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ELECTION LAW

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I INTRODUCTION

IN OUR survey for the year 2024, we have critically examined as many as four main propositions that have come to the fore in the analytical review of the various judgments of the Supreme Court delivered and reported during the calendar year. Each one of the propositions yields some intrinsic value, which is promotive of development in the arena of Election Law.

The first proposition relates to whether, in the given fact matrix of the case, election of the Returned Candidate can be annulled on grounds of non-disclosure of certain assets amounting to 'undue influence' under the relevant provisions of the Representation of the People Act, 1951.[1] The elucidation of this proposition reveals how the statutory provisions need to be expounded, not merely mechanically but creatively, in the light of their underlying foundational objectives.[2]

The second proposition deals with the relatively new developing technological phenomenon of Electronic Voting Machines (EVMs), showing how the new emerging technology can be harnessed successfullyfor replacing the usual norm of 'paper ballots' in the exercise of the right to franchise pan India in the largest democracy of the world.[3] The singular purpose of this proposition is to examine juridically if there is any possibility of manipulation of EVMs jeopardising the right to franchise exercised by the electorates.[4]

The third proposition is relatively simple, inasmuch as it examines the specific issue, whether an election petition is liable to be rejected at the threshold under Order VII Rule 11 CPC for non-compliance with the relevant provisions of the Representation of the People Act, 1951, read with Rule 212 of the Rules of 1971.[5] In this context, what is required to be explored is the ambit of Rule 212 of the Rules of 1971 and its intrinsic value in relation to section 81(3) of the Act of 1951.[6]

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1 See generally, *Infra*, Part II.

2 See, *Ibid.*

3 See generally, *Infra*, Part III.

4 See, *Ibid.*

5 See generally, *Infra*, Part IV.

6 *Ibid.*

The fourth proposition revolves around the issue, whether an election petition can be rejected at the threshold under Order VII Rule 11of CPC read with Section 86 of the RPA of 1951 on grounds of non-disclosure of assets in the nomination paper and indulgence in 'corrupt practices',[7] which, in tone and tenor, is similar to the third proposition. This is so since the results in both cases aresimilar. However, in approach, the fourth proposition is distinctly different, because for the resolution of the problem, it begins with the poser, "The only question is whether the Court can dismiss such a petition at the very threshold on an application under Order VII Rule 11 CPC or that the petition needs a detailed consideration by the Court."[8]

II ELECTION OF THE RETURNED CANDIDATE: WHETHER, IN THE GIVEN FACT MATRIX OF THE CASE, IT CAN BE ANNULLED ON GROUNDSOF NON-DISCLOSURE OF CERTAIN ASSETS AMOUNTING TO 'UNDUE INFLUENCE' UNDER THE RELEVANT PROVISIONS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

This proposition has emanated from the judgment of the Supreme Court in *KarikhoKri* v. *Nuney Tayang*.[9] (Decided on April 9, 2024)

The appellant, Karikho Kri, is the returned candidate in the assembly election to the Arunachal Pradesh Legislative Assembly held in 2019 by securing 7538 votes, the highest number of votes, whereas the respondent, NuneyTayang, secured only 1088 votes, which was next to the number of votes secured by an intermediate candidate, Dr. Mohesh Chai, who secured 7383 votes. The respondent, Nuney Tayang's plea in his election petition was two-fold. One, he sought declaration that the election of the Appellant was void on the grounds mentioned in Sections 100(1)(b), 100(1) (d)(i) and 100(1)(d)(iv) of the Representation of the People Act, 1951, and also that of the candidate who secured the second highest number of votes by levelling certain allegations against him. Two, in view of the voiding of the elections of the two candidates, he sought a consequential declaration that he stood duly elected from the said constituency.

The high court allowed the election petition in part, declaring the election of the Appellant KarikhoKrivoid under sections 100(1)(b), 100 (1)(d)(i) and 100(1)(d)(iv) of the Act of 1951, but rejecting the prayer of the Respondent Nuney Tayang to declare him duly elected, as he had not led any evidence to prove the allegations levelled by him against Dr. Mohesh Chai, the candidate with the second highest number of votes.[10]

Aggrieved by the order of the High Court, both parties filed appeals before the Supreme Court under section 116A of the Act of 1951. While ordering

7 See generally, *Infra*, Part V.

8 See, *Ibid.*

9 2024 SCC OnLine SC 519 (Civil Appeal No. 4615 of 2023), per Sanjay Kumar, J. (for himself and Aniruddha Bose, J.) Hereinafter, *KarikhoKri.*

10 See, *KarikhoKri,* para 3.

notice in both the appeals, in exercise of power under section 116B(2) of the Act of 1951,[11] the Supreme Court directed that an election should not be held for the subject Constituency which was represented by the Appellant Karikho Kri and permitted him to enjoy all the privileges as a Member of the House and of the constituted committees but restrained him from casting his vote on the floor of the House or in any of the committees wherein he participated as an MLA.[12]

Bearing in mind the well-settled principle that "the success of a winning candidate at an election should not be lightly interfered with,"[13] the Supreme Court has examined the issue as to the validity of the high court's findings that the grounds under sections 100(1)(b),[14] 100(1)(d)(i)[15] and 100(1)(d)(iv)[16] of the Act of 1951 were established, warranting invalidation of the election of KarikhoKri, and also the issue whether he had committed a 'corrupt practice' within the meaning of section 123(2) of the Act of 1951.[17]

The central thrust of the respondent before the Supreme Court, right from the beginning, has been that the nomination papers of the appellant, the returned candidate, had been improperly accepted by the Returning Officer despite the non-disclosure of information regarding certain properties, meriting

11 The Supreme Court is empowered to grant a sort of partial stay order: "Where an appeal has been preferred against an order made under section 98 or section 99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from."

12 See, *id.*, paras 4 and 5. However, during the course of the hearing of these appeals, a new development also took place. A fresh schedule for election to the Legislative Assembly of the State of Arunachal Pradesh was notified and the Appellant wished to contest in the election. Accordingly, he sought leave to contest as a candidate in the upcoming assembly election in the State of Arunachal Pradesh during the pendency of this appeal. Since the Appellant succeeded in making "a strong prima facie case" about the legitimacy of his standing, the Supreme Court "stayed the operation of the impugned judgment", subject to the stipulation that "any steps taken by KarikhoKri in view of the stay order would be subject to the final decision that would be taken upon conclusion of the hearing of these appeals." See, *id*., para 6.

13 See, *id*., para 16, citing *Santosh Yadav* v. *Narender Singh,* (2002) 1 SCC 160, and *Harsh Kumar* v. *Bhagwan Sahai Rawat*,(2003) 7 SCC 709.

14 S.100(1)(b): "that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;"

15 S. 100(1)(d)(i): "that the result of the election, in so far as it concerns a returned candidate, has been materially affected— by the improper acceptance or any nomination,"

16 S.100(1)(d)(iv): "that the result of the election, in so far as it concerns a returned candidate, has been materially affected— by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."

17 See, *KarikhoKri,* para 16. Section 123(2) dealing with Corrupt practices, provides: The following shall be deemed to be corrupt practices for the purposes of this Act: "Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right: …"

outright rejection of his candidature. Failing, this very plea was carried forward in the writ petition before the High Court, which held that non-disclosure of those properties "in his Affidavit in Form No. 26 amounted to commission of a corrupt practice as per Section 123(2) of the Act of 1951."[18]

The Supreme Court has closely examined the rationale of the judgment of the high court *de novo.* We may abstract the following counts on which the apex court overturned the judgment of the high court:

(a) The High Court failed to appreciate the distinct independent values of various provisions of section 100 of the Act of 1951, which deals with the "Grounds for declaring election to be void," in the following respects:

(i) It mixed up the reading of the provisions of sections 100(1)(d)(i) and (iv), dealing with non-disclosure of certain properties that still stood registered in the names of his dependent family members of the Appellant, with that of section 100(1)(b) of the Act of 1951, which is concerned with the requirement thereof for the purpose of invalidating the election of the returned candidate, namely, "that the High Court must form an opinion that a 'corrupt practice' was committed by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent."[19]

(ii) It failed to appreciate the *intra se* relationship of the provisions Section 100(1)(b) with those of the provision of Section 123 of the Act of 1951, which "inclusively defines 'corrupt practices', by stating that what has been enumerated thereunder shall be deemed to be corrupt practices for the Act of 1951."[20]Such a failure is evident when the High Court misread the finding of non-disclosure of certain properties resulting into 'undue influence' caused by corrupt practices as defined in the provisions section 123(2) of the Act of 1951,[21] and that mere belonging of such non-disclosed properties "was sufficient in itself to constitute 'undue influence'," within the ambit of said definition.[22]

18 See, *KarikhoKri,* paras 12, 13, 17. The issue of non-disclosure pertained to three vehicles, which still stood registered in the names of his dependent wife and second son, by the appellant in his Affidavit in Form No. 26. In the considered view of the High Court, the nomination of the appellant had been improperly accepted by the Returning Officer, and therefore, "was held liable to be declared void under Section 100(1)(d)(i) of the Act of 1951."

19 *Id.*, para 20, citing the statutory provisions of Section 100(1)(b) of the Act of 1951.

