although the political parties were required to maintain audited accounts and comply with the other conditions under Section 13A of the Income-tax Act to be eligible for tax exemption, most parties had done neither.

In its landmark judgment, the SC held that the political parties were under a statutory obligation to file return of income for each assessment year. The Court further directed that under Article 324 of the Constitution,

“ ***The organisation has continued its crusade for better transparency and accountability in the electoral system despite the reluctance of successive governments to implement electoral reforms.*** ”

the Election Commission of India (ECI) has power to issue -- in the process of the conduct of elections -- directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorised by the political parties in connection with the election of their respective candidates. This judgment not only marked a significant progress in the campaign for a cleaner polity, but also paved the way for mandatory declaration of expenditure in election process by the political parties and candidates.

### **Petition for Directions to Combat Criminalisation of Politics**

In 2011, CC along with other civil society members, filed a PIL (*Public Interest Foundation & Ors. v. Union of India & Anr.*<sup>2</sup>) in the Apex Court for de-criminalising politics. This PIL sought expeditious disposal of criminal cases against members of Parliament and Legislative Assemblies. It also challenged the powers of Section 8(4) of the Representation of the People Act, 1951 (RPA), whereby the disqualification of candidates following their conviction was automatically suspended on

filing an appeal or a revision application.

On March 10, 2014, the Supreme Court in its interim order held that trials in criminal cases against lawmakers must be concluded within a year of the charges being framed and must be conducted on a day-to-day basis. Unfortunately, even after a lapse of more than 10 years, the order of the Apex Court is yet to be implemented.

In its final judgment, the Apex Court, among other directions, held that each contesting candidate shall submit before the ECI the particulars of criminal cases pending against them.

The prayer of CC to hold Section 8(4) of the RPA as unconstitutional was granted in a separate PIL. The Apex Court held that Parliament did not have the competence to provide different grounds for disqualification of applicants for membership and sitting members.

### **SLP in Support of the Powers of the Election Commission**

In 2011, former Maharashtra Chief Minister Ashok Chavan challenged in the Delhi High Court the power of the ECI to issue notice under Section 10A of the RPA, seeking to disqualify a candidate on account of incorrect return of election expenses. The High Court upheld the ECI's power to inquire into the correctness of the account of election

expenses filed by a candidate. Subsequently, Mr Chavan filed a Special Leave Petition (SLP) against this order. The Union Government claimed that in terms of Section 10A of the RPA and Rule 89 of the Conduct of Election Rules, the power of the Commission to disqualify a person arose only in the event of failure to lodge an account of election expenses and not for any other reasons.

Common Cause made up its mind to put its weight behind the ECI in this matter and intervened in the SLP in 2011, along with other like-minded civil society organisations and eminent citizens.

Dismissing Mr Chavan's SLP, the SC upheld his disqualification by the ECI for three years. This judgment is a milestone in establishing the right of the ECI to take steps to ensure free and fair elections.

### **Petition Challenging Electoral Irregularities**

Common Cause, along with ADR, filed a writ petition in 2019, challenging electoral irregularities and to ensure free and fair elections and rule of law. The PIL was filed to ensure that the democratic process is not subverted by electoral irregularities and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution.

The petition highlighted the

**“The PIL was filed to ensure that the democratic process is not subverted by electoral irregularities and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution.”**

dereliction of duty on the part of the ECI in declaring election results (of the Lok Sabha and State Legislative Assemblies) through Electronic Voting Machines (EVMs), based on accurate and indisputable data which is put in the public domain and sought a direction from the SC directing the ECI not to announce any provisional and estimated election result prior to actual and accurate reconciliation of data.

They further sought a direction to the ECI to evolve an efficient, transparent, rational and robust procedure/mechanism by creating a separate department/grievance cell.

### **PIL for the Disclosure of Accurate Election Turnout Figures**

On May 10, 2024, Common Cause, along with ADR, also filed an Interlocutory Application (IA) seeking directions to the ECI to disclose authenticated records of voter turnout by uploading on its website scanned legible copies

of Form 17C Part-I (Account of Votes Recorded) of all polling stations after each phase of polling in the 2024 Lok Sabha elections, and to place in public domain a tabulation of the constituency and polling station-wise figures of voter turnout in absolute numbers and in percentage form for the 2024 LS elections. On May 24, the Court did not grant any relief in the IA and directed it to be listed with the original writ petition.

### **PIL to Check the Wastage of Public Money for Political Advertising**

In its bid to ensure that the government in power did not waste public funds on large-scale advertisements, Common Cause approached the Apex Court in 2003. Despite the SC judgment in 2015, issuing several guidelines aimed at regulating government advertisements to check the misuse of public funds, the trend continues unabated.

An analysis of the annual audit reports of the political parties submitted to the ECI shows that more than Rs 6,500 crore was spent on elections by 18 political parties, (7 national parties and 11 regional parties), between 2015 and 2020. Of this, political parties spent more than Rs 3,400 crore, or 52.3 per cent, on publicity alone.<sup>3</sup>

Therefore, Common Cause once again approached the SC in 2022, seeking directions to put a curb on wastage of public money by political parties to gain

mileage. The matter is yet to be heard by the Apex Court.

### **Petition to Challenge the Electoral Bonds Scheme**

Common Cause and ADR have challenged the introduction of the Electoral Bonds Scheme as part of the Finance Act 2017 which had made electoral funding of political parties more opaque and legitimised corruption to an unprecedented scale.

On February 15, 2024, in a unanimous judgment, a five-judge bench of the Supreme Court held that the Electoral Bond Scheme of 2018 was violative of Article 19(1)(a) of the Constitution and hence, unconstitutional.

The bench further held that the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Section 137 of Finance Act 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017), and Section 13A(b) (as amended by Section 11 of Finance Act 2017) are violative of Article 19(1)(a) and unconstitutional.

