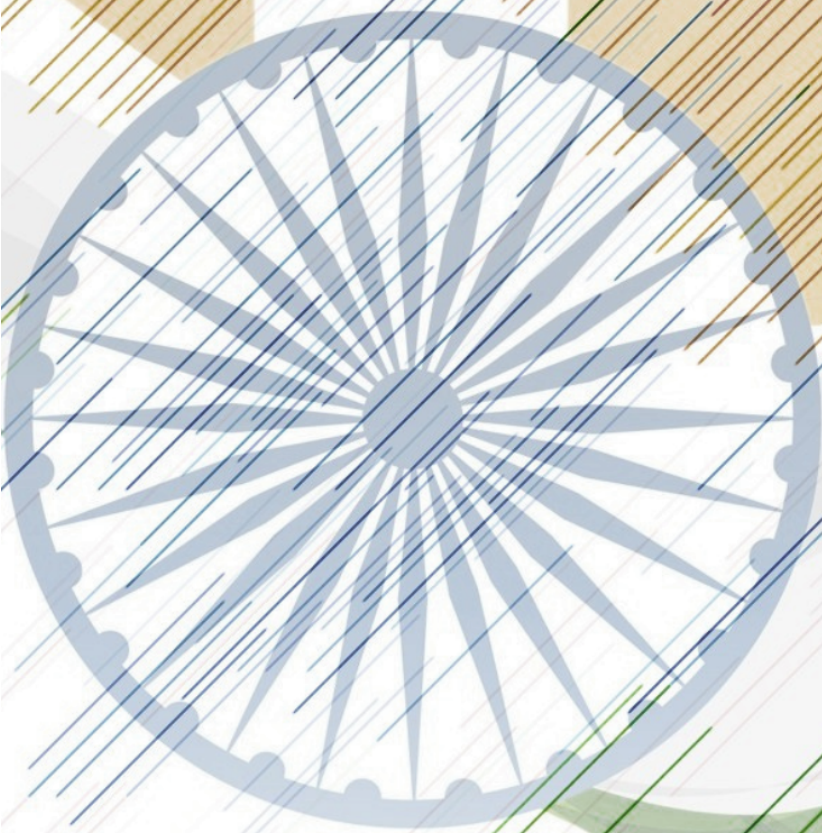


April 2024
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1st Interim Report of the Panel

(Covering the period
16 March to 16 April 2024)



Independent Panel For Monitoring
Indian Elections

Independent Panel for Monitoring Indian Elections – 2024

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indiaelectionmonitor.org

17th April 2024

Executive Summary

1. This is the second of our series of reports on the conduct of the 2024 General Election. Our purpose as the Independent Panel for Monitoring Indian Elections 2024 (IPMIE) is to observe the elections, document violations of laws and procedures, make assessments on electoral integrity, and raise concerns publicly as well as directly with the Election Commission of India (ECI).
2. Our first report was released on 15th March, just ahead of formal announcement of polls by the ECI, providing a baseline for our observation of the elections. The current report covers the period since that announcement through to just before the 1st phase of voting. The focus here is on campaigning by political parties and the implementation of relevant election laws, including Representation of People's Act and the Model Code of Conduct (MCC), as well as the role of authorities potentially impacting the ability of political parties to freely contest elections and of citizens to enjoy fundamental freedoms, as the elections proceed.
3. Below are some highlights from the report:

Using justice system to hollow out the Opposition

- Opposition leaders arrested in days prior to voting: These include Aam Aadmi Party (AAP) leader and Delhi Chief Minister Arvind Kejriwal, and Bharat Rashtia Samithi (BRS) leader K. Kavitha.
- Opposition leaders continue to languish in judicial custody: Include former Jharkhand Chief Minister Hemant Soren and Delhi Deputy Chief Minister Manish Sisodia.
- Opposition figures subjected to raids by investigating agencies in the past month: including former Trinamool Congress (TMC) MP Mahua Moitra, and TMC leader Swarup Biswas.
- Opposition leaders reporting pressure from authorities: AAP leaders in Delhi claimed facing fresh pressure from the BJP to quit the party, or face arrest.
- An Indian Express investigation reported 23 political leaders facing criminal investigation, had their cases dropped after they joined the Bharatiya Janata Party (BJP) – pointing to potential government's abuse of the criminal justice system for political ends.
- Opposition parties report being financially crippled: The Congress Party has alleged that it has been 'financially crippled' after receiving fresh income tax demands amounting to a total of around Rs. 3500 crore (around \$420 million). The Communist Party of India too received fresh tax notices, as did an MP with the Trinamool Congress.

Using electoral bonds to monopolise political space

Analysis of electoral bonds data reported widely, reveals:

- The BJP amassed a total of over Rs. 6000 crore (\$ 720 million) between April 2019 and January 2024 – almost half of all EBS donations during the period.
- BJP had at least 43 'loyal' donors who made repeated donations to it. Some, such as Aurobindo Pharma, had previously faced investigations by central agencies, while others, such as Megha Engineering and Infrastructure Limited (MEIL), subsequently secured lucrative government contracts, subsidies, and other forms of policy support.

Misusing executive authority for electoral advantage

Several instances of high profile violation of MCC, besides several at local level:

- Prime Minister Narendra Modi reported misusing government machinery for electioneering on multiple occasions: (i) using a government account to distribute a WhatsApp message to holders of millions of mobile phone numbers, and (ii) using an Indian Air Force helicopter to attend an election rally in Andhra Pradesh. (iii) At a BJP roadshow featuring PM Modi in Coimbatore, school children from a government-aided school were reportedly made to don clothes bearing party symbols and perform on stages.
- Senior BJP ministers flouted guidelines regarding references to armed forces in electioneering: Including PM Modi, Defence Minister Rajnath Singh, and Women, Children and Minorities Minister Smriti Irani.

Pandering to communal sentiments, for electoral advantage

BJP leaders and affiliated groups continue to violate the MCC with impunity

- Several BJP top brass made repeated references to Ram Temple consecration (January 2024): Including PM Modi, Home Minister Amit Shah and Uttar Pradesh Chief Minister Yogi Adityanath.
- Other instances of PM Modi's appealing to religious sentiments: (i) accused the opposition of conspiring to destroy 'shakti'. (ii) called on voters to remember the opposition's 'sins' on the occasion of Ram Navami.
- Other leaders: Finance Minister Nirmala Sitaraman accused the Dravida Munnetra Kazhagam (DMK) of 'destroying our religion' and Member of Parliament (MP) Tejasvi Surya, accused the Congress of politically backing 'jihadis'. Union Minister Shobha Karandlaje targeted Tamilians, Keralites and Muslims in one speech.
- In just the last month (15 March - 15 April), Rashtriya Swayamsevak Sangh (RSS)-affiliated groups, all proxies of BJP, including Vishwa Hindu Parishad (VHP) and Bajrang Dal, organised at least 12 public events where influential individuals engaged in open incitement to hostility, discrimination, and violence against India's minorities. Such speeches were recorded and widely shared online.
- State broadcaster Doordarshan telecast 'The Kerala Story', that spreads unfounded conspiracy and seeks to denigrate Muslims. At least five other films that pursue anti-minority and anti-opposition narratives are scheduled for public release in the coming weeks.
- Online platforms continue to proliferate hate speech and misinformation, and the risks posed by emerging technologies such as generative AI appear to be increasing.

Electoral management

Election Commission of India is failing to stand up to the torrent of violations

- The poll schedule announced by ECI has been criticised for favouring BJP's electoral prospects – particularly by extending the polling process in states like West Bengal and Maharashtra where BJP is trying to strengthen itself.
- The ECI is not known to have initiated any directives regarding arbitrary actions against opposition leaders by central agencies, continuing anti-minority hate speeches by RSS-affiliated leaders, or in the matter of brazen propaganda films being released during the election period.
- Of the eight potential MCC violations involving PM Modi flagged with ECI, the latter has reportedly intervened only in one instance – relating to the broadcast of WhatsApp messages. Of five potential MCC violations involving senior Union Ministers, ECI was reported initiating action only in one case, when it directed the registration of an FIR against Union

Minister Karandlaje. It also directed similar action, separately, against BJP MP Tejasvi Surya.

These failures confirm the fears among election watch groups that the last-minute appointment of two new Election Commissioners by an Executive-dominated panel, about the lack of independence and autonomy of the ECI.

Call to Action

- Authorities, including the Enforcement Directorate (ED), the Central Bureau of Investigation (CBI) and the Income Tax (IT) Department, must dispel the notion gaining ground that they are hounding the Opposition unfairly, and ECI must urgently provide guidance on the matter.
- Political party leaders must desist from use of communal speech and polarisation to seek votes – and ECI must call out those violations of law, even if it is the most senior leaders of any party.
- ECI must come down heavily against other violations of MCC, especially the misuse of office by ruling parties for electoral advantage.
- ECI must ensure that electors have the full freedom to exercise their right to vote – and election authorities on the ground ensure the appropriate environment for that at booth level.
- There must be 100% verification of Voter Verified Paper and Audit Trail (VVPAT) – and ECI must put in place mechanisms to do so at counting stage.
- ECI must publish on its website updated list of all complaints it received on violations of MCC and election related laws, as well as information on progress with processing of those complaints.

List of abbreviations

- AAP: Aam Aadmi Party
- BJP: Bharatiya Janata Party
- BRS: Bharat Rashtra Samithi
- CAA: Citizenship (Amendment) Act 2019
- CBI: Central Bureau of Investigations
- CCE: Citizens Commission for Elections
- CEC: Chief Election Commissioner
- CM: Chief Minister
- DMK: Dravida Munnetra Kazhagam
- ECI: Election Commission of India
- ED: Enforcement Directorate
- EMB: Electoral Management Bodies
- EVM: Electronic Voting Machines
- FCRA: Foreign Contribution (Regulation) Act
- FIR: First Information Report
- FPTP: First Past the Post
- GE: General Election
- ICCPR: International Covenant on Civil and Political Rights
- INC: Indian National Congress
- J&K: Jammu & Kashmir
- MCC: Model Code of Conduct
- MEIL: Megha Engineering and Infrastructure Limited
- MLA: Member of Legislative Assembly
- MP: Member of Parliament
- NDTV: New Delhi Television
- NRC: National Register of Citizens
- PM: Prime Minister
- RPA: The Representation of the People Act
- RSS: Rashtriya Swayamsevak Sangh
- SCI: Supreme Court of India
- SC: Scheduled Caste
- ST: Scheduled Tribe
- TMC: Trinamool Congress
- UN: United Nations
- UP: Uttar Pradesh
- UT: Union Territory
- VHP: Vishwa Hindu Parishad
- VVPAT: Voter Verified Paper and Audit Trail

Independent Panel for Monitoring Indian Elections – 2024

The members of the Panel are:

1. **Prof. Neera Chandhoke**, Distinguished Honorary Fellow, Centre for Equity Studies, and retd. Professor, Delhi University, India
2. **Dr. Thomas Daffern**, Philosopher and historian; chairman of World Intellectuals Wisdom Forum; Director, International Institute of Peace Studies and Global Philosophy (France and UK); Convenor, Commonwealth Interfaith Network
3. **Mr. Sakhawat Hossain**, former Election Commissioner of Bangladesh
4. **Dr. Harish Karnick**, former Professor, IIT, Kanpur, India
5. **Dr. Sebastian Morris**, former Professor, IIM, Ahmedabad, India
6. **Prof. Rahul Mukherji**, Professor & Chair, Modern Politics of South Asia, South Asia Institute, Heidelberg University, Germany

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1. Introduction

We are a group of independent scholars and practitioners who have constituted ourselves as the Independent Panel for Monitoring Indian Elections (IPMIE) – 2024, in response to citizens groups expressing apprehensions that general election 2024 to India’s parliament risks undermining electoral integrity and citizens rights to free and genuine choice. We decided to contribute by supporting domestic civil society, seeking to ensure free, fair and genuine General Elections 2024 (GE) in India, by observing the elections, and raising concerns publicly as well as directly with the Election Commission of India.

On 15th March 2024, we published our pre-election report, based on experience from GE 2019 onward, reporting whether Indian citizens were able to exercise their right to universal suffrage; were offered free choice; and could make it in an informed manner. According to domestic as well as international law, these are the essence of a free and fair elections, essential for securing the will of the people, itself the cornerstone of a representative democracy. This baseline report which is publicly available on our website, was meant to help us establish a baseline and guide for our monitoring of GE process.¹

Since 16th March 2024, when Election Commission of India (ECI) published the general election 2024 calendar, we have been observing all aspects of the electoral process to date, including voter registration and especially campaigning by political parties and candidates, and implementation and enforcement of relevant domestic law, including Representation of People’s Act and the Model Code of Conduct (MCC). Once polling commences with Phase 1 voting on 19th April, we will also start to monitor voting and the counting system and processes.

Below is an interim report of our monitoring exercise, in the one month since announcement of elections and before commencement of voting, i.e. between 16 March to 16 April 2024. Given the expanse of the election process in a country the size of India, and logistical challenges as well as sensitivities involved, we have relied in this report mostly on secondary sources, including media reports, and some social media posts, besides review of applications by concerned citizens, before election authorities and other redressal fora, and reports of the response of the authorities.

Widespread violations of election laws and codes

The past month was also when the enormity of the working of the electoral bond scheme (EBS) - with data forced to be made public on orders of the Supreme Court of India - became clear to Indian citizens. Whilst it was hardly news that BJP was by far the biggest beneficiary of EBS, the one sidedness of the funding programme, favouring BJP, was remarkable. The pattern emerging from an analysis of EBS data – especially the fact that many corporations made donations even as they made losses, or that many private entities received government contracts or favourable policy decisions, around the time of their making donations to the ruling party;

¹ Independent Panel for Monitoring Indian Elections, ‘Baseline Report Ahead of the 2024 General Election’ (2024) <<https://indiaelectionmonitor.org/>>.

worse, that several of these companies were under investigation for financial crimes, around the same time – hints at two possibilities, election watch groups are claiming: “Extortion, where agencies are actively set after someone to extract money, or straight allegations of corruption, which were put in cold storage after a donation was made to the ruling party.”²

There was also escalation in the period under review, in the trend of central investigating agencies – like the Central Bureau of Investigation (CBI), Enforcement Directorate (ED) and Income Tax (IT) Department – deployed by the ruling BJP to target opposition parties and leaders. Delhi Chief Minister (CM) Arvind Kejriwal was, on 21st March, arrested by the ED in a case of alleged corruption by the Delhi Aam Aadmi Party (AAP) government in granting liquor licenses, under the draconian Prevention of Money Laundering Act (PMLA) - marking the first time in India’s history that a sitting chief minister had been placed under arrest. This was on the back of the continuing incarceration of ex-Jharkhand CM Hemant Soren, accused by ED, similarly of illegally laundering money with the help of a ‘land mafia’. He remains in judicial custody.³ In late March 2024, Congress Party, the largest opposition, reported that its bank accounts holding more than Rs. 270 crore (around \$32 million) were frozen by the IT Department, and that some of its funds were also forcibly withdrawn, subsequent to a series of tax notices that the party had received, bringing the total income tax in arrears, demanded from it by authorities to a whopping Rs. 3,500 crore (\$ 420 million).⁴ Clearly there is more to these actions than mere investigations and bureaucratic procedures.

Concerns with the opaqueness of Electronic Voting Machines (EVM) have continued, as we noted in our last report. Attempts by civil society groups to engage ECI for redressal of these concerns have found no response. Recently the Chief Information Commission was reported reprimanding the ECI for not furnishing information in response to a representation filed by concerned citizens that they had raised with the poll panel, on the credibility of EVMs, VVPAT and the vote counting process.⁵ This is a significant move, given the Supreme Court of India is slated to hear on 18th April a plea for 100% matching of ballots recorded electronically with paper slips. Currently only a very small sample of these are matched.

