

By Courier/ e-mail

July 16, 2010

To,
The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
New Delhi 110 001

Subject: Our writ petition in the Hon'ble Supreme Court (Writ Petition (c) No. 292 of 2009) and the subsequent proceedings in the Election Commission in pursuance of the Hon'ble Court's directions

Sir,

This letter has reference to your office letter No. 51/8/16/9/2009-EMS/Vol.IX dated 24th June, 2010 from Shri K.N. Bhar, Under Secretary.

We would like to respectfully submit once again to the Election Commission of India (ECI) that we had mentioned several concerns regarding the vulnerability of the Electronic Voting Machines in our public interest litigation (PIL) in the Hon'ble Supreme Court. These concerns are of very vital nature and impinge on the reliability of our democratic processes and the integrity of electoral verdicts. **Many of these key concerns remain unaddressed even after the changes purportedly made by the Election Commission as mentioned in your letter.**

Lack of Transparency

Regarding the observation in your letter that the "entire electoral process has been made fully transparent", I am afraid that is not our understanding. In fact, **lack of transparency in the voting process is the central issue of concern where EVM reform is urgently required.** Several stakeholders including a large number of political parties have expressed concerns in this regard to the Commission. 13 political parties have petitioned the ECI on this count and recently, Telangana Rastra Samithi (TRS) has taken unusual step of fielding a large number of independent candidates to avoid EVMs in bypolls to 12 assembly constituencies on July 27. Unfortunately, the ECI has not responded adequately to any of these concerns.

Throughout the world, the issues of transparency and verifiability of elections are today concerns of all genuine democracies. India could not afford to ignore these concerns. Kindly recall that **the Constitutional Court of Germany held electronic voting unconstitutional for precisely the same reasons: lack of transparency (public nature) and lack of verifiability or traceability of elections.** Against this backdrop, Indian courts will find the ECI's position exceptionable.

We look forward to an early opportunity to make specific suggestions to the Election Commission to make the electoral process using EVMs more transparent, verifiable and immune from electoral fraud.

Malfunctioning of EVMs

Regarding various incidents of malfunctioning and manipulation of EVMs mentioned in the book "Democracy at Risk! Can we trust our EVMs?" by Mr. G.V.L. Narasimha Rao, your letter offers only administrative explanations for the reported malfunctioning of the EVMs and field level complaints. **We would like the Commission to provide technical explanations for each of the cases of malfunctioning that have been found to be true by your own filed enquiries. Further, please let us know what remedies are proposed by the ECI to ensure such incidents do not recur.** It is simplistic and patently risky for the Commission to ignore these findings painstakingly compiled by the research team by offering administrative explanations from officials. The ECI is actually expected to undertake a comprehensive study of such cases reported from all over the country.

Our technical experts have undertaken a detailed study of such cases of malfunctioning and are willing to share these findings with the ECI after learning about your own independent technical review or audit. We believe that this would be a significant part of our deliberations with the Commission in the scheduled meeting.

Tamperability demonstration

Although we have never offered to make any demonstration of the tamperability before the Hon'ble Supreme Court, in deference to the ECI's status

as a constitutional body, we had agreed to make a demonstration at your request.

But the willful blocking of our efforts to demonstrate vulnerabilities (as would be evident from the records of September 3 meeting available with you) by the ECI representatives, repeated change of stance by the ECI over the modalities of demonstration (again evident from the letters of the ECI written to us, Shri Omesh Saigal, others and video documentation available of all the meetings held in the ECI); strong arm tactics of the EVM manufacturers with the full knowledge of the ECI to “scare away” the petitioners in the Supreme Court case with criminal and civil action by making insidious accusations is adequate proof that the ECI had never given us a genuine opportunity to demonstrate tamperability of EVMs.

