

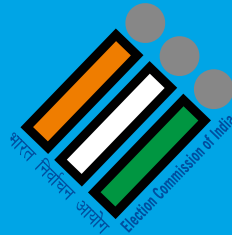


# Manual on Model Code of Conduct

(For the guidance of political parties and candidates)  
& other related guidelines

March, 2019

Document 21 - Edition 1



**भारत निर्वाचन आयोग**  
**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001

*“No voter to be left behind”*



**Document 21 - Edition 1**

**Manual**  
**on**  
**Model Code of Conduct**  
(For the guidance of political parties and candidates)  
& other related guidelines

**March, 2019**



**भारत निर्वाचन आयोग**  
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**सुनील अरोड़ा**

भारत के मुख्य निर्वाचन आयुक्त

**SUNIL ARORA**

Chief Election Commissioner of India



भारत निर्वाचन आयोग  
Election Commission of India



**Message**

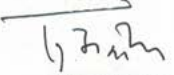
The Election Commission has been conducting elections for the last seven decades in free, fair, transparent and robust manner. These elections are mammoth in scale and operation. Approximately, nine hundred million electors, thousands of contesting candidates and political parties and ten million personnel under the supervision, direction and control of the Commission accomplish this task to perfection. Indian elections are acknowledged for a number of innovative measures which facilitate successful and meaningful electoral participation. Model code of Conduct (MCC) is one such significant and successful contributions of Indian elections.

Since 1968, Model Code of Conduct (MCC) has emerged as a binding ethical code subsequent to consensus amongst all the political parties to facilitate a level playing field and for observance of ethical behaviour during the elections. MCC has been issued by the Election Commission under its executive powers. Even Hon'ble Supreme Court in its several pronouncements has recognized the fact that the Election Commission is well entitled to take necessary steps as per the provisions of Model Code of Conduct to ensure conduct of free and fair elections. This code is the moral fabric of our successful electoral odyssey.

I am happy to share this Manual on Model Code of Conduct with all the stakeholders including political parties, candidates, media, civil society and most important our electors at an important time when we are heading for our 17<sup>th</sup> General Elections. The manual incorporates all the provisions, instructions and clarifications issued by the Election Commission from time to time. A list of Frequently Asked Questions (FAQs) along with their answers has been enclosed at the end to this book.

I compliment Dr. Sandeep Saxena, DEC, Sh. Narendra N. Butolia, Principal Secretary-in-charge of Code of Conduct Division and their team for the preparation of this important document.

I am sure this manual will work as useful guide to all the stakeholders as well as general readers and our electoral machinery.

  
(Sunil Arora)



अशोक लवासा  
भारत के निर्वाचन आयुक्त  
**ASHOK LAVASA**  
Election Commissioner of India



  
भारत निर्वाचन आयोग  
Election Commission of India

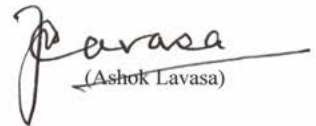


### Message

The Model Code of Conduct has emerged as an effective means of levelling the field among the players during an election because of an all pervasive spirit of compliance. Though the basic Code is an outcome of mutual understanding between the Election Commission and political parties, the Election Commission has gradually but steadily laid a comprehensive and robust system in place to make positive interventions, wherever required during the elections.

I am happy that a structured compilation of all instructions on Model Code of Conduct issued by the Commission from time to time is being brought out in the form of a Manual which would serve as a ready reference for all the election authorities and political workers, whenever they confront any question on electoral offences and malpractices. The Manual encompasses all the aspects of Model Code of Conduct.

I sincerely hope that this Manual would be helpful to all election practitioners and that it would serve its intended purpose by instilling in all stakeholders a sense of self restraint and adherence to a voluntary code which is the hallmark of any civilized society. It is incumbent upon those who aspire to represent the people to project before the people a behaviour that is worthy of emulation and an example of a model conduct that reflects their values.

  
(Ashok Lavasa)





सुशील चन्द्रा  
भारत के निर्वाचन आयुक्त  
**Sushil Chandra**  
Election Commissioner of India



भारत निर्वाचन आयोग  
**Election Commission of India**



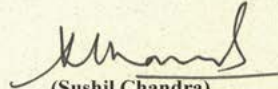
### Message

I am happy that the Election Commission is bringing out Manual on Model Code of Conduct. It will not only serve as a reference book for all the election officials, political parties and contesting candidates but also demystify the functioning of code of conduct for the electors, in general.

A careful observer of electoral process in India would know that Model Code of Conduct is an effective tool in the hands of Election Commission to make level playing field possible. It provides the electors to make an informed and reasonable choice among the candidates, in fray. All the political parties whether ruling party or parties in opposition, appreciate the spirit of Model Code of Conduct as it allows them to make efficient use of their resources during elections.

There is always a sense of curiosity about the management of elections. The Election Commission has been continuously making purposeful strides towards leveraging information to bring transparency in functioning of the electoral system in the country. Manual on Model Code is a further effort on the part of the Election Commission to improve the understanding of issues relating to conduct of elections.

I have no doubt that this Manual would be found useful by all stakeholders on controlling the malpractices in elections.

  
(Sushil Chandra)



डॉ. संदीप सक्सेना  
उप निर्वाचन आयुक्त  
**DR. SANDEEP SAXENA**  
Deputy Election Commissioner



**भारत निर्वाचन आयोग**  
**Election Commission of India**



### FOREWORD

Election Commission has been continuously striving to ensure people's firm faith in democratic institutions in the country, by creating an atmosphere of free and fair play. The Commission within the constitutional mandate given to it, has taken elaborate measures for ethical participation of all the stakeholders in the electoral process.

By engaging the political parties, the Commission evolved a Code of Conduct to manage the electoral battles and also to restrict all such malpractices for that no explicit legal provision is made in the statutes.

Model Code of Conduct has come a long way starting from a mere appeal to political parties in the sixties to the proactive and strategic intervention in every aspect of present day electioneering by the Election Commission.

Publication of this manual is an effort to consolidate the Election Commission's core sets of guidelines on various topics relating to Model Code of Conduct.

I would like to appreciate the efforts of Sh. Narendra N. Butolia, Principal Secretary and his entire team of Code of Conduct Division for undertaking the task of documenting Manual on Model Code of Conduct with such clarity. Do hope election officials, political parties and their functionaries will benefit from this document and find it relevant to their needs.

  
(Dr. Sandeep Saxena)



नरेन्द्र ना. बुटोलिया  
प्रधान सचिव  
NARENDRA N. BUTOLIA  
Principal Secretary



भारत निर्वाचन आयोग  
Election Commission of India



### PREFACE

This Manual attempts to inform and educate about Model Code of Conduct and enabling statutory provisions, instructions, precedents, practices and selected court cases, relating thereto.

The subject is important for political parties and all stakeholders as it provides level-playing field to contesting candidates and builds an atmosphere where the electors are able to exercise their franchise without any fear or influence of inducement.

The Manual contains all existing instructions issued by the Election Commission on Model Code of Conduct, arranged under broad topics in each chapter. Important portions of the instructions in the chapters have been highlighted in colour/listed in the marginal boxes for convenience of readers. Annexures containing extracts of some important instructions and a list of Frequently Asked Questions (FAQs) alongwith their answers have also been added at the end of the Manual.

I hope that this Manual would be beneficial, helpful and handy for election officials, political parties, stakeholders and such other persons from public who may be interested in the subject.

I thank the entire team of Code of Conduct Division, particularly, Sh. Ashwani Mohal, Under Secretary, Smt. Anuradha Singh, Section Officer, Sh. Saurabh Rana, Assistant Section Officer and my personal assistant Sh. Subham Duhan for helping in compilation, development and printing of this publication. I am also grateful to Election Planning Division, Media Division and SDR Division in the Commission, who have provided the updated information for the subjects being dealt with by them.

  
(Narendra N. Butolia)









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## GLOSSARY OF THE TERMS USED

- 1. Assistant Electoral Registration Officer:** The Election Commission may appoint one or more persons as Assistant Electoral Registration Officers to assist an Electoral Registration Officer to prepare the electoral roll of the Constituency under his charge. Every Assistant Electoral Registration Officer shall, subject to the control of Electoral Registration Officer, be competent to perform all or any of the functions of Electoral Registration Officer.
- 2. Assistant Returning Officer:** The Election Commission may appoint one or more persons as Assistant Returning Officer to assist a Returning Officer in conduct of election for the Constituency under his charge. Every Assistant Returning Officer shall, subject to the control of Returning Officer, be competent to perform the functions assigned in the statutes.
- 3. Booth Capturing:** Booth capturing means unauthorized casting of votes by some person other than the genuine voter either by intimidating or threatening the polling officials to surrender the ballot papers or by preventing the voters from going to the polling stations.
- 4. Booth Level Officer:** Booth Level Officer is a local Government/Semi-Government official, familiar with the local electors and generally a voter in the same polling area, who assists in updating the roll using his local knowledge. He, under the overall supervision of Electoral Registration Officer, is responsible for field verification, collection of information/data regarding electors and preparation of roll of a part of electoral roll in respect of the polling area, assigned to him.
- 5. Bribery:** Bribery may be described as an inducement to a person, by wrong means, to do or not to do a thing which he may otherwise have not done or done. In the context of elections, bribery is the most common and rampant form of corrupt practice. It is any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or any election agent, with the object of inducing a person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, or an elector to vote or refrain from voting at an election.

6. **Chief Electoral Officer:** Chief Electoral Officer is an officer of the State Government, who supervises the work relating to preparation of electoral roll and conduct of all elections to Parliament and the Legislature of the State, subject to the overall superintendence, direction and control of the Election Commission.
7. **Constituency:** As amended from time to time, the Delimitation Order defines the territorial extent of each Assembly Constituency and the Parliamentary Constituency. A number of Assembly Constituencies comprise a Parliamentary Constituency. All Assembly and Parliamentary Constituencies are territorial, i.e. have fixed geographical boundaries. An exception is the Sangha Assembly Constituency in Sikkim which comprises of monks residing in recognized monasteries all over the State of Sikkim.
8. **Corrupt Practice:** A corrupt practice is committed by a candidate, or by someone else with his consent. It has effect of vitiating the whole election and can result in the said election being declared void. Corrupt practices at elections are specified in Section 123 of the Representation of the People Act, 1951.
9. **District Election Officer:** The Election Commission designates the head of district administration, variously known as Collector, Deputy Commissioner or District Magistrate, as District Election Officer of the district concerned. Subject to the superintendence, direction and control of Chief Electoral Officer, District Election Officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the preparation and revision of the electoral rolls, and conduct of elections to all Parliamentary, Assembly and Council Constituencies within the district. District Election Officer is responsible for providing polling stations and the publication of the list of polling stations and for providing polling staff at elections.
10. **Election Manifesto:** An election manifesto is a published document containing declaration of the ideology, intentions, views, policies and programmes of a political party, keeping an eye, in particular, on forthcoming elections and published and publicized on the eve of elections.
11. **Electoral Offence:** Electoral offence is a criminal act relating to an election specified under the Indian Penal Code. Commission of an electoral offence can be taken cognizance of as soon as it is committed in the same manner in which any other criminal activity is investigated and tried.

12. **Electoral Registration Officer:** For the purpose of preparation and revision of electoral rolls of a constituency, the Election Commission, in consultation with the Government of the State, designates/nominates an officer of the State Government concerned, as Electoral Registration Officer. Electoral Registration Officer is the statutory authority to prepare the electoral roll of the Constituency under his charge.
13. **Electoral Roll:** Ordinarily known as ‘voter list’, electoral roll is a list of persons registered as electors residing in a constituency. For proper management, electoral roll of a constituency is divided into several parts which contain details of electors of the corresponding polling areas.
14. **EPIC:** Electors Photo Identity Card (EPIC) is issued by Electoral Registration Officer to all electors registered in the electoral roll of the Assembly Constituency under him, for establishing the identity of the concerned elector at the time of poll.
15. **False Statement:** False statement is publication by a candidate or his agent or any other person with consent of the candidate or his election agent, of any statement of fact which is false or not true, in relation to personal character or conduct of any candidate calculated to prejudice the prospects of that candidate’s election.
16. **Freebie:** Freebie is ‘something given without charge’. In common parlance, freebies are the promises of giving certain tangible materials such as bicycles, laptops, TVs or facilities like electricity connection, water connection or food grains on nominal price or without any cost to a targeted group of electorate like people below poverty line, women, students, disabled people etc.
17. **Gratification:** Gratification means something valuable including all pecuniary benefits, entertainment and employment, which is calculated to satisfy a person’s aim, object or desire. It refers to a gift made of something which gives material advantage to its recipient.
18. **Impersonation:** If a person votes in the name of any other person, whether living or dead, or in a fictitious name, or if having voted once, votes in his own name, he commits the offence of impersonation at that election. Impersonation is an electoral offence.

19. **Inducement:** Inducement is persuasion, promise and gratification offered through a third person, direct or indirect, to a voter to vote or refrain from voting. The voter may not be a direct party in the bargain between the candidate/his election agent and the third person but must be shown to have an indirect interest in it.
20. **Model Code of Conduct:** The Model Code of Conduct is a set of norms for guidance of political parties and candidates during election period, evolved with the consensus of political parties. The Election Commission ensures its observance by political parties including the ruling parties and candidates during the period of elections so that nobody can disturb the level playing field for all political parties involved in the electoral process.
21. **Party in Power:** The party in power is the political party which is in government at the center or in the state. The Model Code of Conduct intends that no action should be taken by a party in power in close proximity to the date on which the elections are announced so as to derive any benefit therefrom during the elections.
22. **Photo Voter Slips:** For convenience of voters on day of poll, pre-printed official voter slips, containing photograph of voter and details available in the photo roll such as Number and Name of Constituency, Part No., Name, Gender, EPIC No., Relatives name, Serial No., Polling Station No. and Name and Date, Day and Time of poll, are distributed to all enrolled voters by District Administration. Photo Voter Slips are duly authenticated by Electoral Registration Officer and distributed through Booth Level Officer as per the schedule for distribution prepared by Returning Officer. The undistributed Photo Voter Slips shall be kept by Booth Level Officer. No photocopy of Photo Voter Slip is allowed for distribution purpose. Any unauthorized distribution/possession of Photo Voter Slip shall be considered as violation of provisions of the Representation of the People Act, 1951 and Indian Penal Code.
23. **Polling Station:** Polling station is the room/hall fixed for holding poll where the electors of the concerned polling area cast their votes on the day of poll. It is also referred to as 'polling booth'.
24. **Returning Officer:** The Election Commission, in consultation with the Government of the State, designates/nominates an officer of the State

Government concerned, as Returning Officer for a constituency for election to State Legislature or Parliament.

