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India's 2024 Elections: Unpacking Political Climate, Voting Technology, MCC, Electoral Laws and Reforms

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ABSTRACT

The 2024 Indian General Election is pronounced as a set out of the nation's democratic evolution, underscoring its strengths and vulnerabilities. With over 900 million eligible voters, India's electoral process and political climate remain a pageant of universal relevance. However, the elections also set alight controversies on fairness, voter participation, and Electronic Voting Machines (EVMs) authenticity. While EVMs have streamlined the voting process, concerns regarding their transparency persevere despite introducing Voter Verifiable Paper Audit Trail (VVPAT) systems. This article critically digs into these concerns, collocating them with India's historical electoral reforms and the role of the Election Commission in safeguarding democratic integrity.

Moreover, the election outcome, characterised by the BJP's third consecutive victory yet a downturn in its outright majority, highlights shifting political dynamics, voter sentiment, and the influence of caste-based mobilisation. The study further explores allegations and contentions regarding electoral malpractice, media bias, and enforcing the Model Code of Conduct (MCC). As India stands at a crossroads, the demand for electoral reforms, including enhanced transparency, superintendence, and technological evolutions like blockchain-based voting, is of vital importance. By juxtaposing the convergence of law, policy, and democracy, this article offers a broad overview of the future of India's electoral process.

Keywords: *Electronic Voting Machines (EVMs); Electoral Reforms; 2024 Indian General Elections; Voter Verifiable Paper Audit Trail (VVPAT); Model Code of Conduct (MCC).*

I. INTRODUCTION

India, the largest electoral democracy in the world³, has over 900 million eligible voters out of a total population of 1.4 billion, making its election system a jaw-dropping and mind-blowing

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³ Institute of Development Studies, *India Election 2024: The World's Largest Democracy Votes*, available at <https://www.ids.ac.uk/news/india-election-2024-the-worlds-largest-democracy-votes/> (Last visited on February 11, 2025).

affair.⁴ From the beginning, voting has been perceived as a crucial factor for the survival of democracy and unhampered democracy. Likewise, counting these votes is equally significant, supported by quotes like “In a democracy, voting is not just a right, it is a responsibility” by Dr Rajendra Prasad. The voting system in India has evolved from using cumbersome ballot papers (In the first two General Elections of 1952 and 1957) to convenient Electronic Voting Machines (EVMs). However, debates and controversies come to light even in the 2024 Lok Sabha elections concerning the prevalent method.⁵ Concerned authorities like the Election Commission of India (ECI)⁶ State that these EVM machines are tamper-proof and cannot be influenced, attacked or compromised, leading to the massive deployment of 5.5 million machines in the recent 2024 elections. Nevertheless, specific allegations against the machines were deemed vague by the authorities, as discussed in the later part of this article.

In the 2024 Lok Sabha elections, BJP⁷ Had a third consecutive win, which shows the party's good governance and stronghold in comparison to other parties and an impeccable voter turnout, which gives a positive outlook that people are well-versed in voting in a democracy. However, the factors that resulted in securing fewer seats than expected are crucial to understand, such as serious allegations concerning free and fair polls, unemployment, and issues that paint the BJP as an autocratic government.

Implementing the Model Code of Conduct (MCC)⁸ Clarifies the ethical guidelines for conducting elections, which political parties and candidates must follow. The necessity for the MCC has evolved over the years in response to various unscrupulous tactics used by political parties, such as making false and erroneous claims in their election manifestos. It addresses voters' needs by preventing undue influence from these techniques through punitive measures against the offenders. India's electoral system has undergone significant reforms to uphold free and fair elections, with the Law Commission playing a pivotal role in shaping legal frameworks. Key recommendations, including those from its 255th report, have strengthened the Election

⁴ PRESS INFORMATION BUREAU, *Largest Electorate for General Elections - Over 96.88 Crore Electors Registered Across the Country*, GOV'T OF INDIA January 2024, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=2005189> (Last visited on February 10, 2025).

⁵ NEWS TODAY, *Rahul as PM Chorus Grows Louder*, August 31, 2023, available at <https://newstodaynet.com/2023/08/31/rahul-as-pm-chorus-grows-louder/> (Last visited on February 10, 2025).

⁶ NEWS ISLAND, *Electoral Bond Data Reveals Major Contributors to Political Parties*, March 15, 2024, available at <https://newsisland.in/electoral-bond-data-reveals-major-contributors-to-political-parties/> (Last visited on February 10, 2025).

⁷ BYNEWSINDIA, *Elections 2024 Results: Did Ram Mandir, Ration, and Modi's Guarantee Fail BJP? 5 Major Reasons*, June 10, 2024, available at <https://bynewsindia.com/politics/elections-2024-results-did-ram-mandir-ration-and-modis-guarantee-fail-bjp-5-major-reasons/> (Last visited on February 10, 2025).

⁸ Nisha Srivastava, *BJP accuses Congress of Ignoring Law and Order*, The Daily Guardian, October 27, 2023, available at <https://thedailyguardian.com/others/bjp-accuses-congress-of-ignoring-law-and-order/> (Last visited on February 10, 2025).

Commission's autonomy and improved electoral transparency. Constitutional provisions such as Articles 324–328 govern elections, ensuring equal representation, adult suffrage, and parliamentary oversight. Despite reforms, challenges like electoral malpractices persist, prompting continuous efforts to enhance the democratic process.

This article critically examines the 2024 Lok Sabha elections, focusing on electoral reforms, the MCC, and an in-depth analysis of EVMs and VVPATs. Through utilising research papers and case studies, it analyses their operation, controversies, and the broader implications of election integrity and transparency.

