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# The Grievance with the Voting Procedure for Election in India: A Suggestive Approach

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## ABSTRACT

*India is a largest democracy and also at the same times the most populated country upon the recent census so the democracy is not something is very much readily available so the only way to protect the democracy is through the conduct of the elections and the conduct shall not be driven by any other external influences. So, in this paper the researcher is ideally dealing with the procedure of such voting shall commence. Basically the procedure of such election has actually seen a great transition right from the concepts of the ballot paper to the Electronic Voting Machines and in order to understand whether there is justice the researcher would refer to various definitions given by the jurists.*

*The researcher would like to deal with the both the systems and then analyze which of the two systems is lacking the interest of democracy and is working against the principles and practices laid down by the Constitution. So, the researcher would like to understand the issues associated with both the systems and then propose a suggestion in the interest of the democracy.*

**Keywords:** *Constitution, Democracy, Electronic Voting Machine, Transition.*

## I. INTRODUCTION

In a country like India which is rich in democracy the need for the elections is very much essential in order to continue the legacy of the largest democracy in the world. So, the elections in India happen in every 5 years. The happening of an election is actually something where the democracy is protected and the definition of democracy being given by various jurists follows:

*In the dictionary definition, democracy "is government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system."*

*In the phrase of Abraham Lincoln, democracy is a government "of the people, by the people, and for the people."*

*Popper as cited in Javie (2006) defines democracy in contrast to dictatorship or tyranny. He places emphasis on the availability of opportunities for the people to control their leaders and*

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to them without recourse to a revolution.

Plate claims that He claims that democracy is *a danger due to excessive freedom*. He also argues that, in a system in which *everyone has a right to rule, all sorts of selfish people who care nothing for the people but are only motivated by their own personal desires are able to attain power*.

Socrates believes that democracy is the second worst type of government. Democracy is having “*complete freedom and dignity*.” It is the avoidance of anyone’s control. Those in democracy are motivated simply by pleasure that accompanied freedom and dignity.<sup>2</sup>

The election is actually a procedure whoso ever the citizen of India who has completed the age of 18 years of age shall participate in the procedure of an election. So, thorough the process of the election the people of the country actually decides who shall represent the State and rule them. And when whoever wins the election with the vote percentage shall be in a position to legislate laws and put before the Assembly for the consent of the opposition and the assent of the Governor in case of the State and that of a President in case of a Center.

So, the procedure of the election shall actually begin with the notification given by the Election Commission and then the date shall be mentioned in such a notification and then the process would then proceed with the nomination procedure and then the allocation of the symbols to the candidates shall happen and then the scrutiny of the nomination papers would be the conclusion. And then the at the end there is a voting for which the people elect the candidate out of the people who filed the nomination.

#### **(A) Research problem:**

The problem which is being associated with the electronic voting machine is that the Electronic voting machine is something which is being followed is through the software coding and the same coding is being proceeded and to add something that there cannot have any instance where software cannot be progressed without any bugs.

And it is not possible to actually remove the bugs and if in case the same coding is not being proceeded properly then the instance would be in such a way that there is in methodology for the recounting in case if the bug is being detected and the same cannot be any more be rectified.

And in addition to there cannot be an opportunity to actually look back and recount in various scenarios There can be lot of chances for which the commissions of fraud be overtaken as such

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<sup>2</sup> *Socrates and Aristotle's views on democracy* (no date) *Bartleby*. Available at: <https://www.bartleby.com/essay/Socrates-And-Aristotle-s-Views-On-Democracy-PKGXJH3LDE7Q> (Accessed: 04 September 2023).

a result.

It is impossible for any person for that matter to actually create a bug- free software and that is not something which is a problem here and the extent of the loss which is does is something a problem and what are the measures taken by the election commission in order to do the same is the problem.

The election software is very complex as because of the wide variety of ballot types which are used across the nation and it will contain the errors and there is nothing to do with the skill and the dedication put forward by the Engineers and the programmers who code it.

**(B) Research question:**

- Whether the transition that has happened from the ballot paper to the present Electronic voting machines addresses all the grievance or creating new challenges?
- Whether the democracy is being protected by the use of the Electronic Voting Machines or does it seeks a validation?

