

To,

The Chief Election Commissioner  
Election Commission of India

Dear Sir,

Sub: Request for the removal of the penal provisions in rule 49MA [Conduct of Election (Amendment) Rules 2013] as it unjustifiably punishes the voters and thus undermines the country's free election process

I request your urgent intervention for the removal of the clause in rules of conducting elections, which penalises and terrifies the voters thus making a free and fair election impossible. As per section 49 MA of the Conduct of Election (Amendment) Rules 2013 - in the eventuality of a voter's complaint about a wrong choice printed in the VVPAT slip, the presiding officer of the polling station would warn the voter regarding the consequences of filing a false complaint which in effect would intimidate an ordinary citizen who filed the complaint about the choice printed in the VVPAT. After obtaining an affidavit from the voter regarding his/ her complaint, the presiding officer asks the voter to cast a test vote in the same machine in the presence of all polling officials and representatives of candidates. In the test vote, if it turns out that the VVPAT correctly displays the choice cast in the machine, the ECI declares the voter's complaint as false and files charges under section IPC 177 where the voter potentially faces prison terms up to six months.

The testing method outlined in the section 49 MA is irrational as it fails to distinguish true and false complain in objective manner. One of the two possible reasons for the printing of incorrect choice in VVPAT is the malfunctioning of the EVM-VVPAT unit. Malfunctioning does not

necessarily imply a faulty output at every instance. For example, an automobile that sometimes faces glitches during ignition is a case of mechanic malfunctioning. However, only a bad mechanic would infer that the vehicle has no problems if it still starts after an umpteen number of attempts. So, there is no guarantee that the malfunctioned EVM-VVPAT machine, which shows the incorrect choice during the voting process would repeat its incorrect outcome in the test vote. The second possible cause for wrong output on VVPAT slip is hacking or tampering of the EVM. If an EVM-VVPAT unit is tampered, then the machine, which registered an incorrect choice for the first time, certainly may not register again incorrectly for the second time. The incorrect choice would be repeated only randomly as decided by the hacker. Under both scenarios, it is highly likely that a truthful complaint would be “found” as false and the voter would be prosecuted for participating in the country’s fundamental democratic process with courage and honesty.

Free and Fair election process, which is the bedrock of Indian democracy, would be under serious threat if voters fail to report the false VVPAT display for fear of criminal prosecution in case the complaint “found” as false by the ECI officials. The Honourable Supreme Court has held in a catena of cases that the constitutional protection for the fundamental political expression is calculated to insulate the freedom from such a chilling effect.

As the 49 MA is manifestly arbitrary and undermines the country’s election process, I request you to remove the penal provision with immediate effect. Kindly note that there are several other options available, which does not intimidate the voters and thus insulate the country’s democratic foundation itself from the arbitrary use of power.

## **Valid methods to resolve the voters' VVPAT complaint**

1. Create a facility for the voters to take pictures of the VVPAT display, which can later on enable the voter to prove their complaint.
2. Instead of dropping the VVPAT slip directly into a ballot box, allow it to be taken by voters and after them inspecting it, if the VVPAT printing is correct, let the voters themselves drop the slips into the ballot papers. While having full physical access of VVPAT, voters themselves can correct the serial numbers in the slips if the VVPATs print it incorrectly.
3. The pragmatic considerations that the ECI flagged while upholding this invalid testing system is no reason to side-line the basic principles of a democracy. If not anything else, the ECI should at least drop penal provisions associated with the testing method and make public the number of complaints received in each polling station, irrespective of whether they found it true or not, before the counting process begins. The only concern the ECI could raise is the possibility of false complaints. ECI do not have any empirical basis to argue that the voters are prone to misusing the provisions. In the absence of any such empirical assertions, it is only reasonable that the ECI should not cast premature and prejudiced aspersions on the voters' credibility and integrity. The cornerstone of any democracy is the faith reposed in the common man's ability to make the right judgment. Even if there are complaints that turn out to be wrong, it is unethical on the part of the authorities to adopt a stance of high-handed intimidation, in the absence of any objective mechanism to determine its wilful falsity. After all, the test vote itself would take only a few minutes and that itself would not disturb the election process in any substantial way. Such disruption is nothing compared to the hours-long disruption often caused by the malfunction of the EVMs and its replacement. Further, nothing can justify the incarceration of a voter on the

basis of this invalid method. This potentially terrifies the voter and makes free elections near to impossible.

As rule 49 MA is clearly an antithesis to democracy, I request both the removal of the penal provisions of rule 49 MA with immediate effect, and also the adoption of a method that objectively determines the veracity of VVPAT complaints.

pls find attached the pdf version of the complaint.

Yours Sincerely

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Copy to: Ms. Teesta Setalvad, The Secretary, Citizens for Justice and Peace