20 *Ibid*.

21 *Id*., para 20, citing the inclusive definition of 'corrupt practices' under Section 123(2): "The following shall be deemed to be corrupt practices for the purposes of this Act: Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right."

22 See*, Id*., para 21.

(iii) It has also failed to show, how non-disclosure of certain properties by the appellant "materially affected" the result of the election "so far as it concerns a returned candidate", since, in its view, it was "imperative to decide as to who was the owner of the aforesaid vehicles at the time presentation of the nomination paper" as well "on the date of scrutiny of the nomination paper on 26.03.2019,"[23]

(b) The High Court had misunderstood the underlying principle of non-disclosure of certain properties only and not every property belonging to or owned by the appellant, the returned candidate,which would result in voiding his election.Such a miscomprehension is manifest in the blanket statement of the High Court when it "assumed that the non-disclosure of a vehicle registered in the name of a candidate or his dependent family members was *sufficient in itself to constitute undue influence.*"[24] The Supreme Court has dispelled such a misconstructionat least in two ways:

(i) The non-disclosed property should be held or owned by the appellant in a manner which is capable of exerting 'undue influence' on the electorates; mere registration of a vehicle standing in the name of the appellant on the analogy of the definition of 'ownership' under the Motor Vehicle Act,[25] which is otherwise had been sold or gifted to other persons long before the submission of the nomination, is incapable of exerting such undue influence on the voters, and "thereby inviting the wrath of section 123(2) of the Act of 1951."[26]

(ii) Keeping in view the value of the non-disclosed movable property (the value of the three vehicles in question), which is "a mere miniscule" of the total "value of the movable assets of his dependent family members and himself as Rs. 8,41,87,815/-," "suppression of the value of these

23 *Ibid.*

24 *Id*., para 22. Emphasis added.

25 The high court relied on the provisions of the Motor Vehicle Act of 1988 and the decision of the Supreme Court in *Naveen Kumar* v. *Vijay Kumar*, (2018) 3 SCC 1, which, on the basis of the definition of "owner" as laid down under Section 2(30) of the Act of 1988, held that the person in whose name the motor vehicle stood registered should be treated as the owner thereof." See. *Id.*, paras 9. See also, *Id.*, paras 21, 22, and 23. In applying the concept of ownership as expounded in judgments under the Motor Vehicle Act, the High Court overlooked the fact that those judgments were rendered in the context of and for the purposes of the Act of 1988 and not for general application. The singular context in those cases was to protect the claimants, the victims of accidents, running "from pillar to post to find out who was the owner of the vehicle as on the date of the accident, if the sale/transfer was not carried out in their books by the authorities concerned by registering the name of the subsequent owner," *id.*, para 23. "Once it is accepted that the three vehicles in question were either gifted or sold before the filing of the nomination by KarikhoKri, the said vehicles cannot be considered to be still owned by KarikhoKri's wife and son for purposes other than those covered by the Act of 1988. However, the High Court did not take note of this distinguishing factor in the case on hand." See, *Id.,* para 27.

26 *Id.,* para 28.

three vehicles would have no impact on the declaration of wealth by KarikhoKri and such non-disclosure could not be said to amount to 'undue influence'."[27]

(iii) "It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns."[28] "His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office."[29] A candidate is not required to lay his life out threadbare for examination by the electorate "unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed."[30] A non-disclosure of every asset owned by a candidate,[31] therefore, "would not amount to a defect, much less, a defect of a substantial character."[32]

(c) The High Court's finding under section 100(1)(d)(i) of the Act of 1951, whether "the acceptance of a nomination is found to be improper and it materially affects the result of the election in so far as the returned candidate is concerned," is found to be faulty in terms of construing the fact-matrix of the case. The High had held that since the appellant did not "disclose the factum of his occupying government accommodation from 2009 to 2014", his failure to submit the 'No Dues Certificate' in relation to such government accommodation was sufficient, in itself, to infer that his nomination was defective and, in consequence, the acceptance thereof by the Returning Officer … was improper."[33] In view of the critical examination of the "precedential law"on this count,[34]

27 See, *Ibid.*

28 See, *Id*., para 44.

2 *Ibid.*

30 *Ibid*.

31 Such as, clothing, shoes, crockery, stationery and furniture, etc., unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, as in the case of several high-priced watches, which would aggregate to a huge figure in terms of monetary value, which would obviously have to be disclosed as they constitute an asset of high value, and suppression of the same would constitute 'undue influence' upon the voter as that relevant information about the candidate is being kept away from the voter. See, *Id*., para 44 and require to be disclosed. See, *Id*., para 44.

32 *Ibid*. [para 44]

33 See, *id.*, para 39.

34 For the elaborate discussion on this score, see, *id*., paras 29-37.

the Supreme Court has contradicted this view of the High Court by abstracting the following foundational principle:[35]

> "[W]e is of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper, and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36 (4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he thinks that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' to qualify as a corrupt practice."

In view of the broad parameters as spelt out above, the Supreme Court revisited the issue of non-disclosures of certain information in the light of the facts of the case,resulting into invalidating the election of the returned candidate under section 100(1)(d)(iv) of the Act of 1951 materially affecting the result of the election with the following effect:

(a) Re *Non-submission of the 'No Dues Certificate' in respect of the government accommodation occupied by him during his earlier (2009-14) tenure as an MLA*.[36] The failure to disclosecannot be treated as a defect that is of substantial character to taint his nomination and render its acceptance improper since"there were no actual dues" standing against his name, because he did submit "such Certificates in the year 2014 when he stood for re--election as an MLA,"and that his only fault was his failure "to disclose that he had been in occupation of government accommodation during the years 2009 to

35 *Id*., para 40. For this proposition, the Supreme Court has cited its two earlier decisions: one, *Kisan Shankar Kathore* v. *Arun Dattatray Sawant*, (2014) 14 SCC 162, in which, on facts, it was held that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a *bonafide*dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment, see, *id.*, para 41. The second still earlier judgment to the same effect is *Sambhu Prasad Sharma* v. *Charandas Mahant,* (2012) 11 SCC 390, in which the Supreme Court held that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

36 See, *Id*., paras 42.

2014."[37] "His explanation," said the Supreme Court ", is logical and worthy of acceptance."[38]

(b) Re *non-disclosure of the*dues of municipal/property taxes payable by him and his wife.[39]The "same cannot be held to be a non-disclosure at all, since he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part."[40] As such, it could not be termed as "a defect of substantial character," tainting the nomination of the appellant.[41]

(c) The basic flaw in the approach of the High Court was that it "linked all the non-disclosures attributed to KarikhoKri to Section 100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d)(iv) thereof."[42] And for this linkage, the Supreme Court observed:[43]

> "Surprisingly, there is no discussion whatsoever on what the violations were which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for Section 100(1)(d)(iv), and as to how the same materially affected the result of the election."

"[M]ere non-compliance or breach of the Constitution or the statutory provisions would not result in invalidating the election of the returned candidate under Section 100(1)(d)(iv) as the sine qua non for declaring the election of a returned candidate to be void on that ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. For the election petitioner to succeed on such ground, viz., Section 100(1)(d) (iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby."[44] In other words, under Section 100(1)(d) (iv), the respondent -petitioner "has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby."[45] On the contrary, the Supreme Court has clearly found that there are neither "adequate pleadings or proof to substantiate and

37 *Ibid*.

38 *Ibid*.

39 See, *Id*., paras 43

40 See, *Id*., para 49.

41 See, *Id.*, para 43 read with para 49.

42 See, *Id.*, para 45.

43 *Ibid*.

44 *Id*., para 46, citing *Mangani Lal Mandal v. Bishnu Deo Bhandari,* (2012) 3 SCC 314.

45 *Ibid*. To the same effect are the observations of the 3-Judge Bench of Supreme Court In*L.R. Shivaramagowda v. T.M. Chandrashekar (Dead) by LRs,* (1999) 1 SCC 666 in the exposition of Section 100(1)(d)(iv) of the Act of 1951, see, *id*., para 47.

satisfy the requirements of Section 100(1)(d)(iv) of the Act of 1951,"[46] nor adduced any "sufficient evidence in relation to the non-compliance that would attract Section 100(1)(d)(iv) of the Act of 1951."[47]

In the light of the above analysis, the Supreme Court has finally observed by stating clearly and categorically: "we hold that the High Court was in error in concluding that sufficient grounds were made out under sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 to invalidate the election of KarikhoKri and, further, in holding that non-disclosure of the three vehicles, that remained registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act of 1951."[48]Consequently, the appeal is allowed by setting aside the judgment of the High Court that declared the election of the appellant, the returned candidate, as void.[49]

Conclusion: Election law, notwithstanding being statutory in nature, is not to be applied mechanically. It is highly creative in its application, which is to be expounded creatively by comprehending the foundational principles underlying the statutory provisions in terms of their avowed objective. The High Court faulted in its decision-making, and this is what comes out clearly in the reversal of its decision by the Supreme Court.

III ELECTRONIC VOTING MACHINES (EVMS): IS THERE A POSSIBILITY OF THEIR MANIPULATION JEOPARDISING THE RIGHT TO FRANCHISE EXERCISED BY THE ELECTORATES?

