

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 39/ECI/HAR-LA/2024/NS-II

Dated: 29.10.2024

To

Sh. Mallikarjun Kharge
President, Indian National Congress
24, Akbar Road
New Delhi.

**Subject: Representations by Indian National Congress related to 26
Assembly Constituencies in Haryana—regarding**

Sir,

I am directed to refer to the memorandums/representations dated 09.10.2024, 10.10.2024, 11.10.2024 and 14.10.2024, which were in continuation of the submissions made by the official delegation of INC which met the Commission at 6:00 PM on 09.10.2024. The primary point made in the oral discussions pertained to :

- i. Seeking clarification on perceived lack of clarity on display of 99% battery status on the CU of EVMs, during counting in some Polling Stations of 26 Constituencies.
- ii. Embedded in this concern was the apprehension of replacement of CU itself. In the said meeting, the delegation also pointed out that during the counting process on 08.10.2024, in several assembly constituencies, the INC candidates or their representative brought this fact to the notice of ROs, including through written representations in 6 constituencies.
- iii. The delegation then stated that there are likely to be complaints from around 20 other Assembly Constituencies, for which they sought time to collate all such complaints and grievances to be submitted to the Commission latest by 5:00 PM on 11.10.2024.
- iv. It was also requested that all EVMs of the said Assembly Constituencies must be retained in 'Safe custody' till ECI examines their complaints/grievances.
- v. In addition, the delegation made the point that there was a deliberate slowdown in the speed of counting and uploading of its data. The delegation reminded and recalled its publicly expressed protests on the day of counting itself.
It was clarified by ECI that as per Statutory instructions/rule, all EVMs are kept in safe custody for a period of 45 days (i.e. up to time period of Election Petitions).

2. The Commission made an exceptional consideration of allowing a centralized reference, outside the established process of the candidates being required to submit representation to respective Returning Officers (ROs) / District Election Officers (DEOs) at any stage till the results are declared, after which ROs

become *functus officio*. The Commission readily agreed to the INC request for 48 hours' time for submitting further grievances. It assured the delegation that all their collated representations will be documented and comprehensively dealt with.

3. Accordingly, the Commission had forwarded all 26 representations, received from INC to the respective Returning Officers (ROs) through Chief Electoral Officer, Haryana who are the statutory authorities designated to conclude the electoral process, including counting, in a decentralized manner.

4. It has been confirmed to this Commission that all the 26 statutory authorities i.e. ROs have given a detailed constituency wise response to respective INC candidates, containing annexures as documentary evidence.

5. CEO, Haryana has additionally studied responses of each RO and reported to the Commission vide his letter no. 345-359/CU Power Pack/HVS-2024/4AE – 12558 dated 29.10.2024 (CEO's report along with response of 26 ROs with annexures running in 1642 pages on aggregate basis is available at <https://ceoharyana.gov.in/WebCMS/Start/1935> . The report of CEO *inter alia states that*

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- I. The returning officers have not found any evidence of any wrongdoing in any electoral processes. The replies reflect continuous participation of INC candidates, representatives and their agents in various processes of election, including EVM processes
- II. Total 19 representations do not even mention at what point in time the battery was showing 99% capacity, and how does it have a bearing on results and whether any complaint was made at any stage before declaration of result.
- III. ROs have listed 10-12 stages where Candidates/ authorized agents have participated in the process and have attached minutes signed by various candidates/ their authorized agents.
- IV. The ROs have, in particular given details of participation of authorized agents of the candidates with documentary evidence, from the day of commissioning of machines, when batteries were installed around 7-8 days before the poll, and till the counting process was over to show that handling of EVMs without presence of authorized representative of the candidate is an absolute impossibility. That is perhaps the reason that no complaints were raised till the counting process was over.
- V. All complaints are too general, kind of one pager, as if candidates filed these under some "common" direction.

