

CONCLAVE ON ELECTIONS IN INDIA

**ORGANISED BY RETIRED CIVIL SERVANTS AND
VETERANS OF ARMED FORCES**

NEW DELHI JUNE 8, 2018

SESSION 1: ELECTRONIC VOTING MACHINES

PANELISTS: 1. PROF RAJAT MOONA
DIRECTOR IIT BHILAI
2. M G DEVASAHAYAM
FORMER SECRETARY GOVT OF HARYANA

SESSION 2: ELECTION FUNDING

PANELIST: JAGDEEP S CHHOKAR
ASSOCIATION FOR DEMOCRATIC REFORMS

SESSION 3: THE ELECTION COMMISSION

PANELIST: NEERJA CHOWDHURY
SENIOR JOURNALIST

IN THE CHAIR: Dr S Y QURAIISHI
FORMER CHIEF ELECTION COMMISSIONER OF INDIA

SESSION 1

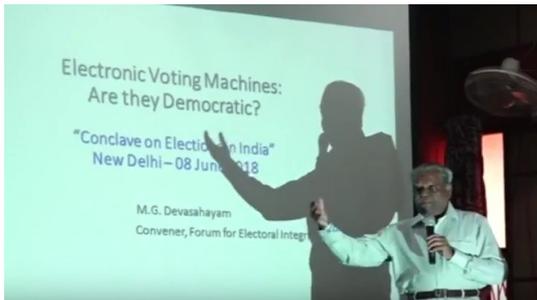


Prof Rajat Moona

- Idea of EVMs mooted by CEC S L Sakhder in 1978. The first prototype developed by ECIL was used in a few booths in the 1982 elections in Kerala.
- Incidents of booth capture reported from all over the country but official inertia delays introduction of EVMs.
- Technical Expert Committee of ECI finds EVMs capable of recording votes correctly and maintaining confidentiality of votes. Clears the use of Mark I EVMs in 1990. Also recommends that new machine be developed. Mark II machines introduced in 2010 with improved wiring and improved protocol.
- Both models have a 12-second delay between recording of two votes. This is necessary to prevent the equivalent of 'ballot stuffing'.
- The new model is capable of 'authentication' by manufacturers who can at any time certify that the machine has not been altered.
- ECI has held mock polls to instill voter confidence. It has challenged critics to hack its machines. Nobody has been able to do so. A Google search may reveal thousands of ways to hack EVMs but none of these has been demonstrated.
- Mark III EVMs introduced in 2014 are compatible with VVPAT and the voter can see that her vote has been correctly recorded. Sensors monitor the working of VVPAT and report errors to PO.
- EVMs are not networked. They are not accessible online and cannot be hacked remotely.
- To hack a significant portion of EVMs in a constituency you need

hundreds to conspire. On a national scale you need millions.
What are the chances of success?

- EVMs may have been banned in other countries. Their problems are different their laws are different. The Indian Supreme Court has directed full use of EVMs.



M G Devasahayam

Are EVMs Democratic?

- EVMs may be technically excellent but the question is are they democratic? Unfortunately there is little public discussion of this question.
- To be democratic they must follow the Democracy Principles

What are the Democracy Principles in Elections?

- The entire process should be so transparent that the voters are satisfied that their votes are correctly recorded and counted.
- Each step in the process should be open to public scrutiny and examination.
- This scrutiny should be possible even without expert knowledge.

The five different systems of voting are:

- Votes recorded on paper ballots and counted by hand.
- Votes recorded by EVMs in machine memory and counted electronically.
- EVM with VVPAT which allows the option of manual verification of electronically counted votes.
- Votes using machine readable paper ballots.
- Internet based online voting.

Of these only the first system using ballot papers is truly democratic.

Judicial Review of EVMs

- In 2009 the Federal Constitutional Court in Germany held EVMs unconstitutional as they violated the Democracy Principles.
- In 2012 the Delhi High Court observed that it cannot be ruled out that EVMs may be vulnerable to fraud. There may be security issues as well.
- In 2013 the Supreme Court said in its ruling that for fullest transparency in the system and to restore voter confidence, EVMs should be accompanied by VVPAT. The Honble Court directed ECI to fully implement this.