II. RETROSPECTIVE ANALYSIS OF INDIA'S 2024 GENERAL ELECTIONS

India went to polls from 19th April to 1st June 2024, spanning forty-four days and seven different phases in the world's largest electoral democracy, with more than 900 million registered voters among a population of 1.4 billion people⁹. Indian Prime Minister Narendra Modi and his handpicked council of ministers from different constituencies and the ministers from the coalition governments were sworn into office to lead India's new government following the eighteenth general election.¹⁰ The 2024 India general election saw a voter turnout of 66%, with all 640 million votes counted at an unprecedented magnitude, for the first time since the 2014 India general election that brought the Bharatiya Janta Party (BJP) to the reins of power. Prime Minister Narendra Modi will preside over for the rare third consecutive term to rule the country, making him only the second Prime Minister to do so after the congress leader and veteran Jawahar Lal Nehru in 1962. With the coalition government, Modi's ruling BJP secured a majority of 293 seats in the Lok Sabha or the 543-seat lower house of India's parliament. As per the prerequisites mentioned, the party securing more than 272 seats in the lower house can form a government. However, the BJP failed to achieve an outright majority, falling well short of the intended targets and the exit poll's predictions, which were aiming for 370 (400 with the coalition partners and allies). The reinvigoration of the Congress party categorised the General Elections of 2024 due to the figure of Rahul Gandhi, the figurehead of the party, who rebelled against the general predictions and the exit poll's results and prevented the BJP party from securing an absolute and outright majority. The election result was characterised by the strength and resilience of India's institutions of democratic representation.¹¹

⁹ Abdessalam Saad Jaldi, *Retrospective Analysis of the 2024 Indian Elections: BJP Wins the General Elections Against the Strengthening Opposition of the INDIA Bloc*, Policy Center for the New South, June 28, 2024, available at <https://www.policycenter.ma/publications/retrospective-analysis-2024-indian-elections-bjp-wins-general-elections-against>(Last visited on February 10, 2025).

¹⁰ Carnegie India, *Infra* note 12.

¹¹ Jaldi, *supra* note 7.

Between the major contenders of the 2024 Indian Parliamentary Elections, the results seemed to highlight the prominence of the features that by now existed in the Indian political climate, indicating the results achieved by the two opposite ideological poles: a centre-right coalition rallying around a technocratic and market-oriented option, organised around the National Democratic Alliance (NDA) and on the other hand a more assertive left-wing around India National Developmental Inclusive Alliance (INDIA) also known as INDIA bloc, which found a figurehead and an incarnation in the form of Rahul Gandhi. The preelection surveys fielded in early 2024 were unanimous in predicting a landslide victory for the BJP. The *India Today* Mood of the Nation poll, released in January 2024, projected that the BJP would win 304 of the 543 seats in the Lok Sabha, with its National Democratic Alliance (NDA) partners chipping in another 31 seats.¹² Top BJP officials themselves widely held the notion of an election landslide: the party went to the polls touting the slogan “*Abki Baar 400 Paar*” (“this time, more than 400 seats”), projecting confidence that the BJP and its allies would clinch a supermajority in the parliamentary election.¹³ For the first time since Modi catapulted to power in 2014, the BJP relies on its NDA coalition partners to stake its claim to the government.¹⁴ To continue to govern, he must rely on two veteran regional leaders who are a part of the NDA, Nitish Kumar of the Janata Dal (United) (JD) and Chandrababu Naidu of the Telugu Desam Party (TDP).

Caste was at the heart of the 2024 general elections. The two contending alliances, the National Democratic Alliance (NDA) and the Indian National Developmental Democratic Alliance (INDIA), offered contrasting visions of inclusion and social justice. The BJP focused on the integration of Hindu castes under a common religious umbrella. It promoted a welfare apparatus that targets individuals rather than groups. INDIA, on the other hand, made caste a key instrument of social justice, promising representation and a welfare regime that recognises the role caste plays in perpetuating inequalities.¹⁵ Both alliances claim to be inclusive of India’s caste diversity.¹⁶ For a quarter-century, governments were formed through a combination of pre

¹² Raj Chengappa, *Mood of the Nation Poll | PM Modi and the BJP: Heading for a Hat-Trick*, India Today, February 9, 2024, available at <https://www.indiatoday.in/magazine/cover-story/story/20240219-mood-of-the-nation-poll-pm-modi-and-the-bjp-heading-for-a-hat-trick-2499624-2024-02-09> (Last visited on February 10, 2025).

¹³ Neelam Pandey, *Why Modi Has Been Using ‘Ab Ki Baar, 400 Paar’ Less & Less in Election Rallies*, The Print, May 4, 2024, available at <https://theprint.in/politics/why-modi-has-been-using-ab-ki-baar-400-paar-less-less-in-election-rallies/2068618/> (Last visited on February 10, 2025).

¹⁴ Carnegie India, *Decoding India’s 2024 Election Contest*, available at <https://carnegieindia.org/research/2023/12/decoding-indias-2024-election-contest> (Last visited Feb. 13, 2025).

¹⁵ Id.,

¹⁶ See also Gilles Verniers, *Caste and Community Break-up of the New Lok Sabha*, Hindustan Times, June 7, 2024, available at <https://www.hindustantimes.com/india-news/caste-and-community-break-up-of-the-new-lok-sabha-101717726693069.html> (Last visited on February 10, 2025).

and post-election alliance governments, with regional parties acting as a backbone of the national parties. Regional parties acting as a focal point in the government formation enhance their status in the corresponding power balance. The BJP's historic election triumph in 2014 ended the coalition period by securing the first parliamentary single-party majority in three decades, winning 282 seats. No party had achieved such a milestone since 1984 when the Congress Party won a landslide victory in the aftermath of Indira Gandhi's assassination.¹⁷ The BJP's subsequent general election victory in 2019 only bolstered its numbers, cementing it as the new dominant party. The BJP's vote share in 2024 declined by less than one percentage point in 2024 relative to 2019 (36.6 versus 37.3 per cent).¹⁸ This suggests that, on an all-India level, its popularity has not changed significantly. However, its seat tally dramatically dropped (from 303 in 2019 to 240 in 2024), indicating that what has shifted is the regional distribution of that support.