“ **Common Cause once again approached the SC in 2022, seeking directions to put a curb on wastage of public money by political parties to gain mileage.** ”

It was further held by the Court that the deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14.

In addition, the Court issued the following directions:

- a. The issuing bank shall herewith stop the issuance of Electoral Bonds;
- b. The State Bank of India (SBI) shall submit the details of Electoral Bonds purchased since the interim order of the Court dated April 12, 2019, till date to the ECI. The details shall include the date of purchase of each Electoral Bond, the name of the purchaser of the bond, and the denomination of the Electoral Bond purchased;
- c. SBI shall submit the details of the political parties that have received contributions through Electoral Bonds since the interim order of this Court dated April 12, 2019, till date to the ECI. SBI must disclose details of each Electoral Bond encashed by political parties which shall include the date of encashment and the denomination of Electoral Bond.
- d. SBI shall submit the above information to the ECI by March 6, 2024;
- e. The ECI shall publish the

information received from the SBI on its official website by March 13, 2024; and,

- f. Electoral Bonds that are within the validity period of 15 days but have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account.

### **Contempt Petition against Non-Disclosure of Information by the SBI**

On March 4, 2024, the SBI filed an application in the Supreme Court seeking an extension of time till June 30, 2024, to furnish information regarding details of electoral bonds purchased and details of each electoral bond redeemed by political parties to the ECI which, was required to be furnished by March 6, 2024.

In response, Common Cause and ADR filed a contempt petition against SBI which was heard on March 11, 2024. It was contended that the information which was directed to be disclosed by the Court can easily be disclosed by the SBI because of the unique number which is printed on the Electoral Bond. Irrespective of whether the unique identification number, which is not discernible to the naked eye, will enable the disclosure of details, the

submissions of SBI in the application sufficiently indicate that the information which has been directed to be disclosed by the Court is readily available.

The Apex Court dismissed the extension application filed by SBI and directed it to disclose the details by the close of business hours on March 12, 2024. The Court further directed that ECI shall compile the information and publish the details on its official website no later than by 5 pm on March 15, 2024.

### **Petition for SIT Investigation in Electoral Bonds Scam**

Common Cause, along with Centre for Public Interest Litigation (CPIL), filed a writ petition before the Supreme Court for enforcement of the right of the people under Article 14, 19 and 21 of Constitution seeking direction for a court-monitored investigation by an SIT into the overwhelming instances of apparent quid pro quo between political parties, corporates and officials of investigation agencies, and other offences, as have been disclosed from the electoral bond data published by the ECI pursuant to judgment in Electoral Bonds Scheme Case.

- a. The electoral bond data released by SBI shows that the bulk of the bonds appear to have been given as quid pro quo arrangements by corporates to political parties for:

- » getting contracts/licences/ leases/clearances/approvals worth thousands and sometimes lakhs of crores and other benefits from the governments or authorities controlled by the governments, which were in turn controlled by the political parties that received those bonds;
- » electoral bonds given in close proximity to action by agencies like the ED/IT/ CBI raising suspicion of it being "protection" money to avoid/stall action by or in exchange for regulatory inaction by various regulators like the drug controller, etc; and,
- » electoral bonds given as a consideration for favourable policy changes.

The investigation in this case would not only need to unravel the entire conspiracy in each instance, which would involve officers of the donor company, officials of the government and functionaries of political parties but also the officers concerned of agencies like the ED/IT and CBI etc., who appear to have become part of this conspiracy.

The Apex Court on April 23, 2024 admitted the writ petition which is pending for hearing.

### **References**

- 1 1996 SCALE (3) 258
- 2 (2019) 3 SCC 224
- 3 India Spend. (2021, December 26). Big spenders: Election expenses cross Rs 6500 crore, shows data. Business Standard. <https://bit.ly/4cOX42v>

# DIGITAL THREATS TO FREE AND FAIR ELECTIONS

## Monitoring Political Content On Social Media

Radhika Jha\*

Social media and online platforms have become the new battleground for electoral politics. Although access to smartphones and the internet is limited to privileged sections, even this restricted access has empowered historically marginalised voices. Platforms like Facebook and YouTube, initially intended for entertainment and social connection, now host a wide range of political opinions and serve as primary news sources for many users.

The ability to harness digital platforms to influence public emotions and perceptions can significantly sway electoral choices. Political parties are investing heavily on digital campaigns to shape voter perceptions.

This article explores the use and misuse of digital space by Indian political parties, its role in shaping electoral politics, the legal framework in place, and efforts by civil society to hold tech platforms accountable for spreading misinformation and hatred.

### Mapping the Landscape of Misinformation and Hate Speech

A 2022 Reuters Institute survey found that 63 per cent of

English-speaking online users rely on social media for news. Further, according to the Internet in India Report 2023, 55 per cent of Indians, or 821 million Indians, are using the Internet. Another survey found that 33 per cent of the users of social media said that they frequently read news related to politics on social media (Lokniti-CSDS, 2019). Thus, social media's role in disseminating news has grown exponentially. However, the lack of oversight or monitoring of fake news, misinformation, and hate speech on these platforms poses serious risks.

These shifting preferences can have major ramifications in the absence of any monitoring of fake news, misinformation, disinformation and hate news.

“ ***The ability to harness digital platforms to influence public emotions and perceptions can significantly sway electoral choices. Political parties are investing heavily on digital campaigns to shape voter perceptions.*** ”

From the Cambridge Analytica scandal of the 2010s<sup>1</sup> to the Capitol attack in the USA in 2021<sup>2</sup>, there are many examples over the years of how big data harvesting, microtargeting and manipulation of social media can seriously impact electoral choices and the political climate of even developed countries, which typically have better legal mechanisms to monitor and prevent such digital manipulations and to ensure digital privacy and autonomy.