The Voter Verifiable Paper Audit Trail (VVPAT)

- VVPAT is an independent system attached to the EVM. The voter can see through a transparent window a paper slip with the name and symbol of the candidate voted for.
- After a 7-second display the slip drops into a sealed box and all such slips can be counted to manually verify the EVM result.
- VVPATS used in selected constituencies since 2013. they are planned to be used in all constituencies in 2019.

VVPAT Complaints and Counting Rules

- The Rules provide for complaints during the poll as well as at the time of counting.
- A voter may complain that the VVPAT slip has not correctly recorded the vote. The Presiding Officer deals with this in terms of Rule 49MA of the Conduct of Election Rules. A test vote is generated and checked with the slip. Any discrepancy is reported to the Returning Officer.
- A candidate may ask the Returning Officer to count the paper slips after the result is declared. The RO deals with this in terms of Rule 56D of the same Rules.

ECI Directions on Counting VVPAT Slips

- ECI has directed that one polling booth be selected at random in an assembly constituency and the slips counted after the electronic counting is over.
- There are detailed instructions on how the booth is to be selected but none on how the verification is to be made.
- This has defeated the very purpose of introducing VVPATs.

- ECI has dealt with verification and audit in a casual manner.

ECI Violates Democracy Principles

- The objectives of transparency and verifiability cannot be achieved unless paper slips are counted in a significant proportion of the booths.
- One booth in an assembly constituency accounts for only 0.4-0.5% of booths. Verification for one booth would be tokenism.
- The VVPAT slips should be counted for a stratified random sample of a statistically significant size.

Democracy Principle in EVMS

- EVMS by themselves do not comply with any Democracy Principle.
- Working with VVPATs they can inspire voter confidence if printed slips are counted for around 25% of the booths.
- If a discrepancy is found, 100% of the slips should be counted.
- ECI should immediately issue suitable instructions in this regard.

Reliability of EVM and VVPAT

- Large scale failure and malfunctioning of EVMS reported in recent elections.
- VVPAT malfunctioning 20.28% in Kairana, 19.22% in Bhandara-Gondia, 13.16% in Palghar by-elections. ECI norm is 5%.
- ECI has delegated manufacture and maintenance of EVMS to companies including foreign entities. It has no means to verify whether they are playing fair or foul.
- ECI must address these issues urgently.

Fraud and Tampering

- EVMS are vulnerable to tampering at the time of manufacturing, storage and first level checks by 'authorised technicians'.
- RTI responses show huge variation between the numbers of EVMS supplied by manufacturers and the numbers received by ECI. No explanation has been received.
- EVMS stolen in different States have not been recovered. Now VVPAT machines have been reported missing.
- ECI argument that EVMS are not networked and hence cannot be

tampered with has been countered by international experts.

Conclusion

- EVMs are not democratic. There are enough reasons to discontinue them and to return to paper ballots.
- However, VVPATs mandated by the Supreme Court must be given a chance to restore Democracy Principles.
- This can be possible only if VVPATs are reliable and a large percentage, say 25% of paper slips are counted before declaration of results.
- This is within ECI's powers. The ball is in their court.



Dr S Y Quraishi

Intervention from the Chair

- The German Federal Court disallowed EVMs not because of any technical deficiency but because their law required ... twenty five years earlier the Indian Supreme Court said the same thing. The use of EVMs in the Kerala elections was held ultra vires of the law as the law required the use of ballot papers.
- Did the Supreme Court direct ECI to use VVPAT? No. ECI decided to use them after trials held from 2011 to 2013 in five different climatic conditions at Kerala, Jaisalmer, Ladakh, Cherapunji and Delhi.
- According to the ECI the high level of VVPAT failure in the recent elections was due to heat. This was difficult to accept as the machines were tested in hot climates.
- Ballot papers from a number of booths were mixed before counting to protect the voting pattern in individual booths. EVMs need to

be used with TOTALISERS to provide the same protection. Unfortunately a Parliamentary Committee has recommended that Totalisers should not be used. Hopefully the Supreme Court will intervene.