The most significant and crucial aspect of the election process is the voter turnout, which is somewhat lower than in the previous elections of 2019. The lower voter turnout was attributed partly to extreme heatwaves and reduced seat count in several parts of the country to the party. There were several significant issues for voters in the General Elections of 2024 that remained unresolved. The major conundrums were unemployment, the economy, foreign policy implementation, welfare schemes, and Hindu nationalism. After catapulting to power in 2014, Prime Minister Narendra Modi initiated an energetic transformation of the Indian Economy. Pradhan Mantri Jan Dhan Yojana (PMJDY),¹⁹ One of the significant financial inclusion initiatives in the world was announced by Prime Minister Shri Narendra Modi on 15th August 2014 from the ramparts of the Red Fort. While launching the programme on 28th August, the Prime Minister described the occasion as a festival to celebrate the liberation of the poor from a vicious cycle. Shri Narendra Modi had referred to the ancient Sanskrit verse: Sukhasya Moolam Dharma, Dharmasya Moolam Artha, Arthasya Moolam Rajyam – which puts the onus on the state to involve people in economic activity. "This Government has accepted this responsibility," the Prime Minister said & the Government has fulfilled its promise in record time. Pradhan Mantri Jan Dhan Yojana is a National Mission on Financial Inclusion that has an integrated approach to bring about comprehensive financial inclusion and provide banking

¹⁷ FRONTLINE, *A scholar and a politician*, January 14, 2005, available at <https://frontline.thehindu.com/other/obituary/article30203212.ece> (Last visited on February 10, 2025).

¹⁸ Francesca Jensenius & Gilles Verniers, *Indian National Election and Candidates Database 1952 – Today*, 2024, available at http://www.francesca.no/wp-content/2017/11/Jensenius_Verniers_SIP2017.pdf (Last visited on February 11, 2025).

¹⁹ See Satish Misra, *Understanding the Rise of the Bharatiya Janata Party*, Observer Research Foundation, September 2018, available at https://www.orfonline.org/wp-content/uploads/2018/09/ORF_Issue_Brief_258_BJP_N.pdf (Last visited on February 10, 2025).

services to all households in the country. The scheme ensures access to a range of financial services like the availability of basic savings bank accounts, access to need-based credit, remittances facility, insurance and pension. Guinness World Records has also recognised the achievements made under the Pradhan Mantri Jan Dhan Yojana. It has certified that the "Most bank accounts opened in one week as part of the Financial Inclusion Campaign is 18,096,130 and was achieved by the Department of Financial Services, Government of India.²⁰

III. ELECTION REFORMS AND LEGAL FRAMEWORK

Based on the recommendations of the pre-independence Law Commissions,²¹ These were established by the British government, with the first commission being established in 1834, many Acts were enacted, viz. Religious Endowments Act 1863, Official Trustees Act 1864, Carriers Act 1865, Indian Companies Act 1866, General Clauses Act 1868, Divorce Act 1869, Court Fees Act 1870, Land Acquisition Act 1870, Female Infanticide Prevention Act 1870, code of criminal procedure revised 1872. Indian Contract Act 1872, Indian Evidence Act 1872, Special Marriages Act 1872, etc.²²

After independence, the Law Commission of India has had a long and successful record of law reforms since its establishment in 1955. Of the 277 reports presented before the government, 92 reports stand implemented.

(A) Reports and recommendations of law commissions

1. The first Law Commission of India²³ Submitted its 14th report titled 'Reforms of Judicial Administration' in 1958 for both civil and criminal. A comprehensive report for revising the Code of Criminal Procedure, namely the 41st report titled 'The Code of Criminal Procedure, 1898', was submitted in 1969. This report considered the recommendations made in the earlier reports of the Commission dealing with specific matters, namely, the 14th, 25th, 32nd, 33rd, 36th, 37th, and 40th reports. Accordingly, the new Code of Criminal Procedure 1973 was enacted.
2. Recommendations made in Report no 165 resulted in the enactment of The Right of Children to Free and Compulsory Education Act, 2009.

²⁰ Prime Minister's Office, India, *Major Initiatives*, available at <https://www.pmindia.gov.in/en/major-initiatives/> (Last visited on February 10, 2025).

²¹ LAW COMMISSION OF INDIA, *Official Website*, available at <https://lawcommissionofindia.nic.in/> (Last visited on February 10, 2025).

²² LAW COMMISSION OF INDIA, *Achievements & Impact of Law Commission Reports*, available at <https://lawcommissionofindia.nic.in/achievements-impact-of-law-commission-report/> (Last visited on February 10, 2025)

²³ Id.,

3. Recommendations in report no. 186 resulted in the National Green Tribunal Act of 2010.
4. The 20th Law Commission had submitted four reports, numbering 248 to 251, recommending the repeal of obsolete laws /outdated laws, which has resulted in the repeal by the Legislature of over 1500 central Acts.
5. Based on the recommendation of Report No. 253 of the Law Commission, “The Commercial Courts, Commercial Division and Commercial Appellate Division, High Court Bill, 2015 was introduced in the Parliament and has since been enacted.
6. Report No. 246 provided valuable inputs for amending the Arbitration and Conciliation Act 1996 through the Arbitration and Conciliation (Amendment) Bill 2015.
7. Report No. 244 and 255 recommended electoral reforms by strengthening the office of the Election Commission of India to provide more independence and teeth to the institution.²⁴

The Commission has made recommendations about general legal reforms, judicial reforms, matters related to personal laws, labour laws, laws related to the rights of women, children, and old persons, and humanitarian reforms.²⁵

The lawful softening and modifications of the existing central laws and India’s electoral procedures are called Election reforms. To strengthen democracy, equitable politics, the election of the best candidate, and equal representation, the law commission makes several recommendations, including its 255th Report on the Electoral Reforms, which calls for reinforcing and strengthening the office of the Election Commission of India to give the organisation additional power and supplemental independence.