6. Independent of the specific complaints, to which ROs have responded, the grievances of INC about the display of the status of battery apparently flow from a lack of clarity and understanding of the exact implications of the display on the CU. Erroneously, the display of 99% as "battery status" is being invoked to suggest a replacement of CU surreptitiously- a total impossibility – as informed

and explained by respective ROs. Any suggestions to see a relationship between the display of battery status on the CU and voting count within the CU, is outside the basic design of the EVM system. However, still it might help to place some routine facts about power packs of EVM system, the most critical point being that voltage or capacity level has no linkage to functioning of EVM. The power pack unit in EVM system is carefully engineered hardware input which underwrites the following: :

- (a) Not requiring any external power source, therefore, validating the primary quality of the EVM system being a stand-alone system. It doesn't have any port to connect to the external world either through wire or wireless).
- (b) It is engineered in a precise manner to deliver power to the core features of EVM system. It is a single use item, therefore, has to deliver and sustain from the point of installation (which is in the presence of the candidate and the representative) and up to the date of counting. The entire custody chain during this period is in the presence of stakeholders.
- (c) It is a custom design in terms of shape and capacity to power the operations of the EVM system.
- (d) Battery compartment is a secure compartment with insertion of the power pack and sealing in the presence of candidates/representatives.
- (e) By definition, it is not a, "high security" item. While the battery packs have individualized serial numbers, they are for the purpose of manufacturing and inventory management. It remains individualized as a generic item in nature of a consumable, to service EVM System.
- (f) It is engineered to be a power source alone and agnostic to the hardware and embedded firmware. In that sense it is a hardware externality.
- (g) The display of the status of battery on the CU is primarily to facilitate the technical and poll duty teams to be alert to replace/change battery units. Hence, no record keeping of power pack battery levels is provided for, nor is it required.
- (h) It has fail-safe features i.e. its "discharge" or replacement cannot erase or, in any way effect the vote count or any other operational features. A replaced battery unit will resume operations from where the previous unit had stopped.
- (i) All incidents of battery change and defects are recorded in a separate report as provided in Annexure 27 (Part-II) of EVM Manual. Such a report is submitted by the presiding officer, if relevant.
- (j) After counting is over, power packs are removed from CU before sealing, in the presence of the stakeholder's present, to ensure safe storage till 45 days and beyond, as required (Para 14.11 of EVM Manual).
- (k) Any change of power pack can happen during mock poll, on poll day or on counting day in presence of candidates or their agents and recorded in a format provided in Annexure 27 (Part-II) of

[EVM Manual](https://www.eci.gov.in/eci-backend/public/uploads/monthly_2023_08/EVMMannualAugust2023.pdf.1f8976b609ce6fef9b0fe69d3f848ff) (available on ECI website at https://www.eci.gov.in/eci-backend/public/uploads/monthly_2023_08/EVMMannualAugust2023.pdf.1f8976b609ce6fef9b0fe69d3f848ff)

7. In a responsive measure to INC grievances however, the Commission has now updated its FAQ on website to include detailed information on power packs on EVM system, including answers to questions like different types of battery cells used worldwide, use of alkaline cells in the power pack of EVMs, other applications of alkaline batteries, difference of EVM Power pack from mobile phone battery, functioning of EVM independent of operating voltage, characteristics of EVM power packs, their installation and functioning of EVM at different output voltages and Why EVM Power pack status is shown as 99% in some CUs even after full day use in poll, etc. With respect to any old or new questions on the EVM system in particular, ECI has always responded by ever updating documents and FAQs in public domain. There are 129 FAQs available [FAQs on EVM | Election Commission of India](#).

8. However, a noticeable and documented trend of picking up any ordinary aspect of the EVM system for projecting it as a “new/fresh doubt” at national level is becoming evident, while the process related grievances are necessarily relatable to specific polling stations/ constituency. This is being done, despite the fact that at each stage of pre-poll preparations pertaining to EVM system, a stakeholder participation of political parties/ candidates/ their agents is provided and meticulously arranged. Records of invites to political parties/ candidates for each step, thereafter minutes, attendance sheets and CCTV/ video footage underwrite this. The sequential steps are further re-iterated by detailed transportation and storage protocols with an immutable audit trail capable of confirming an unbroken chain of secured custody of EVMs transiting through various stages and steps. The intricate system of “seals”, statutory formats- co-shared/ co-signed/ co-sealed by the designated stakeholders are well known to all political parties/ candidates.

9. Various Constitutional Courts have passed as many as 42 judgements after examining various materials on records, evidences and *inter alia* broadly observed as below (Details can be seen at [Legal History of EVMs and VVPATs](#) on ECI website). https://www.eci.gov.in/EBooks/Legal_EVM_and_VVPAT/mobile/index.html :

- The EVMs are not hackable
- No material on record to evidence that the EVMs in India are unreliable or suffer from any drawback
- Evidence inspires confidence in the Court that EVMs are tamper proof.
- No question of introducing viruses or bug
- No question of invalid votes in EVM
- No rigging is possible.
- The results cannot be altered by activating a Trojan Horse through a sequence of key presses. The ECI-EVMs cannot be physically tampered with.