The clear and most categorical answer to this repeatedly raised question has been delivered by the Division Bench of the Supreme Court in *Association for Democratic Reforms (Petitioner)* v. *Election Commission of India and Another*.[50] This has been done by themthrough their concurring judgments with a unique unanimity. With their doubly reinforced voice, they have held

46 See, *id*., para 48. *Cf.*: on perusal of the election petition by the respondent-petitioner, the Supreme Court has found "that the only statement made by him in this regard is in Paragraph 21 and it reads as follows:

'Hence, his nomination papers suffer from substantial and material defects. As such, the result of the election, insofar as the respondent No. 1 is concerned, is materially affected by the improper acceptance of his nomination as well as by the non-compliance with the provisions of the Representation of the People Act, 1951 and the rules and orders made thereunder, including Section 33(1) of the Representation of the People Act, 1951, Rule 4A of the Conduct of Election Rules, 1961 and the orders made thereunder.....'

Again, in his 'Ground No. (ii)', NuneyTayang stated as under:

'As such, the nomination papers of the respondent Nos. 1 and 2 were improperly accepted by the Returning Officer and the result of the election in question, insofar as it concerns the respondent No. 1 the return candidate, as well as the respondent No. 2, has been materially affected by such improper acceptance of their nominations.....'

47 *Ibid.*

48 *Id*., para 50.

49 See, *Id*., para 51.

50 2024 SCC OnLine SC 661, per Sanjiv Khanna and DipankarDatta, JJ. Hereinafter, simply *Association for Democratic Reforms.* (Decided on April 26, 2024).

that in the technology of EVMs, as verified by the technology of Voter Verifiable Paper Audit Trail (VVPAT) machine, there is not even an iota of doubt left for their undue manipulation.[51] The in-depth threadbare analysis of the entire gamut of technologically driven electoral system admirably shows how the Supreme Court Bench have reached this conclusion conclusively!

The matter has come before he Supreme Court under article 32 of the Constitution alleging that "due to possibility of manipulating the EVMs there is suspicion and, therefore, this Court should step into instil confidence in the voters and the people,"[52] as they have the constitutional right "to know that the franchise exercised by them has been correctly recorded and counted."[53] Having thus secured the Supreme Court's jurisdiction, the petitioners vehemently pleaded that since in view of the possibility of manipulation of EVMs and thereby jeopardising the electorates' constitutional right, the Apex Court in the their inherent jurisdiction to preserve and protect people's constitutional fundamental right, should direct the Government:[54]

a) return to the paper ballot system; or

b) that the printed slip from the Voter Verifiable Paper Audit Trail machine be given to the voter to verify, and put in the ballot box, for counting; and/or

c) that there should be 100% counting of the VVPAT slips in addition to electronic counting by the control unit.

In order to respond to this main challenge,[55] the Supreme Court, right in the first instance, as a background to their responsehas candidly stated, how the technology of EVMs as a "viable alternative" was brought into picturefor

51 See, *Association for Democratic Reforms, para 75*(Sanjiv Khanna, J.):
"In our considered opinion, the EVMs are simple, secure and user-friendly. The voters, candidates and their representatives, and the officials of the ECI are aware of the nitty-gritty of the EVM system. They also check and ensure righteousness and integrity. Moreover, the incorporation of the VVPAT system fortifies the principle of vote verifiability, thereby enhancing the overall accountability of the electoral process." The two added suggestions are made "not because we have any doubt, but to only further strengthen the integrity of the election process," see, para 76 – these suggestions are borne out of the questions raised before the Court about the integrity of the EVMs along with VVPAT.

52 See, *Association for Democratic Reforms,* para 2 (Sanjiv Khanna, J.)

53 *Ibid*.

54 *Id*., para 3.

55 Some other issues raised in *Id.,* para 4 related to - the alleged modification of the VVPAT in the year 2017, whereby the glass window on the VVPAT was made translucent/tinted instead of transparent, depriving the voter from knowing whether the vote cast by him was actually registered and counted; Rule 49MA of the Conduct of Election Rules, 19615 is draconian, arbitrary, and contrary to law asreference to Section 177 of the Penal Code, 18606 in the written declaration under Rule 49MA is wrong and misconceived; and lastly, the voters' right to know that the vote as cast is duly registered, being a paramount and indelible fundamental right, any administrative reason and ground raised by the ECI objecting to 100% counting of the VVPAT paper trail should be rejected. These are somewhat peripheral in nature, and therefore, we need not bring them into focused analysis.

replacing the usual norm of 'paper ballots.' This was done after a vigorous debate about the legitimacy of new technology forover a decade[56] "amongst the politicians and experts in the domain of technology and electoral process."[57] Eventually, the use of EVMs, replacing paper ballot, was statutorily adopted by the Parliament through the amendment of the Representation of the People Act, 1951 by the amending Act 1 of 1989. EVMs, thus, came to be used "in the General Elections in 2004 and have been used in each and every General and other election thereafter."[58] Vouchsafing both about the legitimacy and efficacy of EVMs, the Election Commission of India (ECI) has maintained before the Supreme Court:[59]

> "[T]he EVMs have been a huge success in ensuring free, fair and transparent elections across the nation in all elections. They restrict human intervention, checkmate electoral fraud and malpractices like stuffing and smudging of votes, and deter the errors and mischiefs faced in manual counting of ballot papers."

Such a clear and unequivocal stand of the ECI about the reliable and dependable usage of EVMs right from the very beginning has withstood the close and critical judicial scrutiny repeatedly without ever suffering the needle of suspicion! Rather its credentials have become more entrenched from case after case especially with the added attached contrivance to EVMs, known as Voter Verified Paper Audit Trail (VVPAT) system, which provides visual verification for the vote cast by a voter by printing a slip of paper with the voter's choice on it.[60] The slip of paper with the candidate's details is briefly displayed for verification behind a glass window, giving the voter 7 seconds, before dropping into a compartment below. The voter is not allowed to take the VVPAT slip home as it is used to verify votes in randomly selected polling booths for physical verification.

However, the usage of VVPAT mechanism, which is to be attached to EVM, is presently in vogue only to a very limited extent, as it involves the

56 This happened all through the 1980s and early 1990s, with the first use of EVMs in an assembly bye-election in Kerala in 1982. See, *Id.,* para 5.

57 See, *Ibid.*

58 *Ibid.*

59 *Id.*, para 6.

60 The concept of the VVPAT machine was initially proposed in 2010 during a meeting between the Election Commission of India (ECI) and political parties to enhance transparency in the EVM-based polling process. Following prototype preparation, field trials were conducted in Ladakh, Thiruvananthapuram, Cherrapunjee, East Delhi, and Jaisalmer in July 2011. The result of such trials led to the tacit approval of VVPAT by an expert committee of the ECI in February 2013. That, in turn, in the year 2013 itself led to the amendment of Conduct of Elections Rules, 1961, to allow for a printer with drop box (VVPAT unit) to be attached to the EVM. Such an integrated measure was first used in all 21 polling stations of the Noksen Assembly constituency of Nagaland in 2013. In Subramanian Swamy vs Election Commission of India Case, 2013, the Supreme Court mandating VVPATs for transparent elections, compelling government funding for their implementation. For an integrated statement of the features of EVM, see, *Id*., paras 17 and 18,

cumbersome process of counting VVPAT generated slips for physical verification by engaging huge manpower for days together! This means, delay in the declaration of election results and thereby interjecting totally avoidable unwarranted elements of all sorts of suspicion and mongering, imaginary or real, more imaginary than real! Obviously, therefore, it does not seem to be feasible for the ECI to attach VVPAT unit to each of the more than 'one million (ten lakh) polling booths', scattered all over India. This led us to adopt the policy of proportionate use of VVPAT in relation to the total number of EVMs units, in a graduated manner, and that too only to a limited extent. Here, it needs emphasis to state that VVPAT mechanism does not enhance the efficacy or reliability of EVMs per se; it merely reflects or substantiates its inherent efficacy or reliability, reassuring both voters and political parties about the accuracy of their electronically cast votes. In short, VVPAT is merely a trust building measure.

On the principle of proportionate use of VVPAT units to be attached to EVMs, what should be the minimum number of such integrated units in relation to total number of EVMs to be pressed into service so as to generate the requisite much needed TRUST amongst the stakeholders, including the electorates and the participating political parties? To get a scientifically sound answer to this knotty question, in 2018 the ECI made a reference to the Indian Statistical Institute (ISI),[61] which is the competent authority to determine, on the basis of sample size for the internal audit of VVPAT slips with EVM results that is 'mathematically sound, statistically robust, and practically cogent.' On the basis of ISI's advice, the ECI initially used to match VVPAT paper slips of 4125 EVMs under one EVM per assembly rule. This is because, as per ISI's calculations, even counting slips from 479 randomly selected VVPATs across the country would guarantee over 99% accuracy. Here came the judgment of the Supreme Court in *Subramanian Swamy* v. *Election Commissionof India* (2013),[62] laying down firmly that "a paper trail was an indispensable requirement

61 The Indian Statistical Institute, Act 1959 (No. 57 OF 1959), declaring the institution known as the Indian Statistical Institute (ISI) having at present its registered office in Calcutta to be an institution of national importance. Its primary activities are research and training in statistics, development of theoretical statistics and its applications in various natural and social sciences. It comes under the Ministry of Statistics and Program Implementation, Government of India.