(B) Constitutional articles and provisions with recommendations for reforms

There are various articles instituted in our Constitution that govern the elections and are responsible for their smooth functioning.

Article 324: Superintendence, direction and control of elections to be vested in an Election Commission²⁶

The Constitution entrusts the responsibility to the Election Commission of India under Article 324 to supervise, direct and control the entire procedure and machinery for the smooth

²⁴ Id.,

²⁵ Id.,

²⁶ The Constitution of India, 1950, Art. 324, available at <https://indiankanoon.org/doc/950881/> (Last visited on February 11, 2025).

functioning of the elections and also for some other ancillary matters.

The Constitution (Nineteenth Amendment) Act, 1966,²⁷ Abolished and nullified the election tribunals in India and instead gave the authority and jurisdiction to the High Courts to hear the trials and the matters related to election petitions. The abolition of tribunals and the reinvigoration of their powers to the High Court proved to be a turning point in the election petitions within India. This made the High Courts superior in their sovereignty. It also amended Article 324, subclause (1), and accordingly, the Election Commission is given the authority to supervise, superintend, direct, and oversee elections. The Representation of the People Act of 1951 was also modified, and it rendered the electoral tribunals' appointment and authority null and void. A special provision regarding the ability to appoint election tribunals to adjudicate the uncertainties, shortcomings and issues coming out of or concerning elections to Parliament and the Legislatures of States was eliminated.²⁸

Article 325: No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on the grounds of religion, race, caste or sex²⁹

There shall be only one general electoral roll for every territorial constituency in the country for election to either the House of the Parliament or the House of the Legislature of a State. There will be one central list of voters for each area for elections to either the House of Parliament or the House of the Legislature of a State.³⁰

Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be based on adult suffrage

That is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed on that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.³¹

The Constitution (Sixty-first Amendment) Act of 1988 reduced the voting age of Indian citizens

²⁷ The Constitution (Nineteenth Amendment) Act, 1966, available at <https://indiankanoon.org/doc/950881/> (Last visited on February 11, 2025).

²⁸ See also The Constitution (Nineteenth Amendment) Act, 1966, available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-nineteenth-amendment-act-1966> (Last visited on February 11, 2025).

²⁹ The Constitution of India, 1950, Art. 325, available at <https://indiankanoon.org/doc/1742969/> (Last visited on February 11, 2025).

³⁰ See also The Constitution of India, 1950, Art. 325, available at <https://kanoongpt.in/bare-acts/constitution-of-india/articles-part-xv-article-325-ddf853812b841f5a> (Last visited on February 11, 2025).

³¹ See The Constitution of India, 1950, Art. 326, available at <https://indiankanoon.org/doc/1620503/> (Last visited on February 11, 2025).

*for elections from 21 years to 18 years. Previously, the voting age for an Indian citizen was decided as 21 years based on adult suffrage as in, any person below the age of 21 was not allowed to cast a vote in the elections for the Lok Sabha and the Legislative Assembly of each State. With the introduction of this Amendment(61st), a chance was given to unrepresented youths to express their views, opinions and emotions out in the open, thus inspiring and encouraging them to participate in the political affairs of the nation.*³²

Article 327: Power of Parliament to make provision concerning elections to Legislatures³³

Subject to the provisions of this article, Parliament may, from time to time by law, make provision concerning all matters relating to, or in connection with, elections to either the House of Parliament or to the House of the Legislature of a State, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.³⁴

Article 328: Power of Legislature of a State to make provision concerning elections to such Legislature³⁵

Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision concerning all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.³⁶

India is constitutionally a socialist, secular and democratic Republic, and the success of democracy depends upon the smooth functioning of the electoral process. India has opted for a Parliamentary Democracy in line with the British legacy. Since 1952, the country has regularly witnessed elections to the legislative bodies at the national as well as state levels. The electoral system of India is marked by many problems that have encouraged anti-social elements to jump into the electoral fray and impede the nation's political climate. Our system was largely free from any significant flaw till the fourth general election (1967). The distortions in its working appeared, for the first time, in the fifth general election (1971), and these got multiplied in successive elections, especially those held in the eighties and thereafter. The Election

³² Id.,

³³ The Constitution of India, 1950, Art. 327, available at <https://indiankanoon.org/doc/31824/> (Last visited on February 11, 2025).

³⁴ Id.,

³⁵ The Constitution of India, 1950, Art. 328, available at <https://indiankanoon.org/doc/873755/> (Last visited on February 11, 2025).

³⁶ Id.,

Commission has frequently expressed concern and anxiety about removing obstacles in the way of free and fair polls. It has made several recommendations and repeatedly reminded the government to change existing laws to check the electoral malpractices. The Government of India made several Committees regarding electoral reforms. Several new initiatives have been taken by the Election Commission to cleanse the electoral process.³⁷

IV. ELECTRONIC VOTING MACHINES (EVMS)

An Electronic Voting Machine (EVM), one of the most widely used instruments in the election process and also considered trustable by the Election Commission of India (ECI), is an electronic device that is used to count votes transparently with the help of VVPAT for deciding the winner in an election. This is a replacement for the original ballot box process and a step forward towards the adaptation of technological advancements. This instrument caters for the need for a more reliable and time-efficient process that forms the basis of democracy in India, i.e. the counting of votes, which leads to free and fair elections.