25. **Screening Committee:** To examine references of Model Code of Conduct from various departments of State Government, a Screening Committee is constituted in every State during elections. The Screening Committee is headed by Chief Secretary and consisted of two other members. After clearance from the Screening Committee, the Model Code references are sent for the approval of the Election Commission through the Chief Electoral Officer of that State.
26. **SVEEP:** Systematic Voters’ Education and Electoral Participation (SVEEP) is a programme initiated by the Election Commission in 2011 to increase voter awareness and facilitate electoral participation through voter registration and turnout in the youths, women, tribal and other marginalized sections of the society.
27. **Threat of Divine Displeasure/Spiritual Censure:** Any inducement or attempt to induce electors to believe that they would become object of divine displeasure or spiritual censure, if they cast votes or refrain from casting votes in favour of a particular candidate.
28. **Threat of Injury:** The most common form of undue influence is to force a voter to vote or not for a particular candidate, or not to vote in an election at all by making threats of physical injury in case of any defiance of such dictate. Such threats of physical injury may not be confined only to the voter concerned but may also be directed against the third person, like, members of voter’s family or any relatives or friends.
29. **Undue Influence:** Undue Influence, a major corrupt practice, implies to any direct or indirect interference or attempt to interfere on the part of a candidate or his election agent, with the free exercise of any electoral right. It amounts to a threatening to any candidates or any elector or any person in whom the candidate or elector is interested with injury of any kind including social ostracism and excommunication or expulsion from any caste or community.
30. **Vehicle:** It means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise. An ‘office vehicle’ will cover all vehicles belonging to the (i) Central Government, (ii) State Government/UT Administrations, (iii) Public Section Undertakings

of the Central and State governments, (iv) Joint Sector Undertakings of Central and State Governments, (v) Local Bodies, (vi) Municipal Corporations, (vii) Municipalities, (viii) Marketing Boards (by whatever name known), (ix) Cooperative Societies, (x) Autonomous District Councils or any other body in which public funds, howsoever small a portion of the total, are invested and also include those belonging to the Ministry of Defence and the Central Public Organizations under the Ministry of Home Affairs and State Governments.

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## CHAPTER 1

# HISTORICAL BACKGROUND

- 1.1 In the Parliamentary system of democratic government which our Constitution makers adopted for India, the political parties have an important place. Even before the country achieved independence, political parties had been playing a pivotal role in the freedom movement and participating in election system available that time. However, our Constitution was silent altogether with regard to existence of political parties, right upto 1985, when for the first time, their existence came to be recognized by the Constitution when the Tenth Schedule was inserted in the Constitution by the Constitution (Fifty Second amendment) Act, 1985 making political defection a ground for disqualification for membership of Parliament and State Legislatures. Obviously, the Model Code of Conduct for guidance of political parties and candidates did not find any place in the statutes.
- 1.2 Historically, the credit of giving idea of a model code for political parties should go to State of Kerala, which adopted, for the first time, a code of conduct for observance for political parties during the general election to the State Legislative Assembly in February 1960. A draft code was voluntarily approved by the representatives of the leading political parties of the State at a meeting specially convened for the purpose by the state government. This code covered, in detail, important aspects of electioneering, like meetings and processions, speeches and slogans, posters and placards.
- 1.3 During general election to House of People and simultaneous elections to several State Assemblies in 1962, the Election Commission circulated that code to all the recognized political parties and it proved to be effective in conducting of election campaigns in peaceful and orderly atmosphere in the country. The political parties, by and large, followed the code.
- 1.4 The next general elections were held in 1967. The above code was again adopted in Kerala at a conference of political parties held in December 1966. This time, some more states came forward and followed the suit. In August 1966, a conference of political parties was convened by Commissioner of Police, Madras at which a code of conduct for observance during the ensuing general elections was agreed upon, in principle. This was followed by a state level conference of political parties held in December 1966 by the then Chief Minister of the Tamil Nadu, in which a ten-point code for the guidance of political parties was evolved.

A standing committee of seven persons representing different political parties was also set up to look into complaints about the breach of the code. A similar draft code was prepared and discussed in West Bengal in a meeting of political parties convened by the then Chief Minister in January 1967. Though, there was no consensus among the parties but they unanimously resolved to ensure that their election campaigns were conducted peacefully and the authorities were assisted in the conduct of a smooth, free and fair poll. A code drafted on practically the same lines as the Madras code was accepted by the political parties in Andhra Pradesh also, early in 1967.

- 1.5 During mid-term general elections in several states in 1968 and 1969, the Election Commission prepared a document on minimum standard of conduct and behaviour, entitled *‘Role and Responsibilities of Political Parties during Elections: An Appeal to Political Parties for the Observance of a Minimum Code of Conduct during Election Propaganda and Campaign’* and placed the same before the political parties in the meetings held in each state.
- 1.6 The Election Commission reiterated similar appeals to the political parties at the time of the next round of general elections to the House of the People and certain State legislative assemblies in 1971-72.
- 1.7 On 1 January 1974, the Election Commission issued a revised Model Code of Conduct. The Election Commission directed to the Chief Electoral Officers to constitute district level standing committees, under the chairmanship of the District Collectors concerned and consisting of representatives of all recognized and registered political parties, to monitor cases of violation to the code.
- 1.8 A Code of Conduct was again circulated at the time of the general elections in 1977.
- 1.9 On 12 September, 1979, the Election Commission convened a conference of political parties to discuss a more comprehensive Model Code of Conduct to bring within its purview the role of ruling parties, so that they could not misuse their official position for the furtherance of their prospects at the hustings. The representatives of the political parties attending the meeting supported the idea to revise Model Codes so as to incorporate suitable provisions for restricting the government party. Accordingly, on the eve of the general election to the House of the People in October 1979, the Election Commission issued a thoroughly revised Model Code making it much more comprehensive and dividing it into seven parts, devoting one full part (Part VII) to the role of party in power at the



Centre and in the States.

- 1.10 Though by this time, Model Code had been in existence in some form or the other for more than two decades, still it remained more or less a mild appeal and its observance was mainly left to the good sense of political parties and candidates. Rarely was any punitive action taken by any authority if any breach of the code was observed. In 1980s, a view was emerging in the Election Commission that the provisions of Model Code, particularly of Part VII thereof dealing with ruling parties, should be provided statutory sanction by bringing them on the statute book. Accordingly, the Election Commission made a proposal to the Union Government to this effect. However, despite positive discussions in this regard, no law was passed in the Parliament.
- 1.11 The 1991 general election was a watershed event in the course of evolution of Model Code. That year, Model Code was further amplified and re-issued. It still retained its form of 1979 document, though its contents, particularly of Part VII, underwent some significant changes. From this election, the Election Commission became more pro-active to ensure the observance of Model Code. The Election Commission took the stand that Model Code came into operation right from the day the election schedule was announced by it. But there was disagreement between the Election Commission and the Central Government and some of the State Governments on this point. The Governments were of the view that Model Code became operational only when the formal notification of election was issued.
- 1.12 In 1994, the Government of Andhra Pradesh challenged the Election Commission’s stand regarding date of enforcement of Model Code, first, during bye election to Kurnool Parliamentary Constituency and subsequently, during General Election to the State Assembly. The matter went to the Supreme Court but no final decision was given.
- 1.13 A definite view on this issue came from the Punjab & Haryana High Court in *Harbans Singh Jalal v/s Union of India & Others*. In this matter, a writ petition was filed against the Election Commission’s direction to make Model Code applicable from the date of announcement of programme for General Election to Punjab Legislative Assembly in December 1996. While upholding the Election Commission’s direction, the High Court in its Order dated 27 May 1997, maintained that the Election Commission was entitled to take necessary steps for conduct of a free and fair election even anterior to date of issuance of notification, i.e., from the date of announcement of election. The Central

Government, who was a party in the matter, filed a petition for special leave to appeal in the Supreme Court against the ruling of the Punjab & Haryana High Court but again no concrete view was given by the apex court.

- 1.14 After a series of meetings between the Election Commission and the Central Government to resolve the issue, finally, an agreement was reached on 16 April, 2001 that Model Code would come into force from the date, the Election Commission announces the schedule for any election, though a rider was added that such announcement shall not ordinarily be made more than 3 weeks in advance of the date of notification of that election. It was also agreed that the inauguration of any completed projects or laying of foundation stone of new projects may be done by the civil servants instead of ministers/political functionaries so that public interest may not suffer because of the application of Model Code. (Please refer to case no.2 ‘Union of India vs Harbans Singh Jalal’ of CHAPTER-23 LANDMARK JUDGEMENTS ON MODEL CODE). Accordingly, Model Code was suitably modified by the Election Commission to expressly make a provision in ‘Part VII Party in Power’ to both the above effects.
- 1.15 In February 2014, an additional Part VIII was added to Model Code to regulate the issue of election manifestos by political parties pursuant to judgement dated 5<sup>th</sup> July 2013 of the Supreme Court in *S. Subramaniam Balaji v/s the Government of Tamil Nadu & Others*. (Please refer to case no.4 of CHAPTER-23 LANDMARK JUDGEMENTS ON MODEL CODE)
- 1.16 It may be seen from the above description that Model Code has come a long way since its inception in 1960s. From a passive document, it has evolved into an effective and powerful tool in the hands of the Election Commission. Now, not only the political parties and contesting candidates but the public servants have also been brought in the ambit of Model Code. The Election Commission has become more and more assertive to ensure observance of Model Code in its true letter and spirit by all the stakeholders. Even the judiciary has recognized the fact that the Election Commission is well entitled to take necessary steps as per the provision of Model Code to ensure conduct of a free and fair election. The Election Commission has been continuously taking steps and measures to maintain high standards of public morality during election in a true democratic spirit.

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## CHAPTER 2

# STATUS AND SCOPE OF MODEL CODE

### **Main topics discussed in the Chapter:-**

- Status of Model Code
- Provision of Enabling Laws
- Scope of Supplementing Instructions

### **2.1 Introduction**

Model Code of Conduct for guidance of political parties and candidates is a small but unique document (**Annexure- I**). It contains the following 8 parts:-

- (i) Part I of Model Code lays stress on certain minimum standards of good behaviour and conduct of political parties, candidates and their workers and supporters during the election campaigns;
- (ii) Parts II and III deal with the holding of public meetings and taking out processions by political parties and candidates;
- (iii) Parts IV and V describe as to how political parties and candidates should conduct themselves on the polling day and at the polling booths;
- (iv) Part VI exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission for remedial action;
- (v) Part VII deals with the parties in power. This part is, in essence, the flesh and blood of Model Code, which deals with several issues relating to Government and its Ministers, such as visits of Ministers, use of Government transport and Government accommodation, announcements of various schemes and projects etc.
- (vi) The newly added Part VIII says that election manifestoes shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code.

### **2.2 Status of Model Code**

- 2.2.1 Model Code is not a statutory document. Violation of many of its provisions does not attract any punitive action. It is for that reason, the Election Commission was earlier of the view that the provisions of

Model Code, particularly Part VII dealing with ruling parties should be made part of law. Accordingly, in 1980s, the Election Commission sent a proposal to the Union Government. The same was placed before the Goswami Committee on electoral reforms for consideration and on the Committee's recommendation, the Government moved a proposal to amend the Representation of the People Act, 1951 for the purpose of inserting two new sections, namely, as 124 and 126A so as to make some of the provisions of Model Code as illegal practices, punishable with imprisonment for a term extending up to two years or with fine or with both. The proposed amendment also sought to make the date of notification of the election, and not the date of announcement of the election, as date of enforcement of Model Code. But the bills moved in the Parliament were not passed.

2.2.2 Meanwhile, the situation changed. Based on its experience of conducting elections in varied scenario, the Election Commission now maintains that bringing Model Code on the statute book would be a self-defeating measure, because during elections, any violation of Model Code warrants a quick decision and remedial measure, which may not be possible if the matters are taken to the courts and become the subject of examination in a regular judicial process. It is felt that any judicial pronouncement after the election is already over, would have little relevance, and the Election Commission has therefore withdrawn its proposal to give Model Code a statutory backing. The Election Commission has been repeatedly reiterating its view that Model Code will lose its whole efficacy if all its provisions are converted into electoral offences or corrupt practices.

## **2.3 Provisions of Enabling Laws**

2.3.1 Though Model Code does not have legal sanctity but several of its provisions have enabling laws contained in the Indian Penal Code and the Representation of the People Act, 1951. The following malpractices mentioned in Model Code are listed as 'corrupt practices' and 'electoral offences' in the Indian Penal Code and the Representation of the People Act, 1951:-

- (i) Indulgence in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes

and communities, religious or linguistic is a corrupt practice under Section 123 (3A) of the Representation of the People Act, 1951.

- (ii) Appeal to caste or communal feeling for securing votes and use of Mosques, Churches, Temples or other places of worship as forum for election propaganda is both a corrupt practice and an electoral offence under Section 123 (3) and Section 125 of the Representation of the People Act, 1951, respectively.
- (iii) Bribery to voters is both a corrupt practice and an electoral offence under Section 123 (1) of the Representation of the People Act, 1951 and Section 171B of the Indian Penal Code, respectively.
- (iv) Intimidation of voters is an electoral offence under Section 135A (C) of the Representation of the People Act, 1951.
- (v) Impersonation of voters is an electoral offence under Section 171D of the Indian Penal Code.
- (vi) Canvassing within 100 meters of polling stations is an electoral offence under Section 130 of the Representation of the People Act, 1951.
- (vii) Holding of public meetings during the period of 48 hours ending with the hour fixed for the close of the poll is an electoral offence under Section 126 (1) of the Representation of the People Act, 1951.
- (viii) Transport and conveyance of voters to and from polling stations is both a corrupt practice and an electoral offence under Section 123 (5) and Section 133 of the Representation of the People Act, 1951, respectively.
- (ix) Creating obstruction in or breaking up meetings and processions of one political party by workers of other parties OR creating disturbances at public meetings of one political party by workers or sympathizers of other political parties by putting questions orally or in writing or by distributing leaflets of their own party OR taking out processions by one party along places at which meetings are held by another party OR removing posters of one party by workers of another party is an electoral offence under

Section 127 of the Representation of the People Act, 1951.

- (x) Serving or distributing liquor on polling day and during the forty eight hours preceding it is an electoral offence under Section 135 (c) of the Representation of the People Act, 1951.

2.3.2 Any person/political party having a grievance in relation to any of the above malpractices may take legal recourse under the relevant laws mentioned above. As these provisions already exist in the statutes, no purpose would be served even if Model Code is given legal status.

## **2.4 Scope of Supplementing Instructions**

2.4.1 Model Code has been issued by the Election Commission under executive powers and most of the principles embodied in it do not have force of law but as the political parties have themselves consented to abide by them, they are bound to respect and observe them. Secondly, with the support of public opinion the Election Commission has a moral sanction to ensure observance of Model Code.