The Indian electorate is far from immune to such harmful influences of social media and there is a lot more opaqueness regarding the extent of manipulation of social media by political parties. Reports indicate that tech companies favour certain political parties, such as Facebook offering cheaper advertisement deals to Bharatiya Janata Party (Sambhav & Ranganathan, 2022) and fail to curb misinformation and hate speech, especially around elections, while there is little to no effort by the government to make the tech companies accountable in any way. Sophisticated methods of spreading misinformation, such as deepfake videos, have additionally made it challenging to distinguish between real and fake content.

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\* Radhika Jha is Project Lead (Rule of Law) at Common Cause

“ ***Despite India being Facebook’s largest market, only a fraction of the company’s budget is allocated to combat misinformation in the country*** ”

Surrogate and shadow advertisements by political parties have been used extensively over the last decade, as has been documented by various investigations. A 2024 study by multiple organisations found, among other things, evidence of one million USD spent by 22 far-right shadow advertisers over 90 days on Meta, 36 ads promoting hate speech, Islamophobia, communal violence and misinformation over a 90-day period on Meta, a coordinated network of ads promoting BJP and terming opposition, women lawmakers, journalists and activists as “anti-India” with more than 23 million interactions over a 90-day period (Ekō, ICWI & The London Story, 2024).

Whistleblowers like Frances Haugen have exposed how bots and fake accounts tied to Indian political figures disrupt elections. As an example, a test user created a new Facebook account as a person living in Kerala and followed all the algorithms suggested by the

website for three weeks. The result was an inundation of hate speech, misinformation and celebrations of violence. The content included graphic images of dead people, violence and gore (Frenkel and Alba, 2021). Despite India being Facebook’s largest market, only a fraction of the company’s budget is allocated to combat misinformation in the country (Zakrzewski, De Vynck, Masih & Mehtani, 2021).

### **Different Countries, Different Policies**

In fact, there is not just an uneven distribution of resources to combat disinformation by the tech companies, but very often even the policies of the companies vary significantly across countries, with fewer safeguards being present for non-English countries. One study looked at 200 different policy announcements from Meta, TikTok, X, and Google (the owner of YouTube) and found that nearly two-thirds were focused on the US or European Union (Madung, O. and OSR&I, 2024).

Several investigations by fact-checkers and CSOs revealed the extent of the problem in India. An investigation by Alt News found that crores of rupees were being spent by masked websites for advertisements promoting BJP on Facebook. Several of these websites were identical in their appearance and the content was identical verbatim, except for the

domain name (Kumar, 2023).

Another similar investigation by the Reporters’ Collective and ad.watch mapped political advertisements on Meta from February 2019 to November 2020 and found that aside from the official accounts, at least 23 ghost and surrogate advertisers placed 34,884 ads costing more than Rs 58.3 million, mostly to promote BJP or denigrate its opposition (Sambhav, Ranganathan & Jalihal, 2022).

More recently, in 2024, Access Now and Global Witness submitted 48 advertisements containing content prohibited by YouTube’s advertising and election misinformation policies. Even though YouTube reviews ad content before it can run, yet the platform approved every single ad for publication (Access Now & Global Witness, 2024).

### **Some Legal and Regulatory Provisions**

Taking into account the technological advancements

“ ***Regulations are frequently circumvented by political parties by using surrogate advertisers to mask political content while also hiding the amount of money spent on campaigning.*** ”

and the consequent spread of election campaigns in the digital sphere, the Election Commission of India (ECI) has time and again reiterated that the Model Code of Conduct (MCC) would apply to campaigning on online platforms as well. Further, paid political advertisements during the election period on all media channels—television, radio and print, as well on social media platforms—would require a pre-certification from the ECI or the designated officer before dissemination. However, several of these regulations are frequently circumvented by political parties by using surrogate advertisers to mask political content while also hiding the amount of money spent on campaigning.

Over the years, ECI has also issued advisories to political parties, candidates and star campaigners, specifically warning against a ‘notice’ for the violation of MCC, including against surrogate advertisements. It has also clarified that the 48-hour ‘silence period’ under Section 126 of the Representation of Peoples Act, 1951, applies to social media platforms as well.

Some of the major tech companies entered into a ‘Voluntary Code of Conduct’ with the ECI before the 2019 general elections, which were applicable for the 2024 elections as well. However, several investigations suggest that the pre-certification of political ads as well as other provisions of the

code were not being followed. There is also no transparency on how this Code is implemented or how this channel is used.

ECI has been using some of these provisions to selectively take down social media content of some political parties for allegedly violating the MCC (The Indian Express, April 17, 2024). Aside from this selective targeting of political parties and issuing of advisories, no substantial efforts have been taken by the ECI to tackle the issue of surrogate advertisement, hate speech and misleading political advertisements on social media.

### Civil Society Advocacy

Civil society organisations have time and again appealed to the ECI to monitor the online content as part of the extension of the MCC to the digital platforms, as well as to the tech platforms to encourage self-regulation and monitoring. However, the responses from both ends have been less than satisfactory.

“ ***No substantial efforts have been taken by the ECI to tackle the issue of surrogate advertisement, hate speech and misleading political advertisements on social media.*** ”

Before the April 2019 national elections, a group of civil society organisations and activists made a representation to the ECI, demonstrating the need to uphold and defend the integrity of the elections by safeguarding it from the misuse of social media and digital platforms.

A civil society group comprising of organisations such as Common Cause, Internet Freedom Foundation (IFF), Association for Democratic Reforms (ADR), Free Software Movement of India (FSMI), to name a few, were signatories to the letter, along with concerned citizens, including former public servants and chief election commissioners. The letter included an action plan with six suggestions, such as asking the ECI to make it mandatory for political parties to disclose their official handles on all major platforms, appealing to the ECI to monitor the online spending of political parties for election campaigns, and not just spending by candidates, etc.

