

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**IA No.                      of 2020**  
**IN**  
**WRIT PETITION (CIVIL) NO. 1382 OF 2019**  
**PUBLIC INTEREST LITIGATION**

**In the matter of:**

**ASSOCIATION FOR DEMOCRATIC REFORMS & ORS.**

...PETITIONERS

**VERSUS**

**ELECTION COMMISSION OF INDIA & ANR.**

...RESPONDENTS

**APPLICATION FOR DIRECTIONS**

To,

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

THE HUMBLE APPLICATION OF THE  
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH: -

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

Commission of India (Respondent No. 1 herein) not to dispose of or destroy the VVPAT paper slips generated in any election, before the completion of the stipulated period of one year, in consonance with the rules of Conduct of Elections Rules, 1961.

**Early disposal of VVPAT paper slips in contravention of Conduct of Elections Rules, 1961**

2. That **Rule 94** read with **Rule 93** of Conduct of Elections Rules, 1961, states that VVPAT paper slips, generated in an election, shall be retained for a period of one year, from the date of declaration of the results of the election. The relevant portions of the aforesaid provisions are as follows:

***93. Production and inspection of election papers.—***

*(1) While in the custody of the district election officer or, as the case may be, the returning officer—*

*(a) the packets of unused ballot papers with counterfoils attached thereto;*

*(b) the packets of used ballot papers whether valid, tendered or rejected;*

*(c) the packets of the counterfoils of used ballot papers;*

***(cc) the printed paper slips sealed under the provisions of rule 57C.***

*(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152; and*

*[(dd) the packets containing registers of voters in form 17-A;]*

*(e) the packets of the declarations by electors and the attestation of their signatures; shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court.*

**94. Disposal of election papers.**— *Subject to any direction to the contrary given by the Election Commission or by a competent court or tribunal—*

*[(a) the packets of unused ballot papers shall be retained for a period of six months and shall thereafter be destroyed in such manner as the Election Commission may direct;]*

*[(aa) the voting machines kept in the custody of the district election officer under sub-rule (1A) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;]*

*(b) the other packets referred to in sub-rule (1) of rule 93 shall be retained for a period of one year and shall thereafter be destroyed:*

*[Provided that packets containing the counterfoils of used ballot papers **and the printer paper slips, if any,** shall not be destroyed except with the previous approval of the Election Commission;]*

*(c) all other papers relating to the election shall be retained for such period as the Election Commission may direct.*

3. That the results of the '17<sup>th</sup> Lok Sabha Elections, 2019', were declared on 23.05.2019 and as per the Conduct of Election Rules,

1961, the VVPAT paper slips should have been retained for a period of one year. However, as per recent revelations through RTI it has been found that the said VVPAT paper slips, generated at the time of 2019 general elections, have been disposed of within a short time of 4 months. The ECI, *vide* its letter dated 23.09.2019, directed the Chief Electoral Officers of all States and Union Territories, to dispose of the VVPAT paper slips generated in the India General Elections, 2019. This has been done in contravention to the Conduct of Election Rules 1961. A copy of the aforesaid letter dated 23.09.2019 sent by the EC to CEO of all States and UTs annexed herewith as **Annexure A1**(Page \_\_\_\_to \_\_\_\_).

4. That thereafter the Chief Election Officer, Delhi, *vide* its letter dated 30.09.2019 directed the District Election Officers (hereinafter, “DEO”) and Returning Officers (hereinafter, “RO”) of Delhi, to dispose of the VVPAT paper slips generated in the General Elections, 2019, in compliance with the procedure laid down by the ECI in its letter dated 23.09.2019. A copy of the aforesaid letter dated 30.09.2019 of the Chief Election Officer of Delhi to the DEOs and ROs is annexed herewith as **Annexure A2**(page \_\_\_\_to \_\_\_\_).

5. That the DEO, Delhi (East), *vide* its letter No. dated 28.01.2020 in response to an RTI application filed by journalist Poonam

Aggarwal, disclosed that the VVPAT paper slips had already been disposed of. The relevant portion of the letter is quoted as follows:

*“The VVPAT slips have been disposed as per letter dated 30/9/2019(copy enclosed)”.*

A copy of the aforesaid letter dated 28.01.2020 annexed herewith as **Annexure A3**(page \_\_\_\_to \_\_\_\_). A copy of newspaper report dated 07.02.2019 published in *The Quint* is annexed herewith as **Annexure A4**(page \_\_\_\_to \_\_\_\_).