62 (2013) 10 SCC 500, cited in *Association for Democratic Reforms,* para 8 (Sanjiv Khanna, J.)

of free and fair elections,"[63] and accordingly, "to ensure full transparency and confidence of voters,""recommended that EVMs be set up with VVPATs."[64]

However, a few years later, to abridge the still persisting trust deficit about the dependability of EVMs, the Supreme Court in 2019 in *N. Chandrababu Naidu* v. *Union of India*,[65] in order "to generate the *greatest degree of satisfaction* in all with regard to the full accuracy of the election results,"magnanimously ruled that "the number of EVMs that would now be subjected to verification so far asVVPAT paper trail is concerned would be 5 per Assembly Constituency or Assembly Segments in a Parliamentary Constituency instead of what is provided by Guideline No. 16.6, namely, one machine per Assembly Constituency or Assembly Segment in a Parliamentary Constituency."[66] And, these five EVMs corresponding to five polling stations are selected by a draw of lots by the Returning Officer concerned, in the presence of candidates or their agents. With this upgradation by the Supreme Court, the ECI is now obligated to count VVPAT slips of 20,625 electronic voting machines!

In the light of the backdrop as underlined above, there seems to be no difficulty at all to answer the pivotal points raised in the present writ petition, namely, whether there is left any need to "return to the paper ballot system; orthat the printed slip from the Voter Verifiable Paper Audit Trail machine be given to the voter to verify, and put in the ballot box, for counting; and/orthat there should be 100% counting of the VVPAT slips in addition to electronic counting by

63 See, *ibid*, citing paras 28 and 29 of *Subramanian Swamy:*

"28. From the materials placed by both the sides, we are satisfied that the 'paper trail' is an indispensable requirement of free and fair elections. The confidence of the voters in the EVMs can be achieved only with the introduction of the "paper trail". EVMs with Vvpat system ensure the accuracy of the voting system. With an intent to have fullest transparency in the system and to restore the confidence of the voters, it is necessary to set up EVMs with Vvpat system because vote is nothing but an act of expression which has immense importance in a democratic system."

"29. In the light of the above discussion and taking notice of the pragmatic and reasonable approach of ECI and considering the fact that in general elections all over India, ECI has to handle one million (ten lakh) polling booths, we permit ECI to introduce Vvpat in gradual stages or geographical-wise in the ensuing general elections. The area, State or actual booth(s) are to be decided by ECI and ECI is free to implement the same in a phased manner. We appreciate the efforts and good gesture made by ECI in introducing the same. For implementation of such a system (Vvpat) in a phased manner, the Government of India is directed to provide required financial assistance for procurement of units of VVPAT."

64 To introduce the VVPAT mechanism, as explicitly and emphatically recommended by the Supreme Court in 2013, the Conduct of Election Rules, 1961 were amended and notified on August 14, 2013**.** See,*Association for Democratic Reforms,* para 8 (Sanjiv Khanna, J.)

65 (2019) 15 SCC 377, cited in *Association for Democratic Reforms,* para 9 (Sanjiv Khanna, J.).

66 See, *Association for Democratic Reforms,* para 9 (Sanjiv Khanna, J.), citing paras 9 and 10 of *N. Chandrababu Naidu (supra).*

the control unit."[67] Moreover, and this is somewhat more surprising, when these very questions have already been repeatedly raised and responded adequately by the Supreme Court![68]

Why then the Supreme Court has not disposed off the present writ petition right at the threshold in the light of clear and unambiguous elaborative judgments hitherto delivered by them? It is of immense interest to note, that the answer to this piqued question has been given by the Supreme Court Bench itself:[69]

> " We could have dismissed the present writ petitions by merely relying upon the past precedents and decisions of this Court which, in our opinion, are clear and lucid, and as repeated challenges based on suspicion and doubt, without any cogent material and data, are execrable and undesirable. However, we would like to put on record the procedure and safeguards adopted by the ECI to ensure free and fair elections and the integrity of the electoral process. Lastly, we would give two directions, and take on record suggestion(s) for consideration of the ECI."

Thus, the whole objective of the present judgment is to judicially authenticate all the measures that have been hitherto undertaken in the entire electoral process of polling of votes through Electronic Voting Machines (EVMs). This has been done by providing cogent reasons to the various challenges raised before it suspecting the efficacy of EVM-VVPAT system.

If the electoral system backed by the technology of EVM-VVPAT system, which is sound and free from the possibility of manipulation through human intervention in the conduct of elections, there is left nothing in the plea of reverting to the "paper ballot system" of the bygone era. On this count the Supreme Court has sharply stated:[70]

> "Question of reverting to the 'paper ballot system', on facts and in the circumstances, does not and cannot arise. It is only improvements in the EVMs or even a better system that people would look forward to in the ensuing years."

The plea that we should revert to 'paper ballot system' becomes at once attenuated and pales into insignificance the moment it is realized that conduct of elections in India is gigantic task.[71] With all the constraints of time, speed, resources, human vagaries, it has beendemonstrated most recently in the 2024 General Electionsthat how our Election Commission of India (ECI),

67 See, *supra.*

68 See, the cases mentioned by the Supreme Court in *Association for Democratic Reforms,* paras 10-15 (Sanjiv Khanna, J.).

69 See, *id.*, para 16 (Sanjiv Khanna, J.).

70 See, *Id*., para 5 (per DipankarDatta, J.).

71 See, *Id*., para 7 (per Dipankar Datta, J.): "Conducting elections in India is a difficult task, is an understatement; rather, it is a humongous task and presents a novel challenge, not seen elsewhere in the world. India is home to more than 140 crore people and there are 97 crore eligible voters for the 2024 General Elections, which is more than 10% of the world population. These voters represent the largest electorate in the world…"

with the technology of EVMs, could handle about 97 crore eligible voters out of the total population of more than 140 crore people, with absolute fairness and 100% accuracy as verified by the technology of VVPAT.[72] Do we want the reversal of this advancement that instantly eschewed all the limitations inherent in the ballot paper approach![73]

The second challenge to the use of EVMs as an alternative to voting through ballot papers is two-fold: one, that the printed slip from the Voter Verifiable Paper Audit Trail machine be actually given to the voter instead of just showing him/her momentarily just for seven seconds through an illuminated glass windowto verify if his/her vote, as cast, is truly recorded, is inadequate and unsatisfactory;[74] and two, for enhancing voter's satisfaction the auditing should be 100% counting of the VVPAT slips in addition to electronic counting by the control unit.[75] This challenge been answered by the Supreme Court in two ways, one on purely constitutional count; two, on simple common sense logical basis.

The voter's right to know that his/her vote, as recorded, has been counted or not flows from the fundamental right guaranteed by Article 19 (1)(a) under the Constitution. Casting vote is the expression of the freedom of speech, which becomes complete the moment it is counted after its recording.

72 See, *id.*, para 10 (per Dipankar Datta, J.): "However, use of EVMs in elections in India are not without its checks and balances. Reasonable measures to ensure transparency, such as tallying 5% VVPAT slips with votes polled, are already in place after the decision of this Court in N. Chandrababu Naidu v. Union of India (supra). This measure, as has been noticed by Hon'ble Khanna, J., was undertaken out of abundant caution and not as an admission of a flaw in the process."

73 See, *Id*., para 33 (Sanjiv Khanna, J.), enumerating the overriding advantages of the EVM-VVPAT mechanism:

i. It runs on battery/power-packs and does not require any external power supply.

ii. Voting is done by pressing a button thereby negating a scenario of invalid vote akin to an invalid paper ballot.

iii. It does not permit more than 4 votes per minute, thereby deterring and disincentivising booth capturing.

iv. After the pressing of 'CLOSE' button on the control unit, there is no possibility of voting.

v. It ensures quick, error-free and mischief-free counting of votes.

vi. Voter is instantly able to verify the recording of their vote through the beep sound.

vii. Further, the VVPAT slip helps verify that the vote casted is recorded correctly.

viii. By pressing the 'TOTAL' button on the control unit at any time, the total number of votes polled up to the time of pressing the button is displayed, without indicating the candidate-wise result of votes.

ix. The original program, which is political party and candidate agnostic, is ported on to the microcontroller of the EVM21 during the manufacturing at the factory. This process is done way before the elections and it is impossible to know the serial number of any candidate in advance. Thus, it is not possible to pre-program the EVM in a spurious manner.

74 See, *id.*, para 15 (per Dipankar Datta, J.): "The petitioners have characterised the present procedure, wherein the voter after pressing the 'blue button' and casting his/her vote can see his VVPAT slip for 7 seconds through an illuminated glass window, as inadequate for the voter to verify if his/her vote, as cast, is recorded."