In January 2022, several human rights and civil society organisations, joined by whistleblowers Frances Haugen and Sophie Zhang and former Facebook Vice President Brian Boland, called on Facebook to release the India Human Rights Impact Assessment (HRIA) and address the grave concerns about the company’s human rights records in India (Real Facebook Oversight Board, 2022). The company commissioned an

independent assessment in 2019 to evaluate Meta’s role in spreading hate speech and incitement to violence on its platforms but published only snippets from the India report and refused to publish the India HRIA (Brown and Bajoria, 2022). The signatories to the letter to Facebook included Amnesty International, India Civil Watch International, Human Rights Watch and Real Facebook Oversight Board, among over 20 other organisations.

On April 8, 2024, Common Cause, along with 11 other civil society organisations including the Internet Freedom Foundation (IFF), Association for Democratic Reforms (ADR) and Mazdoor Kisan Shakti Sangathan (MKSS), wrote to the ECI with an urgent appeal to uphold the integrity of the upcoming elections and hold political parties, candidates and digital platforms accountable to the voters. The letter highlighted some major concerns, namely the need to regulate online campaigning and surrogate advertisements, the dangers posed by emerging technologies such as deepfakes in influencing voter perceptions, the inadequacies of the voluntary code of conduct and the use of facial recognition and video surveillance of voters.

Some of the important suggestions to the ECI included the scrutiny of expenditure on surrogate advertising and targeted online campaigns by political actors, measures to

“ ***Suggestions to the ECI included the scrutiny of expenditure on surrogate advertising and targeted online campaigns by political actors, measures to increase the accountability of political actors who deploy generative AI with the intent of influencing voter perceptions*** ”

increase the accountability of political actors who deploy generative AI with the intent of influencing voter perceptions and political narratives and initiating a transparent and participatory process to arrive at a MCC for digital platforms.

Since early 2023, a group of organisations across the globe came together to form what eventually came to be known as the ‘Global Coalition for Tech Justice’, a growing movement to ensure that Big Tech plays its role in protecting elections and citizens’ rights and freedoms across the world. Common Cause is a part of the coalition and other steering group members of the Coalition include Digital Action and the India Civil Watch International. On April 16, 2024, the Coalition organised a public event to put the spotlight on tech platforms’ failures to protect people and democracy during elections in

the first quarter of the election megacycle. The speakers talked about the Big Tech failures ahead of India’s election, using evidence from their investigations.

## References

- Access Now and Global Witness (April 2024). “Votes will not be counted”: Indian election disinformation ads and YouTube. Available at: <https://bit.ly/4cSrKjr>
- Brown, D. and Bajoria, J. (21st July 2022). Meta and Hate Speech in India. Human Rights Watch. Available at: <https://bit.ly/4cWvssq>
- Ekō, India Civil Watch International and the London Story (2024). Slander, Lies and Incitement: India’s Million-Dollar Election Meme Network. Available at: <https://bit.ly/3LDlr6i>
- Election Commission of India (1st February 2024). Handbook on Media Matters for CEOs & DEOs: Edition- 1 Feb 2024. Available at: <https://bit.ly/4ccTqyt>
- Express News Service (17th April 2024). On EC orders, X takes down posts of parties & leaders, but disagrees. New Delhi, The Indian Express. Available at: <https://bit.ly/4ddhL8a>
- Frenkel, S. and Alba, D. (23rd October 2021). In India, Facebook Grapples with an Amplified Version of Its Problems. The New York Times. Available at: <https://bit.ly/4cVuX1u>
- Kantar and Internet and Mobile Association of India (IAMAI) (2024). Internet in India 2023. Available at: <https://bit.ly/3ycgShi>
- Kumar, A. (4th April 2023). Exclusive: Network of shadow Facebook pages spending crores of on ads to target Oppn are connected to BJP. Alt News. Available at: <https://>

[bit.ly/4fhQfrW](https://bit.ly/4fhQfrW)

Letter by civil society and human rights organisations addressed to Facebook Director of Human Rights Miranda Sissons dated 19th January 2022. Available at: <https://bit.ly/3Yflxbu>

Letter to the Election Commission of India on 'Safeguarding Democracy from Digital Platforms' dated 06th April 2024. Available at: <https://bit.ly/46kxdNn>

Letter addressed to Shri Rajiv Kumar, Chief Election Commissioner, Shri Gyanesh Kumar, Election Commissioner and Shri (Dr.) Sukhbir Singh Sandhu, Election Commissioner on 'Technology accountability and digital platforms' dated 08th April 2024. Available at: <https://bit.ly/4bWlvst>

Lokniti- Centre for Study of Developing Societies (CSDS) (2019). Social Media & Political Behaviour. Available at : <https://bit.ly/4d5S0Xq>

Madung, O. and Open Source Research and Investigations (27th February 2024). Platforms, Promises and Politics. Available at: <https://bit.ly/3YzuXAf>

Newman, N. Fletcher, R., Robertson, C.T., Eddy, K. and Nielsen, R.K. (2022). Digital News Report 2022. Reuters Institute for the Study of Journalism. Pp 134-135. Available at: <https://bit.ly/46iGjds>

Press Information Bureau Delhi (01st March 2024). Ahead of General Elections 2024, ECI warns political parties to maintain decorum in public campaigning; conveys stern action against direct or indirect MCC violations. Press Information Bureau. Available at: <https://bit.ly/46gElKM>

Real Facebook Oversight Board (19th January 2022). Civil Society, Advocates, Whistleblowers to Facebook: Release the India Human Rights Report, Without Redaction or Delay. Medium. Available at: <https://bit.ly/3Wgn4wA>

Sambhav, K., Ranganathan, N. and Jalihal, S. (15th March 2022). Inside Facebook and BJP's world of ghost advertisers. Available at: <https://bit.ly/4db5AIQ>