**(C) Literature Review:**

**1) Procurement and the Polls: How Sharing Responsibility for Acquiring Voting Machines Can Improve and Restore Confidence in American Voting Systems**

This article is being written by Philip J. Peisch and then published by THE GEORGETOWN LAW JOURNAL. The author of this article initially mentions the development of the electronic voting machines and how it is hampering the interest of the democracy. The researcher used this article to understand the transition of the ballot paper to the electronic voting machines. And then it helped the researcher to formulate the chapter 2 and then understand the gap which is making the democracy more costly.<sup>3</sup>

**2) Electronic Voting Machines and Ballot paper. Which is better for the democracy?**

This article is being written by the Sevotolu Rhakho and the same is being published by the Morung Express. The author through his article explained the realistic examples and then explained the merits and the demerits of both the systems. The researcher used this article to understand the importance of having a unique system for the sake of election purposes. And then formulate the problem associated with the use of the system<sup>4</sup>.

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<sup>3</sup> Philip J. Peisch, Procurement and the Polls: How Sharing Responsibility for Acquiring Voting Machines Can Improve and Restore Confidence in American Voting Systems, 97 GEO. L.J. 877 (2009).

<sup>4</sup> Sevotolu Rhakho, Electronic Voting Machines and Ballot paper. Which is better for the democracy? , Morung Express, (April 16<sup>th</sup>, 2023), <https://morungexpress.com/evm-vs-ballot-paper-which-is-better-for-democracy>.

### **3) The Paperless Chase: Electronic Voting and Democratic Values**

This article was actually written by the Daniel P. Tokaji and then published by the FORDHAM LAW REVIEW. The author in this article explained the importance of actually having an election and how the same election process is complementing the working of democracy. And then cited few definitions given by various jurists in relation to the democracy and the also the criticism in relation to the democracy was also highlighted. The researcher used this article in order to understand the gap between the actual democracy and the democracy system which is being followed and how the conduct of elections is bridging the gap.<sup>5</sup>

### **4) How electronic voting machines have increased the democracy?**

This article is actually being written by Shamika Ravi and then the same is being published by the BROOKINGS. The author in this article explained the need for the transition from the ballot paper to the Electronic voting machines and then continued to explain how the use of the Electronic voting machines solve the problem of having been used the system of the Ballot paper. The researcher used this article in order to substantiate and back the Election Commission in making it use the technology that is viable in this decade. And then through this article the researcher understood the model of the Electronic Voting machines and then how the process of election undertakes through the use of voting machines.<sup>6</sup>

#### **(D) Scope and Objective:**

- The primary objective is to look into and understand the transition from the Ballot paper to the Electronic Voting Machine.
- To understand the issues with the associations with the electronic voting machines.
- And in the same process would like to suggest and pronounce a few reforms which would actually reduce the burden on the Election Commission and then make sure the democracy is protected.

#### **(E) Research Methodology**

The methodology used in this research paper is a traditional method of research that is Doctrinal research. It involves the understanding the procedure adopted by the Election Commission of

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<sup>5</sup> Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711 (2005).

<sup>6</sup> Shamika Ravi, *How electronic voting machines have increased the democracy?*, BROOKINGS, (April 18<sup>th</sup>, 2023), <https://www.brookings.edu/blog/techtank/2019/12/06/how-electronic-voting-machines-have-improved-indias-democracy/>

India and then understands the issues associated with the procedure adopted by the Election Commission of India in relation the electronic voting machines. And analysis of a material in such sector the researcher actually used secondary sources like journal articles, books and case studies for the entire process of research.

## **II. TRANSITION FROM THE BALLOT PAPER TO THE ELECTRONIC VOTING MACHINES**

### **(A) The ballot papers era:**

The hand counted ballot paper is something where a ballot paper would be issued to the voter and the voters then would actually look into the proposed candidates and then put a mark or a stamp on a concerned candidate whom they feel like voting and then get their votes casted. So, this is basically the procedure of the election way back then so the issues which were highlighted are mainly the illiteracy where the people may be in a position not even to read the candidates name and then cast their vote and there can also be a situation where people might need an aid in understanding and sometimes and in few cases they do get their ballot papers along with them with casting their votes but not actually depositing them in a deposit boxes.