And several senior leaders of the ruling BJP have continued to make statements appealing to religion, violating MCC and the Representation of Peoples Act (RPA)⁶, including Prime Minister Narendra Modi. Modi is reported to have said at an election rally “...*the INDIA bloc...did not turn up for pran pratishtha at Ayodhya...Ram Navami is approaching. Do not forget their sins...These parties speak against Sanatan Dharma and advocate making south*

² Yashraj Sharma, ‘India’s Electoral Bonds Laundry: “Corrupt” Firms Paid Parties, Got Cleansed’ *Al Jazeera* (4 April 2024) <<https://www.aljazeera.com/news/2024/4/4/indias-electoral-bonds-laundry-corrupt-firms-paid-parties-got-cleansed>> accessed 12 April 2024.

³ ‘ED Attaches ₹31-Crore Worth Ranchi Land “Belonging” to Hemant Soren’ *The Hindu* (4 April 2024) <<https://www.thehindu.com/news/national/jharkhand/ed-attaches-31-crore-worth-ranchi-land-belonging-to-soren-court-takes-cognisance-of-charge-sheet/article68028233.ece>> accessed 4 April 2024.

⁴ ‘Tax Terrorism, Says Congress, as It Gets an I-T Notice to Pay Rs 1,823 Crore’ *The Indian Express* (29 March 2024) <<https://indianexpress.com/article/india/bjp-tax-terrorism-congress-fresh-income-tax-notice-9239797/>> accessed 5 April 2024.

⁵ ‘Gross Violation of Law: CIC Pulls up Election Commission for Not Replying to RTI Query on EVMs’ *The Indian Express* (12 April 2024) <<https://indianexpress.com/elections/cic-ec-rti-query-evs-law-violation-9266025/>> accessed 14 April 2024.

⁶ Election Commission of India, ‘Model Code of Conduct for the Guidance of the Political Parties and Candidates’ <<https://www.eci.gov.in/mcc/>>.

India a separate country.”⁷ Similar statements appealing to majoritarian religious sentiments were reported being made by Uttar Pradesh Chief Minister Yogi Adityanath and Union Home Minister Amit Shah, among others, among others.⁸

Citizens’ concerns falling on deaf ears

These and other developments in the past month - all of which undermine the free and fairness of elections and the democratic process itself – have drawn strong criticism from civil society and election watch groups. A network of 11 NGOs are reported to have written to the ECI asking it to safeguard the integrity of the election process, and hold political parties, candidates and digital platforms accountable to the voters.⁹ They raised particularly concerns about online campaigning and surrogate advertisement, use of emerging technologies and deep fakes, and voter surveillance, and ECI’s tardy engagement with these challenges to conduct of free and fair election.

A group of over 80 retired civil servants, members of the Constitutional Conduct Group (CCG), in an open letter to the ECI, asking “Is there level playing field?”, brought to the attention of the poll panel the “disturbing pattern of harassment and witch hunting of opposition parties and opposition politicians on the cusp of the general elections”, calling into question the motivation of the agencies.¹⁰ CCG members demanded firm action from the ECI “to quell rising public suspicion that the ECI is sitting silent while a politics of vendetta is being practiced to deny opposition parties the freedom to actively participate in the election process”.¹¹

There is ample evidence that public trust in ECI is running low. If not checked, this could imperil the confidence of citizens in the electoral process, a *sine qua non* of a legitimate democratic system. A recent pre-poll survey conducted by the much-respected Centre for Studies in Developing Societies, CSDS-Lokniti group provides some revealing trends.¹² Data shows that the trust of voters in ECI has declined significantly compared to 5 years ago. In 2019, ahead of the then general election, over half of the respondents in a similar CSDS-Lokniti survey had said they had great amount of trust in the ECI.¹³ In 2024, that has plummeted to a

⁷ ‘PM Modi Rakes up Ayodhya in Bihar: “Don’t Forget INDIA Leaders Skipped Ram Temple Ceremony”’ *The Week* (7 April 2024) <<https://www.theweek.in/news/india/2024/04/07/dont-forget-india-leaders-skipped-ram-mandir-consecration-modi-rakes-up-ayodhya-issue-in-bihar.html>> accessed 10 April 2024.

⁸ ‘Not Only Ram Temple Construction, PM Modi Revived Panchtirthas Linked to Ambedkar: UP CM Yogi’ *News18* (6 April 2024) <<https://www.news18.com/india/not-only-ram-temple-construction-pm-modi-revived-panchtirthas-linked-to-ambedkar-up-cm-yogi-8842564.html>> accessed 10 April 2024; ‘Modi Govt Built Ram Temple, Akhilesh Yadav Was against It: Amit Shah in UP’ *Business Standard* (3 April 2024) <https://www.business-standard.com/india-news/modi-govt-built-ram-temple-akhilesh-yadav-was-against-it-amit-shah-in-up-124040300863_1.html> accessed 10 April 2024.

⁹ ‘Press Release: Civil Society Organisations Express Urgent Concerns over the Integrity of the 2024 General Elections to the Lok Sabha’ (*Internet Freedom Foundation*, 8 April 2024) <<https://internetfreedom.in/civil-society-writes-to-eci-on-2024-elections/>> accessed 14 April 2024.

¹⁰ ‘CCG Open Letter to the Election Commission of India: Is There a Level Playing Field?’ (*Constitutional Conduct Group*, 11 April 2024) <<https://constitutionalconduct.com/2024/04/11/ccg-open-letter-to-the-election-commission-of-india-is-there-a-level-playing-field/>> accessed 14 April 2024.

¹¹ *ibid.*

¹² Sandeep Shastri, ‘CSDS-Lokniti 2024 Pre-Poll Survey | Level and Intensity of Voter Trust in Select Institutions and Processes’ *The Hindu* (11 April 2024) <<https://www.thehindu.com/elections/csds-lokniti-2024-pre-poll-survey-level-and-intensity-of-voter-trust-in-select-institutions-and-processes/article68054233.ece>> accessed 14 April 2024.

¹³ *ibid.*

quarter only.¹⁴ Those with ‘not much faith’ or ‘no faith’ at all, have also doubled in these five years.¹⁵ Reflecting the salience of the continuing lack of faith in EVMs, in the same survey a total of 45 % of the respondents believed that the ruling party can manipulate EVMs to its advantage, ‘a lot’ or ‘somewhat’.¹⁶ A majority of the respondents (35 % compared to the 31 % holding the opposite view) also believed central government agencies like the CBI, ED and IT department were being used by the ruling party for political vendetta.¹⁷ These are damning findings that the ECI and other national institutions of justice will ignore at their own peril.

International opinion too is being impacted, undermining the sterling reputation that India’s election management, indeed the wider system of democratic governance - rule of law institutions, free press and independent judiciary - enjoyed in the past. The worsening situation has already led foreign governments to express concerns, as has the United Nations.¹⁸ It was reported recently that governments of Germany and United State had reacted to the arrest of the Delhi CM, publicly asserting, against government of India’s pushback, that “they encouraged fair, transparent, timely legal process.”¹⁹ It was then reported that the spokesperson of the UN Secretary General had also weighed in, saying he hoped “everyone’s rights are protected in India”.²⁰ This does not bode well for India’s reputation on democratic credentials.

We have seen media reports that the ruling BJP has sought the support of political parties from across the world, to act as election observers.²¹ This is a good attempt, encouraging transparency, but only if it is an independent and objective exercise, best anchored not by a political party but by the ECI itself. The details emerging from what has been reported show that the observers will be embedded in BJP campaign groups across constituencies, during campaign and voting phases – very quickly putting to rest any hopes of their independence and objectivity. It is clear from this report that the BJP is concerned about international opinion around the conduct of general election. Our assertion in the IPMIE is that rather than attempt quick fixes and commissioned endorsements, a better way of going about ensuring effective communication of the success of electoral integrity in India would be to ensure that ECI and other national institutions are freed of the politicised control they are clearly under currently, and allowed to discharge their duties independently, as the constitution demands.

Our contributions to citizens’ initiatives

The purpose of publishing interim reports, as the election cycle progresses, is in line with our core objective, not just to create a record of the conduct of 2024 elections, but also to support

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ ‘After US, Germany, Now UN Reacts to Delhi CM Kejriwal’s Arrest: “Hope Everyone’s Rights Are Protected”’ *The Indian Express* (29 March 2024) <<https://indianexpress.com/article/india/un-react-kejriwal-arrest-us-germany-9239448/>> accessed 5 April 2024.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ ‘In BJP External Push, 25 Global Parties Invited to Have a Ringside View of Lok Sabha Polls, Its Campaign’ *The Indian Express* (9 April 2024) <<https://indianexpress.com/article/political-pulse/bjp-lok-sabha-polls-campaign-external-push-9260790/>> accessed 14 April 2024.

civil society efforts at corrective action by authorities during the process of elections. We aim to publish another interim report, mid-May 2014, a month from now, before publishing a complete final report, after 2024 general election concludes.

To this end, we have, since commencement of election process, also published weekly bulletins. These are a snapshot catalogue of key issues raised by civil society and media concerning free and fair elections, that we share directly with the Election Commission of India, requesting redressal, which is also made available for the public. It is hoped interim reports along with weekly bulletins, will together contribute to motivating election authorities to do more to enforce election laws such as RPA and the MCC, and ensure that these elections remain free, fair and transparent, reflect the principles of democracy and safeguard the electoral rights of Indian citizens.

Given the scope of this interim report, mostly covering the campaign phase, the bulk of our reporting seeks to check out (i) whether electors have a ‘real choice’, that is the ruling party has no advantage over the opposition, and that election authorities are able to ensure a level playing field, and that (ii) electors are able to make an informed choice, with media remaining free, and that candidates are not mobilising support on sectarian lines, including caste and community sentiments. (iii) In the final analysis, it is ECI that is the guarantor of these citizens rights, and it is our assessment of the ECI’s role that is the running themes across this brief interim report.

2. Will Indian voters have a ‘real choice’?

2.1. Government accused of ‘fixing’ elections from the start

2.1.1. Introduction

According to international human rights standards, the question of whether elections can be considered ‘genuine’ depends on whether they meet certain procedural guarantees, and on whether they reflect and give effect to the free will of the electorate.²²

In our previous report, we had highlighted several features of India’s current electoral and political system – including issues impacting political pluralism, such as the opacity of political financing and the persecution of opposition political parties and candidates, as well as contentious elements in voting systems and operations, such as the use of electronic voting machines (EVMs) – that raise serious concerns about whether India’s elections indeed offer a ‘real choice’ to its electorate, and whether there is a level playing field for all actors seeking to contest in the electoral arena.²³

In this section, we highlight several recent developments that have dramatically escalated these concerns. These include:

- (i) The systematic mobilisation of various state agencies to target key leaders of the INDIA opposition alliance,
- (ii) Revelations from the recently-released data pertaining to the financing of political parties via electoral bonds, appearing to confirm that the BJP has cornered the lion’s share of political funding, and suggesting that it may have been involved in *quid pro quo* relationships with corporate actors on a hitherto unprecedented scale, and
- (iii) Other recent examples of government machinery and institutions being misused to benefit the BJP’s electoral prospects, in violation of the MCC that is now in effect.

2.1.2. Crackdown against opposition leaders

In our previous report, we had noted with concern that key central investigative agencies – like the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) – as well as the central Income Tax (IT) Department had been deployed to target opposition leaders. Since then, there has been a marked escalation in the weaponization of these agencies.

Major recent developments that appear to confirm a further, dangerous skewing of the electoral playing field in favour of the BJP include:

²² Office of the High Commissioner for Human Rights, ‘Human Rights and Elections: A Handbook on International Human Rights Standards on Elections’ (United Nations 2021) No. 2/Rev.1 paras 84–101.

²³ Independent Panel for Monitoring Indian Elections (n 1).

- *Arrest of Delhi CM Arvind Kejriwal and targeting of other AAP leaders:* On 21 March, ED officials took into custody Arvind Kejriwal, the Chief Minister (CM) of Delhi, marking the first time in India's history that a sitting Chief Minister has been placed under arrest. Kejriwal is the leader of the Aam Aadmi Party (AAP), a popular opposition party that runs the government in two key states (Delhi and Punjab), and is reported to be making in-roads in the BJP's bastion Gujarat.

The ED has claimed that Kejriwal was the 'kingpin' of an alleged plot by which senior AAP leaders allegedly received kickbacks for the party in return for liquor licenses from the Delhi government.²⁴ Delhi's Deputy Chief Minister, Manish Sisodia, was also arrested last year by the Central Bureau of Investigation (CBI) as part of a parallel corruption investigation into the same alleged plot. K. Kavitha, a leader with the Bharat Rashtra Samiti (BRS), another opposition party, was arrested by the ED a few days before Kejriwal's arrest as another alleged co-conspirator in the case. Sisodia's plea for bail was rejected by the Supreme Court (SC) in October last year, and remains in judicial custody, while Kejriwal has been remanded by the Delhi High Court till 23 April. (Another senior AAP leader – and Member of Parliament (MP) – Sanjay Singh was granted bail in early-April after being jailed for nearly six months, in connection with the same case.²⁵)

Atishi, another senior minister in the Delhi government, said that she and at least three other key AAP leaders also feared impending arrest, and further alleged that they had been approached by the BJP via intermediaries with an offer to join the BJP if they wanted to save themselves from arrest.²⁶ On 11 April, another senior Delhi minister resigned from both his official position as well as his party membership, claiming that the party had become corrupt. Another AAP leader alleged that the resignation was made under 'pressure' from the BJP.²⁷

While the BJP has reportedly threatened to sue AAP over such claims, an *Indian Express* investigation revealed that since 2014, of the 25 political leaders who had switched sides to the BJP while having central agency investigations pending against them, 23 had subsequently received reprieves, with cases against them either being closed entirely or remaining stalled.²⁸ (Another news report noted that of the 417

²⁴ 'India Throws Another Opposition Leader in Jail as Elections Loom' *The Economist* <<https://www.economist.com/asia/2024/03/22/india-throws-another-opposition-leader-in-jail-as-elections-loom>> accessed 5 April 2024.

²⁵ 'Sending Elected CMs to Jail Is Beginning of Dictatorship: AAP MP Sanjay Singh' (*The Indian Express*, 4 April 2024) <<https://indianexpress.com/article/india/sending-elected-cm-jail-dictatorship-aap-mp-sanjay-singh-9251578/>> accessed 5 April 2024.

²⁶ 'There Is a Choice between Joining BJP or Going to Tihar, Says TMC's Mahua Moitra' *The Economic Times* (3 April 2024) <<https://economictimes.indiatimes.com/news/elections/lok-sabha/west-bengal/there-is-a-choice-between-joining-bjp-or-going-to-tihar-says-tmc-mahua-moitra/articleshow/109012900.cms?from=mdr>> accessed 5 April 2024.

²⁷ 'Arvind Kejriwal In Jail, Minister Resigns, Quits AAP Citing "Corruption"' (*NDTV.com*, 11 April 2024) <<https://www.ndtv.com/india-news/arvind-kejriwal-in-jail-delhi-minister-quits-aap-5412911>> accessed 14 April 2024.