Sambhav, K. & Ranganathan, N. (16th March 2022). Facebook charged BJP less for India election ads than others. Aljazeera. Available at: <https://bit.ly/3SkU0Dc>

Zakrzewski, C., De Vynck, G., Masih, N. and Mahtani, S. (24th October 2021). How Facebook neglected the rest of the world, fueling hate speech and violence in India. The Washington Post. . Available at: <https://bit.ly/3WztWq7>

- 1 Cambridge Analytica is a British consulting firm which, in collaboration with Facebook, harvested personal data belonging to millions of Facebook users in 2010s without their consent and the data was then used to provide analytical assistance to Donald Trump before the 2016 US Presidential elections. The firm was also accused of interfering with the Brexit referendum, influencing the "Leave" voters.
- 2 On January 6, 2021, rioters supporting Donald Trump attacked the US Capitol in Washington DC with the goal of stopping the certification of Joe Biden's election. Five people were killed, including one police officer who was beaten by rioters. The riots were allegedly organised on social media, with even President Trump inciting supporters to come to DC in a call to action over a series of social media posts.

# DEMYSTIFYING ELECTORAL BONDS

## Some Frequently Asked Questions

Mohd Aasif\*

Money in politics has always been a point of discussion. Electoral Bonds were introduced in 2017 as one of the instruments for electoral funding. The then finance minister Arun Jaitley hailed it as an efficient way of bringing 'transparency' in the political funding coupled with the provision of secrecy of donors and donees. Common Cause and ADR filed a petition against the electoral irregularities that emerged due to the introduction of Electoral Bonds. The Supreme Court of India, just before the 18<sup>th</sup> Lok Sabha Election, struck down and declared the scheme unconstitutional. It made Electoral Bonds one of the biggest talking points of the year.

But what exactly is the debate around the Electoral Bonds Scheme? We have answered some frequently asked questions (FAQs) to understand the issue.

### **What was an Electoral Bond?**

Electoral Bonds were introduced as interest-free, non-refundable promissory note for anonymous political funding. These were available to an Indian donor (an individual or an organisation registered in India) in multiples of denominations of ₹1,000, ₹10,000, ₹100,000, ₹1,000,000, and ₹10,000,000. A donor -- either as a single entity or jointly with others -- had to fulfil RBI's KYC norms to buy them at the State Bank of India (SBI). The life of the bond was only 15 days. It could only be encashed at a pre-declared bank account of the political party.<sup>1</sup> There was no limit on the number of bonds a donor could buy and a political party could encash them.

### **What was the eligibility criteria to receive donations?**

Only those political parties which were registered under Section 29A of the Representation of the Peoples Act, 1951, and had secured not less than 1 per cent of the votes polled in the last general election or the legislative assembly of the state, were eligible to receive the Electoral Bonds.

### **Why did the Supreme Court strike down the scheme?**

On February 15, 2024, a five-judge constitutional bench of the Supreme Court of India declared the Electoral Bonds Scheme unconstitutional and violative of Article 19(1)(a). The bench ruled that the scheme violated the fundamental right to information of voters, who are the biggest stakeholders in democracy. The court ruled that the information about funding to a political party is essential for voters to exercise their freedom to vote effectively. Concealing information in the name of 'transparency' aids the government to escape accountability.

The Court further ruled that the amendments brought to the Company Act to build a structure for the Electoral Bond Scheme violated the right of shareholders to know which political party the company is donating money to. The court also ordered the deletion of the provisions of the Company Act permitting unlimited corporate contributions to political parties.

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Rejecting the argument by the central government, the Supreme Court did not find the scheme fool-proof and stated that there were sufficient gaps in the scheme which enabled political parties to know the particulars of the contributions made to them.

## **What were the issues raised against Electoral Bonds?**

Critics of the Electoral Bond Scheme raised serious concerns over scheme's violation of Article 21 and about potential corruption under the garb of anonymity. The provision of allowing electoral donations by loss-making companies raised apprehensions of quid pro quo arrangements whereby the donor could extract an undue favour in lieu of contributing to the political parties in power. The limited disclosure clause in the scheme prevented investigating agencies from identifying corruption.

Concerns were also raised over the possibility of public representatives putting the wishes of the donors above that of voters thereby threatening representative democracy through lobbying. Statutory amendments and the Electoral Bond Scheme thus interfered with free and fair elections because of the huge difference in the funds received by ruling parties in states and the Centre and opposition parties and independent candidates, thereby making the political level-playing field uneven.

## **What were the Court's directions?**

The Court directed the disclosure of information on contributions received by political parties under the Electoral Bond Scheme. It also told the SBI, the issuing bank, to herewith stop the issuance of Electoral Bonds.

The Court directed the SBI to submit details of the Electoral Bonds purchased after the interim order of the Supreme Court dated April 12, 2019, till February 15, 2024, to the Election Commission of India (ECI). The disclosure included the name of the purchaser and the denomination of the purchased Electoral Bonds. SBI was also ordered to disclose details of each Electoral Bond encashed by political parties, including the date of encashment and the denomination of the Electoral Bond. Further, the ECI was ordered to publish the information shared by the SBI on its official website within one week of receiving the information.

## **What happened to the Electoral Bonds yet to be encashed?**

Electoral Bonds within the validity period of 15 days but yet to be encashed had to be returned to SBI by the party in possession. As an exception to the non-refundable clause of Electoral Bonds, the court ordered a refund to the purchaser's account once declared unconstitutional.

## **Why was the Electoral Bond Scheme introduced?**

The Electoral Bonds Scheme was aimed at curbing the influence of black money in elections, as claimed by the then Finance Minister Arun Jaitely. He said, "Donations made online or through cheques remain an ideal method of donating to political parties. However, these have not become very popular in India since they involve disclosure of donor's identity." The Electoral Bond Scheme was accompanied by provisions which the government claimed would bring transparency while masking the link between the donor and the political party.

