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# No legal mandate to share voter turnout with anyone other than candidates and their agents, EC tells Supreme Court

NGO's plea sought to disclose authenticated record of voter turnout by uploading on EC website scanned legible copies of Form 17C of all polling stations after each phase of polling

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Electoral staff collecting EVM's and other election materials on a hot summer afternoon at a distribution centre on the eve of 5th phase of Lok Sabha election, in Lucknow on May 19, 2024. | Photo Credit: Sandeep Saxena

The Election Commission (EC) on Wednesday told the Supreme Court that there was no “legal mandate” to provide the voter turnout data to any person other than electoral candidates or his agents.

“There is no legal mandate to provide the Form 17C [account of votes recorded] to any other person other than the candidate or his agent,” the EC said in a 225-page affidavit.

The poll body was responding to an application filed by the Association for Democratic Reforms (ADR), represented by advocates Prashant Bhushan, Neha Rathi and Cheryl D’Souza, primarily seeking to disclose authenticated record of voter turnout by uploading on the EC website scanned legible copies of Form 17C of all polling stations after each phase of polling in the General Elections 2024.

The NGO had alleged an inordinate delay in publishing voter turnout details followed by a sharp spike in figures from the initial voter turnout percentages released by the EC. The development, according to the ADR, had rung alarm bells about the authenticity of the polling data available in the public domain and raised suspicions whether the electronic voting machines (EVMs) were switched.

In the previous hearing on May 17, the Supreme Court had asked why the EC could not upload voter turnout details.

However, the EC countered in its affidavit that the ADR was merely trying to “create an entitlement in the middle of the election period”.

## ‘Voluntary initiative’

It said the statutory mandate required Form 17C to be shared only with candidates and their agents. However, it was the EC’s voluntary and “non-statutory” initiative to disclose the voter turnout through voter turnout app, website and various press releases.

“As a measure of voluntary disclosure, the information is published in the app continuously at two-hour intervals on polling day to reflect the live turnout data. Two press notes are issued on poll date. The last being at 11.45 p.m. after waiting for the maximum number of polling parties to return... This was an initiative for transparency at a national level as prior to the app, information was gleaned in a decentralised manner from

returning parties, polling agents, sector magistrates and such sources. Press and TV channels used to do their own backend evaluations to project larger trends,” the EC, represented by senior advocate Maninder Singh and advocate Amit Sharma, explained.

The EC said the ADR had failed to appreciate the fact that publication of voter turnout data on its app was merely facilitative. The NGO had ignored the disclaimer that figures in the “non-statutory Voter Turnout App” were secondary and provisional data.

“Tentative figures from a secondary source can never be the final turnout figure,” the affidavit said.

Besides, some polling stations are situated in far-flung places. EVMs and accounts of votes recorded have to be transported or brought to the Returning Officer’s base offices. This would take time.

## **‘Mala fide campaign’**

The EC said the application was part of a “consistent mala fide campaign to raise doubts against the EC in every possible way by voicing misleading allegations”.

The poll body said the objective of “certain elements” or “vested interests” was to revert to paper ballots by generating an unwarranted atmosphere of suspicion in close proximity to an election.

The EC accused the ADR of suppressing the information that the Supreme Court had upheld the EVM system in a judgment on April 26. The issue of Form 17C and its various aspects had been discussed in that case, the commission argued.

The EC said the General Elections were entering in last two phases and had so far been held smoothly. It was settled law that petitions intended to create suspicion in public minds or impede the conduct of the process and conclusion of elections by the EC ought to be rejected at the threshold itself.