²⁸ Deepthiman Tiwary, 'Since 2014, 25 Opposition Leaders Facing Corruption Probe Crossed over to BJP, 23 of Them Got Reprieve' *The Indian Express* (3 April 2024) <<https://indianexpress.com/article/express-exclusive/since-2014-25-opposition-leaders-facing-corruption-probe-crossed-over-to-bjp-23-of-them-got-reprieve-9247737/>> accessed 5 April 2024.

candidates announced by the BJP so far for the 2024 General Election, 116 (28%) had switched their allegiance from other parties.²⁹⁾

Separately, Satyendar Jain, another senior AAP leader and Delhi government minister who had been arrested in 2022 in a different case, had his interim bail cancelled by the SC and was ordered to surrender immediately.³⁰

AAP has denied all allegations against its leaders, pointing out that investigators are yet to establish a money trail and have relied solely on testimonies from accused-turned-approvers.³¹ One of the key approvers in the case is reportedly a businessman who had donated funds to the BJP via the now-outlawed electoral bonds scheme.³²

- *Continued incarceration of ex-Jharkhand CM Hemant Soren:* On 30 March, the ED was reported to have filed a charge-sheet against Jharkhand Mukti Morcha (JMM) leader Hemant Soren, who had resigned as the Chief Minister of Jharkhand shortly before his arrest in January.³³ Soren is accused by the ED of illegally laundering money with the help of a ‘land mafia’, and remains in judicial custody.³⁴
- *Freezing of Congress Party bank accounts:* In late-March, the Indian National Congress (INC), India’s largest opposition party that wields power in five states, was reported to have received a series of income tax demand notices amounting to Rs. 1,823 crore (around \$220 million), bringing the total income tax demanded from it by authorities to around Rs. 3,500 crore (around \$420 million).³⁵ The Congress also alleged that more than Rs. 135 crore (around \$16 million) of its funds was forcibly withdrawn from its various accounts, and that accounts holding more than Rs. 270 crore (around \$32 million) were frozen, over its alleged failure to declare cash income amounting to Rs. 15 lakh (around \$18,000).³⁶

The Congress has claimed that it has been left ‘financially crippled’ by the action, which it termed ‘tax terrorism.’³⁷ The Income Tax department was reported to have told the SC that it intends to recover the full Rs. 3,500 crore, but promised it wouldn’t take any

²⁹ Amogh Rohmetra, ‘1 in Every 4 BJP Lok Sabha Candidates Is a Defector — How BJP’s Politics Is Changing under Modi-Shah’ (*ThePrint*, 4 April 2024) <<https://theprint.in/politics/1-in-every-4-bjp-lok-sabha-candidates-is-a-defector-how-bjps-politics-is-changing-under-modi-shah/2027191/>> accessed 5 April 2024.

³⁰ ‘AAP Leader Satyendar Jain Denied Bail by Supreme Court in Alleged Money-Laundering Case’ *Scroll.in* (18 March 2024) <<https://scroll.in/latest/1065351/aap-leader-satyendar-jain-denied-bail-by-supreme-court-in-alleged-money-laundering-case>> accessed 4 April 2024.

³¹ ‘Till Date No Money Trail Found with Any AAP Leader, Kejriwal’s Arrest on One Person’s Word: Delhi Minister Atishi’ (*Business Today*, 23 March 2024) <<https://www.businesstoday.in/india/story/till-date-no-money-trail-found-with-any-aap-leader-kejriwals-arrest-on-one-persons-word-delhi-minister-atishi-422649-2024-03-23>> accessed 5 April 2024.

³² ‘Approver in Delhi Liquor Policy Case Is BJP’s Star Donor, Says AAP’ *The Hindu* (23 March 2024) <<https://www.thehindu.com/news/national/enforcement-directorate-failed-to-establish-money-trail-against-any-aap-leader-despite-multiple-raids-delhi-minister-atishi/article67983434.ece>> accessed 5 April 2024.

³³ ‘ED Attaches ₹31-Crore Worth Ranchi Land “Belonging” to Hemant Soren’ (n 3).

³⁴ *ibid.*

³⁵ ‘Tax Terrorism, Says Congress, as It Gets an I-T Notice to Pay Rs 1,823 Crore’ (n 4).

³⁶ *ibid.*

³⁷ *ibid.*

‘coercive steps’ till the conclusion of the 2024 General Election.³⁸ (The Congress had reportedly faced IT Department action in 2019 as well, during both the General Election as well as key state elections.³⁹)

The IT Department is not known to have initiated any action against the BJP, which the Congress claims should get demand notices amounting to more than Rs. 4,600 crore if the same standards were applied to it.⁴⁰ This amounts to double standards that we as IPMIE take very seriously.

- *Income tax notices to Communist Party of India (CPI):* The Communist Party of India (CPI) was also reported to have received a notice from the IT department, asking it to pay ‘dues’ amounting to Rs. 11 crore (around \$1.3 million), after two of its state units allegedly used old Permanent Account Number (PAN) cards while filing their tax returns.⁴¹
- *Raids at residences of senior TMC leaders in West Bengal:* On 21 March, officials of the Income Tax officials raided various premises linked to Swarup Biswas, a leader with the Trinamool Congress (TMC), whose brother is a senior minister in the TMC-led West Bengal government.⁴²

On 23 March – as raids at Biswas’ premises were still ongoing – CBI officials raided multiple premises linked to another senior TMC leader, Mahua Moitra, including her parents’ home, as well as several local party offices.⁴³ Moitra had been expelled from her position as Member of Parliament (MP) on spurious charges in December, shortly after she had raised corruption allegations involving Prime Minister Narendra Modi.⁴⁴

It bears repeating that the actions listed above are all against opposition parties that have pledged to jointly contest the 2024 GE against the BJP. The Constitutional Conduct Group (CCG), a group of retired senior government officials, has questioned the timing of these actions, and remarked that the ‘undue zeal’ of central agencies suggests ‘deliberate, motivated

³⁸ ‘No Coercive Steps Will Be Taken to Recover Rs 3,500 Crore from Congress before End of Lok Sabha Polls: I-T Dept to Supreme Court’ *The Indian Express* (1 April 2024) <<https://indianexpress.com/article/india/supreme-court-congress-income-tax-3500-crore-lok-sabha-polls-9244483/>> accessed 5 April 2024.

³⁹ ‘Polltime Raids in MP: Kamal Nath Aides, 11 Congress Candidates Including Digvijaya under Scanner’ *The Indian Express* (28 May 2019) <<https://indianexpress.com/article/india/polltime-raids-madhya-pradesh-kamal-nath-congress-digvijaya-singh-5751535/>> accessed 5 April 2024; ‘Our Accounts Dept Staff Raided by Income Tax, Vendetta, Claims Congress’ (*The Indian Express*, 13 October 2019) <<https://indianexpress.com/article/india/congress-claims-accounts-department-raided-by-income-tax-officials-6066457/>> accessed 5 April 2024.

⁴⁰ ‘Tax Terrorism, Says Congress, as It Gets an I-T Notice to Pay Rs 1,823 Crore’ (n 4).

⁴¹ ‘Left Parties Receive Notices from Income Tax Department for Tax Violations’ *The Hindu* (29 March 2024) <<https://www.thehindu.com/news/national/two-left-parties-also-served-notices-by-i-t-department-for-tax-violations/article68007162.ece>> accessed 5 April 2024.

⁴² ‘Tax Raids at Home of Bengal Minister’s Brother End after 72 Hours’ (*India Today*) <<https://www.indiatoday.in/india/story/tax-raids-at-home-of-bengal-minister-arop-biswas-brother-swarup-2518599-2024-03-23>> accessed 5 April 2024.

⁴³ ‘CBI Raids Mahua Moitra’s Ancestral Home’ *The Economic Times* (26 March 2024) <<https://economictimes.indiatimes.com/news/politics-and-nation/cbi-raids-mahua-moitra-s-ancestral-home/articleshow/108737662.cms?from=mdr>> accessed 5 April 2024.

⁴⁴ ‘Mahua Moitra: India Parliament Expels Firebrand MP in Bribery Row’ *BBC News* (8 December 2023) <<https://www.bbc.com/news/world-asia-india-67656686>> accessed 5 April 2024.

executive action.’⁴⁵ In April 2023, a coalition of 14 such parties had unsuccessfully approached the SC seeking relief from central agencies being increasingly deployed in a ‘selective and targeted’ manner against them.⁴⁶ In 2019, the EC had issued an advisory that all ‘enforcement actions’ during the General Election period should be ‘absolutely neutral, impartial and non-discriminatory.’⁴⁷ At the time of writing, it was yet to issue a similar advisory ahead of the 2024 GE. This is scandalous and should be done immediately. These kinds of harassment actions are worthy of Putin’s Russia but not of a democratic law abiding state.

Read together, India, a signatory to key international treaties like the ICCPR, appears to be falling far short of its obligations to foster a culture of political pluralism, to ensure a genuinely pluralistic political debate, and to desist from excluding opposition candidates from electoral processes.⁴⁸ It appears to be particularly failing in its obligation to ensure that individuals otherwise eligible to contest elections must not be excluded or face any discrimination or disadvantage due to their candidacy or political affiliation.⁴⁹

The situation has already led the UN Secretary-General – as well as the governments of Germany and the United States – to express concern.⁵⁰ Domestic experts have been even more pronounced in their assessment of the situation: Yogendra Yadav, a respected psephologist and political activist, opined that with the BJP dominating political funding and immobilising opposition leaders and finances, the 2024 General Election is likely to be the ‘least free and fair national election in Independent India.’⁵¹ Another political observer noted that such persecution of opposition leaders could even imperil India’s proud tradition of seamless transfers of power: ‘An election loss under these rules, now carries dangerously high stakes. It is not just a loss in power and prestige for elections – it might mean losing liberty.’⁵²

The Indian government, however, has appeared defiant and unrepentant.⁵³ But we believe it would be well advised to pay heed to these concerns for the sake of India’s reputation.

⁴⁵ ‘CCG Open Letter to the Election Commission of India: Is There a Level Playing Field?’ (n 10).

⁴⁶ ‘“Politicians Can’t Claim Higher Immunity”: Supreme Court Refuses To Entertain Plea Of 14 Opposition Parties Against “Misuse” Of CBI & ED’ *Live Law* (5 April 2023) <<https://www.livelaw.in/top-stories/supreme-court-plea-opposition-political-parties-centre-investigating-agencies-ed-cbi-clamp-down-dissent-225564>> accessed 29 February 2024.

⁴⁷ Damini Nath, ‘After Opposition Alleges “match-Fixing” in LS Polls, Former CECs: “IT, ED Actions Can Disrupt Level Playing Field”’ *The Indian Express* (1 April 2024) <<https://indianexpress.com/article/political-pulse/lok-sabha-polls-match-fixing-it-ed-actions-former-cecs-9244203/>> accessed 5 April 2024.

⁴⁸ Office of the High Commissioner for Human Rights (n 22) para 95.

⁴⁹ For example, in UN Human Rights Committee, ‘General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (1996) CCPR/C/21/Rev.1/Add.7 paras 95–96 Also see: CCPR/C/COD/CO/4, para. 48 (intimidation of opponents and candidates in the presidential election); and CCPR/C/AZE/CO/4, para. 43 (criminal law provisions used to exclude opposition candidates from electoral processes).

⁵⁰ ‘After US, Germany, Now UN Reacts to Delhi CM Kejriwal’s Arrest: “Hope Everyone’s Rights Are Protected”’ (n 18).

⁵¹ Yogendra Yadav, ‘India Is Going to Have Its Least Free & Fair Election in 2024. See These 5 Indicators’ *ThePrint* (29 March 2024) <<https://theprint.in/opinion/india-is-going-to-have-its-least-free-fair-election-in-2024-see-these-5-indicators/2019854/>> accessed 4 April 2024.

⁵² Shoaib Daniyal, ‘Will the Upcoming Indian Election Be Free and Fair?’ *Scroll.in* (29 March 2024) <<https://scroll.in/article/1065939/will-the-upcoming-indian-election-be-free-and-fair>> accessed 4 April 2024.

⁵³ ‘“Don’t Need UN To Tell Me...”: S Jaishankar On Free And Fair Elections Remark’ *NDTV.com* (4 April 2024) <<https://www.ndtv.com/india-news/dont-need-un-to-tell-me-s-jaishankar-on-free-and-fair-elections-remark-5375939>> accessed 5 April 2024.

2.1.3. Electoral Bonds to monopolise political space

In our previous report, we had echoed the concerns expressed by experts that India's political financing landscape is marked by a lack of transparency, raising entry barriers to politics, excluding honest candidates and parties, and perpetuating corruption as well as the influence of murky corporate actors.⁵⁴

We had further noted that the BJP government's introduction of the electoral bonds scheme (EBS) in 2017 further muddied the waters by enabling anonymous funding of political parties by corporate actors and apparently legitimising corruption. We had also welcomed the Supreme Court's decision outlawing the EBS and directing the State Bank of India (SBI) to release all data relating to electoral bonds.

Since then, the SBI has released this data – albeit with great reluctance, first asking for time till after the end of the elections to gather the unique alphanumeric codes linked to each bond (which enables the linking of donor data with recipient data), and then hastily complying once the SC rebuffed its request.⁵⁵

Indian journalists and reporters – such as those with the Reporters' Collective⁵⁶, among many others – have been painstakingly analysing this data. Highlights from their key findings so far include:

- The BJP has been the largest overall beneficiary of the EBS, amassing a total of over Rs. 6000 crores (around \$720 million) from corporate donors between April 2019 and January 2024.⁵⁷ This amounted to almost half of all EBS donations during the same period.⁵⁸ The second highest receiver was the Trinamool Congress (around Rs. 1600 crore, or ~\$190 million), while the Indian National Congress (INC) was the third (around Rs. 1400 crore, or ~\$170 million).⁵⁹
- All of the top 10 corporate donors paid some amount to the BJP – to the tune of over Rs. 1300 crore (around \$155 million) in total.⁶⁰ The BJP also reportedly had 43 'loyal' donors (corporate donors who made multiple donations and each time to the same party) among 362+ corporate entities that donated to it.⁶¹ The BJP's principal opposition Indian National Congress had only 8 'loyal' donors among 177+ total corporate donors.⁶²

⁵⁴ Independent Panel for Monitoring Indian Elections (n 1) 23.

⁵⁵ 'Supreme Court Orders SBI to Release Unique Codes Linked to Electoral Bonds' *The Wire* (18 March 2024) <<https://thewire.in/law/supreme-court-orders-sbi-to-release-unique-codes-links-to-electoral-bonds>> accessed 12 April 2024.

⁵⁶ 'Electoral Bonds Tracker' (*The Reporters' Collective*) <<https://www.reporters-collective.in/electoral-bonds-tracker>> accessed 12 April 2024.

⁵⁷ Yashraj Sharma (n 2).

⁵⁸ 'Electoral Bonds: Lottery Company among India's Top Political Donors' *BBC News* (15 March 2024) <<https://www.bbc.com/news/world-asia-india-68509410>> accessed 12 April 2024.

⁵⁹ *ibid.*

⁶⁰ Yashraj Sharma (n 2).

⁶¹ Tanay Sukumar, 'Bonds of Loyalty: What ECI Data on Political Funding Shows' *Mint* (2 April 2024) <<https://www.livemint.com/politics/bonds-of-loyalty-what-eci-data-on-political-funding-shows-11711776750681.html>> accessed 12 April 2024.

⁶² *ibid.*

- At least 16 of the top 200 donors made EBS donations even as they ran business losses for three previous consecutive years. Of the Rs. 710 crore donated to political parties by such loss-making entities, over 60% (Rs. 460 crore, or around \$55 million) went to the BJP.⁶³ At least 31 more companies donated much beyond their three-year average profits.⁶⁴ Such donations from loss-making companies were made possible by the BJP-led central government's decision in 2017 to remove previous restrictions and caps that had allowed only profit-making entities to make donations.
- Many private corporations facing investigations by state agencies – mostly those under the control of the BJP-led central government, and on at least one occasion, one under the control of an opposition-led state government – appear to have made donations to political parties using electoral bonds. The BJP has been the prime beneficiary of such donations.