A donor could purchase Electoral Bonds for 10 days each in January, April, July and October as specified by the Central Government. The scheme was also open for 30 days in years when Lok Sabha election were to be held.

## What were the enabling amendments?

In May 2016, Finance Act 2016 was introduced construing the amendments to the definition of “foreign source” under the Foreign Contribution Regulation Act 2010. It allowed foreign companies to donate to political parties provided they had a majority share in Indian companies.

The Central Government introduced amendments to four laws. It amended the Reserve Bank of India Act 1934 to allow the Central Government to “authorise any scheduled bank to issue Electoral Bond(s).”

Amendments were brought to the Income Tax Act 1961, to exempt the I-T department from keeping a detailed record of contributions received through Electoral Bonds.

The Representation of the Peoples Act 1951 was amended to exempt political parties from publishing details of Electoral Bond contributions in ‘Contribution Reports’ to the ECI.

The Companies Act 2013 was amended to remove the upper limit of corporate donations to a political party and their obligation to disclose the breakup of contributions made to different parties.<sup>2</sup>

## Were the Electoral Bonds completely anonymous?

At a first glance, the scheme suggested that donations made through Electoral Bonds were anonymous as these did not display the name of the buyer and the authorised banks were prohibited from disclosing the information unless required by a competent court or during the registration of a criminal case by a law enforcement agency. However, a forensic lab investigation by journalist Poonam Aggarwal of *The Quint* revealed a secret number embedded in the bonds. It enabled the authorised banks to keep a track of the donor and the donee. Further, the central government could access this data and trace the donation back to the donors and link it with the donees.

## How did it change the nature of corporate donations to parties?

Corporate houses earlier were allowed to contribute only 7.5 per cent of their average net profit in the past three financial years. After the introduction of the Electoral Bonds Scheme, even the loss-making companies could contribute to political parties. The corporate bodies were also exempted from giving specific details of the donations.

## What were the tax implications?

Under the provisions before the Scheme, contributions made to political parties and electoral trusts were claimed as deductions under Sections 80GGB and 80GGC of the Income Tax Act.

However, after 2018, all the contributions made through the Electoral Bond Scheme were fully exempted under Section 13A of the Income Tax Act, 1961, provided the political party filed its income tax returns and other specified details with the ECI.

## Endnotes

1 PIB. (2018, January 7). *Why Electoral Bonds are Necessary*. PIB. <https://bit.ly/4dgPrlj>

2 Kashyap, G. (2024, May 14). *A complete timeline of the Electoral Bond Scheme*. Supreme Court Observer. <https://bit.ly/46d9uyN>

# COMMON CAUSE EVENTS

## NHRC Invites Common Cause to a Core Group Meeting on Criminal Justice System Reforms

On 23rd April 2024, the National Human Rights Commission (NHRC) invited Common Cause to a core group meeting on Criminal Justice System Reforms in India. The meeting in hybrid mode was chaired by the NHRC India Chairperson, Justice Arun Mishra in the presence of NHRC members, experts, academicians, representatives of civil society organizations and senior officers of the Commission.

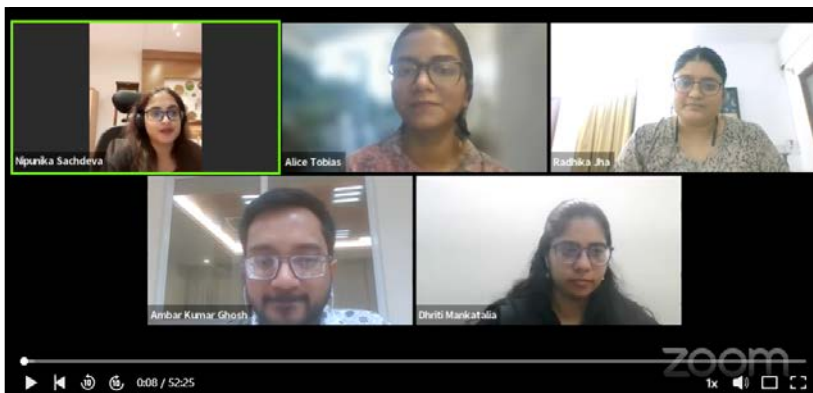


*Former Justice Arun Mishra Chairing the Meeting*

Discussions included finding ways to address the delay in forensic reports, areas of improvement in the prosecution system, and the burking of offences. Common Cause director, Dr Vipul Mudgal presented the findings of the Status of Policing in India Report-2018 on the citizens' trust and satisfaction in the police and its implications for the criminal justice system.

The report reflects the ground reality of the citizens' perceptions about policing in 22 states of india along with an analysis of the official data on the subject. Dr Mudgal cited data to highlight areas of inefficiency and insensitivities of the police. He said the SPIR reports brought out the point that the difference in the citizens' trust and satisfaction levels becomes starker when one talks to the society's vulnerable sections. It was important, he said, to examine the issues of police excesses and atrocities from the point of view of the poor and the excluded sections of society

## The State of Youth Representation: Panel Discussion



*Radhika Jha Addressing the Audience Online*

On 8th May 2024, Ms Radhika Jha, Project Lead of of the Rule of Law programme, represented Common Cause at a well-attended online discussion on "State of Youth Representation: Young Candidates in the 2024 Indian Election." The panel is part of the Centre for Youth Policy's "18 Dialogues for the 18th Lok Sabha". It was a series of conversations on the pivotal role of youth in shaping the 2024 general elections. She spoke on the day-to-

day issues youth face, pointing out empirical data on unemployment as one of them.

The panel further discussed the challenges that the youth candidates in politics have to face. The dominance of dynasties in party politics is identified as one of the biggest challenges for newcomers to register their presence. Further, the role of digital media and its misuse in electoral politics by political parties was a talking point in the context of spreading hate speech, misinformation and disinformation. Radhika informed the panel about the efforts of Common Cause in association with other civil society partners to curb the misuse of social media during elections.