75 See, *supra*.

With the advanced technology of EVMs, as compared to the traditional method of voting through ballot papers, it is now possible to verify instantly and visually through the mechanism of VVPAT contrivance whether the recorded vote has been counted or not! It needs to be emphasized that the added feature of VVPAT in no way enhances the validity or efficiency of EVMs. It only verifies its efficient working. Earlier the adjunct of VVPAT, which involves the complex process of verification, was used by the ECI to test the efficiency of EVMS on a limited scale – one machine per Assembly Constituency or Assembly Segment in a Parliamentary Constituency, which was later extended to 5 machines under the directive of the Supreme Court.[76] In this background, the question of constitutional import is that a voter has the constitutional right to know whether his or her recorded vote has been counted, but he or she has no such enforceable right to claim that the ECI is under obligation either to handover him or her either the printed slip from the VVPAT machine, or/and the ECI's auditing should be made 100% instead of just 5%. The Supreme Court Bench has succinctly summed up the whole gamut of the argument as follows (which is quoted in full):[77]

> "We now address the second facet of the argument based on the right guaranteed by Article 19 (1)(a) - the voter's right to know that his/her vote, as recorded, has been counted. To deal with this contention, a question comes to my mind - did this right not exist when the 'paper ballot system', which the petitioning association wishes to be reverted to, was in vogue? Then, voters would simply drop their paper ballots into a box, for it to be safely ferried away to the counting stations, whereafter the same were counted by election officials far away from the voter's scrutiny, with no way of knowing whether the vote cast by the voter was indeed counted or had not fallen victim to human error and missed from being counted. In the present far more technologically advanced system of the EVM - VVPAT, every voter who enters the polling booth has his/her name recorded, along with an affixation of signature in the Register of Voters maintained by the Presiding Officer, as provided by Form 17A of the Election Rules. Thereafter, the voter presses the desired button on the ballot unit to cast his/her vote, sees a visual confirmation of the same on the transparent VVPAT screen and hears a loud beep. At the end of the voting process, the Presiding Officer is required to record in Form 17C, not just the total number of voters as per the Register of Voters, but also the total number of votes recorded per voting machine as well as those staying away from the voting process despite affixing signature on the register. The total votes polled as per Form 17C is then again tallied with the

76 See, *Association for Democratic Reforms,* para 9 (Sanjiv Khanna, J.), citing paras 9 and 10 of *N. Chandrababu Naidu (supra).*

77 See, *id*., para 17 (per Dipankar Datta, J.)

> total votes recorded by the control unit. Rule 56D(4) also provides that if there is any mismatch between these two totals, the printed VVPAT slips of the polling station would be counted. Furthermore, if a voter is aggrieved by a mismatch in the candidate voted for in the ballot unit vis-a-vis that recorded in the VVAPT, Rule 49M allows the voter to approach the Presiding Officer. Upon the conclusion of polling, there exists yet another remedy under Rule 56-D, for a candidate to apply for a count of the VVPAT slips, should any discrepancy be suspected. Thus, it is manifest that there is in place a stringent system of checks and balances, to prevent any possibility of a miscount of votes, and for the voter to know that his/her vote has been counted. There can be no doubt that such a system, which is distinctly more satisfactory compared to the system of the yester-years, suitably satisfies the voter's right under Article 19(1)(a) to know that his/her vote has been counted as recorded."

Thus, "[t]he petitioners have neither been able to demonstrate how the use of EVMs in elections violates the principle of free and fair elections; nor have they been able to establish a fundamental right to 100% VVPAT slips tallying with the votes cast."[78]

The second cogent reason to counteract the claim of the petitioners as outlined in the preceding paragraph is sheerly based upon 'common sense logic'. The Supreme Court's response in this respect is that the petitioners' claim is premised on "repeated challenges based on suspicion and doubt, without any cogent material and data," and that the same has been repeatedly dismantled with "clear and lucid" reasons.[79] In this scenario, if with the use of VVPAT technology even to the extent of employing only just 5 units per constituency, there has been found 100% accuracy in the functioning of EVMs,[80] even without a single discrepancy, then where does lie the prudence of burdening the ECI with the onerous task of installing 100% VVPAT-slips tallying machines, which would cost the Nation, unwittingly perhaps, with huge added, totally avoidable, expenditure![81] It would indeed "be a folly when the challenges faced in conducting the elections are of such gargantuan scale."[82]

Intrinsic value of the judgment, in our view, lies in its futuristic import, which may be crystalized on the following counts:

78 See, *Id.*, para 18 (per Dipankar Datta, J.).

79 See, *Id.*, para 16 (Sanjiv Khanna, J.). To the same effect, see, *Id.*para 18 (per Dipankar Datta, J.), terming petitioners' assertions based on"mere apprehension and speculation."

80 See*, Id.*, para 11 (per Dipankar Datta, J.): "The exercise of tallying 5% VVPAT slips with votes cast by the electors has not, *till date*, resulted in any mismatch. This assertion of the ECI has not been proved to be incorrect by the petitioners by referring to any credible material or data." Emphasis added.

81 See, *Id.*, para 8 (per Dipankar Datta, J.): The 2024 General Elections, which is conducted in 7 (seven) phases, requiring the setting up of more than 10 lakh polling booths, has entailed the expenditure of around Rs. 10,00,00,00,00,000 (Rupees One lakh crore) with the present set up!

82 See, *Id.*, para 19 (per Dipankar Datta, J.).

(a) Painstakingly, it puts "on record" the entire sweep of "procedure and safeguards" in one-go adopted by the ECI "to ensure free and fair elections and the integrity of the electoral process," which were hitherto lying scattered 'here there and everywhere', and this indeed has been the singular "purpose" of unfolding the various intricate "features of EVMs."[83] The 'essaying' of all the procedural safeguards is bound to enhance our understanding and appreciation about the efficiency and utility of EVMs, precluding the possibility of unnecessary litigation in future.

(b) The two suggestions made by the Supreme Court in the present case[84] are "in the nature of forward-looking measures to strengthen the

83 See, *Id.*, para 16 (Sanjiv Khanna, J.). See, Id., para 1 (per Dipankar Datta, J.): "I do not recollect any previous decision of this Court having explained the working of the EVMs in such great detail with lucidity and dexterity."

84 See, *Id.,* para 76 (Sanjiv Khanna, J.):

"(a) On completion of the symbol loading process in the VVPATs undertaken on or after 01.05.2024, the symbol loading units shall be sealed and secured in a container. The candidates or their representatives shall sign the seal. The sealed containers, containing the symbol loading units, shall be kept in the strong room along with the EVMs at least for a period of 45 days post the declaration of results. They shall be opened, examined and dealt with as in the case of EVMs."

(b)The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at SI. No. 2 or Sl. No. 3, behind the highest polled candidate. Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/ microcontroller after the verification process is conducted. The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered."

These two suggestions, in fact, are made in response to the doubt that was injected by the petitioners on the eve of 2024 General Elections based on a Wikipedia article stating categorically "that firmware is a software which provides low-level control of computing device hardware etc.," and that "programmable firmware memory can be reprogrammed via a procedure sometimes called flashing." See, id., para 68 (Sanjiv Khanna, J.). After considering the response of ECI on this count, the Supreme Court conclusively summed up: "To us, it is apparent that a number of safeguards and protocols with stringent checks have been put in place. Data and figures do not indicate artifice and deceit. Reprogramming by flashing, even if we assume is remotely possible, is inhibited by the strict control and checks put in place and noticed above. Imagination and suppositions should not lead us to hypothesize a wrong doing without any basis or facts. The credibility of the ECI and integrity of the electoral process earned over years cannot be chaffed and over-ridden by baroque contemplations and speculations." See, *Ibid.* Emphasis in original.

85See, *Id.,* para 1 (per Dipankar Datta, J.).

86 See, *Id.*, para 23 (per Dipankar Datta, J.).

electoral system by bringing in more transparency," and not because they "have any doubt" about "the integrity of the election process."[85]

(c) With the unprecedented review and recording of the entire gamut of legal and technical perspective of EWMs, this judgment legitimately discourages the invocation of the extra-ordinary jurisdiction of the Supreme Court in future on the same and similar grounds.It needs to bear in mind that the jurisdiction of the Supreme Court under Article 32, and the High Courts under Article 226 of the Constitution is reflective of 'writ of right', and not of 'writ of course', and therefor, "it should not be exercised casually or lightly on the mere asking of a litigant based on suspicions and conjectures, unless there is credible/trustworthy material on record to suggest that adverse action affecting a right is reasonably imminent or there is a real threat to the rule of law being abrogated."[86] "It must be shown, at least prima facie, that there is a real potential threat to a right, which is guaranteed by law to the person concerned."[87] Besides circumscribing the applicable writ jurisdiction, the issue of doubting the efficacy of the EVMs again and again despite its being concluded earlier with stated cogent reasons, also falls within the ambit of the doctrine of *res judicata,* whichis equally applicable to writ petitions under article 32 and Article 226 as well.[88]

In conclusion: Absolute reliability of the electoral process is *sine qua non* of the democratic system of governance. In pursuance of this cardinal principle, in the "considered opinion" of the Supreme Court in the instant case, the incorporation of the VVPAT system as an adjunct of EVMs, albeit to a limited extent, "fortifies

87 *Ibid*. "Such threat or apprehension has to be well founded and cannot be based merely on assumptions and presumptions as is found in the present set of writ petitions," id., para 27, citing Constitution Bench judgment in *D.A.V. College, Bhatinda v. State of Punjab,*(2013) 10 SCC 500, para 5 (cited in, id., para 25), holing in para 5 " "[...] a petition under Article 32 in which petitioners make out a prima facie case that their fundamental rights are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place;" and *Adi Saiva SivachariyargalNalaSangam v. State of Tamil Nadu*, (2019) 15 SCC 377 (cited in, *id*., para 26), in which a bench of two judges of the Supreme Court had held in para 12: "[...] The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, *if the same is well founded*, can furnish a cause of action for moving the Court." Emphasis added.