- The EVMs are manufactured and maintained by BEL and ECIL. Are these organisations fully protected from threats and incentives? Do they use only in-house engineers? Is there a scope for embedding a chip in the EVM activated by a secret code. All these questions need to be answered.

SESSION 2



Jagdeep S Chhokar

- Political finance is at the core of the black money issue in the country.
- Political parties have successfully resisted attempts to make their funding transparent.
- Efforts by the Association for Democratic Reforms revealed that these Parties have illegally enjoyed exemption from Income Tax without making disclosures required by law.
- Only four Parties submitted details of donations above rupees 20,000 to the ECI. These accounted for only 20% of their income. Eighty percent of their income came from undisclosed sources.
- CIC has ruled that Political Parties are Public Authorities under the RTI but has failed to get its orders enforced.
- ADR has taken the matter to the Supreme Court where the Union of India has submitted in its affidavit that Political Parties should be outside the purview of RTI.

- The UPA government introduced Electoral Trusts. Donations to Parties could be made at arms length through these Trusts.
- ADR investigated one such trust and found that its funds came from UK. This Trust funded both INC and BJP.
- The FCRA prohibits foreign funding of Political Parties.
- Instead of prosecuting the offenders the government has gone all the way out to shield them by amending the law.
- The NDA government has started Electoral Bonds to make funding transparent. The Bonds have actually made it more opaque.
- Anyone willing to fund any Political Party may buy these bonds from the SBI. The KYC details have to be submitted. Although these will be confidential, there is every reason to believe that the Party in power will come to know of the transaction.
- As expected contributions to one Party has increased by 82% this year while contributions to its main rival has decreased by 16%.
- Bringing transparency in political funding will not be easy. Citizens will have to take the help of the media and the Courts to put pressure on Political Parties if anything has to be achieved.



Dr S Y Quraishi

Intervention from the Chair

- While introducing the Finance Bill, the Finance Minister said free and fair elections are not possible unless political funding becomes transparent. He then introduced Electoral Bonds and made it more opaque.
- Donations to Political Parties by Companies were earlier limited to 7.5% of profits. This limit has been removed. Unfortunately no Party protested. Companies can now exist only to run

Political Parties.

- A sting operation by a news agency found secret unique numbers embedded in the Bonds. This was a serious issue. The government has not satisfactorily explained the need for these numbers.
- The AAP website started off by carrying the names of donors. These had to be withdrawn as all donors were raided. Raid raj killed this valuable initiative.
- ECI had some success in curbing money power in elections and around 1200 crore was seized. Now the money reaches its destination before the ECI comes into the picture.
- Public funding of political parties alongwith a ban on corporate funding may be a way out. The expenses declared by the Parties amount to around 4000 crore. A grant of 5500 crore which works out to rupee 100 per voter should be adequate.
- A word of advice. If you want to make a difference work with organisations like ADR and seek the intervention of the Courts.

SESSION 3



Neerja Chowdhury

Challenges to the ECI

- ECI faces multiple challenges.
- There is the challenge of money power that has proved intractable. In Karnataka this year all parties openly offered 5000 rupees per voter. Ten crore is spent in a constituency against the ceiling of 70 lakh. Maybe more in important ones.
- There is the challenge of increasing voter awareness but here we

see a success story. More and more voters are turning out to vote especially women and they are voting differently from their family members. The young voter who turned 18 on 1/1/2018 is yet another target group.

- There is an increasing apprehension in the people about EVMs. People are concerned about malfunction and about manipulation.
- But the most important challenge is to restore the credibility of the ECI. This has suffered because of the arbitrary delinking of the Gujarat and Himachal elections as well as the disqualification of AAP legislators.
- History of ECI tells us that it has performed well under men of stature and quality. How do we institutionalise the appointment of such persons? At present it is the Prime Minister who appoints the CEC and the ECs. Is there a need for a Committee with the PM, the CJI and the Leader of Opposition as in the case of the CVC?
- A strong government tends to weaken institutions such as the ECI or the media. The conversion of ECI into a multi-member body was done with such intentions. It goes to the credit of CEC Seshan that he could deal with the assault. We need to look closely at the appointment of the ECs.



Participants