## **UGC Lecture on Policing and Human Rights at Jamia Millia Islamia**

On 10th June 2024, Dr Vipul Mudgal addressed a batch of enthusiastic faculty members from different corners of the country and from multiple disciplines. The lecture was part of the 2-week refresher course in “Human Rights & Social Inclusion (Interdisciplinary). The event was organized by the Malviya Mission Teacher Training Centre, Jamia Millia Islamia, University under the aegis of the UGC. .

Dr Mudgal cited the findings of the Status of Policing in India Reports from 2018 to 2023, to explain the inadequacies of the police administration regarding their shortage of staff, and lack of training of police personnel etc. He further pointed out the facts and figures about the ingrained bias of police personnel against the marginalised sections of society.

The well-attended lecture concluded with an animated round of questions and answers. Later, the participants answered questions based on the SPIR reports as part of their evaluation.

## **Master Class on Evidence-Based Research to RCRC Faculty**

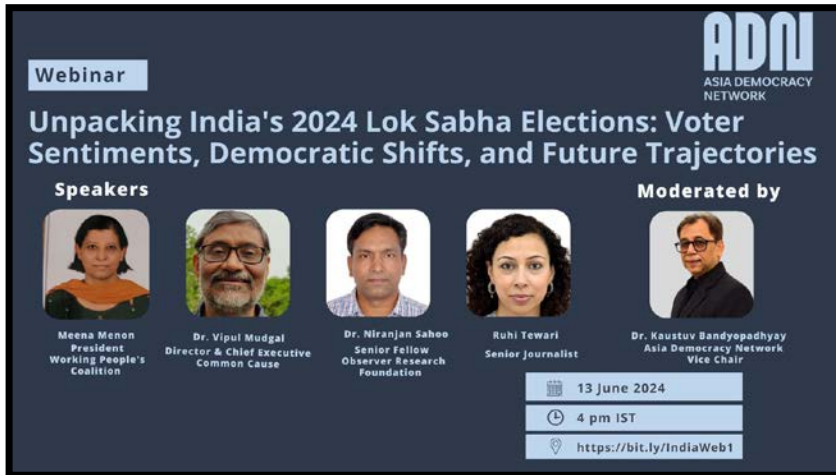
On 3rd May 2024, Responsible Coalition for Resilient Communities (RCRC), an NGO working among marginalised rural communities, invited Common Cause Director Dr Vipul Mudgal to take a session on research training of the organisation’s team working in the field. The idea of the session was to acquaint the NGO workers with the basic features of ground-based research. The topic of the session was “Treading the Path of Evidence-Based Research: The Journey So Far & Beyond.”. The session was devoted to the romance of research and the fruits of data-based analysis for rational policymaking.

## **Unpacking India’s 2024 Lok Sabha Elections: Voter Sentiments and Future Trajectories**

On June 13th 2024, the Asian Democracy Network (ADN), a pan-Asia partnership of civil society organisations working on strengthening democracy, invited Common Cause Director Dr Vipul Mudgal to a panel discussion on the outcomes of the recent Indian elections and their broader implications for democratisation in India and the wider region. Dr Kaustav Bandyopadhyay, Director of Participatory Research in Asia (PRIA), moderated the panel discussion.

The other participants of the panel discussion were Ms Meena Menon, President of Working Peoples’ Coalition, Dr Niranjan Sahoo, Senior Fellow, Observer Research Foundation, and senior journalist Ruhi Tiwari.

The key observations from the recent election results underscore several critical points. As Dr Mudgal observed, the election was fought against the backdrop of institutional dominance by the ruling party, extremely biased media and a massive mismatch in money and power between the two alliances. He



also noted that the carefully cultivated image of Modi's invincibility was shattered in these elections. He mentioned the use of publicly funded advertising campaigns run by the ruling party over a long period of time. He said the entire might of India's mainstream media seemed to be with the ruling party and that things like the arrests of Opposition leaders and the freezing of the bank accounts of the principal opposition party also made a difference in favour

of the ruling dispensation.

The panel discussion focused attention on India's democratic institutions and the role played by the Election Commission of India. The participants noted that the results also reflect a mature electorate capable of nuanced decision-making even amidst polarised campaigns. The importance of strong and independent regional leadership was validated beyond doubt with the BJP seeing success in states like Madhya Pradesh, Assam and Odisha contrasting with the failures observed in Rajasthan and Uttar Pradesh.

*(Compiled by Tejaswini Kaktikar & Mrinank Bhartari Chandar, Interns at Common Cause)*

## Brainstorming Discussion with DIG Cybercrimes, UP

On April 9, 2024, a team of India Justice Report organised a discussion with Mr Pawan Kumar, DIG, Cybercrimes, Uttar Pradesh. The discussion was on the police capabilities pertaining to cybercrimes and the processes and infrastructure to deal with such crimes. The conversation helped arriving at indicators and data for further state-level analysis under the larger theme of cybercrime. Radhika Jha, project lead Rule of Law, Common Cause, joined the discussion as one of the organisers.

## Press Conference on Shadow Advertisement

On April 16, 2024, the Global Coalition for Tech Justice organised a press conference on ringing the alarm bells about tech platforms' failures to protect people and democracy during elections. The event included a discussion on the Indian elections and evidence collected by Ekō, the London Story and India Civil Watch International on shadow advertising, disinformation and hate speech on Facebook in India and Meta's failure to curb this. Radhika Jha from Common Cause participated in the event as a steering committee member of the coalition.

## Common Cause Files RTI with National Human Rights Commission

On May 24, 2024, the SPIR team of Common Cause filed an RTI application to procure information regarding cases of Human Rights violations in the context of policing in India. The components of the RTI were meant to inquire about the desegregation of the data on various heads that are clubbed in the commission's annual reports throughout its lifespan.