For instance, Aurobindo Pharma, a pharmaceutical company, was reported to have donated a total of around Rs. 30 crore (around \$3.6 million) between November 2022 and November 2023, in multiple tranches, to the BJP within a year after one of its directors was arrested by the central Enforcement Directorate.⁶⁵ Within seven months of the first donation (amounting to around \$600,000), the arrested individual agreed to become a state's witness in the case.⁶⁶ Since the arrest, the company has not donated to any other party.⁶⁷

Similarly, the DLF group, a real estate conglomerate, reportedly received a reprieve from the BJP-led state government in Haryana in April 2023 from allegations that it was involved in corruption in a land deal.⁶⁸ Between October 2019 and November 2022, DLF had donated over Rs. 170 crores (around \$20.4 million) to the BJP using electoral bonds.⁶⁹

In West Bengal, run by the opposition TMC, executives at a seafood and spirits company were reported implying to shareholders that they were coerced into donating over Rs. 400 crore (around \$4.8 million) to the TMC after being investigated by state-level tax officials.⁷⁰

⁶³ 'Electoral Bonds: The Art of Extracting Wealth from Loss-Making Firms' *The Reporters' Collective* (22 March 2024) <<https://www.reporters-collective.in/trc/electoral-bonds-the-art-of-extracting-wealth-from-loss-making-firms>> accessed 12 April 2024.

⁶⁴ *ibid.*

⁶⁵ Yashraj Sharma (n 2).

⁶⁶ *ibid.*

⁶⁷ 'Within 48 Hours of Being Selected to Receive Subsidy from Union Gov't, Aurobindo Pharma Gifted Electoral Bonds to BJP' *The Reporters' Collective* (12 April 2024) <<https://www.reporters-collective.in/trc/within-48-hours-of-subsidy-from-govt-aurobindo-pharma-gifted-electoral-bonds-to-bjp>> accessed 12 April 2024.

⁶⁸ Yashraj Sharma (n 2).

⁶⁹ *ibid.*

⁷⁰ *ibid.*

- Many corporations that donated funds to the BJP received lucrative government contracts, subsidies, and other forms of policy support.

For instance, Aurobindo Pharma, the company whose director was arrested before it became a ‘loyal’ donor to the BJP, was reportedly selected by the central government in November 2023 to receive large public subsidies to run their business.⁷¹ In another example, Megha Engineering and Infrastructure Limited (MEIL), a construction major that donated over Rs. 670 crores (around \$80 million) to the BJP between April 2019 and January 2024, has reportedly won several lucrative government projects amounting to several billion dollars.⁷² MEIL, whose premises had reportedly been raided by central Income Tax (IT) officials before it began donating to the BJP, was publicly praised by the central Transport Minister in March 2022.⁷³ MEIL has been one of the BJP’s most ‘loyal’ donors.⁷⁴

Similarly, members of the Association of Power Producers (APP), an influential lobbying group that has openly boasted of its ability to secure beneficial policy benefits for the power sector from the central government, were reported to have donated a total of over Rs. 516 crore (around \$60 million) to the BJP between 2019 and 2024 using electoral bonds.⁷⁵

- The largest overall donor through electoral bonds was Future Gaming, a company run by a lottery mogul, who donated to most major political parties. The biggest chunk of its donations (around Rs. 540 crores, or \$65 million, of a total of Rs. 1368 crores) went to the TMC, which runs the government in West Bengal, one of the few states in India where lotteries are legal.⁷⁶ The company also donated over Rs. 100 crores (around \$12 million) to the BJP, but has reportedly continued to face coercive action including raids from central agencies.⁷⁷

Anjali Bhardwaj, a member of the Citizens Commission of Elections (CCE), was quoted in a news report suggesting two possible explanations for the patterns emerging from the electoral bonds data: ‘Extortion, where agencies are actively set after someone to extract money, or straight allegations of corruption, which were put in cold storage after a donation was made to the ruling party.’⁷⁸

We endorse Bhardwaj’s call for an independent, court-monitored investigations into the revelations arising from the electoral bonds data. We also reiterate that while the outlawing of

⁷¹ ‘Within 48 Hours of Being Selected to Receive Subsidy from Union Gov’t, Aurobindo Pharma Gifted Electoral Bonds to BJP’ (n 67).

⁷² Yashraj Sharma (n 2).

⁷³ *ibid.*

⁷⁴ Tanay Sukumar (n 61).

⁷⁵ ‘A Corporate Lobby Swayed Centre’s Decisions While Its Members Filled BJP’s Coffers’ *The Reporters’ Collective* (10 April 2024) <<https://www.reporters-collective.in/trc/corporate-lobby-sways-centre-while-its-members-fill-bjps-coffers>> accessed 12 April 2024.

⁷⁶ Yashraj Sharma (n 2).

⁷⁷ *ibid.*

⁷⁸ *ibid.*

electoral bonds is a definitive boost to efforts to clean up India’s political funding landscape, other infirmities highlighted in our previous report – such as the lack of official caps on how much political parties can spend during elections, provisions in the Income Tax (IT) Act that exempt political parties from disclosing the sources of donations amounting to less than ₹ 2,000, and the refusal of political parties to become subject to scrutiny under the Right to Information (RTI) Act – all remain unaddressed, and are set to mar Indian democracy for years to come.⁷⁹

2.1.4. Abuse of authority to violate MCC

The MCC is a non-statutory set of guidelines that all political parties have agreed to abide by during the election period. It contains several provisions meant to ensure that the party in power desists from misusing its official position for electoral gains. These include specific prohibitions on, *inter alia*, combining electioneering with official visits by ministers, and using official machinery/personnel for electioneering; use of government transport, machinery and personnel for electioneering; issuing advertisements at the cost of the public exchequer; misusing mass media for partisan coverage of political news and publicity regarding achievements; and announcing new projects and schemes during the election period.⁸⁰ Separately, the EC has also issued detailed advisories prohibiting, *inter alia*, any use of children and references to the armed forces in electioneering.⁸¹

Over the first month of the 2024 GE MCC period, there have been several reported instances of these guidelines being apparently flouted, further skewing the level playing field in favour of the ruling party. We request that the EC publish on line a list of all violations of the guidelines starting now. A non-exhaustive listing of these follows below.

Use of government machinery for electioneering

- On 15 and 16 March, including during a short period after the MCC came into effect, holders of millions of Indian mobile phone numbers across the world received a letter purportedly from PM Modi, highlighting several initiatives of the BJP-led Union Government. The messages were reportedly sent from various accounts registered by the Union Ministry Electronics and Information Technology (MEITY). The ECI was later reported to have instructed MEITY to ensure that no further delivery of such messages takes place during the MCC period.⁸² It did not, however, inquire further about potential privacy violations that may have occurred, or issue a show-cause notice to PM Modi.

⁷⁹ Independent Panel for Monitoring Indian Elections (n 1) 24.

⁸⁰ Election Commission of India (n 6) s VII.

⁸¹ ‘Zero Tolerance towards Use of Children in Poll Campaigns: ECI to Political Parties’ *The Indian Express* (5 February 2024) <<https://indianexpress.com/article/india/do-not-use-children-in-poll-campaigning-ec-to-political-parties-9144967/>> accessed 10 April 2024; ‘Election Commission Bars Use of Defence Personnel’s Photos for Poll Campaign’ *The Times of India* (10 March 2019) <<https://timesofindia.indiatimes.com/india/armed-forces-cannot-be-used-in-election-campaigning-ec/articleshow/68337322.cms>> accessed 11 April 2024.

⁸² ‘EC Asks Centre to Halt Sending out PM Modi’s Letter on “Viksit Bharat” via WhatsApp’ *The Indian Express* (21 March 2024) <<https://indianexpress.com/elections/ec-centre-halt-sending-out-pm-modi-viksit-bharat-whatsapp-9226323/>> accessed 10 April 2024.

- On 17 March, PM Modi was reported to have used an Indian Air Force (IAF) helicopter to attend an election rally in Palnadu, Andhra Pradesh.⁸³ At the time of writing, the ECI was not reported to have initiated any action, despite several political parties filing official complaints.
- In early April, the BJP's Assam unit was accused of collecting data of beneficiaries of a state government scheme on the pretext of conducting a socio-economic survey. According to news reports, the forms distributed by the party in the name of the survey assured voters of inclusion in government schemes.⁸⁴ The ECI was reported to have served a show-cause notice to the BJP's state unit chief.⁸⁵

Use of children for electioneering

- On 18 March, during a roadshow featuring PM Modi in Coimbatore (Tamil Nadu), school children from a government-aided school were reportedly made to don clothes bearing the BJP's party symbols and perform on stages arranged by party workers.⁸⁶ While a criminal case was registered against the school's headmistress, the investigation was reportedly stayed by the Madras High Court.⁸⁷ At the time of writing, the ECI is not known to have initiated any action against the BJP or PM Modi.

References to armed forces in electioneering

- On 7 April, in a social media post, Union Minister Smriti Irani shared a video showing PM Modi donning various kinds of military attire, and extolling various military achievements as those of the BJP.⁸⁸ At the time of writing, the ECI is not known to have initiated any action against Irani, despite several users tagging the ECI's social media handles under her post.
- Other senior political leaders of the BJP have continued to make references to armed forces and military operations. For instance, on 5 April, in response to a question about a news story that accused Indian intelligence services of carrying out extra-judicial killings in Pakistan, Union Defence Minister Rajnath Singh was reported to have said, "If any terrorist tries to disturb the peace in Bharat, or tries to carry out terror activities,

⁸³ 'Complaint against PM Modi for Violating MCC by Using IAF Helicopter in Election Rally' *The Hindu* (18 March 2024) <<https://www.thehindu.com/elections/lok-sabha/complaint-against-pm-modi-for-violating-mcc-by-using-iaf-helicopter-in-election-rally/article67964135.ece>> accessed 10 April 2024.

⁸⁴ 'Assam CPI M Accuses BJP of Model Code Violation Complains to CEO' *The Week* (5 April 2024) <<https://www.theweek.in/wire-updates/national/2024/04/05/ces21-elections-as-mcc-violation.html>> accessed 10 April 2024.

⁸⁵ 'Assam BJP Chief Served Show Cause Notice By ECI For Violating MCC' (*Guwahati Plus*, 6 April 2024) <<https://guwahatipius.com/assam/assam-bjp-chief-served-show-cause-notice-by-eci-for-violating-mcc>> accessed 11 April 2024.

⁸⁶ 'Coimbatore: Inquiry Ordered Over Presence of Schoolchildren at PM Modi's Roadshow' *The Wire* (19 March 2024) <<https://thewire.in/government/coimbatore-inquiry-ordered-over-presence-of-schoolchildren-at-pm-modis-roadshow>> accessed 10 April 2024.

⁸⁷ 'Children at PM Modi Roadshow: Probe against Headmistress Stayed' *The New Indian Express* (9 April 2024) <<https://www.newindianexpress.com/states/tamil-nadu/2024/Apr/09/children-at-pm-modi-roadshow-probe-against-headmistress-stayed>> accessed 10 April 2024.

⁸⁸ Smriti Z Irani (Modi Ka Parivar) [@smritiirani], 'The New India Manifesto under PM @NarendraModi - We Dream Big and Achieve Bigger!' 🇮🇳 <<https://T.Co/jd2TM3ezkg>> <<https://twitter.com/smritiirani/status/1776939605058859486>> accessed 11 April 2024.

we will give them a befitting reply. If they run away to Pakistan, we will enter Pakistan to kill them.”⁸⁹

On the same day, at an election rally in Jaipur (Rajasthan), PM Modi is said to have said, “My government gave a free hand to the Army to retaliate and teach a lesson to the enemies on the borders. The new India is today capable of killing the enemy.”⁹⁰ We note that this kind of rhetoric also prevails in the denial of any election rights to the people of Kashmir, most of whom have been weaponised as “terrorists” by BJP rhetoric and subject to years of harassment and human rights abuse⁹¹.

At the time of writing, the ECI is not known to have initiated any action regarding these speeches.

2.2. Continuing accusations against the EVM-VVPAT system

In our previous report, we had highlighted several weaknesses in India’s voting operations, particularly those pertaining to the continued use of the Electronic Voting Machine & Voter Verifiable Paper Audit Trial (EVM-VVPAT) system.⁹² We had echoed the concerns expressed by legal and technical experts and other civil society actors over the possibility of remote and physical tampering of EVMs, the inadequacy of the current system of cross-verification of EVMs with VVPATs, and called for the political economy behind the EVM-VVPAT system a matter of transparent public record.

While we note with disappointment the Supreme Court’s recent dismissal of yet another petition seeking a closer examination of reported irregularities with the EVM-VVPAT system, we are heartened by reports that it is currently hearing a batch of pleas seeking 100% EVM-VVPAT cross-verification, with the next hearing scheduled for 18 April, a day before polling is setting to begin in the 2024 General Election.⁹³

We reiterate that the integrity of voting operations strikes at the very heart of India’s democratic process. Ensuring 100% EVM-VVPAT cross-verification is a crucial step in preserving the public’s trust in the reliability and integrity of official machinery used in the

⁸⁹ ‘If Terrorists Run Away to Pakistan, We Will Enter the Country to Kill Them: Rajnath’ *The Hindu* (5 April 2024) <<https://www.thehindu.com/news/national/if-terrorists-run-away-to-pakistan-we-will-enter-pakistan-to-kill-them-rajnath/article68033079.ece>> accessed 11 April 2024.

⁹⁰ ‘PM Modi Churu Rally | Unlike Congress, We Gave a Free Hand to Army to Retaliate against Enemies, Says Modi’ *The Hindu* (5 April 2024) <<https://www.thehindu.com/elections/lok-sabha/pm-modi-churu-rally-work-done-in-10-years-just-a-trailer-lot-more-yet-to-come-says-prime-minister/article68031849.ece>> accessed 11 April 2024.

⁹¹ See *Human Rights Violations in Kashmir* by Piotr Balcerowicz, Agnieszka Kuszewska (Routledge, 2022)

⁹² Independent Panel for Monitoring Indian Elections (n 1) 27.

⁹³ ‘Supreme Court to Hear Pleas for Cross-Verification of Votes Cast with VVPAT Slips on April 16’ *The Hindu* (9 April 2024) <<https://www.thehindu.com/elections/lok-sabha/supreme-court-to-hear-pleas-for-cross-verification-of-votes-cast-with-vvp-at-slips-on-april-16/article68047079.ece>> accessed 11 April 2024; ‘“How Many Petitions Shall We Entertain?”: Supreme Court Dismisses Pleas Related to EVMs’ *Hindustan Times* (15 March 2024) <<https://www.hindustantimes.com/india-news/how-many-petitions-shall-we-entertain-supreme-court-dismisses-pleas-related-to-evms-101710516741796.html>> accessed 11 April 2024.

voting process, and in ensuring that India's elections are seen as 'genuine' and acknowledged as the free expression of the will of its electorate.

3. Will Indian voters be able to make an ‘informed choice’?

3.1. Introduction

A genuine election that reflects the free will of the population presupposes the free communication of information and ideas about public and political issues.⁹⁴ This, according to the UN Human Rights Committee, ‘implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.’⁹⁵ Free and fair dissemination of messaging from across the political spectrum is thus a critical element in determining whether the electorate can make an independent and informed choice during elections, free of violence or the threat of violence, compulsion, inducement, or manipulative interference of any other kind.⁹⁶

In our previous report, we had highlighted several structural and operational barriers that may be impeding the average Indian voter’s ability to make an independent and informed choice, ahead of upcoming elections, free of manipulative interference.⁹⁷ These included the domination of broadcast and social media networks by actors friendly to the ruling Bharatiya Janata Party (BJP), the BJP’s continuing proclivity to use communal polarisation and disinformation as part of its electoral strategy, and recent moves by the BJP-led central government to muzzle independent voices and control the free flow of information.