2.4.2 Besides, Article 324 of the Constitution vests vast responsibilities and powers in the Election Commission. Where enacted laws are either silent or do not have sufficient provisions to deal with any unforeseen circumstances during conduct of elections, the Election Commission is entitled to issue instructions exercising plenary power under Article 324 to ensure that the elections are conducted in a free and fair manner. The Supreme Court observed in *S. Subramaniam Balaji* that the Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of election process does not get vitiated, has been issuing instructions under Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections. (Please refer to case no. 4 of CHAPTER- 23 LANDMARK JUDGEMENTS ON MODEL CODE)

2.4.3 The Election Commission has issued a plethora of instructions and taken action, wherever necessary, against the political parties or persons violating these directions. The Courts, from time to time, have upheld the Election Commission's such directions/ actions. To illustrate, in June 1993, the Election Commission cancelled a bye election from Kalka Assembly Constituency in Haryana on the

ground of violation of Model Code. The State Government challenged this in the Punjab & Haryana High Court which granted an interim stay of Election Commission's order canceling the election. The Election Commission moved an SLP in the Supreme Court and the apex court stayed the order of the High Court. Similarly, at the time of a bye-election to Tamil Nadu Assembly in 2015, the Election Commission's order to cover paintings of leaves resembling party symbol of the ruling party, on mini buses was challenged before the Madras High Court but the Court held that the Election Commission's said order was within its jurisdiction under Article 324.

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## CHAPTER-3

# ENFORCEMENT OF MODEL CODE

### **Main topics discussed in the Chapter:-**

- Date of Enforcement
- Duration of Application
- Extent of Application
- Who Are Covered Under Model Code
- Whether the Election Commission Can Take Action under Model Code Before Announcement of Election
- Applicability of Model Code in Cases of Premature Dissolution of Legislative Assembly Followed by the Caretaker Government in Position Till the Formation of New Government After Fresh Election
- Whether Election Related Campaign Activities Undertaken By Persons Other Than Political Parties and Candidates Are Covered Under Model Code

### **3.1 Introduction**

Model Code of Conduct is a singular contribution by political parties to the cause of democracy in India. It ensures a level playing field in the arena of election, where the party in power cannot take any action in close proximity to announcement of election. As maintained in several cases by the Supreme Court, the object of Model Code is that energy to do good by the party in power should not be used on the eve of elections, so as to derive any benefit during elections.

### **3.2 Date of Enforcement**

Model Code of Conduct comes into operation right from the time and day, the election schedule is announced by the Election Commission. The question in regard to date of enforcement of Model Code stands conclusively settled with the agreement dated 16 April 2001 between the Election Commission and the Central Government (Please refer to OM attached to case No.2 ‘Union of India Vs Harbans Singh Jalal’ of CHAPTER- 23 LANDMARK JUDGEMENTS ON MODEL CODE). This is also clear from clause (vi) of Part VII of Model Code, which states that from the time the elections are announced by the Election Commission, the Ministers and other authorities shall not do certain things. It was further endorsed by the Supreme Court in its judgment dated 05 July 2013 in *S. Subramaniam Balaji v/s Government of Tamil Nadu & Others* wherein the court observed that Model Code becomes enforceable from the date of announcement of the election programme (Please refer to case No.4 of



CHAPTER- 23 LANDMARK JUDGEMENTS ON MODEL CODE). In fact, Part VIII of Model Code relating to manifesto may come into force even prior to the date of announcement of election, if a manifesto is issued by any political party before such announcement.

### **3.3 Duration of Application**

In the case of a general election to the House of the People or a State Legislative Assembly, Model Code remains in operation till completion of election process as per the election notification. In the case of a bye-election, Model Code will no longer be in operation as soon as the result of the bye-election is declared by the Returning officer.

### **3.4 Extent of Application**

3.4.1 Model Code applies in relation to all elections to House of People and State Assemblies. It is also applicable in case of elections to Legislative Councils from Local Bodies, Graduates' and Teachers' Constituencies.

3.4.2 At the time of a general election to the House of the People or to a state legislative assembly, Model Code applies throughout India or, as the case may be, the state concerned. In the context of a bye-election, it has a limited application in the district or districts in which the Assembly/Parliamentary Constituency going to poll lies. Certain State Governments requested the Election Commission to suitably modify the instruction as application of Model Code in the entire district during bye-election affects the developmental work in the whole of the district whereas only a part of the district may be involved in the election process. The Election Commission considered the issue and in partial modification directed that in case the constituency going to bye-election is comprised in the state capital/metropolitan city/municipal corporation, Model Code would be applicable in the particular assembly constituency segment only and not in the whole of the district. In all other cases, Model Code would be enforced in the entire district(s) covering the constituency going for bye-election(s).

### **3.5 Who Are Covered Under Model Code**

The provisions of Model Code apply to all organizations/committees,

corporations/ commissions etc, funded wholly or partially by the Central Govt. or any State Govt. like the Commonwealth Games Organizing Committee, DDA, Electricity Regulatory Commissions, Jal Boards, Transport Corporations, any other development authority etc. Any action in contravention of the provisions contained in Model Code including any publication of its advertisements by them highlighting their achievements or announcing new subsidies, tariffs or schemes would attract the provisions of Model Code and tantamount to violation of the same. **(Annexure –II)**

### **3.6 Whether the Election Commission Can Take Action under Model Code Before Announcement of Election**

Normally, the Election Commission does not take cognizance of alleged violation of Model Code before the announcement of election. In this regard, an issue came up before the Election Commission in 2010, that Bahujan Samaj Party, a recognized national party, had violated Model Code by erecting statues of ‘elephant’, its reserved symbol, by using government funds. The Election Commission maintained that it could not take cognizance of the alleged misuse of official power and machinery by any political party during the non-election period. The Election Commission’s stand was questioned before the Delhi High Court in Common Cause vs Bahujan Samaj Party. After examining the relevant provisions of the Symbols Order, the High Court came to the conclusion that the election symbol of the party could not be frozen, as was prayed for by the petitioner, by the Election Commission in view of the existing provisions, though, the High Court observed that the parties in power should not use public funds to promote their own election symbols or their leaders, even during non-election period, and, therefore, requested the Election Commission to frame some guidelines to achieve the above objectives.

### **3.7 Applicability of Model Code in Cases of Premature Dissolution of Legislative Assembly Followed by the Caretaker Government in Position Till the Formation of New Government After Fresh Election**

The Election Commission has considered the matter of application of Model Code in cases of premature dissolution of Legislative Assembly where a caretaker government has been asked to carry on the administration of that State/UT for the purposes of free, fair, transparent, and robust electoral process. On careful consideration of the matter, keeping the observation of Hon’ble Supreme Court

in *S.R.Bomma and Ors Vs, Union of India & Ors. (1994)*, that the caretaker Government should merely carry on the day-to-day Government and desist from taking any major policy situation decision in view, the Election Commission has directed the following:-

- (i) In such an eventuality as described above, the provisions of Part-VII (Party in Power) of the Model Code shall come into operation with immediate effect in the State concerned and shall continue to be in force till the completion of the election to constitute the new Legislative Assembly;
- (ii) The provisions of the aforesaid Part-VII of Model Code shall apply on the caretaker State Government as well as on the Central Government in so far as matters relating to that State are concerned;
- (iii) Consequently, neither the caretaker State Government nor the Central Government shall announce any new schemes, projects, etc. in respect of that State or undertake any of the activities prohibited under the aforesaid Part-VII of the Model Code;
- (iv) All other prohibitions under Part-VII, such as use of official resources for any non-official purposes, combining of official visit with electioneering work, etc. shall apply on all Ministers and other authorities of the caretaker State Government, the Central Government as well as Governments of other States.

### **3.8 Whether Election Related Campaign Activities Undertaken By Persons Other Than Political Parties and Candidates Are Covered Under Model Code**

3.8.1 During elections, complaints are received by the Election Commission from various quarters against some social, cultural or religious organizations, associations, formations etc., about making appeals to electors amounting to election campaign in favour of, or against, certain political parties or candidates, by holding congregations, yoga shivirs, conclaves, meetings, processions, etc., or by invoking religion or playing on the religious sentiments of electors to whom such appeals are addressed.

3.8.2 The Election Commission has laid down the following guidelines to be observed in the matter of such campaigns by organizations and persons other than political parties/candidates, during the period when Model Code is in operation. **(Annexure-III):-**

- (i) Nobody should invoke, in any manner, religion or religious grounds in any manner, or any activities likely to create disharmony among different classes or groups of people, in his campaign. Such activities/ statements are prohibited being offences under various provisions of the law, like, Section 125 of the Representation of the People Act, 1951, Sections 153A, 153B, 171C, 295A and 505(2) of the Indian Penal Code and Religious Institutions (Prevention of Misuse) Act, 1988.
- (ii) Nobody should indulge in any activities or make any statements that would amount to attack on personal life of any person or statements that may be malicious or offending decency and morality.
- (iii) When persons and organizations seek permission to hold public programmes, they should be asked to give a declaration/ undertaking to abide by the above guidelines.
- (iv) The public programmes of such persons and organizations should be closely monitored through videography. If anyone indulges in violation of the above guidelines, the state and district authorities concerned with the maintenance of proper law and order should take appropriate remedial and penal actions expeditiously in all such cases. Further, the District Administration shall ensure that such persons who violated the undertaking are not granted permission to hold any further programmes during the period of that election.
- (v) If the programmes involve incurring expense and amounts to directly promoting the electoral prospects of any particular candidate or candidates, prior special authority from the candidate concerned for incurring the expense shall be obtained, in writing, as required under Section 171 H of the Indian Penal Code, and such authorization should be submitted to the District Election

Officer within 48 hours. Any violation should result in action for prosecuting the person concerned.

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## CHAPTER 4

# SPECIAL MEASURES TAKEN BY THE ELECTION COMMISSION TO ENFORCE MODEL CODE

### **Main topics discussed in the Chapter:-**

- Standardization of Processing of Model Code References received from Union Government and State Governments
  - ✓ Transfer / postings of election related government officials
  - ✓ Enforcement of Model Code with announcement of election
  - ✓ Direction to the Union Government
  - ✓ Direction to State Governments
- Advisory to Political Parties and Candidates
- DOs & DON'Ts for Electioneering to be Followed by Political Parties and Candidates

### **4.1 Introduction**

At the time of each general election, the Election Commission issues directions to Union Government and State Governments concerned to refrain from making announcement for any major financial initiative or undertaking any new developmental scheme/project which can be perceived as distorting to the level playing field for all political parties.

### **4.2 Standardization of Processing of Model Code References received from Union Government and State Governments**

**4.2.1 Transfer/postings of election related government officials:-** Prior to the process starts for general election in a State, the Election Commission issues detailed guidelines on transfers/postings of all government officials who are directly involved in elections asking the State Government to shift out all such officers including police officers, who are posted in their home district and also those officers who have completed/completing 3 years tenure in that district during last 4 years period. (For detailed instructions, please refer to CHAPTER- 19 MODEL CODE AND GOVERNMENT OFFICIALS)

**4.2.2 Enforcement of Model Code with announcement of election:-** The Election

Commission has made a clear cut protocol of communication between

the Election Commission and Union Government/State Governments on Model Code issues. As soon as the press note of programme of election is issued by the Election Commission, instructions are sent to Cabinet Secretary, Government of India and Chief Secretary of the State Government concerned to disseminate the directions for compliance and take immediate action for enforcement of Model Code.

4.2.3 The Election Commission has clarified that-

- (i) Model Code related directions shall be issued only by the Election Commission.
- (ii) RBI may continue to take decisions unhindered on monetary policy issues.
- (iii) Ministry of Finance and other ministries will need to take prior approval of the Election Commission on any policy announcements, fiscal measures, taxation related issues and such other financial relief.

4.2.4 **Direction to the Union Government:** For better coordination, the Election Commission has directed the Cabinet Secretary that:-

- (i) All the Government of India references which are proposed to be placed before the Cabinet or any Committee of the Cabinet should be routed through the Cabinet Secretariat i.e. no such references should be made directly to the Election Commission by the Ministries.
- (ii) Departments, Sub-ordinate Offices, Public Sector Undertakings, Autonomous Bodies of the Ministry/Department will make references to the Election Commission through the concerned Ministry. The Election Commission will require at least 48 hours to process the references, therefore, Ministries/Department should send references well in time, for clearance.
- (iii) A Nodal Officer may be designated in the Cabinet Secretariat with whom the Election Commission may contact for any clarification on such references.

4.2.5 During general election to State Legislative Assembly of Uttar Pradesh

held in 2017, the Election Commission noted that in certain cases, the Ministries/Departments, particularly NITI Aayog, Ministry of Defence and Ministry of Finance took decisions, which had effect of disturbing level playing fields of poll bound states, without referring the matter to the Election Commission. The Election Commission expressed its concern in the matter and asked the Cabinet Secretary to issue necessary instructions to all Ministries/Departments of Government of India to strictly adhere to the Election Commission’s guidelines and also to ensure that its concurrence is taken well in time, wherever it is needed.

**4.2.6 Directions to State Governments:-** Similarly, with announcement of election, the Election Commission issues directions to the State Governments to constitute Screening Committee headed by Chief Secretary and consisted of Secretary/Principal Secretary of Co-ordination Department/General Administration Department and Secretary/Principal Secretary of the Department sending the proposal for approval of the Election Commission. Chief Electoral Officers concerned shall forward only such proposal which have been cleared by Screening Committee, with his specific comments to the Election Commission. The concerned department shall not send the original file to office of the Chief Electoral Officer but only a self-contained reference be sent through Screening Committee. Chief Electoral Officers shall not send any reference to the Election Commission in cases where clear cut instructions exist to deal with.

### **4.3 Advisory to Political Parties and Candidates**

- 4.3.1 Model Code provides that political parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders and workers of other parties. It also provides that no party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic, and there shall be no appeal to caste or communal feelings for securing votes.
- 4.3.2 The Election Commission from time to time has also been issuing general advisory to political parties to maintain high standard of election campaign. Whenever instances of any violation came to notice



of the Election Commission, it took serious view of such violation and directed the concerned authorities to initiate necessary action against the defaulting political functionaries:-

- (i) At the time of 2004 general election, the Election Commission expressed its severe displeasure against a BJP leader in Uttar Pradesh allegedly for distributing sarees and directed the state authorities to initiate criminal proceedings against the persons involved, under Section 171B of Indian Penal Code. Similarly, action was taken against then Union Railways Minister in 2005 Bihar Assembly elections, who was seen on print and electronic media distributing currency notes to some electors.
- (ii) During 2013 general election to State Assemblies in Chhattisgarh, Madhya Pradesh and Rajasthan, the Election Commission while expressing deep anguish on the progressively plummeting levels of political discourse, put the political parties on notice that repeated violation of Model Code may invite action against them. At the general election to the Karnataka legislative assembly in 2013, the Home Minister of the government of Maharashtra faced the Election Commission's displeasure over an objectionable statement made at a private function in Belgaum.
- (iii) At the time of general election 2014, the Election Commission observed that then President of Bharatiya Janata Party and one cabinet minister of Samajwadi Party government of Uttar Pradesh, were indulging in some highly inflammatory speeches, which had the effect of promoting feelings of enmity, hatred and ill-will and creating disharmony between different religious communities on the ground of religion. Taking serious note of the above, the Election Commission directed the state government to file necessary FIRs immediately and to take criminal proceedings against the two leaders and also not to grant permission to them for holding any public meetings, public processions, public rallies, road shows, etc. Both of them were censured by the Election Commission for the above violation of Model Code. BJP President subsequently tendered an unqualified apology. Therefore, the Election Commission gave him a second chance and permitted

the state government authorities to grant permission for holding his public meetings etc. As the said State Minister did not submit his apology, ban on his public meetings, etc. continued during the entire remaining period of that general election.