Indian EVMs, manufactured by Bharat Electronics Limited (PSU under Ministry of Defence, Govt. of India) and Electronics Corporation of India Limited (PSU under the Department of Atomic Energy, Govt. of India)³⁸ consist of two Units - a Control Unit (C.U.) and a Balloting Unit (B.U.) that are connected through a five-metre cable.³⁹ The reason for providing polling booths with two units is the need to press the “Ballot” Button by the Polling Officer in-charge to release a ballot, which enables the voter to cast a vote by pressing the “Candidate” Button or the blue button placed in front of every candidate.⁴⁰ Due to inadequate and inconsistent power supply, usually in remote areas, these instruments are powered through ordinary batteries, which enables them to function without any disruption. Presently, in India, the M3 Model of ECI-EVM is in use, which costs about Rs.7,991/- for the Control Unit and Rs.9,812/- for the Balloting Unit. The ECI-EVM model can record a maximum of 2000 votes, but it is used chiefly for 1500 votes. Every B.U. Contains a provision for 16 candidates, including NOTA. One C.U. can accommodate 24 B.U.; hence, each set of EVM can record up to 384 votes along with NOTA.⁴¹

³⁷ See R. Ramesh, *Historical Perspectives of the Electoral Reforms in India*, Vol.72, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 1325-1336 (2009) available at <https://www.jstor.org/stable/44145743> (Last visited on February 10, 2025).

³⁸ Election Commission of India, *Electronic Voting Machines in India: A Status Paper* available at https://ceo.karnataka.gov.in/uploads/media_to_upload1637061008.pdf (last visited February 11, 2025).

³⁹ See also Ashok Kumar D. & T. Ummal Sariba Begum, *Electronic Voting Machine – A Review*, available at <https://bit.ly/3Yz1234> (Last visited Feb. 12, 2025).

⁴⁰ See Election Commission of India, *FAQ on EVM*, <https://ceomanipur.nic.in/documents/FAQ%20on%20EVM.pdf> (last visited February 11, 2025).

⁴¹ See Election Commission of India, *EVM FAQs*, available at <https://www.eci.gov.in/evm-faqs/> (Last visited on

(A) Role of EVM

However, EVM was first used in 1982 in Kerala for an election purpose on an experimental basis, but there were no legal provisions that governed the usage of EVM at that time.⁴² From 1982 onwards, there was a gradual shift in the usage of EVM, which challenges the validity of EVM in India in the case of *A.C. Jose v. Sivan Pallai & Ors.*⁴³ The Hon'ble Supreme Court held that EVMs cannot be used in an election process until there is a specific legal provision governing their usage. Consequently, the election commission recommended the Government of India's formation of legal sanctions specifically for EVMs, which was thus inserted in the year 1989 as §61A of the Representation of the People Act, 1951,⁴⁴ Which enabled the usage of EVMs in India. The amendment of the said act came into force on 15th March 1989.

In the case of *All India Anna Dravida v. The Chief Election Commissioner and Others*,⁴⁵ The constitutional validity of Section 61A was challenged, but the Hon'ble Supreme Court, in its judgement, upheld its validity to protect the law.

(B) Transparency concerns and legal challenges

With more than 2 million EVM units in India and a decade of its usage by the election commission, there are still arguments over its usage, and there are still beliefs that these machines are susceptible to tampering, they can be influenced towards a particular party or can be hacked through its hardware despite having various favourable judgements towards EVM by various Hon'ble Courts of India that these machines are tamper-proof.

However, there are some cases where political parties have alleged that some discrepancies had happened but were later rejected by the election commission.

For instance, in the **Bhind elections**, there was a demonstration to showcase how VVPAT works along with EVMs by an election commission official. After pressing four times, four slips came out representing the parties, but the point of argument was that more slips were in favour of the BJP. Different reports stated different facts about its bias towards the BJP. Some held that machines were not sanitised after the recently held Kanpur elections. However, later,

January 30, 2025).

⁴² Election Commission of India, *Use of EVM in the Elections: Additional Transparency Measures*, available at <https://hindi.eci.gov.in/files/file/99-use-of-evm-in-the-elections-additional-transparency-measures/?confirm=1&do=download&r=230&t=1> (Last visited on February 10, 2025).

⁴³ See *A.C. Jose v. Sivan Pallai & Ors.*, (1984) 2 SCC 656 (per S. Murtaza Fazar Ali, A. Varadarajan & Ranganath Misra, JJ.).

⁴⁴ The Representation of the People Act, 1951, §61A, available at <https://www.indiacode.nic.in/bitstream/123456789/2096/9/A1951-43.pdf> (last visited February 11, 2025).

⁴⁵ See *All India Anna Dravida v. The Chief Election Commissioner and Others*, 2014 SCC OnLine Mad 761 (per Satish K. Agnihotri, A.C.J. & M.M. Sundresh, JJ.).

the election commission dismissed this matter by stating that EVM machines and VVPAT slips are beyond doubt, leaving apprehension in the minds of people that these machines can be tampered with.⁴⁶

In the **Hari K. Prasad Case**, Hari Prasad was an engineer who tried to expose the loopholes of the EVM machine by conducting an in-depth study of Indian EVM with the help of J. Alex Halderman & Rop Gonggrijp. According to them, the display of EVM can be hacked,⁴⁷ but their voice was suppressed by the Election Commission of India. He was arrested with an allegation that he had stolen an EVM machine from the commission for his research, which was denied by the commission.⁴⁸ This case is still challenging the commitments of ECI about the security of EVM machines, but this case raised a serious concern about whether EVMs are safe and secure.