3.2 Communal polarisation as electoral strategy

The MCC prohibits all activities that may ‘aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.’⁹⁸ It specifically proscribes appeals to caste or communal feelings for securing votes, and using places of worship as forums for election propaganda.⁹⁹

The Representation of the People Act (RPA) also addresses hate speech and other forms of communal electioneering, both as ‘corrupt practices’ (which entail civil liability and can be brought before courts only at the end of the election period) and as ‘electoral offences’ (which entail criminal liability and can be taken cognisance of and proceeded with as soon as the offence is committed). Appeals by a candidate (or any person acting with their consent) to vote on religious (among other) grounds, appealing to religious or national symbols, promotion of enmity between different communities, and publishing false statements are all ‘corrupt practices’ that are grounds for a candidate’s disqualification.¹⁰⁰ Additionally any person (and

⁹⁴ Office of the High Commissioner for Human Rights (n 22) para 97.

⁹⁵ UN Human Rights Committee (n 49) para 25.

⁹⁶ *ibid* 19.

⁹⁷ Independent Panel for Monitoring Indian Elections (n 1) 32.

⁹⁸ Election Commission of India (n 6) s I.1.

⁹⁹ *ibid* I.3.

¹⁰⁰ The Representation of the People Act 1951 s 123.

not just the candidate) who ‘in connection with an election’ promotes or attempts to promote enmity between different classes on religious (among other) grounds is subject to criminal liability.¹⁰¹

Despite these stated prohibitions, we note with dismay that senior political leaders, particularly those of the BJP, have continued to resort to communal polarisation while seeking votes. A non-exhaustive listing of such reported instances follows:

3.2.1. References to the Ram Temple by senior BJP leaders

The consecration ceremony of the Ram Temple in Ayodhya in January, 2024, at the site of the historical Babri Masjid mosque, has been repeatedly mentioned by senior BJP leaders in their election speeches across the country. A non-exhaustive list of such reported instances include:

- *Prime Minister Narendra Modi:* At a series of election rallies – including one in Nawada (Bihar) on 7 April and in Bastar (Chhattisgarh) on 8 April – PM Modi was reported to have falsely accused opposition parties of expelling leaders who had attended the ceremony in Ayodhya. Modi also reportedly called on voters to remember the opposition’s ‘sins’ on the occasion of Ram Navami (which falls on 17 April), and further commented that the Congress Party’s official manifesto resembled that of the Muslim League, the separatist outfit that had advocated for the establishment of Pakistan during India’s freedom movement.¹⁰²

‘I wonder why the INDIA bloc is so hostile towards popular sentiments. They did not turn up for pran pratishtha at Ayodhya even though the temple was constructed through public donations, and not with government money. Ram Navami is approaching. Do not forget their sins, wonder why the INDIA bloc is so hostile towards popular sentiments. They did not turn up for pran pratishtha at Ayodhya even though the temple was constructed through public donations, and not with government money. Ram Navami is approaching. Do not forget their sins.’ (Reported and translated excerpts from PM Modi’s election rally in Nawada (Bihar) on 7 April).

IPMIE regards calling the way people choose to vote “a sin” risks sending our political democracy back into the deepest dark ages of pre-enlightenment thought.

- *Union Home Minister Amit Shah:* On 3 April, at a rally in Muzaffarnagar (Uttar Pradesh) in support of BJP candidate Sanjeev Baliyan, HM Shah reportedly accused the opposition of opposing the construction of the Ram Temple, and claimed that it was

¹⁰¹ ibid 125A.

¹⁰² ‘PM Modi Rakes up Ayodhya in Bihar: “Don’t Forget INDIA Leaders Skipped Ram Temple Ceremony”’ (n 7); ‘“Congress Expelled Its Leaders Who Visited Ram Mandir...”: PM Modi in Chhattisgarh’ *The Economic Times* (8 April 2024) <<https://economictimes.indiatimes.com/news/elections/lok-sabha/india/congress-expelled-its-leaders-who-visited-ram-mandir-pm-modi-in-chhattisgarh/articleshow/109139291.cms?from=mdr>> accessed 10 April 2024.

Modi's government that respected the sentiments of the people and oversaw the construction of the temple.¹⁰³

‘घमंडिया गठबंधन वाले कभी नहीं चाहते थे कि अयोध्या में राम मंदिर बने। कांग्रेस ने 70 साल तक राम जन्मभूमि के मुद्दे को अटकाकर, लटकाकर और भटकाकर रखा। मोदी जी ने केस भी जीता, भूमि पुजन भी किया और 22 जनवरी को रामलला की प्राण प्रतिष्ठा भी कर दी।

- श्री@AmitShah’ (Excerpt from HM Shah’s speech posted by BJP’s X account)

- *Uttar Pradesh Chief Minister Yogi Adityanath*: On 6 April, at a rally in Nagina (Uttar Pradesh) in support of BJP candidate Om Kumar, Adityanath highlighted the Ram Temple consecration ceremony as an achievement of the BJP.¹⁰⁴

‘By physically installing Lord Shri Ram in Ayodhya, the BJP has validated the faith of millions while simultaneously ensuring the security of daughters and businessmen. (Reported and translated excerpts from Adityanath’s election rally speech in Nagina)

The above-listed speeches are only a small sample of references made to the Ram Temple made by BJP leaders across the country. All of them appear to fall afoul of MCC and RPA provisions that prohibit appeals to communal sentiments while seeking votes. At the time of writing, the ECI was not reported to have initiated action in any of these cases.

3.2.2. Other appeals to vote on religious grounds

A non-exhaustive listing of other reported instances of senior political leaders invoking communal sentiments while seeking votes follows:

- On 18 and 19 March, PM Narendra Modi was reported to have delivered multiple speeches – including one in Shivamogga (Karnataka) and another in Salem (Tamil Nadu) – where he accused opposition parties of conspiring to destroy *shakti* and of deliberately insulting the Hindu religion: ‘If they want to destroy *shakti*, then worshipping *shakti* is our resolve.’¹⁰⁵

Modi’s comments were in response to a remark by opposition leader Rahul Gandhi that Modi was a ‘mask’ who works for a *shakti* – which Gandhi later clarified wasn’t

¹⁰³ ‘Modi Govt Built Ram Temple, Akhilesh Yadav Was against It: Amit Shah in UP’ (n 8).

¹⁰⁴ ‘Not Only Ram Temple Construction, PM Modi Revived Panchtirthas Linked to Ambedkar: UP CM Yogi’ (n 8).

¹⁰⁵ Kaniza Garari, ‘Your Shakti Vs Our Shakti: Telangana Congress Accuses PM Modi of “Violating MCC”’ *News Meter* (19 March 2024) <<https://newsmeter.in/politics/your-shakti-vs-our-shakti-telangana-congress-accuses-pm-modi-ofviolatingmcc-726495>> accessed 10 April 2024; *PM Modi Addresses a Public Rally in Salem, Tamil Nadu* (2024) <<https://www.youtube.com/watch?v=EjVWk-HMER8>> accessed 10 April 2024.

intended with religious connotations.¹⁰⁶ (The word *shakti* loosely translates to ‘power’ or ‘force’ in regular Hindi lexicon, but also has deeply religious connotations in Hinduism.¹⁰⁷). At the time of writing, the ECI is not reported to have initiated action against PM Modi or Gandhi.

- On 18 March, BJP MP Tejasvi Surya was reported to have accused the opposition Congress Party of ‘appeasement politics’ and providing political backing to ‘jihadis’ leading to hate crimes against Hindus.¹⁰⁸
An FIR was reportedly registered against Surya, upon a complaint from the ECI. However, the investigation against Surya was subsequently stayed by the Karnataka High Court.¹⁰⁹
- On 19 March, Union Finance Minister Nirmala Sitharaman was reported to have made a speech in Chennai, Tamil Nadu, accusing the opposition Dravida Munnetra Kazhagam (DMK) Party of ‘destroying temples, swindling temples and destroying our religion.’¹¹⁰ At the time of writing, despite a complaint from the DMK, the ECI is not reported to have initiated action against Sitharaman.
- 20 March, senior BJP leader CT Ravi published a social media post calling on Hindus to unite to protect and defend *Sanatana Dharma* (Eternal Order/Religion) from ‘those who are out to destroy it’, specifically referring to Rahul Gandhi. An FIR was reportedly registered against Ravi, upon a complaint from the ECI.¹¹¹ The irony here noted by IMPIE is that thinkers in the tradition of Sanatan Dharma such as President Radhakrishnan, Aurobindo, Gandhi, R.K. Iyer are the least fanatical, and most liberal and least violent of all Hindu thinkers.
- On 21 March, Union Minister Shobha Karandlaje was reported to have delivered a speech in Bengaluru, Karnataka, targeting Muslims, Tamilians and Keralites: ‘People who come from Tamil Nadu plant bombs here, people from Delhi chant *Pakistan Zindabad* slogans and people who come from Kerala were involved in acid attacks.’¹¹²

¹⁰⁶ Kaniza Garari (n 104).

¹⁰⁷ ‘What Is “Shakti” in the Hindu Religion? The Term Fuelling Modi and Rahul’s Most Recent Slugfest’ *Deccan Herald* (19 March 2024) <<https://www.deccanherald.com/india/what-is-shakti-in-the-hindu-religion-the-term-fuelling-modi-and-rahuls-most-recent-slugfest-2942715>> accessed 10 April 2024.

¹⁰⁸ ‘BJP MP Tejasvi Surya Booked for Alleged Hate Speech over Bengaluru Shopkeeper Assault’ *The Indian Express* (21 March 2024) <<https://indianexpress.com/article/cities/bangalore/bjp-mp-tejasvi-surya-booked-for-alleged-hate-speech-over-bengaluru-shopkeeper-assault-9226016/>> accessed 10 April 2024.

¹⁰⁹ ‘Karnataka High Court Stays Proceedings against BJP MPs Shobha Karandlaje, PC Mohan and Tejaswi Surya’ *The Indian Express* (22 March 2024) <<https://indianexpress.com/article/cities/bangalore/karnataka-high-court-shobha-karandlaje-cafe-blast-remarks-9229047/>> accessed 11 April 2024.

¹¹⁰ Express News Service, ‘Take Action against Nirmala Sitharaman for “Hate Speech”, EC Urged’ (*The New Indian Express*, 20 March 2024) <<https://www.newindianexpress.com/states/tamil-nadu/2024/Mar/20/take-action-against-nirmala-sitharaman-for-hate-speech-ec-urged>> accessed 11 April 2024.

¹¹¹ ‘Flouting MCC: FIR against CT Ravi over Social Media Post’ *The New Indian Express* (22 March 2024) <<https://www.newindianexpress.com/states/karnataka/2024/Mar/22/flouting-mcc-fir-against-ct-ravi-over-social-media-post>> accessed 10 April 2024.

¹¹² ‘FIR against Union Minister Shobha Karandlaje after DMK’s Complaint to ECI’ *Hindustan Times* (21 March 2024) <<https://www.hindustantimes.com/cities/bengaluru-news/fir-against-union-minister-shobha-karandlaje-after-dmks-complaint-to-eci-101711017550327.html>> accessed 10 April 2024.

- An FIR was reportedly registered against Karandlaje, upon a complaint from the ECI.¹¹³
- In early-April, several news reports revealed that Arun Govil, the BJP's candidate in the Meerut constituency, had repeatedly referred to the Hindu god Ram in his speeches, in addition to prominently using religious portraits and other imagery at his campaign events.¹¹⁴ Govil, who had previously portrayed Ram in a popular television series, even reportedly referred to himself as the deity.¹¹⁵ The ECI has reportedly issued a notice to Govil.¹¹⁶
 - On 14 April, at a press briefing in Lumding, Assam Chief Minister Himanta Biswa Sarma appeared to justify religious polarisation during elections.¹¹⁷ At the time of writing, the ECI is not known to have initiated any action against Sarma.

'I always do religious polarisation. What is new? There is nothing wrong with that. Because what is my religious polarisation – there will be no insult to Hindus. If it is called polarisation, then I will polarise. Is it religious polarisation to raise a voice for the rights of Hindus?' (Reported and translated excerpts from Sarma's remarks at a press meet in Kaki, Lumding (Assam))

3.2.3. Continuing anti-minority hate speech by Hindu nationalist leaders

We also note with alarm that despite the activation of the MCC, and the enhancement of security measures across the country, extremist Hindu nationalist actors, including many who reportedly have close ties with the BJP, have continued to organise public events where influential individuals have engaged in open incitement to hostility, discrimination, and violence against India's minorities.

- In addition to speeches mentioned above, South Asia Justice Campaign's Hate Speech Monitor documented 12 public speeches that appeared to be in potential violation of the RPA, between 15 March and 15 April, by other senior Hindu nationalist figures.¹¹⁸ These include speeches that target religious minorities, and meet the thresholds for 'top' and 'intermediate' level incitement as defined in the UN Strategy and Plan of Action on Hate Speech.¹¹⁹

¹¹³ *ibid.*

¹¹⁴ Omar Rashid, 'Vote in "Ram Ke Naam": Meerut DM Issues Notice to On-Screen Ram Arun Govil' *The Wire* (10 April 2024) <<https://thewire.in/politics/vote-in-ram-ke-naam-meerut-dm-issues-notice-to-on-screen-ram-arun-govil>> accessed 10 April 2024.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ 'Nothing Wrong With Religious Polarization, Says Assam Chief Minister Himanta Biswa Sarma' *ETV Bharat News* (15 April 2024) <<https://www.etvbharat.com/en!/state/nothing-wrong-with-religious-polarization-assam-chief-minister-himanta-biswa-sarma-enn24041501921>> accessed 16 April 2024.

¹¹⁸ 'Hate Speech Monitor' (*South Asia Justice Campaign*) <<https://southasiajusticecampaign.org/hate-speech-monitor/>> accessed 11 April 2024.

¹¹⁹ 'Top' level incitement is advocacy of discriminatory hatred constituting incitement to hostility, discrimination, or violence, and incitement to genocide, all of which are prohibited under international law. 'Intermediate' level hate speech refers to hate speech that may be prohibited by States to protect the rights or reputation of others, or for the protection of national security or of public order, or of public health or morals. See United Nations, 'Strategy and Plan of Action on Hate Speech: Detailed Guidance on Implementation for United Nations Field Presences' (2020)

- Most speakers reportedly belonged to Rashtriya Swayamsevak Sangh (RSS)-affiliated organisations such as the Vishwa Hindu Parishad (VHP), Bajrang Dal (BD), and Antarashtriya Hindu Parishad (AHP), among others. The RSS is known to be the BJP’s ideological progenitor.¹²⁰
- There has been an ever-growing crop of influential Hindu nationalist speakers who are invited to various rallies and public events where they incite hostility, discrimination, and violence against India’s religious minorities. Key individuals who have recently been reported making contentious speeches include:
 - Pravin Togadia, chief of the Antarrashtriya Hindu Parishad.¹²¹
 - Dhananjay Desai, chief of the Hindu Rashtra Sena.¹²²
 - Neeraj Denoria, chief of the Bajrang Dal.¹²³
 - Yati Narsinghanand Saraswati, influential Hindu monk.¹²⁴
 - Dharendra Krishna Shastri, influential Hindu monk.¹²⁵
- Common patterns observed in the content and form of documented speeches by non-political speakers include:
 - Appeals to Hindu religious identity, with the destruction of the Babri Masjid and the construction of the Ram Temple repeatedly referred to.
 - Hostile threats (including of violence) against Muslims, Christians and other religious minorities for allegedly attacking temples, converting Hindus, etc.
 - Demonisation of minorities by peddling conspiracy theories – such as the ‘love jihad’ charge against Muslims, and the charge of unlawful mass conversions against Christians. These conspiracy theories are used as dog-whistles to incite violence, discrimination and hostility against Muslims and Christians.
 - Calls for voting along religious identity lines and calls for the social and economic boycott of non-Hindus.