- (iv) In the same general election, a leader and candidate of Jharkhand Vikas Morcha was issued warning for breach of Model Code as he had made a written appeal to all churches in Dumka in Jharkhand for support in that election.
- (v) Likewise, during general election to Legislative Assembly of Bihar in 2015, then President of Janata Dal (U) and a star campaigner of BJP were cautioned for violation of provisions of Model Code during election campaigning.
- (vi) During general election to Uttar Pradesh Legislative Assembly in 2017, a sitting MP belonging to BJP was found to be making certain statements to the effect of promoting enmity between different classes of society on the ground of religion and the Election Commission censured him.

4.3.3 In 2017, the Election Commission in a circular letter to all recognized political parties maintained that it will not remain silent spectator and will take stern action for any violation under the available powers (**Annexure- IV**). The Election Commission has issued directions to the State governments to keep thorough watch on meetings of the political parties and get video-graphed the same to see whether ‘caste’ is being used for political/electoral purpose. The Election Commission has also issued instructions to track campaigns of star campaigners of the political parties under the provision of Section 77(1) of the Representation of the People’s Act, 1951.

#### **4.4 DOs & DON’Ts for Electioneering to be Followed by Political Parties and Candidates**

4.4.1 The Election Commission has drawn up a list of ‘**Dos**’ and ‘**Don’ts**’ to be followed by political parties and contesting candidates after the announcement of elections and till the completion of the process of elections. The Election Commission has directed that this be given

the widest possible publicity in the official language of the State and its contents brought to the knowledge of all candidates and political parties. **(Annexure V)**

4.4.2 It must be made clear to the political parties that the list of Dos’ and Dont’s is only illustrative (not exhaustive) and is not intended to substitute or modify other detailed directions/instructions on the concerned subjects, and must be strictly observed and followed.

**(A) DOs**

- (i) To ensure a level playing field, public places like maidans and helipads must be available impartially to all parties/contesting candidates.
- (ii) During elections, criticism of other political parties and candidates should be restricted only to their policies, programs, past records and works.
- (iii) The right of every individual for peaceful and undisturbed home life should be fully safeguarded.
- (iv) The local police authorities should be fully informed and necessary permission be taken well in time, of the venue and time of the proposed meetings.
- (v) Restrictive or prohibitory orders in force, if any, in the place of the proposed meeting, shall be fully respected. Exemption, if necessary, must be applied for and obtained, well in time.
- (vi) Permission must be obtained for use of loudspeakers or any other such facilities for the proposed meetings.
- (vii) Police assistance should be obtained in dealing with persons disturbing meetings or creating disorder.
- (viii) The time and place of the starting and termination of any procession and the route to be followed should be finalized in advance and prior permissions obtained from the police authorities.
- (ix) Traffic regulations and restrictive orders, in force of the localities, enroute of the procession should be ascertained and fully complied

with.

- (x) The passage of the procession must be without hindrance to traffic.
- (xi) Cooperation should be extended to all election officials to ensure peaceful and orderly poll.
- (xii) All political workers engaged in electioneering must display badges or identity cards.
- (xiii) Unofficial identity slips issued to voters shall be on the plain (white) paper and not contain any symbol and name of the party or name of the candidate.
- (xiv) Restrictions on plying of vehicles during the campaign period and on poll day shall be fully obeyed.
- (xv) Any complaint or problem regarding the conduct of elections shall be brought to the notice of the Election Commission's Observer/Returning Officer/Zonal/Sector Magistrate/Chief Electoral Officer/Election Commission of India.
- (xvi) Directions/orders/instructions of the Election Commission/Returning Officer/District Election Officer, in all matters related to various aspects of elections, shall be strictly complied with.
- (xvii) Do leave the constituency after the campaign period is over if you are not a voter or a candidate or candidate's election agent from that constituency.
- (xviii) The political parties should ensure that no payment in excess of Rs. 10,000 is made in cash, in a day, to any person/company/entity, except where
  - (a) the payment is made in a village or town, which is not served by a bank;
  - (b) the payment is made to any employee or party functionary towards salary, pension or for reimbursement of his expenses;
  - (c) cash payment is required under any statute.

**(B) DON'Ts**

- (i) No official work should be mixed with campaigning/electioneering. No inducement, financial or otherwise, shall be offered to the voter.
- (ii) No appeal on basis of caste/communal feelings of the electors.
- (iii) No activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes/communities/ religious/linguistic groups, shall be attempted.
- (iv) No aspect of the private life, not connected with the public activities, of the leaders or workers of other parties shall be criticized.
- (v) No criticism of other parties or their workers on basis of unverified allegations or on distortions.
- (vi) No use of temples/mosques/churches/gurudwaras or any place of worship for election propaganda, including speeches, posters, music etc., or electioneering.
- (vii) Activities, which are corrupt practices or electoral offences such as bribery, undue influence, intimidation of voters, personation, canvassing within 100 meters of a polling station, holding of public meetings during the period of 48 hours ending with the hour fixed for the close of the poll and conveyance of voters to and from polling stations, are prohibited.
- (viii) Demonstrations or picketing before house of any individual, by way of protesting against their opinion or activities shall not be resorted to.
- (ix) In order to maintain purity of elections and bring transparency in process of elections, political parties are advised to avoid transactions in cash and instruct their office bearers, official, agents and candidates not to carry huge amount of cash during elections.
- (x) No disturbances shall be created in public meetings or processions organized by other political parties or candidates.

- (xi) No processions along places where another party is holding meetings.
- (xii) Processionists shall not carry any articles, which are capable of being misused as missiles or weapons.
- (xiii) Posters issued by other parties and candidates shall not be removed or defaced.
- (xiv) Posters, flags, symbols or any other propaganda material shall not be displayed in the place being used on the day of poll for distribution of identity slips or near polling booths.
- (xv) No use of loudspeakers whether static or mounted on moving vehicles, between 10.00 p.m. and 6.00 a.m.
- (xvi) No use of loudspeakers at public meetings and processions without prior written permission of the authorities concerned. Normally, such meetings/processions will not be allowed to continue beyond 10.00 p.m. in the night and will be further subject to the local laws, local perceptions of the security arrangements of the area and other relevant considerations like weather conditions, festival season, examination period, etc.
- (xvii) No liquor should be distributed during elections.

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## CHAPTER 5

# ANNOUNCEMENT OF NEW SCHEMES- RESTRICTION ON FINANCIAL & ADMINISTRATIVE MATTERS

### **Main topics discussed in the**

#### **Chapter:-**

- Consolidated Guidelines
- Presentation of Annual Budget
- Announcement of Financial Grants/Concessions/Relief/ Subsidy Payment out of Discretionary Funds & MP/ MLA LADS
- Permission to Regular Financial Matters of Statutory Requirement
- Waiving Off of Recoveries and Bad Debts by State Government Financial Institutions
- Restriction on Ad Hoc Appointments
- Instances of Restriction on Other Administrative Decisions

### **5.1 Introduction**

5.1.1 Model Code restricts announcement of new schemes/projects and also grant of new reliefs after the announcement of elections. The Election Commission has directed that ministers and other authorities shall not-

- ✓ announce any financial grants, in any form, or,
- ✓ make promises thereof, or,
- ✓ lay foundation stones etc. of projects or schemes of any kind; or,
- ✓ make any promise of construction of roads, provision of drinking water facilities etc.,

which have the effect of influencing voters in favour of the party in power.

5.1.2 In 1993, the Election Commission cancelled all together a bye-election to Haryana State Assembly from Kalka Assembly constituency on the ground of announcement of certain new development schemes by the then Chief Minister of the State, in violation of Model Code. Almost simultaneously, the Election Commission also cancelled a bye-election from Ranipet Assembly Constituency in Tamil Nadu, where also, the then Chief Minister of the State announced certain new projects, in breach of Model Code.

- 5.1.3 The Election Commission has instructed the Chief Electoral Officers of States to obtain, within 72 hours of announcement of elections, list of all those works which have already been started on ground and also list of fresh work not started so far, for referencing, in case of validating any complaint on violation of Model Code.
- 5.1.4 These Model Code restrictions apply equally to new schemes and also ongoing schemes. But enforcement of Model Code cannot be given as an excuse for not commissioning of the public utility schemes which are at the stage of completion or for allowing them to remain idle. Commissioning of such schemes can be done by civil authorities without any fanfare or ceremonies and without associating political functionaries, though the political functionaries may attend the functions as ordinary participants. In a bye-election in Kerala in March-April 1994, on the Election Commission’s directions, the new railway line between Thrissur and Guruvayoor in Kerala, which was scheduled to be inaugurated by the Prime Minister, was commissioned by the officials of the railways and state government. Similarly, during general election to Karnataka State Assembly in 2018, a reference was received from Ministry of Defence that the Defence Minister was proposed to grace a function at a Bangalore plant as Chief Guest and to hand over first metro train set to Chairman, Kolkata Metro Rail Corporation. The Election Commission directed to the Ministry to invite a civil servant as chief guest in the function and do the honours, with other standard conditions.
- 5.1.5 Where the funds are needed to make payments for the completed work, the release of such funds is not objected to. For instance, during the general election to the Karnataka legislative assembly in 2013, Union Ministry of Micro, Small and Medium Enterprises was allowed to release the margin money subsidy of Rs 26 crores to the Government of Karnataka under the Prime Minister’s Employment Guarantee Programme as per the scheme guidelines, but without any publicity being given to such release of funds. Likewise, the Central government was permitted to release the remaining grant of Rs 15 crores to that state government under ‘One Time Additional Central Assistance for Annual Plan 2012-13’ without any publicity.



## 5.2 Consolidated Guidelines

5.2.1 During general elections to the House of the People and certain State Legislative Assemblies in 2009, on request from some State Governments for relaxation in instructions on humanitarian ground, the Election Commission revisited its existing instructions and issued consolidated guidelines with modifications or clarifications, wherever necessary, on 5 March 2009 (**Annexure VI**). These guidelines are as detailed below:

### Financial matters

- (i) Model Code related directions shall be issued only by the Election Commission.
- (ii) The Cabinet Secretariat or any other government agency should reiterate and disseminate the directions of the Election Commission for compliance.
- (iii) All references from Government of India to the Election Commission shall be made preferably through the Cabinet Secretariat.
- (iv) In so far as reference from State Governments are concerned, the same shall be made to the Election Commission through the Chief Electoral Officer of the State concerned after getting cleared from the Screening Committee.
- (v) Reserve Bank of India may continue to take decisions unhindered on monetary policy issues.
- (vi) Ministry of Finance will need to take prior approval of the Election Commission on any policy announcements, fiscal measures, taxation related issues and such other financial relief. Similarly, other ministries and departments will need to take prior approval of the Election Commission before announcing any relief or benefit.
- (vii) The following types of existing works can be continued by the government agencies **without reference to the Election Commission:**

- (a) work-projects that have actually started on the ground after obtaining all necessary sanctions;
  - (b) beneficiary-projects where specific beneficiaries have been identified, by name, before coming of Model Code into force;
  - (c) registered beneficiaries of MNREGA may be covered under existing projects. New projects under MNREGA that may be mandated under the provisions of the Act may be taken up only if it is for the already registered beneficiaries and the project is already listed in the approved and sanctioned shelf of projects for which funds are also already earmarked.
  - (d) there shall be no bar to release of funds for the completed portion of any work subject to observance of laid down procedures and concurrence of Finance Department.
  - (e) payments directly to the hospitals from Chief Minister’s Relief Fund/Prime Minister’s Relief Fund, in lieu of direct cash payment to individual patients (beneficiaries), will be permissible without reference to the Election Commission;
- (viii) Following types of new works (whether beneficiary or work oriented) can be taken up **under intimation to the Election Commission only if they fulfill the given conditions before Model Code comes into effect** (in case of any of the conditions not being met, prior approval of the Election Commission shall be obtained).
- (a) full funding has been tied up;
  - (b) administrative, technical and financial sanctions have been obtained;
  - (c) tender has been floated, evaluated and awarded;
  - (d) in case there is contractual obligation to start and end the work within a given time frame and failing which there is an obligation to impose penalty on the contractor; and
  - (e) emergency relief works and measures that are aimed at

mitigating the hardships, directly and solely, of the persons affected in a disaster may be taken up under intimation to the Election Commission;

(ix) The following types of activities will require **prior permission of the Election Commission:**

- (a) new works and projects cannot be taken up from discretionary funds of whatever nature. (Discretionary fund, in this context, includes funds, which are provided for in the budget in a generic manner and for which no identified and sanctioned project exists prior to Model Code coming into effect)
- (b) proposals for revival of sick public sector undertakings, governmental takeover of enterprises, etc. (or any policy decision on similar lines) cannot be taken up
- (c) fresh auctions of liquor vends, etc., cannot be held even if the annual auction time falls within Model Code period. Where necessary, the government should make interim arrangements as provided in its respective laws;
- (d) area of operation of any existing project or scheme or programme cannot be extended or expanded;
- (e) no land allocation shall be made by the government to any entity, whether individual or an enterprise; and
- (f) signing an MOU or an agreement where the government is a party will also require prior clearance by the Election Commission.
- (g) tenders other than global tenders, if already floated may be evaluated but not finalized. If these are not floated, shall not be floated without prior permission of the Election Commission.
- (h) where works are to be undertaken or functions are to be held in fulfillment of international commitments, prior concurrence of the Election Commission shall be taken.

- (i) ex-gratia payments and gratuitous relief in the aftermath of a disaster can be given directly to the persons affected at the current rates or scales of assistance presently in force, under intimation to the Election Commission. No change in the extant and prescribed scales of payments, however, shall be made in the existing rates or scales without prior permission of the Election Commission;
  - (j) however, new works that may be necessitated by way of preventive measures to mitigate the likely effects of natural disasters, like repair of embankments, water channels etc. can be taken up only with prior permission of the Election Commission;
  - (k) also, an area shall not be declared drought or flood affected or any such calamity affected without prior approval of the Election Commission. The extent of area already declared to be calamity-affected cannot be expanded without prior approval of the Election Commission; and
  - (l) similarly, any selective assistance to a group of persons from the Chief Minister's Relief Fund/Prime Minister's Relief Fund will require prior approval of the Election Commission.
- (x) Global tenders already floated, can be evaluated and finalized where any time limits are specified for such purpose. Tenders other than global tenders, that are already floated may be evaluated but not finalized without prior approval of the Election Commission. If they are not already floated, they shall not be floated without prior approval of the Election Commission.
- (xi) While starting any work (including any relief work) or development activity, no formal function shall be held involving any political functionary. As a matter of good practice, normal functions and publicity even with the presence of official functionaries should be kept to the minimum.
- (xii) Regular recruitment or appointment or promotion through

the UPSC, State Public Service Commissions or Staff Selection Commission or any other statutory authority can continue. Recruitments through non-statutory bodies will require prior clearance of the Election Commission.