6. The Election Commission of India in its another letter to all the CEOs of States and Union Territories vide letter dated 23.09.2019 had also given instructions by prescribing a ‘Standard Operating Protocol’ for the retention and disposal of VVPAT paper slips generated during mock and actual polls. In its letter, the Commission had clearly instructed that VVPAT slips pertaining to mock poll and actual poll cannot be disposed of if any election petition or court case is pending in the competent court and the paper slips shall be kept in the custody of District Election Officers till the final disposal of the Election petition or Court case. The relevant portion of Para No. 3 of the letter is reproduced below;

*“(3) For retention and disposal of VVPAT paper slips generated during mock poll on poll day and actual poll, the following protocol shall be followed;*

- a) VVPAT paper slips pertaining to mock poll on poll day and actual shall be retained till Election Petition period i.e.45 days from the date of declaration of result.*
- b) After completion of Election Petition period, the CEO/DEO shall immediately obtain within 7 days the status of Election Petition or Court Case from the competent court.*

*c) If any Election Petition or Court Case is pending, the VVPAT paper slips pertaining to mock poll and actual poll shall be kept in the custody of District Election Officers till final the disposal of Election Petition or Court Case.....”*

7. The ‘Manual on Electronic Voting Machine and VVPAT’ published by the Election Commission of India on February, 2019 which is also available on Commission’s website specifies the time period for storing EVM and VVPAT machines after the declaration of results. It says that the voting machines should be stored for a period of Election Petition i.e 45 days from the date of declaration of election results. Under Rule 94 (aa) of the Conduct of Election Rules, 1961, the guidelines of the Election Commission on retention period of the EVMs after using in election and for using the same in the subsequent elections, are as under:

*“Every Voting Machine (EVM) and VVPATs used in an election and kept in the custody of District Election Officer shall be kept untouched, under the standard protocol of security, till confirmation of Election Petition position from the High Court concerned after the completion of the period for filing Election Petition i.e 45 days from the date of declaration of the result.”*

A copy of the ‘Manual on Electronic Voting Machine and VVPAT’ published by the Election Commission of India on February, 2019 is attached herewith and marked as **Annexure A5** (page \_\_\_\_to \_\_\_\_).

8. In its letter dated 23.09.2019, the Election Commission of India has cited completion of Election Petition period, i.e 45 days for

destroying VVPAT slips which is actually meant for voting machines and not for the VVPAT slips.

9. Such an inexplicable and mysterious rush and urgency by the Election Commission to destroy VVPAT slips in just four months is not only in contravention of the rules prescribed under the Conduct of Election Rules, 1961 but also raises significant apprehensions particularly in the background of the petitioner's writ petition already pending before this Hon'ble court in W.P (C) No. 1382/2019. Moreover, these paper slips can serve as a crucial evidence before this Hon'ble Court in deciding as well as ordering an inquiry into reconciliation of the large number of discrepancies encountered during the counting of the votes through the Electronic Voting Machine (EVM) in the 17<sup>th</sup> Lok Sabha held in April, 2019 and highlighted through the instant writ petition.

**Inquiries are still pending with respect to atleast eight cases of mismatch between EVMs and VVPAT vote counts**

10. That as per multiple media reports, atleast eight cases of mismatch between EVM and VVPAT vote counts have been reported in Rajasthan, Himachal Pradesh, Manipur, Meghalaya and Andhra Pradesh. A copy of one such news report dated 22.07.2019 reported in *The Economic Times* is annexed herewith and marked as **Annexure A6**(Pages \_\_\_\_\_to \_\_\_\_\_).

11. That the Election Commission of India has ordered an inquiry in the aforesaid cases in July, 2019. “*The Quint*”, an Indian News website, filed an RTI application on 26.10.2019, seeking information on the inquiry conducted by the ECI. The ECI replied to the said RTI application vide letter dated 25.11.2019, i.e. after two months of the issuance of the directions for disposal of the VVPAT paper slips, disclosing that the information was not available as the matter was under the consideration of the ECI’s Technical Experts Committee. The relevant portion of the letter is quoted as follows:

*“The information sought by you is not available as the matter of mismatch cases is still under consideration of Technical Experts Committee.”*

A copy of the aforesaid RTI reply from EC dated 25.11.2019 is annexed herewith and marked as **Annexure A7** (page \_\_\_\_\_to \_\_\_\_\_).

12. That VVPAT paper slips are a crucial evidence to detect possible tampering or the manipulation of the entire voting process and thus, they are indispensable for conducting an inquiry in the cases of any discrepancy. In the last general election, a number of discrepancies, as enumerated in the instant writ petition, arose and it is almost impossible to conduct a thorough enquiry into the said discrepancies if VVPAT Slips are destroyed.

### **PRAYER**



In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

- a) Direct Respondent No. 1 not to destroy or dispose of VVPAT paper slips generated in any election in the last one year and to retain the same at least for a period of one year;
- b) Direct the Election Commission of India to retain all other documents pertaining to the 17<sup>th</sup> Lok Sabha elections held in April, 2019;
- c) Pass any other and further orders or directions that this Hon'ble Court may deem fit, just and proper in the facts of circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT BE FOREVER BOUND

APPLICANT THROUGH

**PRASHANT BHUSHAN**

COUNSEL FOR THE APPLICANT/ PETITIONER

DATED: FEBRUARY 2020

NEW DELHI