V. VVPAT AS A SOLUTION

Voter Verifiable Paper Audit Trail, commonly called VVPAT, is an independent device that strengthens voters' beliefs that votes cast through EVMs are accurate and non-tampered.⁴⁹ This device releases a slip containing necessary information such as serial number, party name and candidate name, which can be viewed for seven seconds through a transparent window after the vote is cast. After seven seconds, it releases from the device and falls into a sealed box. Though voting was started through EVM machines, the political parties and voters were not fully confident regarding its security. Therefore, the commission in the year 2010 asked the technical committee to explore the possibility of such a prototype in collaboration with the makers of EVM, which was introduced in the year 2011, and the same year, field trials were conducted in Thiruvananthapuram, Ladakh, Cherrapunji and Jaisalmer. Later, after 2 years, the government amended the Conduct of Elections Rules, 1961,⁵⁰ Allowing the Commission to use VVPATs along with EVMs. Consequently, the election commission used VVPATs with EVM for the

⁴⁶ See INDIA TODAY, *EVM Tampering Row: Bhind Demonstration Triggers Political Storm in Madhya Pradesh*, April 10, 2017, 18:47 IST, available at <https://www.indiatoday.in/india/story/evm-tampering-bhind-madhya-pradesh-970604-2017-04-10> (Last visited on February 10, 2025).

⁴⁷ See J. Alex Halderman et al., *Security Analysis of India's Electronic Voting Machines*, in Proceedings of the 17th ACM Conference on Computer and Communications Security (2010), available at <https://jhalderm.com/pub/papers/evm-ccs10.pdf> (last visited Feb. 12, 2025).

⁴⁸ See NATIONAL HERALD, *Why Is the EC Stonewalling Hari Prasad and Questions Raised on EVMs*, August 10, 2019, available at <https://www.nationalheraldindia.com/opinion/why-is-the-ec-stonewalling-hari-prasad-and-questions-raised-on-evms> (Last visited on February 10, 2025).

⁴⁹ Supreme Court Observer, *VVPATs for Voter Verification: Association for Democratic Reforms v. Election Commission of India*, available at <https://www.scobserver.in/cases/vvpats-for-voter-verification-association-for-democratic-reforms-v-election-commission-of-india/> (last visited Feb. 12, 2025).

⁵⁰ The Conduct of Elections Rules, 1961, R. 49MA, available at https://upload.indiacode.nic.in/showfile?actid=AC_CEN_3_81_00001_195143_1517807327542&type=rule&file name=2.conduct_of_election_rules,_1961.doc.pdf (Last visited on February 11, 2025).

first time for the bye-elections of the Noksen Assembly seat in Nagaland in 2013.⁵¹

In the case of *Subramaniam Swamy v. Election Commission of India*,⁵² the Hon'ble Supreme Court held that a 'paper trail' is an essential need of the voters to lay out transparency. The Court ordered the government to provide funds for this mode of ensuring transparency through paper trails and appreciated the commission for this concept of VVPAT.⁵³

VI. MODEL CODE OF CONDUCT

The Model Code of Conduct (MCC) is a set of guidelines prepared by the ECI.⁵⁴ That prescribes the conduct of political parties and candidates during the phase of elections. These guidelines are evolved with the consent of political parties to ensure free and fair elections and also explain how parties can lodge complaints to the EC observers in case of dispute and instruct how the Ministers of the parties in power must conduct themselves when the MCC is in force.⁵⁵ This is enforced just after the announcement of the schedule of elections taking place through a notification from the office of the election commission for its immediate effect till the date of the announcement of the results.

MCC is applicable during the general elections of Lok Sabha, Legislative Assembly and bye-elections of different constituencies. However, MCC is not a statutory law or any law passed by the Parliament, but political parties, candidates, organisations, committees, and institutions wholly or partly funded by the state and centre are bound to comply with the rules and regulations of MCC, otherwise resulting in punitive actions. The punitive offences herein referred to as 'electoral offences' are listed in Part VII and Chapter III of The Representation of People Act, 1951.⁵⁶ Some of these offences include:⁵⁷

- Maintaining Secrecy of Voting
- Canvassing for Votes

⁵¹ See Syed Afzal Akhtar, *The Issue of EVM (Electronic Voting Machine)*, Alliance Sch. of L., Alliance Univ., Bangalore (2021), available at <https://ssrn.com/abstract=3871197> (Last visited on February 11, 2025).

⁵² See *Subramaniam Swamy v. Election Commission of India*, (1996) 4 SCC 104 (per A.M. Ahmadi, C.J., N.P. Singh & B.N. Kirpal, JJ.).

⁵³ See Election Commission of India, *Legal History of EVMs and VVPATs: A Compilation and Analysis of Case Laws* (2022), available at https://www.eci.gov.in/eci-backend/public/uploads/monthly_2022_11/10386732_LegalHistoryofEVMsandVVPATs_pdf.a942a6ed2e36892f92adecb5e88f6d3d (Last visited on February 11, 2025).

⁵⁴ Election Commission, *infra* note 57.

⁵⁵ See The Hindu, *Model Code of Conduct explained: When in force, guidelines, and action on violations*, available at <https://www.thehindu.com/elections/model-code-of-conduct-explained-when-in-force-guidelines-and-action-on-violations/article67957740.ece> (Last visited on February 10, 2025).

⁵⁶ The Representation of People Act, 1951, Part VII & Ch. III., available at https://www.indiacode.nic.in/handle/123456789/2096?sam_handle=123456789/1362 (Last visited on February 11, 2025).

⁵⁷ State Election Commission, Delhi, *Corrupt Practices and Electoral Offences*, available at <https://sec.delhi.gov.in/sec/corrupt-practices-and-electoral-offences> (Last visited on February 10, 2025).

- Disorderly Conduct
- Breaches of Official Duty
- Corrupt Practices: Bribery, Undue Influence, etc.

