

IN THE HON'BLE SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) NO. 434 OF 2023

**IN THE MATTER OF**

ASSOCIATION FOR DEMOCRATIC REFORMS ... PETITIONER

*VERSUS*

UNION OF INDIA & ANR. ... RESPONDENTS

**ADDITIONAL AFFIDAVIT ON THE BEHALF OF PETITIONER**

I, Jagdeep Chhokar, S/o Raghvir Singh, the Founder-Trustee of the petitioner trust, having its office at T-95, C.L House, II Floor Gautam Nagar, New Delhi, do hereby solemnly affirm and state on oath as under: -

1. That I am the Founder-Trustee of the petitioner trust in the accompanying writ Petition and being well conversant with the fact and records of the case, I am competent and authorized to swear this affidavit on the behalf of Petitioner Society.
2. That this additional affidavit is being filed to bring to the notice of this Hon'ble Court a recent research paper published on Social Science Research Network (SSRN) titled "*Democratic Backsliding in the world's largest Democracy*" published by Sabyasachi Das of Ashoka University on 25th of July 2023. A copy of Article published on SSRN titled "*Democratic Backsliding in the world's largest Democracy*" by professor

Sabyasachi Das of Ashoka University on 25.07.2023 is annexed herewith as **Annexure A1 (Page \_\_ to \_\_)**

3. A news item was published on The Hindu online portal on 01.08.2023 titled, "*In 2019 general election, BJP won disproportionate share of seat in closely contested constituencies: research paper*", based on the above-mentioned research paper. A copy of the news article published in The Hindu online portal on 01.08.2023 titled "*In 2019 general election, BJP won disproportionate share of seat in closely contested constituencies: research paper*" is annexed herewith as **Annexure A2 (Page\_\_to\_\_\_\_)**
4. That the findings of the research paper are pertinent to the issues raised in the present Writ Petition. The irregularities in election data and the potential manipulation of the electoral process, as highlighted in the paper, resonate with the concerns raised in the present petition regarding the integrity and fairness of the electoral system.
5. That the core finding of the research paper is that election data analysis reveals significant irregularities related to the density of the incumbent party's win margin variable. Notably, there is a discontinuous jump observed at the threshold value of zero. This indicates that in constituencies where the contest was closely fought between a candidate from the incumbent party (BJP) and a rival, the BJP won a disproportionately higher number of these constituencies compared to the ones it lost. Furthermore, the disproportionate winning of closely contested constituencies by the BJP is primarily concentrated in states where the party was in power at the time of the election. The paper suggests that electoral manipulation occurred during the time of registration and polling through the strategic deletion of Muslim voters who generally do not support BJP from the

electoral lists, driven by their culturally distinct names. The research paper also suggests that manipulation of elections can occur at three distinct stages during the electoral process. Firstly, such manipulation may happen at the time of voter registration, wherein targeted deletion of names of voters who are perceived to be unlikely to vote for the incumbent party takes place. Secondly, manipulation can occur during the voting process itself, wherein polling officers may strategically discriminate against registered voters who are likely to vote against the BJP. Finally, manipulation can also take place at the time of counting of votes.

6. The following conclusions are drawn in the research paper:

*“The paper documents irregularity in India’s 2019 general election data by showing that the incumbent party’s win margin distribution exhibits excess mass at zero, while no such pattern exists either in previous general elections or in state elections held simultaneously and subsequently. This implies that the incumbent party in 2019 won a disproportionate share of closely contested elections. Moreover, the pattern is concentrated in the states ruled by the incumbent party at that time. While the result is consistent with electoral fraud or manipulation, the incumbent party’s superior ability to predict and affect win margin (i.e., precise control), owing to its significant advantage in electoral campaigning over other parties can also explain it. To isolate the two mechanisms, I conduct a series of analyses to check for presence of precise control and manipulation. I do not find that the incumbent party did greater door-to-door campaigning than other parties in constituencies barely won by it. On the other hand, I find evidence consistent with electoral manipulation at the stage of voter registration as well as at the time of voting and counting (turnout manipulation). In both cases, the results point to strategic and targeted electoral discrimination against Muslims, in the form of deletion of names from voter lists and suppression of their votes during election, in part facilitated by weak monitoring by election observers...”*