- 5.2.2 In subsequent General elections, these guidelines are being reiterated and issued with necessary additions/clarifications.

### **5.3 Presentation of Annual Budget**

- 5.3.1 As per the established practice in the country, union budget for a fiscal year is presented to the Parliament in the month of February. The Election Commission, in deference to the State Legislatures, and having regard to convention and propriety, has not laid down any precept or prescribed a course of action for presentation of annual budgets, though an advisory was issued to all states at the time of 2009 general elections (**Annexure VII**).
- 5.3.2 In absence of clear and specific guidelines on this issue, different views have been taken during different elections. At several occasions in the past, presentation of annual budget was deferred. In January 2000, the Election Commission announced the programme for the general elections to the legislative assemblies of Bihar and Odisha. A session of the Bihar Legislative Assembly had already been called before the announcement of elections and that session was scheduled to commence on 10 January 2000. During that session, state budget was to be presented. However, the state government decided overnight not to present the budget or seek the vote-on-account in that session. Even the customary address of the Governor of the State to be made on the inaugural day of the session was substantially pruned down, so as to avoid any mentioning of the state government’s achievements during the previous year or announcement of any new schemes or welfare measures in the coming year.
- 5.3.3 In some cases, State Governments and even the Parliament, instead of presenting full budget, sought only a vote on account for 3-4 months.
- 5.3.4 During general elections to Legislative Assemblies of Goa, Manipur, Punjab, Uttarakhand and Uttar Pradesh in January-March 2017, the Election Commission allowed the Union government to present budget

with the direction that no state specific schemes shall be announced in the national budget which may have the effect of influencing the electors of the five poll going states in favour of the ruling party(ies) and in the budget speech, the Government’s achievements in respect of said five states will not be highlighted in any manner. It was also expected from the government that the advice given by the Election Commission in that letter No.437/6/INST/2009-CC&BE dated 9<sup>th</sup> March, 2009 will also be duly kept in view by the government at the time of the presentation of the budget (**Annexure VII**). During general elections to State Assemblies of Meghalaya, Nagaland and Tripura in 2018, the Election Commission allowed the presentation of union budget and related programme on AIR.

## **5.4 Announcement of Financial Grants/Concessions/Relief/Subsidy**

5.4.1 The Election Commission invariably takes a humanitarian view on the works that are necessitated due to man made and natural calamities. It does not refuse approval for schemes undertaken for tackling emergencies or for providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc. In these matters, however, prior approval of the Election Commission should be taken and all ostentatious functions should be strictly avoided and no impression should be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office so as to influence the electors in favour of the party in power.

5.4.2 The Election Commission has directed (**Annexure VI**) that:

- (i) Ex-gratia payments and gratuitous relief in aftermath of a disaster can be given directly to the persons affected, at the current rates/scales of assistance presently in force, under intimation to the Election Commission. No change in the extant and prescribed scales of payments, however, shall be made in the existing rates/scales without prior permission of the Election Commission.
- (ii) The Election Commission has no objection to release of PM’s/CM’s Relief Fund for the medical treatments, provided selection

of beneficiaries/patients are done by the concerned Government officials/head of the concerned private hospitals. Payment directly to the hospitals from CM’s/PM’s Relief Fund, in lieu of direct cash payment to individual patients (beneficiaries) will be permissible without reference to the Election Commission.

- (iii) Emergent relief works and measures that are aimed to mitigate the hardships, directly and solely, of the persons affected in a disaster may be taken up under intimation to the Election Commission.
- (iv) However, new works that may be necessitated by way of preventive measures to mitigate the likely effects of natural disasters like repair of embankments, water channels etc. can be taken up only with prior permission of the Election Commission.
- (v) Also, an area shall not be declared drought/flood affected or any such calamity affected without prior approval of the Election Commission. The extent of area already declared to be calamity-affected cannot be expanded without prior approval of the Election Commission.
- (vi) Similarly, any selective assistance to a group of persons from the Prime Minister’s/Chief Minister’s Relief Fund will require prior approval of the Election Commission.
- (vii) Ministers and other authorities shall not sanction grants/payments out of discretionary funds.

5.4.3 Implementation of relief work in drought affected areas:- During 2004 general elections, the Election Commission approved the following modalities of implementing relief work in areas which have been declared as “drought affected” (**Annexure VIII**):-

- (i) The drought relief works by way of immediate relief measures to be taken up by the State Governments shall only be in the areas which have been declared as “drought affected” within the parameters laid down under the guidelines for managing of Calamity Relief Fund by the Central Government. No new areas are to be added to the existing list of such “drought affected” areas after the announcement of elections. Addition of any additional

area/village will only be subject to obtaining prior concurrence of the Election Commission after following due procedure for seeking assistance under the Calamity Relief Fund/ National Relief Fund specified by the Government of India for operation of such funds.

- (ii) To provide immediate relief in the areas declared as drought affected, the Election Commission approved the following measures on provisional basis:-
  - (a) Provision of drinking water by way of water tankers.
  - (b) Digging of bore-wells as well as dug-wells in scarcity areas on account of drying of the existing bore-wells/dug-wells.
  - (c) Provision of rice/wheat at prescribed rates for distribution among the destitute without support and who cannot go for work as per mechanism already prescribed in the Calamity Relief Fund Scheme.
  - (d) Provision of fodder for cattle.
  - (e) New works on wage employment (Food for work etc.) where such existing works have been completed.
- (iii) No minister of the Government or a political functionary will be associated in the management of the drought relief operations in any capacity, supervisory or otherwise.
- (iv) The entire relief operation would be taken up by the Division, District and Taluka/sub-District Administration without involving elected representatives and/or non-officials at any level.

## **5.5 Payment out of Discretionary Funds & MP/MLA LADS**

- 5.5.1 The constitutional validity of the members of Parliament Local Area Development (MPLAD) Scheme was questioned before the Supreme Court in *Bhim Singh v Union of India and Ors.* It was contended that the scheme gave unfair advantage to sitting members of Parliament in as much as they could utilize the funds available to them to induce voters in their favour. However, the Supreme Court rejected the contention and



observed that spending from the MPLAD fund is subject to provisions of the Representation of the People’s Act, 1951 and regulations of the Election Commission. In this connection, the Election Commission has instructed that no new schemes shall be sanctioned under the MPLAD scheme during the period Model Code is in force. Even where some sanction under the scheme has already been granted but the work has not commenced on ground at the time of coming into force of the Model Code, such work shall not be taken up and executed till completion of the election.

5.5.2 Release of funds under the MPLAD Schemes will be subject to the following restrictions (**Annexure IX**):-

- (i) No fresh release of funds under MPLAD (including Rajya Sabha members) Fund shall be made in any part of the country where election is in progress. Similarly, no fresh release of funds under the MLAs’/ MLCs’ LAD Fund shall be made, if any such scheme is in operation, till completion of election process.
- (ii) No work shall start in respect of which work orders have been issued before the period Model Code comes in operation but the work has actually not started in the field. These works can start only after completion of election process. However, if a work has actually started, that can continue.
- (iii) There shall be no bar to the release of payments for completed work(s) subject to full satisfaction of the concerned officials.
- (iv) Where schemes have been cleared and funds are provided or released and materials procured and reached the site, such scheme may be executed as per programme.

## **5.6 Permission to Regular Financial Matters of Statutory Requirement**

The Election Commission allowed revision of wages rates under MGNREGA during general election to Karnataka State Assembly 2018 with subject to the standard conditions, as it is an annual feature and does not involve any new policy. Similarly, issue of notification on recommendation of Committee on GST Council meeting was permitted as the said financial matter was of statutory requirement with all India bearing. Likewise, the Election Commission also

permitted increase of EPF credit rate and reduction in rate of administrative charges payable by employer under EPF scheme.

## **5.7 Waiving Off of Recoveries and Bad Debts by State Government Financial Institutions**

The Election Commission has taken a view that financial institutions funded, partly or wholly, by the State Governments should not take recourse to writing off loans advanced to any individual, company, firm, etc. during the period when Model Code is in force, without the prior concurrence of the Election Commission. Similarly, the financial limits that these institutions have to adhere to while granting or extending loans should not be enhanced by issuing of loans indiscriminately to beneficiaries during Model Code period.

### **Administrative Matters**

## **5.8 Restriction on Ad Hoc Appointments**

5.8.1 Model Code envisages that during the period of its operation, no ad hoc appointments in government, public undertakings, etc. shall be made, which may have the effect of influencing the voters in favour of the party in power.

5.8.2 The policy of the Election Commission, has been that it does not object to the appointments/regular recruitment/promotions made on the results or recommendations of the Union or State Public Service Commissions, Staff Selection Commission or other such statutory bodies or regular promotions on the recommendations of departmental promotion committees. But in certain cases, even regular appointments being made in the normal course on the basis of due selection by the authorities concerned have been deferred till after the completion of elections.

5.8.3 Recruitment through non-statutory bodies will require prior clearance of the Election Commission. Normally, wherever the Election Commission considers that the matter is not of extreme urgency and could wait till the completion of the election process, it advises the government to defer such appointments for the time being. Some of the important proposals of appointments so deferred by the Election Commission

during elections held in past years was:-

- (i) reconstitution of the Delhi Urban Art Commission,
- (ii) reconstitution of the National Board for Wildlife,
- (iii) restructuring of the Brahmaputra Board into the Brahmaputra River Basin Authority,
- (iv) nomination of private individuals as chairmen of the governing councils of four new National Institutes of Design,
- (v) appointment of member in the National Commission For Scheduled Tribes,
- (vi) appointment of the Chairman, Central Board of Film Certification,
- (vii) appointment of advisory panel members in the Regional Centres of CBFC and
- (ix) nomination of three non-official members of the Central Silk Board.

## **5.9 Instances of Restriction on Other Administrative Decisions**

- 5.9.1 The Election Commission did not permit modification of lists of ‘other backward classes (OBC)’ and such other special categories of people by some of the state governments at the time of the general election to the House of the People in 1998, as that could be construed and perceived as being done with a view to influencing certain sections of the electorate and providing unfair advantage to the ruling parties.
- 5.9.2 Similarly, the setting up of the National Commission for Welfare of Socially and Economically Backward Sections among Religious and Linguistic Minorities by the Central Government in October 2004 when general elections were in progress to some state legislative assemblies, was considered by the Election Commission as violation of Model Code.
- 5.9.3 Likewise, the Election Commission did not accept proposals of the governments of Madhya Pradesh and Haryana for creation of some new districts on the eve of the general elections to the state legislative assemblies in 2003 and 2005, respectively.

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## CHAPTER 6

# PUBLICATION OF ADVERTISEMENTS AT COST OF PUBLIC EXCHEQUER

### **Main topics discussed in the Chapter :-**

- Supreme Courts' Guidelines
- Consolidated Guidelines
- Display of Advertisements and Hoardings At the Cost of Public Exchequer
- Publication of Advertisements in Non Poll Going States
- Publication of Advertisements in Connection with Special Occasions/Days
- Continuation of Aadhaar Related Publicity in Various States

### **6.1 Introduction**

6.1.1 Use of public funds on government advertisements during elections has been a major concern to the Election Commission. The primary objective of government advertisements is to use public funds to inform the public of their rights, obligations and entitlements as well as to explain government policies, programmes, services and initiatives. But the general practice is that large boards and hoardings are erected, at government cost, on road sides giving information about the works executed by MPs/MLAs with their photographs from out of their local areas development funds.

6.1.2 Model Code restricts issue of advertisements at the cost of public exchequer in newspapers and other media and misuse of official media for partisan coverage of political news and publicity regarding achievements of the party in

power with a view to furthering its prospects in elections.

6.1.3 During 2004 parliamentary elections, a question was raised whether all such boards and hoardings should be removed. During the same elections, the Election Commission gave instructions that all publicity hoardings put up by the State governments on the eve of elections highlighting their achievements, may be removed. The Election Commission directed that photographs of MPs/MLAs be suitably covered. The same instruction was applied in the case of photograph of the Prime Minister on publicity boards displayed on main highways, newly laid or improved under the Prime Minister's Golden Quadrilateral Scheme.

- 6.1.4 The Election Commission also directed that advertisements highlighting welfare schemes and achievements of the Central and State Governments being published in the newspapers having circulation in poll-bound states shall be forwarded to the Election Commission for clearance.
- 6.1.5 In 2009 general elections, the Election Commission considered certain advertisements in some newspapers by Union Bank of India and Canara Bank highlighting their achievements to be violation of Model Code and cautioned Chairmans and Managing Directors of the banks to be careful in future.
- 6.1.6 During the general election to the Karnataka Legislative Assembly in 2013, the Government proposed to release some TV spots and advertisements relating to a conference of World Trade Organization held in Hyderabad. The Government was permitted to telecast the proposed TV spots on TV channels in Andhra Pradesh and also to publish the advertisements, on the condition that the slides containing photographs of political leaders were omitted and the advertisements with names and photographs of the Prime Minister, Union Minister of State for Tourism and Chairperson of United Progressive Alliance, were not published in newspapers being published/having circulation in Karnataka.
- 6.1.7 At the time of a bye-election to Tamil Nadu Legislative Assembly in 2015, the Election Commission issued an order to cover paintings of leaves resembling the symbol of the ruling party appearing on mini buses plying in the state. The Madras High Court, before whom the order of the Election Commission was challenged, held that the impugned order was passed by the Election Commission in the interest of voters and that it had not interdicted policy decision enunciated by any authority and thus the order was within jurisdiction of the Election Commission under Article 324 of the Constitution.

## **6.2 Supreme Courts' Guidelines**

- 6.2.1 On a petition from 'Common Cause' for laying down appropriate guidelines to regulate government advertisements during elections, the Supreme Court constituted a Committee in 2014 for deliberation in the matter. On the basis of suggestions received from the Committee,

on 13 May 2015, the Supreme Court issued guidelines under Article 142 of the Constitution, till the period Parliament/government frames appropriate policy. The essence of the guidelines is as follows:

- (i) Display material must be presented in objective language and be free of political argument or partisan standpoint.
- (ii) Government advertising shall maintain political neutrality and avoid glorification of political personalities and projecting a positive impression of the party in power or a negative impression of parties critical of the government.
- (iii) Advertisement materials must not-
  - (a) mention the party in government, by name;
  - (b) directly attack views or actions of others in opposition;
  - (c) include any party/political symbol or logo or flag;
  - (d) aim to influence public support for a political party, candidate for election;

Or

- (e) refer to link to websites of political parties or politicians;
- (iv) Government advertisement materials should avoid photographs of political leaders and if it is felt essential for effective government messaging, only the photographs of the President/Prime Minister should be used;
- (v) Government advertisements shall not be used at patronizing media houses or aimed at receiving favourable reporting for the party or person in power.
- (vi) In such government advertisements only the photographs of the President, Prime Minister and the Chief Justice of India alone should be published and that too may be decided by the above constitutional functionaries themselves.