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech_Guidance%20on%20Addressing%20in%20field.pdf>.

¹²⁰ Walter Andersen and Shridhar D. Damle, ‘Appendix II: Organizations Where RSS Swayamsevaks Are Active and Their Area of Work’, *Messengers of Hindu Nationalism: How RSS Reshaped India* (Hurst & Company 2019).

¹²¹ ‘On X: “Location: Warud, Maharashtra Date: March 22 Antarrashtriya Hindu Parishad (AHP) Pravin Togadia Delivers an Inflammatory Speech Targeting Muslims. <https://t.co/6IyRST4q8h>” / X’ (*X (formerly Twitter)*, 23 March 2024) <<https://twitter.com/HindutvaWatchIn/status/1771463144042283023>> accessed 11 April 2024.

¹²² ‘On X: “Location: Solapur, Maharashtra Date: February 25 Communal Speeches Delivered by Hindu Rashtra Sena Chief Dhanajay Desai and Ambadass Gorantla. <https://t.co/khG2AVwvys>” / X’ (*X (formerly Twitter)*, 21 March 2024) <<https://twitter.com/HindutvaWatchIn/status/1770677420275720570>> accessed 11 April 2024.

¹²³ ‘On X: “Location: Constitution Club, New Delhi Date: March 12 Bajrang Dal Chief Neeraj Denoria Delivers Inflammatory Speech Stoking Hatred against Muslims. <https://t.co/OK7wib1OfP>” / X’ (*X (formerly Twitter)*, 18 March 2024) <<https://twitter.com/HindutvaWatchIn/status/1769567905279053952>> accessed 11 April 2024.

¹²⁴ ‘On X: “Location: Talwara, Hoshiyarpur, Punjab Date: February 28 Monk Yati Narsinghanand Saraswati Peddles Fear and Hate against Muslims. <https://t.co/APXKC2pgEc>” / X’ (*X (formerly Twitter)*, 18 March 2024) <<https://twitter.com/HindutvaWatchIn/status/1769679641437184052>> accessed 11 April 2024.

¹²⁵ ‘On X: “Location: Paharganj, Delhi Date: February 25, 2024 Monk Dharendra Krishna Shastri Promotes Fear and Hate towards Muslims at an Event Held in Support of Taking over Sahi Idgah Mosque in Mathura. <https://t.co/JE4ePeDWSZ>” / X’ (*X (formerly Twitter)*, 19 March 2024) <<https://twitter.com/HindutvaWatchIn/status/1770023154754187365>> accessed 11 April 2024.

- Videos of these public speeches are recorded and widely shared online, via apps such as WhatsApp, garnering high engagement across platforms.
- The speeches have had violent real-life implications for religious minorities in recent years.¹²⁶

While some of these speeches may not have been made specifically in the context of elections, they have the effect of further vitiating the atmosphere ahead of the 2024 General Election. In any case, they fall afoul of other laws (beyond the MCC and RPA) that have provisions prohibiting religious hate speech. And yet, these public events and speeches have continued to proliferate, despite Supreme Court directives to state police forces to take *suo motu* action in cases of hate speech and incitement. If not addressed urgently, they could have devastating consequences during the 2024 General Election.

3.2.4. Broadcast and release of pro-BJP, anti-minority and anti-opposition films

On 5 April, DD National, one of several television channels operating under the state-owned Doordarshan network, broadcast the controversial film ‘The Kerala Story’ that attempts to disparage the Muslim community.¹²⁷

The movie purports to portray an organised plot by Muslim men in the state of Kerala, to seduce Hindu women en masse, marry them, and recruit them into terror organisations. At the time of the movie’s theatrical release in May 2023, the Supreme Court had forced the film-makers to show a disclaimer stating that there is no data to back the claims made in the movie.¹²⁸ Nevertheless, the movie has since been openly promoted by several BJP leaders, including PM Modi.¹²⁹

Despite multiple opposition parties complaining to the ECI about the potential of the movie to ‘exacerbate communal tensions’ ahead of the elections, the ECI is not reported having initiated any action in the matter.¹³⁰

¹²⁶ ‘India Persecution Tracker #2024/1’ (*South Asia Justice Campaign*, 20 February 2024) <<https://southasiajusticecampaign.org/ipt2024-1/>> accessed 3 March 2024.

¹²⁷ ‘Controversy Surrounds Doordarshan’s Broadcast of “The Kerala Story” Ahead of LS Polls as Nationalist Films Dominate Screens’ *The Economic Times* (8 April 2024) <<https://economictimes.indiatimes.com/news/elections/lok-sabha/india/controversy-surrounds-door-darshans-broadcast-of-the-kerala-story-ahead-of-ls-polls-as-nationalist-films-dominate-screens/articleshow/109072339.cms?from=mdr>> accessed 14 April 2024.

¹²⁸ ‘Supreme Court Asks The Kerala Story Makers to Add a Disclaimer to the Film’ *WION* (19 May 2023) <<https://www.wionews.com/entertainment/supreme-court-asks-the-kerala-story-makers-to-add-a-disclaimer-to-the-film-594015>> accessed 14 April 2024.

¹²⁹ ‘Modi’s Backing of Inflammatory, Fictional “Kerala Story” Highlights Pressing Need for Opposition Unity’ (*The Wire*, 8 May 2023) <<https://thewire.in/communalism/narendra-modi-kerala-story-opposition-unity>> accessed 26 August 2023.

¹³⁰ ‘Controversy Surrounds Doordarshan’s Broadcast of “The Kerala Story” Ahead of LS Polls as Nationalist Films Dominate Screens’ (n 125).

‘The Kerala Story’ is only one of several movies made by BJP sympathisers that is scheduled for mass consumption during the election period. At least five films that have been flagged by film critics and analysts, for pushing Islamophobic narratives and demonising opposition parties and other government critics, are scheduled for public release in the coming weeks.¹³¹ At the time of writing, the ECI is not reported having initiated any action regarding this influx of propaganda films.

3.3 A partisan media, exacerbating the problem

In our previous report, we had noted that the domination of mainstream and social media networks by pro-BJP actors has meant that the average Indian users of these services is now subject to a daily and carefully constructed barrage of pro-BJP, anti-opposition and anti-minority content, including disinformation, with a wide range of actors pushing the same narratives from different sources and through different channels.¹³²

3.3.1. Partisan coverage by broadcast media

We note with concern the following patterns that we have observed during the 2024 General Election:

- The most popular television broadcast networks have continued to be highly partisan in favour of the BJP and the BJP-led central government.
- Election speeches by senior BJP leaders, particularly by Prime Minister Modi, have received disproportionate coverage, often in the form of live telecasts.
- Key speeches by opposition figures – such as the press conference where senior Congress leaders alleged that their bank accounts were frozen, and the INDIA opposition alliance rally in New Delhi following the arrest of Delhi Chief Minister Arvind Kejriwal – were not broadcast live by many channels, but instead treated with derision during primetime debate programmes.
- The coverage of opposition political parties, especially the Congress Party, the Aam Aadmi Party and the Trinamool Congress, has been overwhelmingly negative. Key developments such as the criminalisation and immobilisation of opposition leaders and parties have been portrayed not as arbitrary exercises of state power, but as comeuppance for engaging in corruption and ‘anti-national’ activities. IPMIE witness with dismay this continual inversion of truth as a tactic to confuse people.
- While print and online news media outlets have extensively covered the revelations following the release of electoral bonds data by the State Bank of India, this has found little resonance in broadcast television, which has appeared hesitant to question the BJP.

¹³¹ Hannah Ellis-Petersen, “‘Brazen Propaganda’: Pro-Modi Films Flood Bollywood before India Election’ *The Guardian* (22 March 2024) <<https://www.theguardian.com/film/2024/mar/22/brazen-propaganda-pro-modi-films-flood-bollywood-before-india-election>> accessed 14 April 2024.

¹³² Independent Panel for Monitoring Indian Elections (n 1) 32.

Allegations of potential quid pro quo between donors and the BJP, particularly those pertaining to raids that were preceded by raids by state agencies, received virtually no coverage during primetime programmes, although researchers have exposed them as factual.

3.3.2. Hate speech and misinformation on online platforms

In our previous report, we had highlighted that all major social media platforms operating in India, including those under Meta (like Facebook, WhatsApp, and Instagram), and others like X, have a history of allowing the proliferation of hate speech and misinformation by Indian actors.¹³³ We had also warned of the increasing risks posed by emerging technologies, such as generative AI. We welcome recent statements by Indian and international civil society groups echoing our concerns.¹³⁴

While all political parties are making extensive use of online platforms for campaigning, large-scale and malicious use of AI-powered deepfakes is yet to be observed. However, there are already signs of the technology being misused – for instance, a recent news report revealed the proliferation of AI-generated images of PM Modi steeped in Hindu imagery on Instagram, in violation of the platform’s own policies.¹³⁵ We repeat Human Rights Watch (HRW)’s recent warning that during the 2024 General Election, generative AI could be used for a number of malicious purposes, including the creation of deceptive messaging impersonating candidates, officials and news outlets.¹³⁶

In our previous report, we had also highlighted the Indian government’s recent measures ostensibly aimed at curbing the misuse of social media, but which are in fact used to arm itself with sweeping powers to control the flow of information and shut down criticism of government.¹³⁷ These efforts have continued: on 20 March, the Union government notified the establishment of a Fact Check Unit (FCU) with statutory powers to flag misinformation on social media about government policies and actions.¹³⁸ We are heartened by the Supreme Court’s decision to stay the FCU notification, and endorse HRW’s call urging social media companies to resist government pressure when responding to content-takedown demands, while also ensuring that speech that incites violence or hatred is proactively and meaningfully addressed.¹³⁹

¹³³ *ibid* 37.

¹³⁴ ‘India’s General Elections, Technology, and Human Rights Questions and Answers’ (*Human Rights Watch*, 8 April 2024) <<https://www.hrw.org/news/2024/04/08/indias-general-elections-technology-and-human-rights-questions-and-answers>> accessed 14 April 2024.

¹³⁵ Nilesh Christopher, ‘Before India Election, Instagram Boosts Modi AI Images That Violate Rules’ *Al Jazeera* <<https://www.aljazeera.com/economy/2024/4/12/before-india-election-instagram-boosts-modi-ai-images-that-violate-rules>> accessed 14 April 2024.

¹³⁶ ‘India’s General Elections, Technology, and Human Rights Questions and Answers’ (n 132).

¹³⁷ Independent Panel for Monitoring Indian Elections (n 1) 37.

¹³⁸ ‘India Top Court Stays Government Move to Form Fact Check Unit under IT Laws’ (*Al Jazeera*) <<https://www.aljazeera.com/news/2024/3/21/india-top-court-stays-government-move-to-form-fact-check-unit-under-it-laws>> accessed 14 April 2024.

¹³⁹ ‘India’s General Elections, Technology, and Human Rights Questions and Answers’ (n 132).

Social media platforms, as do all companies, have the responsibility to prevent, address and remedy human rights violations.¹⁴⁰ In the context of general elections in India, as HRW has summarised, this entails the responsibility to ‘conduct ongoing human rights due diligence, and to revisit existing due diligence measures to take into account the heightened risks to human rights that elections present.’¹⁴¹

To this end, recent developments such as Meta’s establishment of an India-focused Elections Operations Centre and its introduction of a WhatsApp helpline to address AI-generated misinformation, and Google’s announcement that it would privilege reliable election-related information in search results, including on YouTube, are welcome.¹⁴² Other developments such as the Global Witness investigation revealing that YouTube approved dozens of India-focused advertisements promoting voter suppression and incitement to violence, as well as Microsoft’s warning that Chinese state-backed hackers may be planning to disrupt Indian elections, remind us of the challenges that lay ahead.¹⁴³

3.4. Disabling civil society and dissenters

The ECI and the Supreme Court have not been able to protect India’s shrinking civic space, which is a bulwark for Indian democracy. India is a country of continental diversity, which has an argumentative social tradition.¹⁴⁴ This is one of India’s most potent resources favouring democratic resilience. The incumbent party wishes to squash this space so that opposing the incumbent becomes ever more difficult. Shrinking civic space, therefore, represents an acute threat to the sustenance of India’s democracy. Since 2014, many systematic attacks on civil society organisations as well as individuals linked to civil society have only added to the opposition woes associated with the incarceration of opposition politicians. We find similar patterns in Putin’s Russia and Orban’s Hungary.¹⁴⁵

The imprisonment of sixteen individuals - famously known as the Bhima Koregoan 16 or BK 16 - many of whom remain incarcerated, is the most egregious example of this phenomenon,

¹⁴⁰ United Nations, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (Office of the High Commissioner for Human Rights 2011) <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf>.

¹⁴¹ ‘India’s General Elections, Technology, and Human Rights Questions and Answers’ (n 132).

¹⁴² ‘How Meta Is Preparing For Indian General Elections 2024’ (*Meta*, 19 March 2024) <<https://about.fb.com/news/2024/03/how-meta-is-preparing-for-indian-general-elections-2024/>> accessed 11 April 2024; ‘MCA’s WhatsApp Helpline: Curbing The Spread of AI-Generated Misinformation In India’ (*Meta*, 19 February 2024) <<https://about.fb.com/news/2024/02/mcas-whatsapp-helpline-curbing-the-spread-of-ai-generated-misinformation/>> accessed 11 April 2024; ‘Supporting the 2024 Indian General Election’ (*Google*, 12 March 2024) <<https://blog.google/intl/en-in/company-news/outreach-initiatives/supporting-the-2024-indian-general-election/>> accessed 11 April 2024.

¹⁴³ “‘Votes Will Not Be Counted’: Indian Election Disinformation Ads and YouTube’ (*Global Witness*) <<https://en/campaigns/digital-threats/votes-will-not-be-counted-indian-election-disinformation-ads-and-youtube/>> accessed 11 April 2024; Dan Milmo, ‘China Will Use AI to Disrupt Elections in the US, South Korea and India, Microsoft Warns’ *The Guardian* (5 April 2024) <<https://www.theguardian.com/technology/2024/apr/05/china-using-ai-disrupt-elections>> accessed 11 April 2024.

¹⁴⁴ Amartya Sen, *Argumentative Indian*

¹⁴⁵ Flikke, G. (2016). Resurgent authoritarianism: the case of Russia’s new NGO legislation. *Post-Soviet Affairs*, 32(2), 103–131. <https://doi.org/10.1080/1060586X.2015.1034981> <https://doi.org/10.1080/1060586X.2015.1034981> . Antoine Buyse, “Squeezing civic space: restrictions on civil society organizations and the linkages with human rights,” *The International Journal of Human Rights* 22:8, 966-988.

The accused were booked under fabricated terror charges based on evidence planted on their phones through the Israeli Pegasus software. As independently established by Amnesty International (amongst others), the incarceration of the BK16 had a chilling effect on civil society in India. Similar has been the fate of Muslim student activists protesting against the discriminatory Citizenship Amendment Act in Delhi, also charged under the draconian Unlawful Activities Prevention Act, including Umar Khalid and Gulfisha Fatima. Father Stan Swamy, an 84-year-old Jesuit priest who spent his life working with indigenous people died in incarceration in what many consider to be a ‘judicial murder’. People in the government and security bureaucracy who commit such acts of “judicial murder” should be brought to justice in our view.

Income tax, anti-money laundering laws (Prevention of Money Laundering Act) and violations of foreign currency laws (Foreign Currency Regulation Act) have been invoked against well-known organisations, many of whom have now been effectively shut down. These include Oxfam International, CARE International, Greenpeace International, Amnesty International, Centre for Policy Research and the Centre for Equity Studies. The optics of this are terrible for India except in the eyes of the educated world.