7. The paper further notes as under as regards the electoral data for the 2019 general elections:

*"The ECI initially released in its official website the "final" count of Electronic Voting Machine (EVM) votes polled for each Parliamentary Constituency (PC) for the first four out of seven phases of the 2019 elections (373 out of 543 PCs). Subsequently, it released constituency-wise numbers of votes counted in EVMs, which did not match the initial numbers. When the media pointed out the discrepancy, the ECI removed the earlier figures from its website."*

8. That on 29.07.2023, the Indian Express published an article titled, "4 yrs since LS polls, EC yet to give details of any discrepancy between EVM, VVPAT count", wherein it notes as under:

*Four years after the government told Parliament that it would collect information from the Election Commission about possible discrepancies between the Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trail (VVPAT) tallies during the 2019 elections, a Parliamentary panel this week noted that the reply was yet to be provided, adding that identifying such issues was necessary for the security of the voting process.*

*In its report on the pending assurances pertaining to the Law and Justice Ministry, which was presented in the Lok Sabha on Thursday, the Committee on Government Assurances said an unstarred question regarding "discrepancy in EVM and VVPAT" was asked on June 26, 2019. The government was asked whether any discrepancy between the EVM and VVPAT counts was found in the 2019 Lok Sabha elections and if so, what corrective measures had been taken. In the reply, the government gave an assurance that the information was being collected and would be laid on the table of the House.*

*The Law Ministry informed the committee, which is chaired by BJP MP from Meerut Rajendra Agrawal, that it had asked the EC for the required information on March 12, 2020 and sent reminders on September 3, 2020, February 19, 2021, October 7, 2021, November 26, 2021 and June 3, 2022. "The requisite information from the EC is still awaited," the ministry said. Giving oral evidence in January this year, the Legislative Department Secretary said the EC had been called, but they could not attend as they were "having*

*discussions with some political parties”. The committee then gave the ministry a month’s extension to fulfil the assurance.*

*“The Committee note that finding discrepancies between EVMs and VVPAT is a crucial aspect of ensuring the integrity and transparency of the electoral process. The Committee feel that the need for identifying such issues is all the more necessary to ensure the security and reliability of the voting process. EVMs and VVPATs are designed to provide an accurate reflection of voters’ choices...The Committee, however, regret to note that precious little has been done in this direction...The Committee are deeply concerned to note that the requisite information is still awaited from the Election Commission,” the report said.*

*The committee said the fact that the information was yet to be received by the ministry indicated the lack of coordination.*

*“The Committee feel that there is an urgent necessity for identifying the discrepancies between the EVMs and VVPAT as it helps in maintaining trust in the electoral process by ensuring that votes are being recorded and counted correctly,” the report said. The committee asked the Legislative Department to prioritise the matter and get the requisite information from the Election Commission without further delay. The EC spokesperson did not respond to a request for comment on the delay and if any discrepancies had been noticed.”*

A copy of the article titled, “4 yrs since LS polls, EC yet to give details of any discrepancy between EVM, VVPAT count”, published in the Indian Express on 29.07.2023 is annexed herewith as **Annexure P3 at Pages \_\_\_\_\_ to \_\_\_\_\_**

9. Pertinently, this Hon’ble Court vide order dated 17.07.2023 noticed as under as regards the pendency of another W.P.(C) 1382/2019 filed by the petitioner organization herein with respect to the aforementioned discrepancy in the electoral data for the 2019 general elections:

*Our attention is drawn to the order dated 13.12.2019 passed in W.P.(C) No. 1382/2019 titled “Association for Democratic Reforms*

*& Another. vs. Election Commission of India & Another.”, wherein notice was issued.*

10. That as notice was issued on the aforementioned W.P.(C) 1382/2019 filed by the petitioner organization on 13.12.2019, it is surprising that for four years; the election commission has not been able to explain the discrepancy in the electoral data for 2019 general elections either to the court by filing a counter affidavit in that matter or to the legislature itself as noted in the *Indian Express* article quoted above.

11.It is requested this Honorable Court may take cognizance of the aforementioned aspects by taking the present affidavit on record.

12.Prayed, accordingly.

DEPONENT

### **VERIFICATION**

I, the above named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of August, 2023.

DEPONENT