88 See, *Id.*, para 30 (per Dipankar Datta, J.). The genesis for this linkage is traced as under: "The inclusion of the term 'public right' in Explanation VI of Section 11 of the Civil Procedure Code, 1908 aims to avoid redundant legal disputes concerning public rights. Given this clarification, there is no room for debate regarding the application of Section 11 to matters of public interest litigation presented through writ petitions," citing two Constitution Bench judgments of the Supreme Court: *Daryao v. State of U.P.,* 2017 SCC OnLine SC 1734 *(*cited in*, id.,* para 31), and *Direct Recruit Class II Engineering Officers' Association. v. State of Maharashtra*, (2019) 2 SCC 260 (cited in, *id*., para 32), holding, inter alia, that "the principles of res judicata are not foreign to writ petitions."

the principle of vote verifiability, thereby enhancing the overall accountability of the electoral process,"[89] and thereby making our democracy "healthy and robust."[90]

IV ELECTION PETITION: WHETHER LIABLE TO BE REJECTED AT THE THRESHOLD UNDER ORDER VII RULE 11 CPC FOR NON-COMPLIANCE WITH THE RELEVANT PROVISIONS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 READ WITH RULE 212 OF THE RULES OF 1971?[91]

This proposition has emanated from the Supreme Court judgment in *K. Babu* v. *M. Swaraj*.[92]

The abstracted fact matrix of the case is as under.[93] The appellant is the returned candidate in the election to the State Legislative Assembly, who had polled 992 votes more than the next candidate, *viz.,* the first respondent. Thereupon, Election Petition was filed by the first respondent before the High Court of Kerala at Ernakulam under Sections 80, 81, 83, 84, 100, 101 and 123 of the Representation

89 See*, Id*., para 75 (Sanjiv Khanna, J.). See also, id., para 38 (per Dipankar Datta, J.): "I conclude with the hope and trust that the system in vogue shall not fail the electorate and the mandate of the voting public shall be truly reflected in the votes cast and counted."

90 For the elaboration on this count, see, id., para 67 (Sanjiv Khanna, J.): "… Unfounded challenges may actually reveal perceptions and predispositions, whereas this Court, as an arbiter and adjudicator of disputes and challenges, must render decisions on facts based on evidence and data. This is the reason why we had re-listed the matters for directions and clarifications on 24.04.2024, when specific points/questions raised were answered by the ECI. The petitioners were also heard."

91 See also, Virendra Kumar, "What is the true ambit and scope of an Application made by the Returned Candidate, seeking rejection of the Election Petition on grounds of non-disclosure of any cause of action?" *ASIL* Vol. LVIV (2023); Virendra Kumar, "Non-disclosure of assets: whether constitutes corrupt practice in the absence of any statutory provision requiring disclosure of assets?" *ASIL* Vol. LVIII (2022); Virendra Kumar, "Election Petition: Whether it can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?" *ASIL* Vol. LVII (2021); Virendra Kumar, "Dismissal of Election petition in limine: How to determine the non-disclosure of cause of action, one of the pivotal grounds of dismissal?" *ASIL* Vol. LIV at 253-268 (2018), Virendra Kumar, "Whether election petition discloses any 'cause of action': ambit of court's enquiry," *ASIL* Vol. LIII at 349-353 (2017); Virendra Kumar, "corrupt practices under the representation of the people act, 1951: when does an election petition is held to disclose triable issues?" *ASIL* Vol. LII at 482-488 (2016); Virendra Kumar, "Nob-disclosure of criminal antecedents: Whether tantamount to 'undue influence' as a facet of corrupt practice under Section 123(2) of the 1951 Act", *ASIL* Vol. LI at 509-518 (2015); Virendra Kumar, "Election Petition: When could it be said to disclose 'no cause of action'" *ASIL* Vol. LI at524-530 (2015); Virendra Kumar, "Nomination paper: when does it amount to its proper or improper rejection by the returning officer?" *ASIL*. Vol. L at 545-550 (2014); Virendra Kumar, "Cause of action: when it is said to be disclosed in an election petition," *ASIL*. Vol. XLVIII at 414-418 (2012); Virendra Kumar, "An election petition lacking material facts as required to be stated in terms of Section 83(1): whether could be dismissed summarily without trial," *ASIL*. Vol. XLVI at 358-363 (2010); Virendra Kumar, "Material facts and particulars," *ASIL*. Vol. XXXVI at 245-248 (2001); Virendra Kumar, "Dismissal of election petition *in limine*," *ASIL*. Vol. XXXV at 282-284 (1999); Virendra Kumar, "Modus operandi for determining cause of action," *ASIL* Vol. XXIII (1987) at 412-415; and Virendra Kumar, "Rejection of nomination paper," *ASIL* Vol. XXI (1985) at 409-418.

92 2024 INSC 103: AIR 2024 SC 1043 (delivered on 12 February, 2024), per Sanjay Kumar. J. (for himself and Aniruddha Bose, J.) Heren after, *K. Babu*.

93 See, *K. Babu,* paras 3, 4 and 5.

of the People Act, 1951,[94] seeking a declaration that the election of the appellant was void and, in consequence, to declare him duly elected. In return, the appellant filed preliminary objections, contending:

(a) that the petition was liable to be dismissed under Section 86 of the Act of 1951 for non-compliance with Section 81 thereof;

(b) that sufficient number of copies, as required under Rule 212 of the Rules of the High Court of Kerala, 1971 were not filed;

(c) that the copy of the election petition furnished to him was not a true copy of the petition filed;

(d) that there was non-compliance with Section 83 of the Act of 1951, which requires an election petition to contain a concise statement of material facts and full particulars of any corrupt practice, including the names of the parties alleged to have committed such corrupt practice along with the date and place of commission of each such practice; and

(e) that the pleadings in the election petition lacked material facts and particulars of the corrupt practices attributed to him and, therefore, the election petition did not disclose a cause of action.

Accordingly, he prayed that the election petition be dismissed at the threshold under Order VII Rule 11 CPC.

On critical scrutiny, the high court "accepted the plea of the appellant to some extent but ultimately found that sufficient cause of action was made out for trial of the election petition to decide whether the election of the appellant on 06.04.2021 was null and void."[95] Accordingly, it eventually held that "the election petition would be proceeded with in respect of the identified issue alone,"[96] as elaborated by it and, therefore, not liable to be rejected at the threshold.[97]

94 Hereinafter, simply the Act of 1951.

95 See, *K. Babu,* para 6,

96 In fact, in pursuance of this observation, the High Court granted time to the Appellant, then respondents in the election petition, "to file their objections/further objections, if any." See*, ibid.*

97 The elaboration of the identified triable issues, as abstracted by the Supreme Court, is mainly on the following two counts: One, that "the defects pointed out by the appellant were not in relation to Section 81(3) of the Act of 1951 but pertained only to Rule 212 of the Rules of 1971," and, therefore, it was held "that the lapses in that regard did not amount to non-compliance with Section 81(3)of the Act of 1951 and the election petition was not liable to be rejected by invoking the provisions of Section 86(1)thereof." Two, that "the statements allegedly made by the appellant and his election agents did not amount to a corrupt practice, as defined in Sections 123(2)(a)(ii) and 123(3) of the Act of 1951," but "apropos the allegation that the appellant had used a religious symbol to further his prospects in the election and thereby committed a corrupt practice within the sweep of Section 123(3) of the Act of 1951," inasmuch as "the slips distributed by the appellant and his election agents depicted a picture of Lord Ayyappa and voiced an appeal to vote for the appellant," which, in the opinion of the High Court, *prima facie*, "use of the picture of Lord Ayyappa in the slips distributed by and on behalf of the appellant" constituted "a corrupt practice under Section 123(3) of the Act of 1951 and that the election petition, with respect to this aspect, was liable to be tried." See, *id.*, paras 7 and 8.

Aggrieved by this order, the appellant has come to the Supreme Court in appeal arguing before it specifically that there was non-compliance by the respondent-petitioner with Section 81(3) of the Act of 1951, warranting invocation of Section 86(1) thereof,[98] which expressly mandates that in trial of election petitions, the high court "shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117." In turn, Section 81, falling in Chapter II of the Act of 1951, titled 'Presentation of Election Petitions to High Court', in its sub-section (3) clearly stipulates: "Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition…..'

