

## EC TO REVIEW PENALTY FOR 'FALSE PLAINT'

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

Sunil Arora

The Election Commission may “revisit” the rule for prosecution of a voter for making a false complaint of malfunction of an electronic voting machine or a voter verifiable paper audit trail machine, Chief Election Commissioner Sunil Arora has said.

“Now that the current elections are over, we will probably be discussing it internally whether it should be modified, softened etc. ... we may revisit it,” he said when asked about the penal provision which many feel is unwarranted.

### Rule 49MA

A voter who claims that the EVM or the VVPAT machine did not record his or her vote correctly is allowed to cast a test vote under Rule 49 MA of the Conduct of Election Rules. However, if the voter fails to prove the mismatch, poll officials can initiate action under Section 177 of the Indian Penal Code for giving a ‘false submission’.

The Section says the person “shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

In April, the Supreme Court had sought a response from the poll panel on a plea seeking to revoke the rule. The plea alleged that putting the onus on the elector in cases of arbitrary deviant behaviour of machines used in election process infringes upon a citizen’s right to freedom of expression under the Constitution.

The petition also pointed out that presently the burden of proof rests on the elector for reporting any deviant behaviour of EVMs and VVPAT machines.

A Bench headed by the Chief Justice Ranjan Gogoi took note of the plea, which alleged that Rule 49MA of the Conduct of Elections Rules was unconstitutional as it criminalises reporting of malfunctioning of EVMs and voter-verified paper audit trail (VVPAT) machines.

The poll body has maintained that if there is no penal provision, people may make false claims. The penal provision is used as “an exception, very, very, very rarely”, Mr. Arora said, adding that the intention of the provision must have been to discourage those who want to disrupt the electoral process by making such complaints.

According to EC officials, it takes 20 to 30 minutes to go through and settle complaints about VVPAT machines malfunctioning.

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