The specific details in this regard are as follows:

- a) On August 17, the Chief Election Commissioner promised to make EVMs available at the Nirvachan Sadan premises for demonstration purposes. He has even admitted that the petitioners’ technical experts can bring whatever hacking or reverse engineering tools to show tamperability. This is recorded in the minutes of the meeting submitted by us to the ECI and is also part of the video recording of the proceedings. This promise was not kept despite repeated requests. Similar assurances were given during meetings with others like Shri Omesh Saigal, Shri Kirit Somaiya etc. Unedited tapes of all meetings with the ECI would bear this out.
- b) Inspection of the EVMs was stalled abruptly on September 3, 2009 to prevent our technical personnel from initiating a tamperability demonstration. The same is also available as evidence with the ECI on unedited tapes.
- c) The Election Commission of India (ECI) had written to Shri Omesh Saigal on September 4, 2009 agreeing to provide EVMs to him for reverse engineering purposes by providing an affidavit that the same would not be misused/ used for commercial purposes. We has the Commission changed its stance now and refusing permission for reverse engineering?

“ECI-EVMs are Vulnerable to fraud”

As the Election Commission of India is aware, a collaborative scientific study was undertaken by Indian researchers led by Hari Prasad and international researchers of repute like Alex Halderman (University of Michigan, U.S.) and Mr. Rop Gonggrijp a security researcher from Netherlands. The scholarly research study available in public domain (www.indiaEVM.org) shows how real EVMs used in Indian elections by the Election Commission of India (ECI) can be tampered with.

The above study shows that all the claims of the ECI so far that the EVMs are tamper proof are incorrect. The study establishes beyond a shadow of doubt that by gaining momentary access to the EVM at any stage of its life cycle the results of the elections can be manipulated.

The response of the ECI to the above study mentioned in the letter written to TRS brings out its curious interpretation. It says, “...some components had been unauthorizedly replaced...This EVM is thus a fake EVM having ceased to be the official EVM of the Commission and manipulation of results on such a fake machine cannot be given any credence to question the credibility of the EVM voting system.”

Does every ECI-EVM cease to be “official EVM” if some part is unauthorizedly replaced by criminal hackers or insiders to make it work differently? What is the mechanism presently available that would detect “unauthorized” manipulation of EVMs? None of the safeguards in your letter can ensure detection of such manipulations? With myriad players including PSU manufacturers, foreign multinationals and private companies involved in various sensitive operations, what are the safeguards if any of them involved in the supply chain is compromised?

As the EVMs store data only electronically, if the electronic vote is manipulated by hardware and software manipulations by either “insiders” or outsiders, there is no way to establish election fraud. The Election

Commission should not ignore any such possibilities and must introduce safeguards to prevent such fraud.

Agenda for the proposed meeting

We are prepared to demonstrate the tamperability of the EVMs without setting any preconditions and following internationally accepted practices for making such a demonstration. If need be, we are prepared to give an affidavit to the ECI as demanded of Shri Omesh Saigal.

The restrictions set forth in your letter of tampering the EVMs without opening them may be possible only by performing "magic" and we claim no expertise in this field. The restrictions of not opening the EVM, not manipulating the hardware and software are unscientific and illogical to demonstrate the tamperability of any electronic system. When you began the process of "enquiry" last July, you said that we may do whatever we wanted to show the tamperability (refer minutes of our meeting on August 17 with the ECI). If you take a look at the video recordings of all the meetings and your letters, the shifting stance of the ECI would become apparent to you.

We sincerely urge the ECI to please approach the issue positively and with an open mind. We would like to request the ECI to carefully examine all the facts, field evidences, scientific findings brought out by us and other experts with regard to vulnerabilities of EVMs.

We are looking forward to meet the Election Commission to discuss all the above issues at an early date, not limiting the scope of our interactions to demonstrating the tamperability of EVMs. We would like to make a demonstration also but without any pre conditions and as per the terms agreed by the Commission representatives on August 17, 2009.

We would like the Commission to convey in writing whether we are being invited only for discussions on the vulnerabilities of EVMs and the need for additional safeguards or whether demonstration is also allowed without any pre-conditions. As we have to make our own travel arrangements, bring the necessary

tools etc. please do let us know the exact agenda of the meeting a few days in advance in writing.

We eagerly await to hear from the Commission on the agenda, date and time for the meeting. As the issues proposed for discussion require policy changes in the Commission, we would like the three election commissioners to be present at the meeting so that some concrete decisions can be made with regard to safeguarding Indian elections.

With regards,

Yours faithfully,

(V.V. Rao)

**Petitioner, Supreme Court &
National Coordinator, VeTA**

**Citizens' Forum for
Promoting Verifiability, Transparency and
Accountability in Elections (VeTA)**