In view of the above, the appellant vehemently contended before the Supreme Court that the election petition was not in compliance with Section 81(3) of the Act of 1951, "as sufficient number of copies of the petition were not filed at the time of its presentation, and that copies of the documents served on him in the election petition were not true copies and had not been attested as true copies."[99] Nor the defects pointed out by him in the election petition were cured "within time and were rectified after expiry of the period of limitation prescribed for filing of an election petition."[100] In this backdrop, he reiterated his plea that "the election petition, filed without complying with statutory provisions, was liable to be rejected summarily."[101]

The Supreme Court has countered this plea by stating discerningly that "it may be noted that it was never the case of the appellant that the election petition was not accompanied by as many copies as there were respondents in the petition."[102] "His complaint was that sufficient number of authenticated copies were not furnished as required under Rule 212 of the Rules of 1971,"[103] which, *inter alia*, provides that "[e]very petition shall be accompanied by 3 authenticated copies of the application for the use of the court and twice the number of additional copies as there are respondents to be produced along with the application for service along with summons as per rules 210 and 211…"

For squarely meeting the concerns of the appellant in the light of the fact matrix of the case, the Supreme Court has explored the ambit of the Rule 212 of the Rules of 1971and its intrinsic value in relation to section 81(3) of the Act of 1951. From "a plain reading" of the said Rule 212, it is clearly revealed that "the three authenticated copies are for the use of the Court only,"[104] and that such copies "are clearly in addition to what is required to be filed under Section 81(3) of the Act

98 See, *Id*., para 11.

99 See, *Id.*, para 9.

100 *Ibid.*

101 *Ibid*.

102 *Id*., para 12.

103 *Ibid.* This Rule is contained in Chapter XVI of the Rules of 1971, titled 'Election Petitions', which deals with 'Copies of petitions etc., to be furnished.'

104 *Id.*, para 13.

of 1951."[105] Notwithstanding this plain reading, it was strenuously argued before the Supreme Court "that the requirements of Rule 212 of the Rules of 1971 must be imported into and combined with those prescribed by Section 81(3) of the Act of 1951."[106] However, the court is not "impressed" with this argument.[107] The rationale adduced for this stance is:[108]

> "When the statutory provision unequivocally stipulates as to what is required to be done to comply with the mandate thereof, it is not permissible in law to read something more into that provision. Rule 212 of the Rules of 1971 introduces additional requirements prescribed by the High Court and the same cannot, by any stretch of imagination, be read into and be made part and parcel of Section 81(3) of the Act of 1951.

On the contrary, in the light of facts of the case, the Supreme Courthas categorically noticed that "[t]hough the appellant also made a bald statement in his preliminary objections that the copy of the petition furnished to him was not a true copy of the election petition, he did not elaborate on what he meant by that;[109] nor he ever alleged "that the copy of the petition furnished to him was not attested by the first respondent under his own signature to be a true copy of the election petition."[110] Rather, "[i]n his grounds in the present case, the appellant stated that copies of the documents served on the respondents in the election petition were not true copies and had not been attested as such."[111] Even on this count, "a precise averment was not made by the appellant even before us that the copy of the petition supplied to him was not attested by the first respondent under his own signature to be a true copy of the election petition."[112] "Significantly," the Supreme Court has noticed that "the copy of the petition furnished to him was neither produced before the High Court nor before us to substantiate this plea."[113] "In effect, the only point urged by the appellant is that the election petition is liable to be rejected for non-compliance with the requirement of Rule 212 of the Rules of 1971."[114]

"Viewed thus,"the Supreme has held that "the objections raised by the appellant against the maintainability of the election petition filed by the first respondent had no merit and the order of the High Court holding to that effect

105 *Ibid.*
106 *Id.,* para 15.
107 *Ibid.*
108 *Ibid.*
109 *Id.,* para 13.
110 *Ibid*.
111 *Id*., para 14.
112 *Ibid.*
113 *Ibid.*
114 *Ibid*.
115 *Id*., para 16.

warrants no interference."[115] Accordingly, the appeal has been dismissed, and the interim order passed earlier stands vacated.[116]

IV ELECTION PETITION: WHETHER IT CAN BE REJECTED AT THE THRESHOLD UNDER ORDER VII RULE 11OF CPC READ WITH SECTION 86 OF THE RPA OF 1951 ON GROUNDS OF NON-DISCLOSURE OF ASSETS IN THE NOMINATION PAPER AND INDULGENCE IN 'CORRUPT PRACTICES' IN THE ELECTION?[117]

Kimneo Haokip Hangshing v. *Kenn Raikhan*.[118]

The appellant in this case is the returned candidate in the general elections to the Manipur Legislative Assembly held in 2022. Her election was challenged by the respondent, who was also a contestant from the same seat, through an election petition "on the grounds that the appellant has not disclosed her assets in her nomination papers and that she had indulged in 'corrupt practices' in the election."[119]The appellant moved an application under Order VII Rule 11 of the Civil Procedure Code, 1908 ("CPC") read with Section 86 of the Representation of the People Act, 1951 for rejection of the petition, "on the grounds that it does not disclose any cause of action as it does not

116 *Ibid*. The Supreme Court had heard the appeal in part on 18.01.2024, and stayed further proceedings in the election petition, see, *id*., para 2.

117 See also, Virendra Kumar, "Election Petition: Whether applications under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, seeking dismissal for non-compliance of the provisions to Section 83(1)(c) is maintainable? *ASIL* Vol. LVIV (2023); See also, Virendra Kumar, "Election petition: Whether it deserved to be dismissed in limine owing to the absence of material facts betraying a clear cause of action? *ASIL* Vol. LVIV (2023); Virendra Kumar, "Election Petition: Whether it can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?" *ASIL* Vol. LIVIII (2021);

Virendra Kumar, "Dismissal of Election petition in limine: How to determine the non-disclosure of cause of action, one of the pivotal grounds of dismissal?" *ASIL* Vol. LIV at 351-401 (2018); Virendra Kumar, "Election petition: Whether it deserved to be dismissed in limine owing to the absence of material facts betraying a clear cause of action? "Whether election petition discloses any 'cause of action': ambit of court's enquiry," *ASIL* Vol. LIII at 349-353 (2017); Virendra Kumar, "corrupt practices under the representation of the people act, 1951: when does an election petition is held to disclose triable issues?" *ASIL* Vol. LII at 482-488 (2016); Virendra Kumar, "Election Petition: When could it be said to disclose 'no cause of action'" *ASIL* Vol. LI at 524-530 (2015); Virendra Kumar, "Nomination paper: when does it amount to its proper or improper rejection by the returning officer?" ASIL. Vol. L at 545-550 (2014); Virendra Kumar, "Cause of action: when it is said to be disclosed in an election petition," *ASIL*. Vol. XLVIII at 414-418 (2012); Virendra Kumar, "An election petition lacking material facts as required to be stated in terms of Section 83(1): whether could be dismissed summarily without trial," *ASIL*. Vol. XLVI at 358-363 (2010); Virendra Kumar, "Material facts and particulars," *ASIL*. Vol. XXXVI at 245-248 (2001); Virendra Kumar, "Dismissal of election petition in limine," *ASIL*. Vol. XXXV at 282-284 (1999); Virendra Kumar, "Modus operandi for determining cause of action," *ASIL* Vol. XXIII (1987) at 412-415; and Virendra Kumar, "Rejection of nomination paper," *ASIL* Vol. XXI (1985) at 409-418.

118 2024 SCC OnLine SC 2548 **(**Decided on September 13, 2024), per Sudhanshu Dhulia, J. (for himself and AhsanuddinAmanullah, J.) Hereinafter, *KimneoHaokipHangshing.*

119 See, *KimneoHaokipHangshing,* para 2.

specify any corrupt practices alleged to have been committed by the appellant, nor is there any averment regarding concealment of her income/assets," and, therefore, "the Election Petition does not comply with the requirements of Section 83 of RPA and ought to be dismissed at the threshold."[120]

The high court, however, held that "whether the appellant had any income or not and whether he had given a wrong declaration at the time of his nomination needs to be looked into in trial for which evidence has to be led by the parties and examined by the Court."[121] The petition, therefore, cannot be dismissed under Order VII Rule 11 application. Consequently, the application under Order VII Rule 11 filed by the appellant was dismissed. Aggrieved by this order, the appellant by special leave to appeal has come to the Supreme Court.

The Supreme Court, in order to examine the legitimacy of the high court order and to cut down the unnecessary perusal of analogous or parallel precedents, has first made a prefatory short statement by observing: "Over the years, Election Petitions have been filed invariably on the grounds which are similar to the ones raised before this Court."[122] Accordingly, the pointed poser to resolve the issue in the instant case is: "The only question is whether the Court can dismiss such a petition at the very threshold on an application under Order VII Rule 11 CPC or that the petition needs a detailed consideration by the Court,"[123] and that the answer to this question "will depend upon what kind of statutory compliances have been made in the Election Petition."[124]

In the present case, the critical issue to be decided is, whether or not the election petition complies with the requirements of section 83 of RPA, and ought to be dismissed at the threshold if it does not. A bare perusal of the provisions of said Section 83[125][125] Section 83 of the Act of 1951 provides:

120 *Id*., para 4.

121 *Id.*, para 5.

122 *Id*., para 7.

123 *Ibid*.