6.2.2 Subsequently, on consideration of the review petitions filed by the Central Government and several State Governments, the Supreme Court modified the above guidelines by its order dated 18 March 2016 and permitted

publication of photographs of the Governor and Chief Ministers of the states also in the government advertisements. Further, the court also allowed publication of photographs of Cabinet Minister/Minister in charge of the concerned ministry in lieu of photograph of the Prime Minister, and likewise, publication of photograph of the Minister/Minister in charge of the concerned department of the state government was allowed in lieu of photograph of the Chief Minister, if so desired. The Ministry of Information and Broadcasting, in compliance with the Supreme Court’s directions dated 13 May 2015, constituted a three member Committee under Sh. B. B. Tandon, former Chief Election Commissioner to address the issues related to content regulation in government advertising.

### **6.3 Consolidated Guidelines**

6.3.1 In 2004, the Election Commission issued detailed instructions on publication of government advertisements (Annexure X). Later on more instructions were issued, which are summarized as follows:

- (i) No advertisements shall be issued in electronic and print media highlighting the achievements of the Govt. at the cost of public exchequer. If any advertisement has already been released for telecast/broadcast or publication in the print media, it must be ensured that telecast/broadcast of such ads on electronic media is stopped forthwith and that no such ad is published in any newspapers, magazines, etc., i.e. in print media, from the date of announcement and it should be immediately withdrawn.
- (ii) For pre-viewing, scrutinizing and certifying advertisements to be telecast over TV channels and cable networks by any registered political party or by any group or organization / association, having headquarters in NCT of Delhi, the Chief Electoral Officer, Delhi shall constitute a Committee as directed in the Order. Similarly, the Chief Electoral Officers of other States / Union Territories will constitute Committees for dealing with applications by political parties and other associations / groups with headquarters in their States / Union Territories, as per provided in the Order. Returning Officer of every Parliamentary Constituency has been declared as Designated Officer for previewing, scrutinizing and

certifying advertisements by individual candidates contesting election from the constituency concerned.

- (iii) Further, the Chief Electoral Officers of all States / Union Territories are also required to constitute further a Committee to attend to complaints / grievances in regard to the decision of the Committees of Designated Officers on the application for certification of advertisements.
- (iv) Each application for certification is to be submitted before the Committee concerned or the Designated Officer concerned in a statement as per the prescribed format. The certificate for telecast for an advertisement is to be given by the Committee / Designated Officer in the prescribed format. The applicants are required to submit two copies of the proposed advertisements in electronic form alongwith an attested transcript thereof.
- (v) A proper record in a register should be maintained for all applications received for certification. Each application should be serially numbered and the serial numbers should also be indicated on the two copies in electronic form and the receiving officer should affix his signature on the electronic copy. After issue of certificate, one electronic copy of the advertisement as certified for telecast, should be retained by the Committee / Designated Officer.
- (vi) All Chief Electoral Officers may take immediate action for acquiring, by hiring or purchase, necessary equipments / infrastructure, such as television, VCR, VCD, etc. that may be required for the purpose of previewing and scrutinizing of advertisements by the Committees and Designated Officer in their State / Union Territory. Purchase of equipment, if any, is to be made in accordance with the rates and procedures approved by the State Governments for similar items.

## **6.4 Display of Advertisements and Hoardings At the Cost of Public Exchequer**

6.4.1. The Election Commission has directed that such hoardings,



advertisements, etc., put up by the Government, which purport to give general information or convey general messages to the masses on family planning, social welfare schemes etc. may be allowed to be displayed. However, all the hoardings, advertisements, etc. at the cost of public exchequer, which seek or purport to project the achievements of any living political functionary or political party and which carry his photo or name or party symbol should be removed forthwith as no political functionary or political party can use public resources and incur or authorize expenditure from public exchequer to eulogise himself or itself or enhance his/its own or any political leader’s personal image. Such hoardings, etc. undoubtedly amount to their individual/party election campaign at public cost.

- 6.4.2. The Election Commission has also directed that no advertisements should be issued in the newspapers and other media, including electronic media, at the cost of public exchequer during the election period and misuse of mass media during election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power, should be scrupulously avoided.

## **6.5 Publication of Advertisements in Non Poll Going States**

- 6.5.1 It has been observed that many times advertisements highlighting welfare schemes and achievements of the Central Government and State Governments are published by some non-poll going State Governments, in the editions of newspapers having circulation in the States where elections are going on. The Election Commission considers this to be a violation of Model Code.
- 6.5.2 The Election Commission has directed that all such advertisements issued by the State Governments of non-poll going States and proposed to be published in the newspapers of poll going States, during the period when Model Code is in effect, should be got cleared from the Election Commission, before they are sent for publication in the newspapers having editions or having circulation in the poll-bound States.
- 6.5.3 The Election Commission has noted that despite issue of the above

instructions, advertisements are issued by some non-poll going States in newspapers having editions or having circulation in the poll bound states, without obtaining the Election Commission’s clearance. The Election Commission has expressed its displeasure over such violations of its instructions. The Election Commission has further advised that, in future, if any such violation of its instructions is brought/come to its notice, the Secretary/ Director of the Information and Public Relations of the concerned Government shall be held directly responsible for such lapse.

## **6.6 Publication of Advertisements in Connection with Special Occasions/ Days**

- 6.6.1 The Election Commission has taken a clear stand that there will be no objection to release of such advertisements in connection with special occasions/days like World Habitat Day/ Pulse Polio/HIV Awareness Campaigns and celebrations of various ‘Diwas’ like Independence Day/ Republic Day/ Gandhi Jayanti/ State Formation Days etc., provided they do not contain photograph/political message/reference of any Minister/ political dignitary/political party. The said advertisements should not highlight achievements of the party in power, which may influence the voters and induce them to vote in their favour.
- 6.6.2 It is observed that various important historical days like Independence Day, Republic Day, Gandhi Jayanti, Shivaji Jayanti or State Formation Days falling during election period are celebrated with much fanfare and attended to by Central/State Ministers who, at time, make it a platform for gaining political advantage by highlighting the achievements of the party in power or their political functionaries contesting the elections. The Election Commission has taken a serious note of this and decided that while Ministers can participate in such celebrations, the theme of their speeches should be confined only to the historical background, deeds and achievements of the historical figures and they must take utmost care not to make any political speech converting the forum into a platform for political campaign.
- 6.6.3 For similar reasons, there will be a complete ban on celebrations like “xxx years/days in power” during this period as such occasions are virtually

utilized to highlight the achievement of the party in power.

## **6.7 Continuation of Aadhaar Related Publicity in Various States**

It has been clarified that only those Aadhaar related publicity can be done during election period, which has objective to give information about Aadhaar Card to the general masses. Any publicity highlighting achievements of the scheme or the Authority or Government will not be allowed to be made.

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## CHAPTER 7

# TOURS/VISITS OF MINISTERS/OTHER DIGNITARIES

### **Main topics discussed in the**

#### **Chapter:-**

- Consolidated Instructions
  - ✓ Official visit not to be combined with political/private visit
  - ✓ Restriction on use of official vehicles
  - ✓ No protocol by Government officials
  - ✓ Meeting with govt. officials
  - ✓ Video Conferencing with Government officials
  - ✓ Personal staff with Ministers, while on tour
  - ✓ Accommodation in Government guest houses
- Briefing of Chief Minister/Home Minister by Police Officers

### **7.1 Introduction**

7.1.1 During elections, ministers may be undertaking tours to the state where Model Code is in force. In order to ensure level playing field, the Election Commission placed certain curbs on the tours of ministers. The Election Commission issued certain directives on 31 December 1993 to the effect that the ministers, chairman and directors of government bodies visiting a district or constituency after the announcement of election therefrom should not be provided with official transport or declared as state guests and that they should not convene any meetings of officers at district level, nor should they use any government vehicles or take with them their personal staff on such tours. The only exception to those directives was the Prime Minister of India, who stands on a different footing in view of the government's instructions on security arrangements for him.

7.1.2 On the eve of general elections to the House of the People and certain legislative assemblies in 1996, the Election Commission, by its order made on 17 January 1996, almost banned all official tours of ministers of the Union and State Governments from the time of announcement of elections to their completion. The Election Commission also put restriction on the officials involved in elections being made to attend on the visiting ministers in the name of security and administrative arrangements. The Ministers were allowed to use official vehicles in their

headquarters from their residences to their offices and that was only for official work. Though resented, these instructions were rarely defied openly.

- 7.1.3 During 1999 general elections, on the Central Government’s request for relaxation, the Election Commission revised its earlier instructions.

## **7.2 Consolidated Instructions**

- 7.2.1 The Election Commission’s instructions (**Annexure XI**) on various aspects of tours undertaken by Ministers during elections issued from time to time have been consolidated for the sake of convenience in the following paragraphs :-

- (i) No minister of State Government shall undertake an official visit to any constituency for which elections have been announced by the Election Commission, during the period commencing with announcement of the elections upto end of the election process.
- (ii) If a Minister of the Union is travelling from his/her headquarters to a poll bound state/district on purely official business, which cannot be avoided in public interest, then a letter certifying to this effect should be sent from the Secretary of the department/ministry concerned of the Government of India, to the Chief Secretary of the state which the Minister intends to visit, with a copy to the Election Commission. On receipt of such information from the Secretary that the Union Minister is proposing a purely official visit and no political activity of any kind is envisaged during such tour, the Chief Secretary may provide the Union Minister with a Government vehicle and accommodation and extend other usual courtesies for his official trip. While doing so, the Chief Electoral Officer of the State, who is entrusted with the task of monitoring of electoral activity in the State, including the implementation of Model Code, shall be alerted in advance by the Chief Secretary. The Election Commission will keep watch on such arrangements in consultation with the Chief Electoral Officer. The Union Ministers are expected to avoid making official visits to their home States, and particularly to the constituencies from where

they are contesting elections though it is open for them to make private visits.

- (iii) **Official visit not to be combined with political/private visit:-** The Minister shall not combine his official visit with electioneering work and shall not make use of official machinery or personnel during the campaigning. In this connection, a reference was received in 2004 from Union Government seeking clarification whether the Minister for Railways while in Patna for political campaign can come officially from Patna to New Delhi for attending the meetings relating to railway budget or cabinet meetings. The ministry also sought a clarification on the issue whether the Railway Minister while on a personal/political visit to Patna can proceed to Kolkata on official visit. It was clarified that the Minister cannot combine his political or personal visit with official visit to Kolkata or elsewhere even if he pays the money for entire trip. It was also informed that the Minister could avail of normal privileges of free railway / air pass as available to Members of Parliament, but he was not entitled to take benefit of privileges as Union Minister for Railways for train/air journeys for going to Patna and returning to headquarters at Delhi. Before that, during general elections to State Assembly of Madhya Pradesh, the then Chief Minister of Punjab used state aircraft for a visit from Chandigarh to Indore for an official purpose. From there, he proceeded to Bhopal on election visit. He was made to pay for the entire journey from Chandigarh to Bhopal and back. Similarly, in 2003 general election to Legislative Assembly of Chhattisgarh, the then Chief Minister of the state had to reimburse to the state government the expenses for air journey which he performed by using state government aircraft from Raipur to Delhi for party work. However, during 2015 election, an exception was made in case of the Prime Minister, when he was permitted to combine his official tours with his private election campaign visits, with the directions that the expenditure on travel of the Prime Minister on non-official visits was to be borne by the political party concerned.

- (iv) **Restriction on use of official vehicles:-** It is clarified that

the Ministers are entitled to use their official vehicles in their headquarters from their place of residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity which would include a visit to party office even if it were enroute. No pilot car(s) or car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his/her electioneering visits, even if the State administration has granted him a security cover requiring presence of armed personnel to accompany him on such visit. An instance was brought to notice of the Election Commission that Union Minister for Railways and Union Minister for Company Affairs used staff car to visit the Election Commission's office with election work. Both the ministers were issued notice. Consequently, the ministers paid the government for use of such car for their private visit. Similarly, a reference was received in 2012 from the Chief Electoral Officer, Punjab that the then Chief Minister of Punjab was campaigning in Rama Mandi from where he would like to travel to Ferozpur for hoisting the National Flag on 26 January. The Principal Secretary to Chief Minister requested that the expenditure on the vehicle to be used by Chief Minister from Rama Mandi to Ferozpur and back would be borne by the State Government. The Election Commission decided that the dignitaries who would be hoisting National Flag at Republic Day functions may travel directly to that place from the place of election campaign, if any. The travel expenditure for this purpose would be borne by the State Government concerned. They do not need to travel between these places via headquarters.

- (v) **No protocol by Government officials:-** Officers of state governments and district administrations shall not receive, see off or call upon, by way of protocol, on the ministers at the Centre or of the states when they visit any state or district on election tour. However, an exception has been made in the case of election tours of the Prime Minister and police officers of all ranks, including director general of police, and district collectors have been permitted to remain present for attending to security related arrangements.
- (vi) **Meeting with Government officials:-** Minister will not summon any election related officer of the constituency or the State in

which any elections have been announced, to a place or office or guest house inside or outside the said constituency for any official discussions during the period of elections commencing with the announcement of the elections from such constituency and ending with the completion of election process. The only exception to these instructions will be when a Minister, in his capacity as in charge of the department concerned, or a Chief Minister undertakes an official visit to a constituency, or summons any election related officers of the constituency to a place outside the constituency, in connection with failure of law and order or occurrence of a natural calamity or any such emergency which requires personal presence of such Ministers/Chief Ministers for the specific purpose of supervision review/salvage/relief and other similar purposes.

- (vii) **Video Conferencing with Government officials:-** Video conferencing by the Chief Ministers of states with their district officials is prohibited during the period when Model Code is in operation. Any official who meets the Minister on his private visit to the constituency where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in *Section 129 (1) of the Representation of the People Act, 1951*, he shall be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided there-under.
- (viii) **Personal staff with Prime Minister/Ministers, while on private tours/campaigning:-** Earlier, the Chief Ministers or other Ministers were not allowed to accompany personal staff with them during their private tours during the period of Model Code. On reconsideration, the Election Commission decided that during Model Code period, one non-gazetted member of personal staff of the Chief Ministers of States/Union Territories and Union Ministers may be allowed to accompany them on personal/private tour. However, such personal staff shall not take part in any political activity or assist the Chief Minister in his political work. The restriction regarding personal staff members who can accompany on personal/private tours shall not apply to the Prime Minister. Similarly, during 2018 general election to the legislative assemblies of Chhattisgarh, Madhya Pradesh, Mizoram, Rajasthan and Telangana on request from the Principal Secretary



to Prime Minister, the Commission on grounds of security concerns permitted deployment of official staff of Doordarshan for operation and transportation of teleprompter equipment to assist the Prime Minister in delivery of election speeches, during that and subsequent election campaigns subject to the condition that the said services by the Doordarshan should be made available on the terms and conditions stipulated by the Ministry of Information & Broadcasting for providing such services.