Similarly, the FCRA has been used to crack down on civil society organisations and more than 20,000 organisations have now lost their ability to receive any foreign funding. In 2023 alone, close to 1743 organisations did not have their FCRA licences renewed. A significant number of these are now threatened with business continuity and many of them will be shut down.

India’s premier investigating agencies including the Enforcement Directorate (ED), the Central Bureau of Investigation (CBI) and the National Investigation Agency (NIA) are now hounding civil society organisations and activists on a regular basis. Threats posed by the ED, the CBI and the NIA have a more potent penal nature compared with the FCRA route. These are worrisome developments over which the BJP government has presided and been encouraging.

A study by Heidelberg University found that the severest attacks are on organizations working to protect the rights of minority Muslims, followed by those that are working for environmental causes associated with the rights of tribal forest dwellers living in resource-rich areas. Once rights-based organizations get disciplined, it becomes easier for them to operate in the civic space. For example, Amnesty International did not compromise its work on minority rights. It operates without any financial support in India. Greenpeace, on the other hand, has severely diluted its rights-based work and is able to pursue its operations.¹⁴⁶

While the frontal attacks are targeted at a few, it has led to civil society voices being significantly curbed in India. Self-censorship is now the norm rather than the exception in the formal civil society sector as institutional protection takes precedence over expressing constitutionally mandated rights.

¹⁴⁶ Rahul Mukherji and Aditya Shrivastava, “Civil Society under siege, in India,” *The Hindu* (New Delhi: Editorial: January 5, 2024).

These attacks also represent the tip of the iceberg as the crackdown on all protests and demonisation of those opposed to the majoritarianism of the government has led to curtailment of democratic protests across the country. The crackdown on the farmers protests and branding them as 'Khalistani' separatists threatening the integrity of India is the most glaring example of this. Spaces to protests in the national capital of Delhi have been reduced to one specific spot in the city, while permissions for holding rallies and meetings are being withheld even on that spot. It is no longer possible to mobilise large numbers of people without severe threat of retaliation in most states ruled by the BJP. Houses of dissenting individuals, especially Muslims, being bulldozed and demolished and false cases initiated against them and their families, is a wide-spread phenomena. All these actions are unconstitutional and anti-democracy.

Civil society now reels under the pincer of losing foreign funding as well as domestic philanthropy backing away from supporting rights-based causes, thus financially crippling them completely. While social actors fighting for constitutionally mandated progressive and secular causes are losing out, civil society in support of Hindu nationalism is empowered. This state sponsored shrinking civic space makes it especially difficult for opposition parties to win elections since "democracy dies in darkness".

4. Electoral management: Independent and objective?

4.1. Introduction

As an extension of the international legal obligation of States to respect, protect, and fulfil human rights, electoral management bodies (EMBs) are obligated to ensure the integrity of the electoral process.¹⁴⁷ EMBs must be able to function independently, and to ensure that the electoral process is conducted fairly, impartially and in accordance with established laws that are compatible with the ICCPR.¹⁴⁸ Their decision-making must be open, transparent and maximally consultative, and all stakeholders must be provided access to relevant information.¹⁴⁹ Further, in accordance with the rights to a fair trial and to an effective remedy, States are obligated to ensure independent judicial review or other complaints and appeals procedures.¹⁵⁰ Remedies must be prompt, adequate, effective, and enforceable within the context of the electoral calendar.¹⁵¹

In our previous report, we had highlighted allegations made by opposition parties and civil society actors regarding the conduct of the Election Commission of India, the constitutional body tasked with overseeing the conduct of free and fair election, particularly during the 2019 General Election.¹⁵² We also highlighted several structural weaknesses that imperil the independence of the ECI, and make it prone to executive interference, inhibiting its ability to ensure a level playing for all political parties.¹⁵³ In this section, we highlight several recent developments that further deepen fears that the ECI is not being an impartial arbiter during the 2024 General Election.

4.2. Appointment of new Election Commissioners

According to India's Constitution, the appointment of the Chief Election Commissioner (CEC) and the Election Commissioners (ECs) is to be made by the President.¹⁵⁴ In 2023, the legislative vacuum regarding the mechanics of this process had prompted the Supreme Court (SC) to lay out a temporary appointments process. According to the SC's guidelines, issued in response to a Public Interest Litigation (PIL), the CEC and the ECs were to be appointed by a three-member committee comprising the Prime Minister (PM), the Chief Justice of India (CJI), and

¹⁴⁷ Office of the High Commissioner for Human Rights (n 22) para 114.

¹⁴⁸ UN Human Rights Committee (n 49) para 20.

¹⁴⁹ Office of the High Commissioner for Human Rights, 'Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs' (United Nations 2018) A/HRC/39/28 para 45.

¹⁵⁰ Office of the High Commissioner for Human Rights (n 22) paras 128–129.

¹⁵¹ Office of the High Commissioner for Human Rights (n 144) para 46.

¹⁵² Independent Panel for Monitoring Indian Elections (n 1) 42.

¹⁵³ *ibid.*

¹⁵⁴ The Constitution of India 1950 art 324.

the Leader of the Opposition or the largest opposition party in the Lok Sabha.¹⁵⁵ While specifying that this temporary system was to be valid only till Parliament enacted a law regarding the same, the SC had also warned of ‘the devastating effect of continuing to leave appointments in the sole hands of the Executive’.¹⁵⁶

In late-2023, in apparent disregard of the SC’s warnings, Parliament enacted a new law laying out the procedure of appointments to the ECI. According to the new procedure, the shortlisting of potential appointees is to be done by a committee headed by the Union Law Minister, and the subsequent selection is to be made by a three-member committee comprising the PM, the Leader of Opposition in the Lok Sabha, and – instead of the CJI as recommended by the SC – a Cabinet Minister nominated by the PM.¹⁵⁷ In our previous report, we had noted that this new system cements a virtual veto for the Executive in deciding the officials who oversee elections across the country. This situation is alarming to say the least.

The abrupt and premature resignation of one of the three ECs on 9 March, 2024, officially attributed to ‘personal reasons’, along with the scheduled resignation of another, paved the way for the Executive-dominated panel (with the PM nominating Home Minister Amit Shah to be the third member) to appoint two new Election Commissioners ahead of the 2024 General Election. Also concerning is the fact that the leader of the largest opposition party in the Lok Sabha publicly alleged that he had been given less than a day to evaluate 212 prospective candidates, and that the number of candidates had come down to six by the time the selection panel convened, implying that the two appointees were handpicked by Modi and Shah.¹⁵⁸

The profiles of the new ECs, both recently retired bureaucrats from the Indian Administrative Service (IAS), do little to allay concerns about their independence and autonomy during the 2024 General Election. One of the appointees was described in a media report as being among ‘Shah’s right-hand men’ in the Union Home Ministry, overseeing key initiatives such as the downgrading of Jammu & Kashmir (J&K) in 2019 and the formation of the Trust that is currently presiding over the construction of the Ram Temple in Ayodhya.¹⁵⁹ The other had reportedly overseen several key infrastructure projects, including those around Hindu pilgrimage sites in Uttarakhand, a key poll plank of the BJP.¹⁶⁰ IPMIE calls for Electoral Commissioners to be appointed henceforth by a neutral panel of top Judges and only candidates who are genuinely neutral and independent and free of party politics should henceforth be appointed.

¹⁵⁵ Rangarajan R, ‘On Selecting Election Commissioners’ *The Hindu* (17 December 2023) <<https://www.thehindu.com/news/national/on-selecting-election-commissioners-explained/article67648538.ece>> accessed 9 April 2024.

¹⁵⁶ Ritika Chopra, ‘The New Process for Picking Election Commissioners, Why It Was Brought In’ *The Indian Express* (8 February 2024) <<https://indianexpress.com/article/explained/picking-election-commissioners-9149779/>> accessed 9 April 2024.

¹⁵⁷ The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

¹⁵⁸ ‘Two New ECs Appointed, Adhir Ranjan Chowdhury Raises Dissent’ *Telegraph India* (15 March 2024) <<https://www.telegraphindia.com/india/two-new-election-commissioners-appointed-adhir-ranjan-chowdhury-raises-dissent/cid/2006944>> accessed 5 April 2024.

¹⁵⁹ Sangeeta Barooah Pisharoty, ‘Who Are the New Election Commissioner-Appointees, Sukhbir Singh Sandhu and Gyanesh Kumar?’ *The Wire* (14 March 2024) <<https://thewire.in/government/who-are-the-new-election-commissioner-appointees-sukhbir-singh-sandhu-and-gyanesh-kumar>> accessed 5 April 2024.

¹⁶⁰ *ibid.*

The new ECs were announced on the same day the SC was scheduled to hear a petition challenging the validity of the law laying out the new appointments process. While the SC was reported to have expressed ‘concern’ about ‘the procedure adopted for selection’, it refused to stay the appointments, citing, among other things, the fact that elections were around the corner.¹⁶¹

It bears repeating that in August 2020, Ashok Lavasa, one of the ECs who had reportedly dissented notes over the ECI’s inaction regarding alleged MCC violations by PM Modi and HM Shah during the 2019 GE, had also resigned, less than a year after reports that his family members had been targeted by the IT department.¹⁶² In 2021, Lavasa was also revealed to have been one of the individuals whose electronic devices were potentially compromised using Pegasus, an Israeli-made spyware that is sold only to state agencies.¹⁶³ If Lavasa had stayed on with the EC, the norms of seniority would have placed him as the CEC in charge of overseeing the 2024 GE.¹⁶⁴

Against this backdrop, the new appointments add fuel to suspicions expressed by political analysts that apparent loyalists have been brought in to ‘do something that the incumbents were unwilling or unable to carry out.’¹⁶⁵

4.3. Review of ECI’s conduct: election schedule, MCC violations

Some of the key criticisms faced by the ECI during the 2019 General Election were its overall perceived partisanship in favour of the BJP, which manifested in its failure to act decisively against communal election hate speeches by BJP leaders, and its refusal to act against the BJP’s top leadership (such as the Prime Minister and the Home Minister) On all these counts, the EC appears to be falling far short during the 2024 General Election as well.

4.3.1. Allegations of 2024 General Election schedule favouring the BJP

With polling scheduled to take place over 44 days, in seven phases, the 2024 General Election is scheduled to be India’s second-longest ever, after its inaugural General Election in 1951-52.

¹⁶¹ ‘SC Dismisses Pleas Challenging Appointment of New Election Commissioners’ (*The Indian Express*, 21 March 2024) <<https://indianexpress.com/article/india/sc-refuses-to-stay-appointment-of-new-election-commissioners-9226164/>> accessed 5 April 2024.

¹⁶² ‘Election Commissioner Ashok Lavasa Submits Resignation’ *The Hindu* (18 August 2020) <<https://www.thehindu.com/news/national/election-commissioner-ashok-lavasa-submits-resignation/article32384923.ece>> accessed 10 April 2024.

¹⁶³ Kabir Agarwal, ‘Ashok Lavasa Placed on Snoop List as EC After Flagging Modi’s 2019 Poll Code Violations’ *The Wire* (19 July 2021) <<https://thewire.in/government/pegasus-project-ashok-lavasa-narendra-modi-amit-shah-model-code-of-conduct>> accessed 10 April 2024.

¹⁶⁴ *ibid.*

¹⁶⁵ Yogendra Yadav (n 51).

¹⁶⁶ (Assembly elections to Arunachal Pradesh, Sikkim, Andhra Pradesh, and Odisha are also planned to be held over this period, according to the schedule announced by the ECI on 16 March, 2024.)

While a host of logistical and security concerns necessitate the spacing out of India's elections, opposition parties have alleged this extended schedule gives an edge to political parties with superior financial resources, and allows PM Modi, the BJP's main campaigner, to travel extensively across states that are considered to be vital for the BJP's chances of securing a majority in the Lok Sabha.

For instance, in West Bengal, which is scheduled to witness voting in seven phases, the opposition Trinamool Congress (TMC) alleged that the ECI had ignored the TMC-led recommendation for polls to be held in one or two phases.¹⁶⁷ In Maharashtra, where voting in three phases was the norm between 1962 and 2014, opposition parties have claimed that the scheduling of voting in five phases is likely to give the BJP and its allies additional time to settle disputes they are reportedly engaged in currently over seat-sharing.¹⁶⁸ Political analysts have noted that, previously, longer elections have correlated with a higher probability of success for incumbent government.¹⁶⁹

We believe a new formula is required whereby Opposition Parties are asked to formally agree the governments proposal election protocols.

The Citizens Commission on Election (CCE) has alleged that the spacing out of polling days, along with the BJP's near-monopoly over the content broadcast by television networks, gives PM Modi 12 'premium days' to circumvent campaigning bans – which are constituency-specific, and in effect for 48 hours prior to polling – by delivering speeches which are broadcast nationally but delivered from locations where the 'silence period' is not in place.¹⁷⁰ Devasahayam further questioned the presence of a three-day gap between the date of polling is set to conclude (on 1 June) and the date votes are set to be counted.¹⁷¹ (Previously, such a gap had been necessary to address issues like booth capturing and ballot stuffing, which the ECI claims have been eliminated with the advent of the EVM-VVPAT system.)

4.3.2. Inaction regarding abuse of state agencies to target opposition leaders

¹⁶⁶ "'Helps Parties With Deeper Pockets': Opposition Questions 7-Phase Election' *NDTV.com* (17 March 2024) <<https://www.ndtv.com/india-news/helps-parties-with-deeper-pockets-opposition-questions-7-phase-election-5252203>> accessed 10 April 2024.

¹⁶⁷ *ibid.*

¹⁶⁸ 'LS Poll Dates in: Opposition Sees Advantage BJP in Maharashtra's First Five-Phase Schedule' *The Indian Express* (18 March 2024) <<https://indianexpress.com/article/political-pulse/ls-poll-dates-in-opposition-sees-advantage-bjp-in-maharashtras-first-five-phase-schedule-9220276/>> accessed 10 April 2024.

¹⁶⁹ Amitabh Tiwari, 'Can BJP Benefit From A Long Poll Schedule? Here's What Data Shows' *NDTV.com* (25 March 2024) <<https://www.ndtv.com/opinion/can-bjp-benefit-from-a-long-poll-schedule-heres-what-data-shows-5283242>> accessed 10 April 2024.

¹⁷⁰ G. Sampath, 'Why Does the Election Commission Need Seven Phases to Conduct General Elections? (Interview with M.G. Devasahayam)' *The Hindu* (19 March 2024) <<https://www.thehindu.com/podcast/election-commission-seven-phase-general-elections/article67968117.ece>> accessed 10 April 2024.

¹⁷¹ *ibid.*

In 2019, the ECI had issued an advisory that all ‘enforcement actions’ during the General Election period should be ‘absolutely neutral, impartial and non-discriminatory.’¹⁷² At the time of writing, despite the scale of targeting of opposition leaders becoming much more pronounced, the ECI was yet to issue a similar advisory ahead of the 2024 GE. (For more, see section on arbitrary targeting of opposition in Chapter 3.)