Given the 2024 Lok Sabha general elections, which commenced on 19th April and were held in 7 phases, MCC came into force through a notification dated 16.03.2024 from the office of the Chief Electoral Officer stating that as the schedule for general elections is announced, MCC will come into effect, and got suspended on the result day dated 04.06.2024.⁵⁸

(A) MCC guidelines and election ethics for political parties and candidates

- 1. General Conduct:** Political parties are advised not to do any activity that can create tensions among individuals based on caste, creed, religion and linguistic diversities. During criticism of other parties, parties allege that they must take care that the leaders' private life and public activities should not be discussed but only their policies and past work. While promoting their policies or in rallies, the right of every individual for an undisturbed and peaceful life should not be compromised by blocking or protesting in front of houses, and permission must be sought to erect flags, paste posters or hang banners.⁵⁹
- 2. Meetings:** It is advised to political parties and candidates that any meeting if proposed, must be informed to local police to maintain law and order to avoid chaos. They must ascertain to follow any regulatory order at that time in the proposed area of the meeting and also have to seek permission for any equipment, such as loudspeakers.⁶⁰
- 3. Procession:** Political parties or candidates organising processions shall inform the authorities and local police regarding their routes, assembly and termination points and seek necessary permissions. Organisers should ensure that no clash occurs among different processions to avoid any difficulties for the general public.⁶¹
- 4. Polling Day:** On the polling day, all the political parties and candidates shall supply their workers' identity badges, shall cooperate with the officers on duty, ensure the non-usage of alcohol, refrain from gathering crowds near camps, and these camps must be

⁵⁸ Office of the Chief Electoral Officer, Delhi, Press Release No. 102(43)/2024/147 (Issued on March 16, 2024), available at https://wcd.delhi.gov.in/sites/default/files/WCD/circulars-orders/general_election.pdf (Last visited on February 11, 2025).

⁵⁹ See Election Commission of India, *Model Code of Conduct*, available at <https://www.eci.gov.in/mcc/> (Last visited on February 11, 2025).

⁶⁰ Id.,

⁶¹ Id.,

simple without any prompt display of flags and posters.⁶²

- 5. Polling Booth:** If the political parties have any complaints regarding the conduct of elections, they may approach the observers appointed by the election commission.⁶³

(B) Key MCC guidelines for party in power

- The Union Ministries and State Governments have to refer to ECI to approve releasing policies, fiscal measures, and financial reliefs during the enforcement of MCC through Cabinet Secretariat and Screening Committees, respectively, which then transfer their proposals to the Chief Electoral Officers.⁶⁴
- There shall not be any announcement of financial grants, projects or schemes involving foundation stones, promises for providing water facilities, construction of roads, public undertakings, ad-hoc appointments and areas such as helipads, maidans, bungalows, rest houses or other government accommodations must not be acquired by one party but to others as well fairly and transparently. However, no such area can be used as a campaigning office or a public meeting office.⁶⁵
- Ministers shall not take undue advantage by combining their official visits with the election campaigning and using official pieces of machinery and personnel during campaigning. The issue of advertisements and hoardings must not be at the cost of the public exchequer, along with the misuse of official mass media during elections.⁶⁶
- The ruling government cannot present the entire budget in the election year because of the uncertainty of the power holders after the elections. During MCC, announcements of new major schemes are restricted because of their potential to influence the voters, as economic surveys in the interim budget are also suspended.⁶⁷

(C) Guidelines for election manifestos

Specific guidelines were issued as per directions given by the Hon'ble Supreme Court in the case of *S. Subramaniam Balaji V. Govt. of Tamil Nadu and Others*,⁶⁸ It was held by the Court to frame the guidelines in consultation with the recognised parties regarding the contents of the

⁶² Id.,

⁶³ Id.,

⁶⁴ PMO India, *Supra* note 18.

⁶⁵ Law Commission, *Supra* note 19.

⁶⁶ Id.,

⁶⁷ PMO India, *Supra* note 18.

⁶⁸ See *S. Subramaniam Balaji V. Govt. of Tamil Nadu and Others*, (2013) 9 SCC 659 (per P. Sathasivam & Ranjan Gogoi, JJ.)

election manifestos.⁶⁹

The guidelines are as follows:

- Anything contained in the manifesto should not violate the ideals and principles enshrined in the Indian Constitution and must be consistent with the provisions of MCC.
- The promises in the manifestos should not contradict the measures that need to be considered while framing laws as given in the Directive Principles of State Policy.⁷⁰ To uphold the sanctity of elections, promises made should not be of undue influence in nature.
- Promises made in manifestos must also reflect the means to achieve those claims to avoid vague promises from the manifestos and to win the trust of voters transparently.

VII. CHALLENGES AND CRITICISM OF THE 2024 INDIAN GENERAL ELECTIONS

As per the media reports and the trends, the 2024 elections were the least free and fair in India's history. Just days after India's nationalist-populist Bharatiya Janata Party (BJP) formed a government for the consecutive third time, Delhi's BJP Lieutenant Governor, V.K. Saxena, maliciously charged the writer Arundhati Roy, a fierce critic of Modi, under the Unlawful Activities (Prevention) Act (UAPA) 2019 for a speech she gave in 2010. The already draconian law was amended in 2019 to allow the government more additional and extraordinary powers to impute individuals and designate organisations as terrorists without a formal judicial process. BJP leaders accused Roy of being a traitor backed by the Congress party. This indicates that some version of authoritarian populism, with its attacks on dissent, the undermining of institutions, and social polarisation, will likely continue to shape governance under the new government.⁷¹

For much of its history as an independent state, India has been an electoral democracy. However, the V-Dem Institute now regards it as an electoral autocracy without sufficient freedoms and safeguards to ensure a free and fair electoral process. Since the last general elections of 2019, the fairness and quality of India's electoral democracy have steeply declined. Such discourses framed the government's policies and its institutional capture. For instance, the government's welfare policies, consisting of small cash transfers, small loans, food rations, and

⁶⁹ Law Commission, *Supra* note 19.