- (ix) **Accommodation in Government guest houses:-** The Ministers shall not be accommodated in guest houses or rest houses of the government or of public sector undertakings, while on election tours, as these guest houses may be required for accommodating the Election Commission’s observers and other election related officers. Same restrictions will apply in case of Members of Parliament and State Legislatures or other political functionaries. However, ministers and other political functionaries who have been provided security cover of ‘Z’ or ‘Z plus’ category by government or of equivalent level under any law shall be exempted from above restrictions and they can be accommodated in the government guest houses, if their security considerations so warrant. The ministers on official tours which are unavoidable may also be provided accommodation in the government houses, subject to the condition that they will return to their headquarters immediately after completion of their work and will not indulge in any activity which may violate the Model Code provisions.

### **7.3 Briefing of Chief Minister/Home Minister by Police Officers**

The Election Commission has issued instructions to the effect that security briefings of Chief Minister or the Home Ministers when considered essential should be undertaken by Home Secretary or Chief Secretary, who in turn should be briefed by the police agencies. The instructions further state that in case where police agency’s/official’s presence is considered essential, Chief Secretary/ Home Secretary may require the police agency/official to be present in such briefings.

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## CHAPTER 8

# RESTRICTION ON ELECTIONEERING DURING PERIOD OF 48 HOURS BEFORE CLOSE OF POLL

### Main topics discussed in the Chapter:-

- Restriction on Presence of Political Functionaries in a Constituency During the Last 48 Hours
  - ✓ Measures to Check
  - ✓ Exemption from Restriction
- Telecast of Election Matters During the Last 48 Hours
- Whether Broadcasting of Election Related Matter over Radio Could be done during Last 48 Hours
- Advertisements in Print Media
- Telecast of Feature Films (Other Than Commercial advt.) of the Actors Contesting Elections

### 8.1 Introduction

8.1.1 In order to strengthen the law and order on the day of poll and to ensure an atmosphere where the electors do not feel intimidated in any manner, the Election Commission has directed that all ministers, members of Parliament and State Legislative and other political functionaries who have been provided with security should leave the constituency as soon as the campaign period ends, i.e. 48 hours before the time fixed for the close of poll.

8.1.2 *Section 126 of the Representation of the People Act, 1951*, prohibits holding of public meeting in the period of 48 hours ending with the hour fixed for the close of poll, when election campaign comes to an end. (*Section 126 of the Representation of the People Act, 1951* is reproduced below :-

“Section - 126 Prohibition of public meetings during period of forty – eight hours ending with hour fixed for conclusion of poll –

- (1) no person shall –
- (a) *convene, hold or attend, join or address any public meeting or procession in connection with an election; or*
- (b) *display to the public any election matter by means of cinematograph, television or other similar apparatus.*

- (c) *Propagate any election matter to the public by holding, or by*

*arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in the polling area.*

- (2) *Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.*
- (3) *In this section, the expression “election matter” means any matter intended or calculated to influence or affect the result of an election.”*

## **8.2 Restriction on Presence of Political Functionaries in a Constituency During the Last 48 Hours**

8.2.1 During the course of campaign in an election, the political parties mobilize their supporters, including from outside the constituency of poll, in order to bolster that campaign. In view of the fact that after the closure of campaign period no campaign can take place within the constituency, presence of political functionaries and party workers, who have been brought from outside the constituency and who are not voters of the constituency, should not remain present in the constituency as their continued presence after end of campaign period may undermine the atmosphere for free and fair poll. Hence, the Election Commission has directed that the district election administration / police administration shall ensure that all such functionaries leave the constituency immediately after the campaign period is over.

**8.2.2 Measures to Check:-** The Election Commission has directed that in order to ensure that the above instruction is carried out, the election administration / police administration may take all necessary measures which may include:

- (i) Checking of kalyan mandapams / community halls etc., to find out whether any outsiders have been accommodated in these premises.
- (ii) Verification of lodges and guesthouses to keep a track of the list of

occupants.

- (iii) Set up check-posts at the constituency borders and track the vehicular movement from outside the constituency.
- (iv) Verify identity of the people / group of people in order to find out whether they are voters or not and to establish their identity.

**8.2.3 Exemption from Restriction:-** An instance came to notice of the Election Commission during an bye-election in 2017 that a prominent political leader didn't leave the constituency after campaign period was over, citing some medical reasons. The Election Commission, having considered the matter issued following guidelines-

- (i) The District Election Officer concerned, in consultation with Chief Electoral Officer, would constitute a Medical Board for health check-up of the political functionary seeking exemption. The Medical Board shall, after medical examination of the patient and his/her medical history, will give report whether condition of the patient( political leader) is such that he can't move or be shifted under medical attendance out of the constituency in an ambulance or vehicle.
- (ii) The exemption would only be considered by the Election Commission after consideration of report of the Medical Board received through Chief Electoral Officer concerned.
- (iii) Such political functionary to whom exemption has been granted may be allowed to stay in the constituency subject to the condition that this is in no manner be used for any political/election related activities in any way. To ensure this, a video surveillance team headed by a magistrate with suitable police personnel shall be deployed at all the entrances of place of stay till completion of poll. Expenditure incurred for such stay should be duly accounted for in election expenditure accounts of the contesting candidate for that constituency.

## **8.3 Telecast of Election Matters During the Last 48 Hours**

8.3.1 Previously, Section 126 prohibited only the convening /holding or

attending, joining or addressing any public meeting/procession in connection with an election during the period of 48 hours ending with the hour fixed for conclusion of poll for any election in the polling area concerned. However, the scope, extent and dimension of the prohibition contained in the Section were expanded with amendment in the said Section in 1996 when vide Sub-section (1)(b), prohibition was made applicable to display of any election matter by means of cinematograph, television or other similar apparatus during the prohibited period of 48 hours.

- 8.3.2 But in the era of wide reach of electronic media in the country, it is impossible to block any matter being covered on electronic media in a specific area, state or constituency.
- 8.3.3 During the general election to House of People in 2014, some complaints were made to News Broadcasting Standards Authority (NBSA) against certain television channels that they had telecast live the release of manifesto by Bharatiya Janata Party at New Delhi on 7 April 2014, when some constituencies in Assam and Tripura were going to poll on the very day. It was contended that it amounted to violation of provisions of Section 126 (1)(b) and Model Code and also guidelines issued by NBSA. After detailed hearing of the complainants, NBSA held that in the scenario of a multi- phased election, prohibition of display to public of any election matter in operation in a constituency in State ‘X’ cannot obviously prevent the telecast of electioneering being carried on in State ‘Y’, in respect of a candidate belonging to the very political party whose candidate is also contesting in a constituency in State ‘X’. The media would be entitled to broadcast the electioneering in regard to a contesting candidate of a particular party in one state, irrespective of the fact that transmission would be seen in other states. It was further held that so long as the broadcast of the election related programme in State ‘Y’ is not used for promoting or attacking any specific candidate in State ‘X’, there can be no objection. What are prohibited are any advertisements or sponsored programmes or any reports supporting or criticizing a candidate with an intention to influence or effect the results of an election. Covering a general event relating to a political party which is relevant and of common interest across the country or across a

state, which does not extol the public to support any candidate or which does not criticize any candidate in the constituency going to polls, is not a violation of any guidelines.

#### **8.4 Whether Broadcasting of Election Related Matter over Radio Could be done during Last 48 Hours**

Clause (b) of sub-section(1) of Section 126 bans display of election material through T.V. or similar apparatus. As for radio, the Election Commission clarified that it would be treated as 'other similar apparatus' for this purpose and hence broadcasting /propagating any election matter through radio would be covered under clause (b) and would not be permissible during the period of 48 hours mentioned in the said section.

#### **8.5 Advertisements in Print Media**

8.5.1 Unlike political advertisements in electronic media which are not regulated by any statutory law but are governed by the directions of the Supreme Court, the political advertisements in print media are subject to certain restrictions imposed by law itself. As per Section 127A of the Representation of the People Act, 1951, no person can print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printers and publisher thereof. Further, no person can print or cause to be printed any election pamphlet or poster, unless the printer has obtained a declaration, in duplicate, as to the identity of the publisher thereof, signed by the publisher and attested by two persons to whom he is personally known.

8.5.2 Furthermore, the printer is required to send one copy of the said declaration together with four copies of the printed material and a statement showing the number of copies printed and the printing charges realized from the publisher, to the chief electoral officer of the state, if such document has been printed in the capital of the state, or to the district magistrate of the district in which it is printed, in any other case. The above provisions apply in relation to the advertisements published by the political parties and candidates in the newspapers as well.

- 8.5.3 Any person who prints or publishes or causes to be printed or published any election pamphlet or poster in contravention of the above statutory restrictions is punishable with imprisonment for a term extending up to six months or with fine which may extent to two thousand rupees, or with both.
- 8.5.4 As per the law, the content of any such election pamphlet or poster is not required to be pre-certified from any authority, unlike the advertisements in electronic media which require pre-certification by the Media Certification and Monitoring Committees set up by the Election Commission at the district and state levels under the directions of the Supreme Court. However, the advertisements published by the political parties and candidates in the e-version of newspapers requires pre-certification. Further, the restrictions on the publication of advertisements on electronic media during the period of 48 hours ending with the hour fixed for the close of poll do not extend to the publication of advertisements by political parties and candidates in print media.
- 8.5.5 During the general election to the Bihar legislative assembly in 2015, certain advertisements of offending nature were published in some prominent newspaper in Bihar on the day previous to the date of poll. To ensure that no such instance was repeated on the date of poll and no untoward incident may take place because of any inflammatory or hate advertisements, the Election Commission, in exercise of its powers under Art 324 of the Constitution directed that no political party or candidate or any other organization or person shall publish any advertisement in the newspapers on the day of poll and one day prior to poll unless the contents of the advertisement proposed to be published were got pre-certified by them from the Media Certification and Monitoring Committee (MCMC) at the district or state level, as the case may be. Similar direction was also issued to all newspapers in the state of Bihar that they should not publish any advertisement in the newspapers on the day of poll and one day prior to poll which had not been pre-certified by the said MCMC. The above direction of the Election Commission was brought to the notice of all political parties in the state of Bihar and also given wide publicity to all media of mass communication for general

information and strict compliance.

- 8.5.6 From then onwards, at all subsequent general elections, the Election Commission has been issuing similar directions with the modification that the aforesaid pre-certification of advertisements in newspapers is required in respect of all such advertisements as intended to be published on poll day and one day prior to poll day.

## **8.6 Telecast of Feature Films (Other Than Commercial advt.) of the Actors Contesting Elections**

The question of whether to permit telecasting of films of the actors, who are contesting election, on TV channels or not was brought to the attention of the Commission. After due deliberations the Commission directed that telecast of films and commercial advertisements involving film actors who are contesting elections will not be restrained on TV channels or Cinema Theatres. However, **telecast of such feature films (other than commercial advertisements) will not be allowed on Doordarshan** during the period of enforcement of Model Code of Conduct, considering that Doordarshan is run on public funds.

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## CHAPTER 9

# DISPLAY OF PHOTO/MESSAGE ON OFFICIAL WEBSITE/GOVT. BUILDINGS/ ADVERTISEMENTS

### **Main topics discussed in the Chapter:-**

- Display of Photo/Message on Official Website
- Display of Photo/Message in Government Buildings
- Display of Photo/Message on Govt. Advt./Hoardings
- Whether Names/Photos can be Displayed on Mobile Objects Funded under MP/ MLA LAD
- Display of Photos on Beneficiary Cards/Electric bills/Construction Site Plaques etc-
- Whether Images of National Leaders/Poets/Prominent Personalities of the Past can be Displayed
- Restriction on Use of Photographs of Defence Personnel

### **9.1 Introduction**

The Election Commission has observed that official websites of Ministers and their offices/ organizations, which carry material on personal achievements of the Ministers in their political/ public life, continue to display the same during election period. It amounts to violation of Model Code provisions. The Election Commission has issued directives to regulate this type of political advertisements.

### **9.2 Display of Photo/Message on Official Website**

9.2.1 The Election Commission has instructed that partisan coverage of ministers highlighting and eulogizing their personal achievements on various official websites of Govt. Departments and social media, in order to furthering the prospects of party in power should be scrupulously avoided during the period Model Code is in force.

9.2.2 Similarly, all references of Ministers, politicians or political parties available on Central/ State Government's official website, shall be taken off/purged of/covered/hidden/removed. The Chief Electoral Officers shall take immediate action to remove/hide photographs of any political

functionary from official websites of state department (**Annexure- XII**).

During bye-elections, these instructions may be confined to only those politicians/ministers, etc. who themselves become candidates at such bye- elections.

- 9.2.3 In 2017, the Election Commission received a complaint that images of the Prime Minister and Minister of Housing & Urban Poverty Allevation were being displayed on website of Pradhan Mantri Awas Yojana, being completed in Uttar Pradesh. The Election Commission having considered the issue held that depiction of photographs of the Prime Minister and Ministers, as aforesaid, is in violation of Model Code and hence asked to remove such photographs immediately from the official website ‘*pmaymis.gov.in*’.

### **9.3 Display of Photo/Message in Government Buildings**

The Election Commission has also instructed that during Model Code period photographs of Prime Minister, Chief Ministers, ministers and other political functionaries many of whom are still active in public life and may be contesting elections should not be displayed in government buildings/premises as that would have the effect of disturbing the level playing field vis-à-vis the political functionaries of other parties and candidates.

### **9.4 Display of Photo/Message on Government Advertisements/Hoardings**

The Election Commission has directed that “hoardings, advertisements, etc., put up by the Government which purport to give general information or convey general messages to the masses on family planning, social welfare schemes etc. may be allowed to be displayed. However, all those hoardings, advertisements, etc. which seek or purport to project achievements of any living political functionaries or political party and which carry their photos or name or party symbol should be removed forthwith as no political functionary or political party can use public resources and incur or authorize expenditure from public exchequer to eulogize himself or itself or enhance his/its own or any other political leader’s personal image. Such hoardings, etc. undoubtedly amount to their individual/party election campaign at public cost.

### **9.5 Whether Names/Photographs can be Displayed on Mobile Objects Funded under MP/MLA LAD**

The Election Commission has been receiving complaints that names of MPs/MLAs painted on mobile objects like water tanks, ambulances etc. funded under MPLAD/MLALAD schemes are moving on various places in election going States. The Election Commission has considered the matter and directed that the names of MPs/MLAs etc. appearing on such moving vehicles etc. should be covered suitably during the election period as such vehicles moving from one place to another may be considered as a form of election campaign in favour of the MP/MLA etc. concerned.