4.3.3. Inaction in reported instances of MCC violations by senior BJP leaders:

On 29 March, it was reported that the EC had received over 79,000 complaints regarding potential MCC violations via its eVigil app, and that it had successfully resolved over 99% of these.¹⁷³ While this is welcome, we note the following patterns in the EC’s response to potential violations by the senior leadership of the BJP:

- Of the eight potential violations involving PM Modi (including one instance of government machinery being misused to broadcast WhatsApp messages, one instance of misusing an Indian Air Force helicopter to attend an election event, one instance of children being used at an election event, at least four instances of appealing to religious and communal sentiments in election speeches, and at least one instance of referring to armed forces in an election speech), the ECI is reported to have initiated action in only one instance – relating to the broadcast of WhatsApp messages using a government account, when the ECI is reported to have asked the Union Ministry of Electronics & Information Technology (MEITY), and not PM Modi, to desist from sending any further messages. This was despite the messages being sent in PM Modi’s name. At the time of writing, the ECI is not reported to have issued show-cause notices to PM Modi regarding the other cases.
- Of the five potential violations involving senior Union Ministers – Amit Shah (appealing to religious sentiments), Rajnath Singh (referring to armed forces), Nirmala Sitaraman (appealing to religious sentiments), Smriti Irani (referring to armed forces), and Shobha Karandlaje (appealing to communal sentiments and promoting enmity between communities), the ECI was reported to have initiated action only in one case, when it directed the registration of an FIR against Karandlaje. (The police investigation against Karandlaje was subsequently stayed by the Karnataka High Court.)
- The ECI was not reported to have initiated any action in Uttar Pradesh Chief Minister Yogi Adityanath’s repeated references to the Ram Temple inauguration in his election speeches.
- The ECI was reported to have, separately, directed the registration of FIRs in cases involving BJP MP Tejasvi Surya (who had accused opposition parties of giving political backing to ‘jihadis’) and CT Ravi (who had accused the opposition of seeking to destroy the Hindu

¹⁷² Damini Nath (n 47).

¹⁷³ ‘Over 79,000 Election Code Violation Complaints Received through eVigil App: ECI’ (*Hindustan Times*, 29 March 2024) <<https://www.hindustantimes.com/india-news/over-79-000-election-code-violation-complaints-received-through-evigil-app-eci-101711703656109.html>> accessed 11 April 2024.

religion – essentially the same charge made by PM Modi). (The police investigation against Surya was subsequently stayed by the Karnataka High Court.)

- The ECI was not reported to have initiated any action against non-political actors, including those belonging to Hindu extremist groups aligned to the RSS, the BJP’s ideological progenitor, for continuing to organise public events marked by open incitement to hostility, discrimination, and violence against India’s minorities. This is despite some of the events involving calls to vote on religious grounds, and hence inviting provisions of the Representation of the People Act.

Read together, these instances appear to confirm fears that the current ECI is unable or unwilling to act decisively in cases of the BJP’s top leadership openly flouting election guidelines. Any action taken appears to be against leaders from the junior rung.

4.3.4. Inaction in addressing influx of propaganda films

At the time of writing, the ECI is not known to have initiated any action regarding the telecast of the controversial movie ‘The Kerala Files’ by state broadcaster Doordarshan (despite repeated complaints from opposition parties), or about the impending public release of propaganda films made by BJP sympathisers.

4.3.5. Gaps in addressing online misinformation and hate

In 2019, the ECI and social media platforms operating in India had formulated a ‘Voluntary Code of Ethics’ to be adhered to during all future elections.¹⁷⁴ Indian civil society groups have repeatedly pointed out the gaps in this system, such as its non-legal status, the absence of a provision for compliance monitoring, and the failure to engage constructively with civil society during the drafting of the Code.¹⁷⁵ While the ECI has announced a several measures to combat online misinformation during the 2024 General Election, these core concerns remain unaddressed.¹⁷⁶

¹⁷⁴ Election Commission of India, “‘Voluntary Code of Ethics’ by Social Media Platforms to Be Observed in the General Election to the Haryana & Maharashtra Legislative Assemblies and All Future Elections’ (*Press Information Bureau*) <<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1586297>> accessed 14 April 2024.

¹⁷⁵ ‘Press Release: Civil Society Organisations Express Urgent Concerns over the Integrity of the 2024 General Elections to the Lok Sabha’ (n 9).

¹⁷⁶ “‘Myth vs Reality’: EC Lays down Steps to Curb Fake News’ (*Hindustan Times*, 17 March 2024) <<https://www.hindustantimes.com/india-news/myth-vs-reality-ec-lays-down-steps-to-curb-fake-news-101710615785656.html>> accessed 14 April 2024.

5. Conclusions and Call to Action

IPMIE continues to express the concern that, in the context of general election 2024 underway, the ruling BJP at the helm of the Indian state and its institutions display worrisome competitive authoritarian propensities.¹⁷⁷ If the authoritarian aspects of such a regime gets accelerated over its competitive and democratic features, then the surge towards authoritarianism will be inevitable for the following reasons:

1. The Enforcement Directorate is hounding opposition politicians. It had the audacity to imprison two chief ministers – Arvind Kejriwal of Delhi and Hemant Soren of Jharkhand, among others, who are being pursued. The PMLA can be wantonly deployed to arrest persons without adequate proof for conviction. Both Germany and the US have criticized the action on Kejriwal. There is a worry within the democratic opposition that it is risky to be in the political opposition and much safer to join the ruling party. Joining the ruling party clears the concerned politician of a tainted past. It can even buy electoral rewards. Intimidating the democratic opposition in this way could be suicidal for the life of a democracy. The ECI seems incapable of dealing with a competitive authoritarian state, but the Supreme Court can still act to give the political opposition a fighting chance. And the media can also highlight this abuse.
2. IPMIE is furthermore concerned regarding the financial intimidation of opposition parties. The fines imposed on the Congress Party, the CPIM and income tax raids on opposition politicians seem another equally potent way to deter the political opposition. The ECI and the Supreme Court should intervene to play the role of a neutral umpire.
3. IPMIE is concerned that the ECI has not taken the ruling party to task for using Hindu nationalist appeals and deploying children and the armed forces in support of their cause. The Prime Minister has even used the data provided by the government's ministry for WhatsApp propaganda messaging.
4. IPMIE takes serious note of communal polarization and use of hate speech. It is well known that populist leaders who turn authoritarian, routinely use such appeals.¹⁷⁸ If the ECI fails in this regard, it will become party to India's authoritarian turn.
5. IPMIE notes that the ECI has taken no measures to address concerns regarding the EVMs and the VVPATs. We demand 100% verification of VVPATS.
6. IPMIE notes that mainstream media, especially television, is blocking important content or just spelling out the ruling party's side of the story – be it the arrest of Arvind Kejriwal or the mass protests in Ladakh.

¹⁷⁸ Ruth Ben Ghiat, *Strongment: Mussolini To The Present* (WW Norton:).

7. IPMIE wishes to remind the Supreme Court that changes in procedures for nominating members of the ECI and recent ECI appointments pose a serious challenge to even the performance of India as an electoral autocracy, as reported by the V-Dem report. People may not really be electing autocrats, if the ECI acted as a neutral umpire. The inaction of the current ECI, points in a worrisome direction.
8. Other recommendations from IPMIE at this time have been made throughout the text.

Annexure #1: Weekly bulletin of key concerns, No. 1 (27 March, 2024)

The Independent Panel for Monitoring Indian Elections, 2024 (IPMIE) plans to release periodic in-depth interim and final reports, based on its monitoring of general election 2024. We also feel it is important to flag to the Election Commission of India (ECI), on a more ongoing basis, key concerns with the conduct of free and fair elections that are brought to our notice, so ECI could respond to those as the elections gets underway. Below is a catalogue of concerns we observed in the past days, since the announcement of general election 2024, on 16th March 2024.

1. **Appointment of Election Commissioners:** The recent appointment of two election commissioners to the ECI has reportedly been criticised by the sole non- ruling party member of the selection committee, who has claimed that the names of the shortlisted candidates were not provided to him in adequate time, among other “procedural lapses”. Supreme Court too has expressed concerns at “procedure adopted” in the appointments.
2. **Questions regarding polling schedule and voting phases:** The long seven-phase election cycle announced by ECI is seen as advantaging the ruling BJP, and its “star campaigner”, Prime Minister Narendra Modi.
3. **Continuing concerns over EVMs:** There are continuing doubts regarding the robustness of EVMs, as expressed by civil society. RTI inquiries reveal a high rate of EVM failure reported by states to the ECI during the 2019 elections. The suggestions offered by civil society to overcome these challenges, such as by counting VVPATs as ballots, have not been accepted by the ECI, in its plans for general election 2024, and concerns around the EVMs have not been addressed in a satisfactory.
4. **Electoral Bond Scheme (EBS):** We also take note of the significance of Supreme Court’s recent judgement on EBS. From the evidence and analysis available publicly, it seems EBS has been used by the ruling BJP unscrupulously, to, among others, put pressure on potential donors. The bonds seem to provide significant financial privilege favouring the ruling party that undermines the competitive aspects of India’s electoral democracy.
5. **Prime Minister Modi’s speech invoking religious sentiments:** PM Narendra Modi, in an election speech delivered in Salem, Tamil Nadu, on 19 March, was reported invoking religious sentiments in electoral campaigning. Please see this for example of a media report. We are made to understand that complaints have been filed with the ECI on this alleged violation of the Model Code of Conduct, specifically this complaint, reported in the press.
6. **Arrest of Arvind Kejriwal, a sitting opposition Chief Minister:** The arrest of a sitting Chief Minister from an opposition political party during elections casts serious doubts over whether a level playing field is being provided to all parties going into the election. This comes after the arrest recently, of another sitting CM from the opposition, Hemant Soren in Jharkhand. There seems to be a clear pattern in using investigative agencies to disproportionately target opposition political parties and their leading figures, which will have a chilling effect on the opposition’s ability to contest the elections freely and fairly.
7. **Media bias:** We take note of the fact that most mainstream media has presented an unbalanced picture regarding issues that impact free and fair elections, including electoral bonds, arrest of sitting Chief Ministers. These too have the potential to bias information available with voters in favour of the ruling party, thus breaching the obligation to ensure a level playing field.
8. **Voter Registration:** Article 325 of Indian Constitution states:....”*no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.*” yet evidence shows that millions of Muslim Indians and millions of Dalits have been systematically excluded from the rolls: an urgent inquiry needs to be undertaken by the EC into how this has happened, and how it can be swiftly rectified.

Annexure #2: Weekly bulletin of key concerns, No. 2 (28 March – 3 April, 2024)

This is the second of our weekly catalogue of concerns about the integrity of 2024 general election (GE). As the Independent Panel for Monitoring Indian Elections, 2024, we have been observing the 2024 GE election process, and publishing our findings, periodically. The bulletin is meant to raise emergent concerns, directly with the Election Commission of India (ECI), in the hope that these are addressed speedily, also as a record of concerns

1. **Financial disadvantage to opposition parties:** Indian elections are an expensive affair. However, there are concerns about whether government agencies are allowing opposition parties to compete in the 2024 general elections freely. After freezing the Congress party's bank accounts, notices have been served to the party by the Income Tax department, amounting to over 3,500 crore rupees (over 410 million USD) in tax demand. IT notices have also been served to Left parties during election season. Although the IT has said to the Supreme Court that no coercive steps will be taken to recover the money from the Congress before the end of the elections, these notices were served after elections were announced. The party has reported that the IT department has already withdrawn 135 crores (over 16 million USD) from its accounts.
2. **Political competitors arrested:** The arrests of two opposition Chief Ministers during elections have hampered the opposition's ability to fight elections. The Prevention of Money Laundering Act (PMLA) was amended in 2019 so that opposition leaders and activists could be arrested till proven guilty. This provision has been used to target and imprison opposition politicians so that they give up their opposition to the incumbent party. The Supreme Court has granted bail to an opposition Member of Parliament implicated in the same alleged corruption case as the Delhi Chief Minister due to the absence of a money trail being found to support the arrest. The Court's decision casts doubts over government agencies' action in arresting opposition politicians.
3. **Supreme Court notice to the Election Commission of India (ECI) over Voter Verifiable Paper Audit Trail (VVPAT):** The manipulation of Electronic Voting Machines (EVMs) can rob the voter to exercise their democratic right to vote. The Supreme Court has sent notice to the ECI regarding a petition seeking the counting of all VVPATs and sought its response over whether voters can deposit the VVPATs into a ballot box for greater accuracy in vote-counting. This further underlines the growing concern over the safety of EVMs in ensuring an untampered voting procedure. The ECI has thus far not responded to concerns over the EVMs.
4. **Concern expressed by former Election Commissioners over level playing field:** Various former Election Commissioners have expressed concern over the actions of law enforcement and financial agencies pertaining to the opposition parties, arguing that it disrupts the level playing field necessary for holding free and fair elections. The ECI should discourage such actions. In a joint rally on 31 March, the combined opposition has similarly made a five-point demand to the ECI to ensure free and fair elections and a level playing field for the voters.
5. **Growing international concern over the restraints on political competition:** After the United States and Germany, the United Nations has reacted to the arrest of Arvind Kejriwal, the sitting Chief Minister of Delhi. The government's actions against its political rivals, the use of agencies, and concerns about free and fair polls have directed international scrutiny towards India's elections.

Annexure #3: Weekly bulletin of key concerns, No. 3 (4 April – 10 April, 2024)

This is the third of our weekly catalogue of concerns about the integrity of 2024 general election (GE). As the Independent Panel for Monitoring Indian Elections, 2024, we have been observing the 2024 GE process and publishing our findings, periodically. The bulletin is meant to raise emergent concerns, directly with the Election Commission of India (ECI), in the hope that these are addressed speedily, also as a record of our concerns.

1. **BJP's appeal to religion for votes:** Statements appealing to religion were made by senior leaders of the Bharatiya Janata Party (BJP), violating the Model Code of Conduct (MCC). The MCC requires that "There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda."
 - Prime Minister Narendra Modi is reported to have said in an election rally in Bihar, "...the INDIA bloc...did not turn up for pran pratishtha at Ayodhya...Ram Navami is approaching. Do not forget their sins...These parties speak against Sanatan Dharma and advocate making south India a separate country."
 - Uttar Pradesh Chief Minister Yogi Adityanath said in a speech in Maharashtra, "I have come here from Uttar Pradesh - the land of Lord Ram. Wherever I went in Maharashtra, I could hear people say, 'joh Ram ko layehain, hum unko layenge' (we will vote for those who brought in Lord Ram [referencing the Ram temple])".
 - Union Minister Smriti Irani similarly invoked Lord Ram in a speech in Chennai.
2. **Use of military symbols in election messaging by BJP ministers:** Armed forces are being invoked in violation of the MCC. Smriti Irani posted a video on X that showed Prime Minister Modi donning armed forces attire and interacting with defence personnel, and displayed military equipment. This violates the Model Code of Conduct (MCC).
3. **Use of central agencies against opposition parties:** Central agencies continue to target opposition politicians in a partisan way, disrupting a level electoral playingfield. Trinamool Congress in Bengal has questioned the timing of a midnight raid against its members in a 2022 case, by the National Investigation Agency, allegedly without the permission of the state police. This follows the recent arrest of Delhi Chief Minister Arvind Kejriwal and former Jharkhand Chief Minister Hemant Soren by central agencies close to elections.
4. **Continued concerns over electoral bonds (EBs):** The research on EBs demonstrates clearly that there has been both quid-pro-quo between the government and donors and bonds have been issued in a manner disproportionate with companies' size/profits. EBs are also linked with targeting of political opponents, for e.g., as seen in Delhi CM, Kejriwal's case, where the company, whose director was initially arrested in the alleged liquor scam, donated EBs to the BJP and turned approver for the government.
5. **Continued concerns over Electronic Voting Machines (EVMs):** Concerns surrounding the safety of EVMs remain, in light of the recent notice by the Supreme Court to the ECI. The ECI has not responded adequately and must ensure that there are no doubts over the safety of EVMs as it relates crucially to citizens' right to vote.
6. **Restrictions on independent media and civic space:** Whilst senior BJP politicians continue freely appealing to communal sentiments, government is reported to be systematically targeting what is left of the independent media. The Union Government has asked YouTube to block media channels National Dastak and Article 19, which together have over 10 million subscribers. Another independent channel, Bolta Hindustan, was also reported having its YouTube account suspended recently. Journalists such as Rana Ayyub and human rights activists and other campaigners, such as Harsh Mander, have also recently been reported being hounded by authorities, including Income Tax Department.

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