⁷⁰ The Constitution of India, 1950, Directive Principles of State Policy, Part IV, Art. 36-51, available at <https://www.mea.gov.in/images/pdf1/part4.pdf> (Last visited on February 11, 2025).

⁷¹ Priya Chacko & Kanchan Panday, *The 2024 General Election and the Future of Authoritarian Populism in India*, European Center for Populism Studies, June 22, 2024, available at <https://www.populismstudies.org/the-2024-general-election-and-the-future-of-authoritarian-populism-in-india/> (Last visited on February 10, 2025).

subsidies for private goods like toilets and insurance, have been communicated as superior to previous programs, which were constrained in their delivery by elite corruption and as ‘guarantees’ of a better life from Modi. Nevertheless, their limited nature means that considerable onus is placed on personal duty to pursue ‘empowerment through market participation, which is consistent with Hindutva’s emphasis on *swadharma* (own duty) for the upholding of social order rather than transformation. Nationalist-populist discourses underpinned the introduction of policies targeting and stigmatising Muslims, such as curtailing interreligious marriage on the grounds they often involve religious conversion and the coercion or tricking of Hindu women by Muslim men – and the promotion of Hindu upper caste behavioural norms, for instance, banning beef production and consumption. Both religious conversions (termed ‘love jihad’) and beef production, the BJP claimed, permitted establishment elites to cultivate Muslim ‘vote banks.’ Liberal universities were targeted as full of ‘anti-national’ elites, and their administrations were filled with pro-government leaders. Courts increasingly favoured the executive, including by adopting its rhetoric. The mainstream media became increasingly uncritical of the government, while the independent media were subject to censorship, defamation charges and tax investigations to stifle their dissent.⁷²

Modi’s initial campaigning revolved around his welfare ‘guarantees’ for improving the lives of the poor and the building of a temple marking the birthplace of the god Rama on the site of a mosque demolished by Hindutva activists in 1992. This campaigning emphasised aspirational nationalist populism, tinged with anti-Muslim resentment. Modi has sought to represent himself as an aspirational leader, leaving the espousal of anti-Muslim rhetoric to colleagues like Amit Shah, vigilante groups and his supporters. During the inauguration of the Ram Temple in January, for instance, while Modi declared the temple a symbol of religious unity, his supporters filled public spaces, both virtual and physical, with anti-Muslim rhetoric.⁷³

As the campaign wore on, however – perhaps due to low voter turnout and negative internal polling – Modi resorted to explicitly Islamophobic and anti-elite rhetoric. Modi declared the Congress Party manifesto as having an imprint on the Muslim league (The party often blamed for the partition of India in 1947). He also accused the Congress Party, which pledged to snatch away affirmative action benefits of lower castes to satisfy the Muslim vote bank. In the state of Bengal, ruled by prominent regional party and Congress ally Trinamool Congress’s Mamata Banerjee, the Prime Minister evoked the fears of infiltrators (implicitly Muslims) snatching

⁷² Id.,

⁷³ Id.,

away the resources of the Hindu people of Bengal. He also alleged that Congress's emphasis on redistribution meant that it wanted to snatch away the mangal sutras (an ornament worn by married Hindu women) and buffaloes of Hindus to give to Muslims. The Indian Election Commission failed to adequately enforce the Model Code of Conduct and address the issues concerning these comments.⁷⁴

VIII. CONCLUSION AND WAY FORWARD

The 2024 Indian General Elections saddle out as a vindication of India's electoral democratic spirit and a stark reminder of the challenges and conundrums that continue to plague the electoral process and political fray. The alteration from paper balloting (used in the first two general elections of 1952 and 1957) to a marking system, which was being used from the 1962 general elections till 2001, when EVMs were fully used to conduct the elections, marked a significant leap towards efficiency and a free and fair electoral process. However, scepticism about their reliability and biases accentuates the importance of continuous technological and legal scrutiny. Electoral disputes, political controversies, polemics and constant altercations necessitate enhanced transparency and accountability mechanisms to have a check and balance on the integrity of EVMs. Incorporating VVPATs has been interceding in the right direction. However, its execution needs further clarification to address persistent concerns about electoral fraud and voter trust.

The maintenance of a level playing field for all political participants is significantly influenced by electoral laws and the role of the Monitoring and Compliance Committee (MCC). Despite bringing these regulations into being, their execution frequently proves inadequate, resulting in breaches compromising the integrity of the electoral process. A multitude of challenges, including the swindling of campaign funds and the strategic manipulation of social media to disseminate misinformation, calls for developing a more robust legal framework to address these evolving conundrums effectively.

To reinvigorate the democratic electoral framework in India, it is vitally important to enhance the independence and sovereignty of the Election Commission. This objective can be fulfilled through measures aimed at reducing inappropriate political clout and implementing significant reforms in campaign financing and voter education initiatives. Such actions represent fundamental steps toward strengthening the fabric of electoral democracy.

There exists an imminent need to transition the discourse from mere obedience to procedural

⁷⁴ Id.,

regulations toward a focus on electoral reforms. The integration of global best practices, including blockchain-based voting systems and improved voter awareness programs, may provide valuable strategies to enhance the authenticity of the electoral process. Therefore, a democratic election encompasses more than just casting votes; it necessitates the assurance that each vote is counted accurately and ethically.

Consequently, the immediate concern extends beyond implementing reforms to safeguard electoral integrity. It is necessary to ensure that the democratic ideals espoused within India persist as not merely aspirations but as enduring realities. The concerted efforts interceding in this direction will be vital for the preservation and advancement of democracy within the nation.

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