- EVM are full proof device for counting and allegations of tampering are baseless.
- EVMs with VVPAT system ensure the accuracy of the voting system
- The Election Commission has successfully held free and fair elections and lowering down of image and prestige of constitutional body cannot be allowed.
- Recently while hearing a petition on use of EVMs in Indian elections, the Supreme Court broadly observed to the effect that *“reverting to the “paper ballot system” of the bygone era, as suggested reveals the real intention of the petitioning association to discredit the system of voting through the EVMs and thereby derail the electoral process that is underway, by creating unnecessary doubts in the minds of the electorate.”*

The Court also dismissed comparison of the electoral processes with European Nation inter alia observing *“ any comparison of the nature which was sought to be drawn on behalf of the Petitioning association with a particular European Nation, may not be adequately representative since the demographic and logistical challenges in the conduct of elections in each country are unique to it. Also, it was not demonstrated before the court that the machines put to use in the electoral system of such nation are similar and what was said by its court applies ex proprio vigore to India “*

- The invention is undoubtedly a great achievement and national pride
- Honorable Justice Dutta while delivering judgement in WP(C) 434/2023 ADR vs ECI has noted that *“. It is of immediate relevance to note that in recent years, a trend has been fast developing of certain vested interest groups endeavouring to undermine the achievements and accomplishments of the nation, earned through the hard work and dedication of its sincere workforce. There seems to be a concerted effort to discredit, diminish, and weaken the progress of this great nation on every possible frontier.”*
- Honorable Justice further observed that *“..... Should there be hacking, resulting in violation of a right of an elector in any manner, and if there be proof adequate enough to upturn an election result, the law already has in place a remedy, i.e., an election petition under section 80 of the RoP Act. Such an election petition can be filed not just by an aggrieved candidate, but also by a voter, within 45 (forty-five) days from the date of declaration of the result of election. Since there is already a remedy in law to allay the fears that have been expressed by the petitioners, if and when a discrepancy in the results arises, the Courts are not powerless to uphold the sanctity of the democratic process by appropriate intervention.”*

10. **In view of the foregoing, the Commission categorically rejects** all baseless allegations and apprehensions conveyed by INC regarding all aspects of the electoral process in the recently concluded election to the state assembly of Haryana. While doing so, it may be added that the Commission normally refrains

from responding on grievances relating to constituency specific decentralized electoral processes, whether in case of electoral roll or candidates or deployment of man and material or conduct of poll or counting, officials like ERO/ RO/DEO being the fully empowered election authorities. However, ECI is duty bound to protect and defend the integrity of the core design of this statutory decentralized scheme, that is being sought to be eroded or duplicated, by “generic” petitions/grievances setting out false narratives without any evidence whatsoever, raised in proximity to polling or counting day, which have serious potential to fuel the surcharged environment.

11. **The Commission would also like to recall that, seen in retrospect,** INC is persistently raising unfounded doubts on the “core” aspects of Indian electoral process, with a sort of discernable pattern of timelines and approach. Records reflect that:

- i. The Commission had to respond on 11th May 2023 when just before the poll day in Karnataka, INC made absurd and unfounded allegations, (<https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVS LT41NNLRjYNNJP1KivrUxbfqkDatmHy12e%2FzVx8fLn2ReU7TfrqYobglpa9B8pUZwHpOYIhBTmN5%2BU5jPftP%2Bwp1b6xUQXwgpW1VKQ702%2Fr3n%2BfsgW7KN%2BEyZmaMbm7eCCT0iXWfaj3vKM%3D>) inter alia stating that:

“the concern arises from the fact that this Honorable Commission has deployed EVMs which were previously deployed for elections in South Africa. We have been informed of this by various sources including the fact all these EVMs have been received directly back from South Africa without going through the process of re-validation and re-verification.”

- ii. INC’s allegation based on some media reports on voter turnout, also making an indirect attack on EVM, during Lok Sabha election 2024 was again duly replied in detail by Commission on 10th May 2024), (<https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNNJP1KivrUxbfqkDatmHy12e%2FztfbUTpXSxLP8g7dpVrk7%2Fda%2BEbTiKk%2FXhgFE8uZCGZfVPGRaeGPqVZA%2F5LjCkbbICSv%2B1yJkuMeCkTzY9fhBvw%3D%3D>), inter alia stating that :

“...Through innuendos and insinuations, the contents of the post, tend to create disharmony in respect of the delicate space of election management, can plant doubts in the mind of the voters and political parties and potentially creates an anarchic situation...”