124 *Ibid*.

125 Section 83 of the Act of 1951 provides:

"(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

> shows that "an Election Petition should, inter alia, contain a concise statement of material facts and particulars of any corrupt practices which is alleged against the returned candidate, etc."[126] and that further "the Proviso to Section 83(1) of the Act requires that the Election Petition shall also be accompanied by an affidavit in prescribed form to support the allegations of corrupt practices."[127]

In view of the above, the case of appellant in the present case before the Supreme Court is that "if the provisions as referred above, wherein material details have to be given by the respondent and particularly the details of corrupt practices *etc.*, has to be *strictly construed* and any deviation by the respondent on this requirement shall make the petition liable to be dismissed at the very threshold."[128]However, here comes the critical turning point in judicial decision-making when the Supreme Court has summed up the true import of Section 83(1) of the Act of 1951, emerged as the "settled position of law", by stating spontaneously:[129]

> "All the same, this [strict construction of Section 83(1)] is not what is the requirement of law. Rather the settled position of law here is that an Election Petition should not be rejected at the very threshold where there is a 'substantial compliance' of the provisions."

With a view to examining, whether "substantial compliance" of section 83(1)(a) and 83(1)(b) has been done by the respondent-petitioner, the Supreme Court perused paras 15 and 16 of the election petition with the following effect:[130]

> In para 15 of the Election Petition, the respondent has pleaded that construction worth approx. Rs. 2 crores has taken place on agricultural land of the appellant, however, the column for investment in land through construction has been left empty by the appellant. Thereafter, the respondent has also pleaded that the appellant was serving as a Committee Officer in the Assembly Secretariat, Manipur Legislative Assembly till 31.12.2021, yet,

126 See, *KimneoHaokipHangshing,* para 6.

127 *Ibid.*

128 See, *Id*., para 7. Emphasis supplied.

129 *Ibid*.

130 See, *Id*., para 8. See also para 3, wherein the respondent in his Election Petition inter alia raised the following grounds in challenge to the election of the appellant:

"(1) Because the [appellant] has been declared as the returned/successful candidate by improperly accepting the nomination paper despite the concealment of the asset and investment of about Rs. 2 crores for land development in the said property of land and construction inside the agricultural land mentioned in her Form 26 affidavit...

(2) Because the [appellant] had concealed her total income for Financial Year 2021-2022 and shown as Rs. 0 even though she was serving as Committee Officer at Secretariat of Manipur Legislative Assembly till 31.12.2021."

> she has shown her income for FY 2021-2022 as Rs. 0/-, which is untrue.

In para 16 of the Election Petition, the respondent has referred to Section 33 of RPA and alleged non-compliance with the requirement of furnishing true and correct information by candidates. Further, in ground A (as reproduced above) it is asserted that since the appellant has concealed her investment of Rs. 2 crores in her land, her nomination papers ought to have been rejected.

On a perusal of the petition as a whole, including the averments reproduced above, the Supreme Court has held that "it is clear that a cause of action has been disclosed by the respondent,"[131] and that "[w]ether the appellant has concealed her investments and her income, and thus her nomination has been improperly accepted, is a triable issue."[132]

The Supreme Court has also dealt with the issue of compliance in respect of the affidavit, which,in terms of the proviso to section 83(1)(c) of RPA, is required to be given under Rule 94A of the Conduct of Election Rules, 1961. This Rule provides the 'Form of affidavit to be filed with the election petition'by stipulating: "The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."[133] In this context, the question that has often come to the fore is, whether an election petition is liable to be dismissed at the very threshold even if the allegations of corrupt practices of a returned candidate have not been given by a petitioner in terms of the proviso in section 83(1)(c) of RPA. Authoritatively, this question was answered by a three Judge Bench of the Supreme Court in *G.M. Siddeshwar* v. *Prasanna Kumar,*[134] in the negative by holding that an electionpetition could not be dismissed *in limine* "even if an affidavit is not filed in terms of the proviso." Stated positively,[135]

> "What is mandatory, however, is that there should be substantial compliance. In other words, if substantial compliance in terms of furnishing all that is required under the law has been given, the petition cannot be summarily dismissed."

131 *Id*., para 8.

132 *Ibid*.

133 See, *id.,* para 9: The format of the relevant portion of Form 25 is reproduced below:

> "I, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati _____ (Respondent No.__) in the said petition) make solemn affirmation/ oath and say—
>
> (a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;
>
> (b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of and the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the Schedule annexed thereto are true to my information..."

134 (2013) 4 SCC 776, cited in *KimneoHaokipHangshing,* para 10.

135 *Ibid.*

This test laid down in *G.M. Siddeshwar* has beenrecently reiterated and applied in *Thangjam Arunkumar* v. *Yumkham Erabot Singh*,[136] in which the Supreme Court upheld the dismissal of the returning candidate's Order VII Rule 11 application by the High Court of Manipur in an election petition by observing:[137]

> "14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit."

In view of the above, the Supreme Court has concluded by stating that there is "no reason to interfere with the finding of the High Court of Manipur that the Election Petition discloses a cause of action and that there is substantial compliance of the requirements provided under provisions of RPA and thus the petition cannot be dismissed under Order VII Rule 11 CPC."[138]

Contribution: re the functional value of the provisions of section 81(1)(a), section 81(1)(b) and section 81(1)(c) in terms of the principle of 'substantial compliance' is unique.

V CONCLUSION

Our critical analysis of the four propositions, which corresponds to the four judgments of the Supreme Court, has yielded the following conclusions.

Re First judgment: *KarikhoKri* v. *Nuney Tayang*[139]

In this case, the high court annulled the election of the returned candidate on grounds of non-disclosure of certain assets amounting to 'undue influence' under the relevant provisions of the Representation of the People Act, 1951[140] by applying those provisions rather 'mechanically'. Election law, notwithstanding being statutory in nature, is not to be applied mechanically. It is highly creative in its application, which is to be expounded by comprehending the avowed objectives underlying those statutory provisions. The High Court had faulted on this count in its decision-making, and this is what comes out clearly in the reversal of its decision by the Supreme Court.

Re Second judgment: *Association for Democratic Reforms (Petitioner)* v. *Election Commission of India*.[141]

Through this case it is shown by the Supreme Court that how the new developing technology of Electronic Voting Machines (EVMs), can replace the conventional mode of 'paper ballots' in the exercise of the right to franchise pan India in the largest democracy of the world.[142] This has been creditably done by

136 2023 SCC OnLine SC 1058, cited in *id*., para 11.

137 *Ibid.*

138 *Kimneo Haokip Hangshing,* para 12.

139 See, *supra*, Part II.

140 See generally, *supra*, Part III.

141 See, *Ibid.*

142 *Ibid.*

dispelling all doubts about the possibility of any manipulation of EVMs jeopardising electorates' right to franchise with the aid and assistance of super added technology of Voter Verified Paper Audit Trail (VVPAT) system.[143] The Election Commission of India (ECI) has vouchsafed and candidly stated before the Supreme Court that "the EVMs have been a huge success in ensuring free, fair and transparent elections across the nation in all elections."[144] "They restrict human intervention, checkmate electoral fraud and malpractices like stuffing and smudging of votes, and deter the errors and mischiefs faced in manual counting of ballot papers."[145]

Re Third judgment: *K. Babu* v. *M. Swaraj*[146]

In this case, the Supreme Court has specifically dealt with the issue, 'whether an election petition is liable to be rejected at the threshold under Order VII Rule 11 CPC for non-compliance with Section 81(3) of the Act of 1951 read with Rule 212 of the Rules of 1971' "as sufficient number of copies of the petition were not filed at the time of its presentation."[147] In this context, the Supreme Court has sustainingly secured the value of the statutory provision by observing: "When the statutory provision unequivocally stipulates as to what is required to be done to comply with the mandate thereof, it is not permissible in law to read something more into that provision. Rule 212 of the Rules of 1971 introduces additional requirements prescribed by the High Court and the same cannot, by any stretch of imagination, be read into and be made part and parcel of section 81(3) of the Act of 1951."[148]

Re Fourth judgment: *Kimneo Haokip Hangshing* v. *Kenn Raikhan*.[149]

The fourth proposition revolves around the issue, whether an election petition can be rejected at the threshold under Order VII Rule 11of CPC read with section 86 of the RPA of 1951 on grounds of non-disclosure of assets in the nomination paper and indulgence in 'corrupt practices',[150] which, in tone and tenor, is similar to the third proposition. This is so, inasmuch as the end results in both are similar. However, the approach of the Supreme Court in the case of fourth proposition is refreshingly different, because for the resolution of the problem in hand it succinctly stated "the settled position of law" by observing that an election petition should not be dismissed at the very threshold on an application under Order VII Rule 11 of CPC "where there is a 'substantial compliance' of the (mandatory statutory) provisions."[151] This approach instantly saves precious judicial time in the resolution of conflict problems!

143 *Ibid.*
144 *Id.*, para 6.
145 See generally, *supra*, Part IV.
146 *Ibid*,
147 *Ibid.*
148 See generally, *supra*, Part V.
149 See, *Ibid.*
150 See*, Ibid.*
151 See*, Ibid.*