

**A BACKGROUND NOTE ON INVESTIGATION AGAINST
MR. HARI PRASAD AND OTHERS IN THE CASE OF THE
MISSING EVM IN MAHARASHTRA**

The attention of the Commission has been drawn to some media reports regarding the arrest of Mr. Hari Prasad of Hyderabad in the case of a theft of one Electronic Voting Machine (EVM) of the Election Commission of India in Mumbai, Maharashtra. The facts of the case are as follows:

A programme was telecast on Telugu TV channel on 29-04-2010. In this programme, Mr. Hari Prasad of M/S Net India Pvt Ltd, Hyderabad claimed that, one EVM of the Election Commission manufactured by ECIL and used in Maharashtra elections, was made available to him by some persons whose identity he would not reveal.

EVMs are public property kept in the custody of the Election Commission of India for use during elections. Under the provisions of Representation of the People Act, 1951 and the Conduct of Elections Rules, 1961, EVMs are kept under the safe custody of District Election Officers. As per the records, the said Control Unit of EVM shown by Mr. Hari Prasad on television was in the custody of DEO, Mumbai under lock and key. After watching the telecast, the DEO Mumbai conducted a physical verification and found that the said Control Unit was missing.

Since EVMs are in the custody of the District Election Officer (DEO), removal of an EVM from the possession of the DEO without his

authorization is illegal and constitutes theft under the Indian Penal Code (IPC), and makes that EVM stolen property. Possession of stolen property is also an offence under IPC. The DEO is duty bound to report theft of any EVMs as for any other public property under his custody, and take appropriate legal action to ensure that the guilty are punished and such incidents are not repeated in future. The DEO Mumbai therefore filed an FIR on 12th May 2010.

While the Commission has every respect for technologists and is always open to suggestions for improvement in the voting system, it cannot overlook any illegal act, especially the theft of a public property like the EVM given in its custody for conduct of elections.

Once an FIR is registered in a criminal case, it is for the police to investigate the matter. There can be no interference in the matter from anyone else. The police on completion of investigation then files a report before a competent Court of Law. The Commission, can, certainly not interfere in the investigation being carried out by the police under the law of the land. Under the law, the police is independent in matters of investigation and is responsible only to the Courts.

Mr. Hari prasad has met the Commission on several occasions, as have some others in matters relating to EVMs. He came with Mr. V.V.Rao, a petitioner in the Supreme Court on issues relating to EVM, on 17th August 2009 and again on 3rd September 2009. The Commission has given Mr. Hariprasad a patient hearing, and has assured him that the Commission will consider his suggestions. At his request, EVMs were allowed to be examined

by him, in the Commission Headquarters. Mr. Hariprasad met the Commission once again on 10th August 2010, with his other colleagues. This meeting was held in a very cordial atmosphere where the Commission categorically stated that it has an open mind in the matter and looks forward to receiving any suggestions for improving the electoral system. Mr. Hariprasad and his colleagues while asserting that they are not against EVM, said that they would come up with some positive suggestions. It was mutually agreed that this dialogue will continue in future, and that Mr. Hariprasad and his colleagues will meet the Commission again with more suggestions on a mutually convenient date.