# COMMON CAUSE CASE UPDATES

## Supreme Court Cases

### **Petition for SIT investigation in Electoral Bonds Scam (W.P.(C) No. 266/2024):**

Constitutionality of the Electoral Bonds scheme, which was introduced by amending Finance Act 2017, was challenged in the Supreme Court by Common Cause and the Association for Democratic Reforms (ADR) in 2017. On February 15, 2024, the Court struck down the scheme, holding it as unconstitutional. The Bench held that the scheme violated the voters' right to information enshrined in Article 19(1)(a) of the Constitution. The Court also struck down the amendments made to the Income Tax Act and the Representation of the People Act, which enabled such anonymous political donations. The court directed the State Bank of India (SBI) and the Election Commission of India (ECI) to make public all details associated with the sale and purchase of these bonds so that voters can see if any quid pro quo arrangements took place between corporate donors and political parties.

After the judgment, Common Cause and the Centre for Public Interest Litigation (CPIL) filed another petition in the Supreme Court in April 2024 seeking

direction for a court-monitored investigation by an SIT into the instances of apparent quid pro quo between political parties, corporate donors and officials of investigation agencies.. The petition also prays for the issuance of an appropriate writ, order or direction to the authorities to investigate the source of funding of shell companies and loss-making companies as has been disclosed through the electoral bonds data; to recover the amounts from political parties where these are found to be proceeds of crime; and for investigation into the violation of Section 182(1) of the Companies Act 2013 by companies which donated to political parties through electoral bonds within 3 years of their incorporation.

### **Petition challenging the electoral irregularities and to ensure free and fair elections and the rule of law (W.P. (C) 1382/2019)**

Common Cause, along with ADR filed a writ petition in 2019, to ensure that the democratic process was not subverted by electoral irregularities and to ensure free and fair elections. The petition highlighted the dereliction of duty on the part of the ECI in declaring election results (of the Lok Sabha and State Legislative

Assemblies) through Electronic Voting Machines (EVMs) based on accurate and indisputable data which is put in the public domain. The petitioners sought a direction from the Hon'ble Court to the ECI to not announce any provisional and estimated election results before the actual and accurate reconciliation of data.

On May 10, 2024, Common Cause and ADR filed an application seeking directions from the Supreme Court to the ECI to disclose authenticated records of voter turnout by uploading scanned legible copies of Form 17C Part-I (Account of Votes Recorded) of all polling stations after each phase of polling in the on-going 2024 Lok Sabha elections. It also sought this information and polling station-wise figures of voter turnout to be uploaded on the commission's website.

The application also prayed that Part- II of Form 17C containing candidate-wise results of Counting should also be disclosed after the compilation of results.

On May 17th, 2024, the matter was heard by CJI DY Chandrachud, Justice JB Pardiwala and Manoj Mishra. The ECI requested a fair opportunity to deal with the

contents of the IA. The court granted a week to the ECI to file a response to the IA.

On May 24 2024, the application was heard by the bench of Justice Dipankar Datta and Satish Chandra Sharma and the court was not inclined to grant any instant relief..

### **Petition seeking directions to implement the recommendations of the National Electric Mobility Mission Plan, 2020 W.P. (C) 228/2019**

Common Cause has partnered with CPIL and Jindal Naturecure Institute to seek directions for the implementation of the recommendations of the National Electric Mobility Mission Plan, 2020, promulgated in 2012 by the Ministry of Heavy Industries, and the recommendations of Zero Emission Vehicles: Towards a Policy Framework by the NITI Aayog.

The petition has said that the government's failure to suitably implement these recommendations is the direct cause of air pollution levels that have turned our cities into virtual 'gas chambers' having severe negative health impacts on the lives of citizens, particularly on our children.

The petitioners have, among other things, sought directions to mandate demand, creation of requisite charging infrastructure and cross-subsidisation of Electric Vehicles by charging marginal fees on fossil fuel-based vehicles as recommended by NITI Aayog to promote gradual adoption of Electric Vehicles.

On March 11 2024, the matter was heard and the respondents were granted four weeks to file the counter affidavit. On May 6 2024, the matter was taken up by Justice Surya Kant and K.V. Viswanathan. Upon request, the court granted four weeks to the respondents and ordered the matter to be listed for hearing on July 22 2024.

**Contempt Petition against Lawyers Strike:** The contempt petition filed by Common Cause against the strike of lawyers in Delhi High Court and all district courts of Delhi on the issue of conflict over pecuniary jurisdiction has led to the submission of draft rules by the Bar Council of India (BCI). Earlier the Court had expressed displeasure over the lack of proper action on the part of BCI.

During the hearing on February 6, 2024, arguments by the counsels were heard. On February 9, 2024, the Court appointed Justice. S. Muralidhar, as Amicus, to examine the rules in the context of the existing judgments and objections as filed by Mr Bhushan, and to submit his report. It also granted an opportunity of hearing, if needed, to the counsels appearing for the parties. The matter was taken up on May 3, 2024, where on joint request the Court directed the registry to re-list the matter on August 13, 2024.

Please email us at [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com) if you want a soft copy of the report.

# Status of Policing in India Report 2023

## Surveillance and the Question of Privacy



Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the Status of Policing in India Report 2023: Surveillance and the Question of Privacy, is a study of public perceptions and experiences regarding digital surveillance in India .

SPIR 2023 analyses data collected from face-to-face surveys conducted with about 10,000 individuals from Tier I, II and III cities of 12 Indian states and UTs to understand perceptions around digital surveillance. The study also involved a Focused Group Discussion (FGD) with domain experts, in-depth interviews with serving police officials, and an analysis of media coverage of surveillance-related issues.

Please email us at [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com) if you want a soft copy of the report. It can also be downloaded from [commoncause.in](http://commoncause.in)

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