The fundamental issues with the ballot paper are mainly the issue in relation to the Bio diversity that is the wastage of paper it means to Reverting back to paper from electronic means is the same as turning back to primitive raw meat even after the discovery of fire. When even the most polluting industries are trying to become greener and reduce their carbon footprints, using paper on such a huge scale despite more eco-friendly options being available is a direct neglect of the environment.

#### **a. Time Consuming Manual Ballot Counting**

The time which would actually take in order to count the votes and arrive that result the votes are counted manually and then there is probability of actually happening of an error and it is a tiresome task. There are approximately 80 crore registered voters on India during the last general election and then counting the voters ballot paper and then verifying the details takes a lot many more days to come as such to arrive the result. And this might result in miscounting of votes and then adds huge time to actually count back. And there is an instance in a Panchayat election in Odisha conducted using ballot papers, there was a scene of miscounting wherein candidates won according to the second counting. However, there is no way of knowing whether

the first count was correct or the second. One can never be sure.<sup>7</sup>

#### **b. Booth Capturing: Show of Muscle Power**

The use of muscle power has been a tool for many political parties who are not in a belief of actually reaching the state of majority and there is also chance of happening of the same if there is notion that they would lose.

Apart from this, booth capture instances by CPM party in West Bengal are not hidden from anyone. In an interview with *The Economic Times* on 1 February 2019, the Chief Election Commissioner, Sunil Arora said regarding shifting back to paper ballots, “Political parties have a right to make their feedback known and their apprehensions because they're the biggest stakeholders after the voters. But we're not going to go back to ballot-paper days. We're not going to the days of ballot papers being snatched, muscle powers being used for that (and) inordinate delays in counting.”

#### **c. Methods of Vote Manipulation in Ballot Paper**

Aside from booth capturing, other methods of vote manipulation have come into play in the past elections. This includes the difference in inks during vote casting. A video from the Rajya Sabha Elections in Haryana showed how the vote casting times were different for BJP MLAs and for Congress MLAs and that later the votes cast by Congress MLAs were not taken into consideration due to change in the pen used for casting votes. Sometimes, even some papers where votes are cast can be changed voluntarily or under forced circumstances thus, making the voting scenario quite unsafe for both voters and members of the election commission.

#### **d. The progress of ballot paper in present day:**

The advantage which the ballot paper actually has is that there is no chance for hacking unlike the same which would probably happen in case of the Electronic Voting System. As because it cannot be pre processed as it is being done in case of electronic voting machines in order to get a desired voting system. There is no algorithm programmed or the electronic wiring that can actually be tampered with by an individual or a group of experts to give a desired result that is favourable for the one party.

The notice of the problem with the electronic voting machines is being addressed by the Netherlands and then they have really banned the system of using the Electronic voting machines in the year 2006. And in the month of March 2009 the Supreme Court of Germany

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<sup>7</sup> *EVMs vs paper ballots: Which one is better to use?* (no date) *GD Topic: EVMs Vs Paper Ballots - Which one is Better to Use?* | *MBAUniverse.com*. Available at: <https://www.mbauniverse.com/group-discussion/topic/current-affairs/evms-vs-paper-ballots> (Accessed: 04 September 2023).

ruled that the voting through the electronic voting machines was and would amount to unconstitutional act. And in the same year even the Republic of Ireland followed the same and banned the use of the Electronic Voting Machines and the same even followed by the Italy.

As these countries have actually adopted the paper ballot systems from the already developed nations like the England, USA and also are practicing the same the Indian political parties are putting a forward notion that the same practice shall be adopted in India as well. But with the difference in the advent of the political ideologies and systems they face in there can be different election methods that is the backed up by the Election Commission as such.

### **(B) The development of the Electronic Voting Machines:**

The technology now which is being used in this century is the Electronic Voting Machine which it generally means the use of electronic to either aid or take care of the chores of casting and counting votes in relation to the happening of the process of election.

So, it is basically designed in a way that it has two units primarily one is the controlling unit and the other would be the balloting unit. And the same two units are attached by a cable and the control of the EVM is kept with the polling officer or the person who sits in the presiding officer. The balloting unit is kept with the voting compartment for the electors to actually cast their votes and this is done to ensure that the identity of the voter is being identified.