It was also conveyed that “As you are also aware, during the election period, Commission scrupulously avoids commenting on political parties and takes the hard hitting of several public questions and accusations on its own shoulders as it believes in a respectful collaborative equation with all

political parties, so critical for healthy Indian democracy. However, Commission has found your communication placed in public domain in the middle of the ongoing election process as highly undesirable and one that appears designed to create confusion / misdirection / impediment to the conduct of smooth, free and fair elections which is the mandate of ECI under the constitution.”

- iii. INC’s high pitch allegations again came through social media on 2nd June 2024, just two days before the counting day of last Lok Sabha election, alleging that the outgoing Home Minister was calling up 150 DMs/Collectors to pressurize them for counting. Despite the request of ECI to provide details of such 150 DMs along with factual matrix/ basis, it was never provided. (<https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJP1KivrUxbfqkDatmHy12e%2FzIv7%2FZQo9etPKoyJV5h%2FcTpRPWpX9OOgP2wHKYqKjmXEGAEQOUFWw3ihETyhNJPfORsXQUwCbGU493NshNTgs7UQ%3D%3D>).
- iv. INC’s allegation on 4.6.2024, the counting day of Lok Sabha 2024 election itself, emanating from inadequate understanding of counting data release, was explained to their delegation on the same day: - that once leads consolidate after many rounds, the party /candidate wise position would normally change much less frequently than the early rounds, when leading margins are narrow.
- v. INC’s unverified and unsubstantiated allegation of slow counting and slow reporting of result data on the counting day of the recent Haryana General Election was duly replied on the same day on 08th Oct 2024, <https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJP1KivrUxbfqkDatmHy12e%2FzX%2FLARKC1lI3JwqUillk3e13Vk%2FYjQPeVw39Vn%2B1FwNR3VGd0WvavKn5VxCK%2BrUp8mtKFKdEJy1vCippd5OaxbQ%3D%3D> , inter alia stating that:

“ entire counting process in Haryana was unfolding in the presence of candidates, observers and micro observers as per the statutory scheme and there was nothing on record to substantiate ill-founded allegations of slowdown in updating results. It was gleaned from publicly available data on website that 25 rounds across all the constituencies were being updated every 5 minutes, testifying dissemination of counting process in a speedy manner. “
- vi. The latest allegation/ apprehension conveyed by the party through press conference over “battery status” and making use of the same to allege that the lawful result was “unacceptable” was also responded to on 09.10.2024 (<https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLRjYNJJP1KivrUxbfqkDatmHy12e%2FzX%2FLARKC1lI3JwqUillk3e13Vk%2FYjQPeVw39Vn%2B1FwNTen4rml7t%2FM428RgVKKZ0fO4jyvJqQIR5ZMChqCiQwfQ%3D%3D>), inter alia stating that:

“ Such an unprecedented statement as above in a generic sense, unheard in the rich democratic heritage of the country, is far from a legitimate part of free speech & expression and moves towards an undemocratic rejection of the will of the people expressed in accordance with the Statutory and Regulatory electoral framework, uniformly applied across all elections in the country including J&K and Haryana.”

12. **It is needless to remind that such frivolous and unfounded doubts have the potential of creating turbulence** when crucial steps like polling and counting are in live play, a time when both public and political parties' anxiousness is peaking. The communications carrying baseless allegations were often widely publicized by INC even before receipt of any formal letter in the ECI and mostly coinciding with peak of electoral cycle i.e., near to or on poll day or counting day.

13. **The persistence of this approach is disconcerting** when it emanates from a reputed National Political Party of historic standing with those many years of experience in the electoral field. Thus, once again ECI is compelled to note that with no evidence whatsoever of any statutory electoral step being compromised and candidate's consent to proceed to each next stage being on record; the INC has once again raised the smoke of a "generic" doubt about the credibility of an entire electoral outcome exactly in similar manner as it has done in recent past, of which examples have been given in preceding paras. This is least expected of a national political party. The Commission appreciates the criticality of the considered views of political parties in sustaining and strengthening electoral democracy in the country and assures that it will remain committed towards timely grievance redressal. At the same time, the Commission sincerely urges INC to take firm and concrete steps, matching with the party's long and illustrious standing, to amend their afore stated approach and in doing so set an example for emulation by one and all to responsibly conduct themselves at sensitive electoral stages so as to avoid possibilities of precipitation of public unrest and chaos.

Yours sincerely,



(S. B. Joshi)
Principal Secretary