So, with the use of the electronic voting machine instead of the ballot paper the polling officer will press the ballot button which actually enables the voter to cast their vote as such and then a list of the candidates names and symbols will be available on the machine to aid the voter and the same will be a blue button next to the list of the candidates. The voter can actually press the button next to the candidates name and then they can actually voter for they can actually vote.<sup>8</sup>

The elections in India actually and the era of the electronic voting machines is being happening from the period of 30 years by now and then it started to began soon after India getting independence. So, till the invent of the electronic voting machine the procedure followed was the ballot paper and there are issues in relation to the usage of ballot paper and few of the fundamental of such usage of the ballot paper are like Vote rigging, forged voting, booth capturing with muscle power, too much time consumed in getting the paper ballots packed and to avoid the wastage of tons of paper during election process,

So, the Election Commission of India considering the problem associated with the usage of the electronic voting machines has looked into the alternate and better way of using the voting

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<sup>8</sup> (No date) History of EVM - Election Commission of India. Available at: <https://eci.gov.in/voter/history-of-evm/> (Accessed: 04 September 2023).



power by the citizens.

Accordingly the use of the Electronic voting machines were adopted and the use of this technology was started in various parts of India firstly in the State of Kerala in the year 1982 but the decision to actually have only the usage of the Electronic voting machines happened to take place in the year 2004 and parted away from the use of the ballot paper.<sup>9</sup>

**a. The debate over the usage of EVMs:**

The party which is aggrieved from the date of the announcing the election result only would be the subjecting and raising out claims that there is a grievance in the methodology used by the election commission.

Be it the era of the ballot paper there is a chance of booth capturing and now the claims are upon the technology used by the electronic voting machines and now it is upon the tampering issues which should have happened as such are the claims.

The first instance of the EVM tampering came forward during the General elections 2009 when the BJP lost the elections and then they coined the term as EVM hacking and a detailed explanation and report of the surveys were also aided to the complaint filed before the election commission by the LK Advani the leader of BJP.

So, subsequently when the BJP won the general elections in the year 2014 by a majority of 51% the congress started putting claims against the BJP and then even recently the opposition leaders when the BJP won an election in the year 2017 and they even highlighted the programming in the EVM so that the vote went on to a preferred party. This was supported by the Congress and the Samajwadi party as well then.

In light of the above issues few leaders of the political party made a report and then submitted to the election Commission of India then there is a need to change back to the traditional method of conducting the elections but the fact is that there is a problems associated with that as well so in order to address those issues what measures and steps shall be undertaken in order to curb such practices.

In response to the same the Chief Election Commission Mr Sunil Arora accepted the report and then made a statement stating that there would be no change in the near future or shifting the practice from the electronic voting machines to the Ballot paper again. And it has been a consistent policy of the ECI (Election Commission of India) for quite some time and I think it will remain the same.”

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<sup>9</sup> <https://eci.gov.in/evm/>

**b. The Impact of the Electronic Voting Machines:**

The use of EVMs significantly reduced electoral fraud, especially in politically sensitive states where election manipulation frequently required re-voting for which the use of ballot paper can still be a problem. It benefited the society's weaker and more vulnerable groups, such as women and scheduled castes and tribes, who were now more likely to vote. The electoral process became more competitive as a result, and the winning party's vote share and margin of victory both decreased. The electoral process became more competitive as a result, and the winning party's vote share and margin of victory both decreased.

The election process has unintentionally become more effective with the switch from manual to computer resources. The system has become quicker and more reliable than paper ballots, whether in terms of quicker result announcement, the elimination of vote-counting errors, or the ease of the voting process. Whereas miscounting on paper ballots occasionally raised doubts about a candidate's victory, EVM resolves that conundrum.

By decision of the Supreme Court, the VVPAT was added to EVMs in 2013. This effectively represents a printout of a voter's vote. To ensure that voters were confident their votes were being cast for the candidates they had picked and not for any other party, this mechanism was created.

**i. The Negative Impact:**

EVM failing during the voting process has frequently been documented in the past as a result of some inherent flaws in a specific machine. Although the machine is changed after receiving a complaint of a failure, the voting process is nevertheless hindered for the time being, and occasionally a repoll is required.

Despite all the precautions, a machine can fail anywhere in the world. The votes stored in both EVMs are also taken into consideration as soon as the second machine arrives. EVM tampering is deliberate and has not been supported by any evidence to date. When someone or a group of people tamper with a voting machine, all votes are recorded for that specific election.

Let's think about the likelihood that EVM might be compromised, if not now, then perhaps in the future, as we have seen with all electrical devices and machinery, be it a smartphone, TV, computer, or other device. The control unit, ballot unit, and VVPAT make up the Indian EVM. Each EVM unit is independent and not linked to any other equipment. Therefore, even if it were possible to tamper with the EVMs, doing so would take meticulous planning on the part of the hacker, a vast network of cyber professionals, as well as assistance from the Election Commission itself. This notion seems incredibly unlikely to be true.

When we entrust the recording and storing of our votes to an entirely electronic process, we are left with little redress in the event that the process fails, which it does far too frequently, according to history. Voters using DRE voting machines can review and amend their selections on the touch screen's final summary display before casting their ballot. However, DREs do not give voters a way to check how their vote is recorded in the electronic memory of the DRE. As a result, the voter cannot see or verify the electronic ballot records stored in those memory circuits, and they are also able to change them. However, the information contained in that fictitious, transient, and unreliable computer memory is what is used to tally the votes.

Without voter-verified paper records that accurately reflect the voters' choices, it is simply impossible to perform a meaningful recount. While most DRE voting machines can print a paper record of the votes cast, this report is not generated until after the polls have closed, and is nothing more than a printout of the electronic records. If the electronic record is inaccurate, then the printed report will also be inaccurate.

For instance unlike the events which would probably occur a voter marks the appropriate locations in the voting machine and gives a command to cast the ballot and due to a software problem or due to the malfunction the computer records the ballot in a wrong direction for which would not have wanted. The voter leaves the booth, and at the end of the day, the poll worker prints out the ballot images. The voter's votes are incorrectly tallied and the printed ballot image is incorrect, but this error goes undetected because the voter is not there to view the printed version. But because the printed version of the ballot images all match the electronic records (as they must, since one is simply a copy of the other), elections officials proudly report that they have successfully conducted yet another flawless election.

So, if in case there is a situation of recounting then there is no mechanism adopted by the machines to actually recount. While most DRE voting machines can print a paper record of the votes cast, this report is not generated until after the polls have closed, and is nothing more than a printout of the electronic records. If the electronic record is inaccurate, then the printed report will also be inaccurate.

### **III. CONCLUSION AND SUGGESTIONS**

The researcher after the analysis from the various terminals and postulates would like to conclude that there are issues associated with the use of technology and also with the use of paper but the point which needs to be noted is that what are efforts and the measures taken by the Election Commission in order curb such practices is the discussion. The Economic intelligence unit while actually measuring the democracy indexes of various countries have

actually ranked that the rate of democracy in relation to the India's Electoral process a score of 9.17 out of 10 and it is completely the achievement of the Election Commission of India and as it is before there is speculative growth in the rate only after the shift from ballot paper to the Electronic voting machines but even now there is actually a problem with the index it is weighing only the percentage of 9.17 why not 10 out of 10. So, it is necessary to look into the practices which are hampering the interest and then act productively in order to achieve democracy.

The suggestions which the researcher would like to propose is that if we are again relying upon the ballot paper mechanism then the whole nation is going back 10 years for which we in today so rather than going with the opposition leaders the researcher would like to propose is that there is a need to adopt both the procedures that is the ballot paper and the Electronic Voting Machines as because the problems with the EVMs are addressed by the usage of the Ballot paper and the issues in relation to the Ballot paper were being addressed by the advent of the Electronic Voting machines. And in addition to the same there shall be the compliance team in which the head is shall be appointed by the Election Commission to cross verify the check the compliance and the same officer shall be appointed in consultation with the leader of the house and also the leader of the opposition as well. And one more thing which the researcher would like to suggest is that the Voter Verifiable Paper Audit Trail mechanism shall be adopted in all the polling stations and in all general assembly elections in order to ensure the democracy is protected not the interest of the parties is protected.

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