## **9.6 Display of Photos on Beneficiary Cards/Electric Bills/Construction Site Plaques etc-**

9.6.1 The Election Commission has issued clarification in the matter as follows:-

- (i) Beneficiary cards distributed to beneficiaries, construction site plaques etc. erected during the enforcement of Model Code shall not contain photographs/messages of Chief Ministers, Ministers and other political functionaries. However, no interference is called for in respect of photos of political functionaries on beneficiary cards, construction site plaques etc. that are distributed/erected prior to the announcement of election.
- (ii) Similarly, electricity bills, water bills etc. to be generated after the enforcement of Model Code should not contain any photographs or messages/symbols of political functionaries/parties.

9.6.2 During 2017 general election to Goa State Assembly, the Election Commission received a complaint that hoardings with photographs of Prime Minister were displayed at petrol-pumps. The Election Commission issued necessary direction to remove the photographs. Likewise, on the basis of a news item appeared in print media, the Election Commission ordered to stop distribution of certificates displaying photograph of Prime Minister by oil companies to LPG gas consumers who had surrendered gas subsidy, in Uttarakhand during 2017 general election to the State Assembly.

## **9.7 Whether Images of National Leaders/Poets/Prominent Personalities of the Past can be Displayed**

The Election Commission has clarified that while photographs of Prime Minister, Chief Ministers, Ministers and other political functionaries should not be displayed, this instruction, however, is not applicable with regard to the images of national leaders, poets, and prominent historical personalities of the past, or images of the President of India and the Governors and these may continue to be so displayed. A reference was received from DAVP in 2013– whether on the occasion of the death anniversary of former Prime Minister Smt. Indira Gandhi and the birth anniversary of Sardar Valabhbhai Patel, their photograph and messages could be published in the advertisements. The Election Commission decided that there may be no objection to the publication of photographs and message related to the departed political leaders except those leaders who have passed away in the recent past.

## **9.8 Restriction on Use of Photographs of Defence Personnel**

- 9.8.1 Ministry of Defence brought to the notice of the Election Commission that photographs of Defence personnel were being used by some political parties, their leaders and candidates in advertisements as part of their election propaganda and requested the Election Commission to issue suitable instruction in this regard.
- 9.8.2 The Election Commission maintained that photographs of Chief of Army Staff or any other Defence personnel or photographs of functions of Defence forces should not be associated with or used in advertisement/propaganda/campaigning or in any other manner in connection with elections by political parties and candidates. The Election Commission, accordingly, called upon all the political parties to advise their candidates/leaders to desist from displaying photographs of Defence personnel or functions involving them in advertisements, or otherwise, as part of their election propaganda/campaigning.

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## CHAPTER 10

# USE/REQUISITION OF VEHICLES

### **Main topics discussed in the**

#### **Chapter :-**

- Legal Provision on Requisition of Vehicles
- Exemption from Requisition of Vehicles
- Compensation for Requisitioned Vehicles
- Consolidated Instructions
  - ✓ Ban on use of Official Vehicles
  - ✓ Restriction on convoy of vehicles
  - ✓ Use of vehicles During filing of nominations
  - ✓ Use of vehicles for electioneering purposes
  - ✓ Use of vehicles on poll day
  - ✓ Video-Vans
  - ✓ Use of Bikes for Campaigning
  - ✓ Regulation of Road Shows During Elections
  - ✓ Use of Road Transport by Star Campaigners
- Use of Official Vehicles by Speaker/ Deputy Speaker or functionaries of various boards/Commissions/PSUs
- Bullet Proof Vehicles Provided for Security Reasons

### **10.1 Introduction**

Vehicles are most essential means of communication during elections and therefore, these are in great demand, not only by political parties and candidates but also by the election machinery and authorities for performance of their official duties and conveyance of polling parties, polling material and security personnel.

### **10.2 Legal Provision on Requisition of Vehicles**

Section 160(1) of the Representation of the People Act, 1951 authorizes the state governments to requisition any vehicle, vessel or animal, if it is needed or is likely to be needed for any election purpose.

### **10.3 Exemption from Requisition of Vehicles:-**

Vehicles being used by the following categories are exempted from requisition-

- (i) Vehicles being lawfully used by a candidate or his agent for any purpose connected with the election.
- (ii) Vehicles belonging to wild life sanctuaries, national sanctuaries and national games parks.

- (iii) Likewise, the vehicles, as well as the staff of Bharat Sanchar Nigam Limited have also been exempted.
- (iv) The vehicles of All India Radio and Doordarshan have also been exempted from requisition, as they too are involved in election-related work during the election period.
- (v) The Election Commission has also exempted the vehicles of World Health Organization, UNICEF and other organs of UNO like its polio projects, from being requisitioned for election duties.

#### **10.4 Compensation for Requisitioned Vehicles**

The government is liable to pay compensation for the vehicles, vessels or animals for the period, they are so requisitioned. Compensation shall be paid to the owner on the basis of the fares or rates prevailing in the locality concerned. If the owner is aggrieved by the amount of the compensation, he may apply within 14 days from the date of determination of the amount of compensation to the state government for referring the matter to an arbitrator.

#### **10.5 Consolidated Instructions**

10.5.1 The statutes do not specify any limit on the number of vehicles that may be used by a political party or candidate. In absence of such legal restriction, the Election Commission has been taking several measures from time to time to put reasonable curb on the number of vehicles being used by political parties and candidates during their election campaigning. The Election Commission has issued a number of instructions for sake of clarity and easy reference for all the stakeholders. The said instructions have been consolidated and issued on 10 April, 2014. (**Annexure XIII**). The detailed instructions including subsequent clarifications are as follows:-

##### **10.5.1 Ban on use of Official Vehicles**

- (i) Subject to exceptions mentioned herein, there shall be a total and absolute ban on the use of official vehicles by any political party, candidate or any other person connected with election (except officials performing any election related official duty) for campaigning, electioneering or election related travel during

election period starting with the announcement of election schedule by the Election Commission and ending with the completion of election process.

*(Official vehicle’ will cover all vehicles belonging to the (a) Central Government, (b) State Government/UT Administrations, (c) public undertakings of the Central and State governments, (d) Joint Sector Undertakings of Central and State Governments, (e) Local Bodies, (f) Municipal Corporations, (g) Municipalities, (h) Marketing Boards (by whatever name known), (i) Cooperative Societies, (j) Autonomous District Councils or any other body in which public funds, howsoever small a portion of the total, are invested and also include those belonging to the Ministry of Defence and the Central Public Organizations under the Ministry of Home Affairs and State Governments).*

- (ii) The District Administration shall keep a close watch to see whether official vehicle belonging to any authority specified in the preceding para is being used for electioneering purposes. In case it is so, the District Magistrate shall, forthwith, requisition or cause to be requisitioned such vehicles, under Section 160 of the Representation of the People Act, 1951 after following due procedure, for election work. Such requisitioned vehicles shall not be released until after the completion of the process of elections.

**[Clarifications:** *(a) It is clarified that the ban on use of vehicles will equally apply to the vehicles in the state where election is being held or from any other States, not going to the polls. The Chief Secretary of each State/Union Territory/the Secretary to the Government of India in the concerned Department, as the case may be, will be personally held responsible for misuse of vehicles belonging to any Ministry/ Department/public sector/joint sector undertakings/autonomous bodies/ attached offices under a Ministry/Department. The offices under whose charge such vehicles are entrusted will also be equally held responsible for any violation.*

- (b) It is further clarified that use of such vehicles belonging to any of these authorities by anyone, including ministers of

the Central of State Government, even on payment basis, for campaigning or on tours connected with elections with the alleged and bogusly certified purpose of official work in their capacity as ministers, is totally prohibited.]

**[Exception:** (a) *The only exception to the above prohibition will be Prime Minister and other political personalities, who might, in view of extremist and terrorist activities and threat to their lives, require security of a high order and whose security requirements are governed by statutory provisions made by the Parliament or the State Legislature in this behalf.*

(b) *The above restriction shall also not apply in the case of the President and Vice-President of India, Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha and such other dignitaries visiting the state from other states. However, it is further clarified that in the case of Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha these restrictions will be applicable at the time of General Elections to the Lok Sabha as in respect of any Ministers of the Union or any State Government.]*

- (iii) Information with regard to assessment of the security requirements made in respect of any such personality, shall be furnished to the Election Commission by the Central Government or the State Government concerned.
- (iv) If the Election Commission has any material to doubt that the assessment of security requirements made by authorities under Special Protection Group Act, 1988 or any other special enactment/instruction of the Government have been manifestly or unduly excessive with the intention of promoting indirectly the electoral interests of a particular party or candidate, the concerned Government shall be asked to take immediate and appropriate corrective steps.
- (v) If security requirement of a person, as assessed by security agencies, requires him to travel in bullet proof vehicle, only one such vehicle may be provided by the government on payment



of cost of propulsion of such vehicle by such person. In such bullet proof vehicle, no other political leader/worker (except his personal/medical attendant) shall be allowed to travel.

**10.5.2 Restriction on convoy of vehicles:** (i) Vehicles shall, under no circumstances, be allowed to move in convoys of more than ten vehicles, excluding the security vehicles. The convoys, including those carrying a minister of Central or State government., exceeding ten vehicles shall be broken up and a gap of 100 mtrs would be maintained. This shall, however, be subject to security instructions issued by the competent authority in respect of such individual.

(ii) It shall be the duty of the local administration to ensure that vehicles in a convoy are not allowed to flout the Election Commission's direction, till the process of election is completed.

**10.5.3 Use of vehicles During filing of nominations:** The maximum number of vehicles allowed within the periphery of 100 metres of Returning Officers'/Assistant Returning Officers' office on behalf of a candidate visiting the said office to file his nomination paper in a procession/convoy of vehicles, shall be three. Periphery of 100 metres should clearly be demarcated by Returning Officers/District Election Officer. Only one door of the office shall be kept open for entry of candidate +4 other authorized persons and all other doors should be closed. A CCTV camera should also be placed at the entry door to record actual time of entry.

**10.5.4 Use of vehicles for electioneering purposes:** (i) There is no limit on vehicles, which a candidate may use for electioneering purposes. But before the campaigning commences, the candidate shall have to furnish the details of all such vehicles and the areas in which he intends to use them for campaign purposes, to the District Election Officer or such other Officer(s) as may be specifically authorized by the District Election Officer. The officer, after necessary scrutiny, would issue permit to the candidate in respect of each such vehicle. Permit must contain the details like number of the vehicle, date of issue of permit, name of candidate and the area (where it shall be used for campaigning). The original copy (not the photo copy) of permit, in such dimension that it can easily

be seen from a distance, should be displayed on the wind screen of the vehicle.

- (ii) Deployment of additional vehicles can only be done after due notice by the candidate or his/her agent to the authorities and obtaining permits for the same.
- (iii) Details of the vehicles to be deployed by the candidate should be conveyed by District Election Officer to the Election Expenditure Observer(s) to enable them to check whether the expenditure on vehicles is correctly included in the election expenditure account of the candidate.
- (iv) If a vehicle for which permission is given to a particular candidate is found being used for another candidate, then the permission shall be withdrawn and such vehicle seized by/under the authority of District Election Officer.
- (v) If a candidate, after obtaining permission, does not intend to use the campaign vehicle(s), for any period of more than two days, he/she shall intimate to the District Election Officer, to withdraw the permission for such vehicle(s). If the candidate fails to do so, it will be presumed that the candidate has used the permitted vehicles for campaign purpose and accordingly, the expenditure as per the notified rates on use of such vehicles shall be added to his/her account of election expenses.
- (vi) Any vehicle used for campaigning without due authorization/ permit, shall be deemed to be unauthorisedly campaigning for the candidate and may attract penal provisions of Chapter IX A of the Indian Penal Code. It shall immediately be taken out of the campaigning exercise. [*Chapter IX A of IPC- pertains to offences relating to Election and provision for punishment therefor*].
- (vii) The vehicles deployed for election campaign by the candidates should not be requisitioned by the administration.
- (viii) For availing benefit of clause (a) of explanation (1) given under Sec. 77 (1) of the Representation of the People Act, 1951 by the leaders of the political parties, i.e., star campaigners, the

permission for the mode of road transport will be issued centrally by the Chief Electoral Officer, irrespective of the fact whether the same vehicle is to be used throughout the State or different vehicles are to be used by such party leaders in different areas. The permit will be issued against the name of the star campaigner and it need to be displayed prominently on the windscreen of the vehicle. The permits so issued by the Chief Electoral Officer will be of distinctly different colour from those issued by the District Election Officer for other campaign vehicles of candidates.

- (ix) On a request from a recognized political party, the District Election Officer would issue permit for one vehicle to be used by the district level office bearer of the party (other than the star campaigner) for his electioneering in multiple ACs within the district. The permit should bear details like number of the vehicle, the name of political leader and the period for which the permit is issued. It should be of different colour so that it can easily be identified. An attested copy shall be pasted on wind screen and original be kept with the driver for checking by police or other authorities. The expenditure in this regard shall be booked against the political party and not the candidates. If such vehicles are used for election campaign of any particular/candidates then the expenditure should be added to the account of candidate(s) appropriately.
- (x) The Chief Electoral Officer may issue permits for vehicles that can move throughout the State for use of office bearers of recognized political parties for electioneering purposes only. For the States having more than 100 Assembly Constituencies, the Chief Electoral Officer may issue permits for a maximum of five vehicles and for remaining States/UTs, for a maximum of three vehicles to a recognized political party. The expenditure on these vehicles shall be incurred by the political party and not by the candidate. If such vehicles are used for election campaign of any particular/candidates then the expenditure should be added to the account of candidate(s) appropriately.
- (xi) Use of vehicles for transporting publicity material - If a request

is received from a recognized (National/State) political party for grant of permission for vehicle(s) for the purpose of distribution of publicity material to their various party offices across the State, the Chief Electoral Officer may grant such permission for one vehicle per party for every 25 (Twenty five) Assembly Constituencies. The applicant political party will make the application specifying the details of the vehicle, fitness certificate, name of the driver, date-wise movement plan of the vehicle. The Chief Electoral Officer shall ensure that such vehicles are also be subjected to normal checks and the same will not be used for election campaigning. The expenditure on account of such vehicles shall be incurred by the political party and not by the candidate.

- (xii) As per definition given in Section 160(4) (b) of the Representation of the People Act, 1951, a cycle rickshaw is also a vehicle. If a candidate is using a cycle rickshaw in election campaign, he has to account for its expenditure in his account of election expense, giving details of all such rickshaws being used by him. If the rickshaw does not have any municipal registration/permit for its identification, a permit may be issued in name of the rickshaw driver, which he should carry on his person while using that rickshaw for campaign purposes. Rickshaws being used for carrying passengers in ordinary course etc. may be exempted, from the above condition if they are displaying only one poster showing the name or party symbol of a candidate, presuming that they are doing so on their own free will.
- (xiii) With a view to check possible misuse of private vehicles by the candidates/party leaders/party workers for carting anti-social elements or to smuggle illicit arms and ammunition etc., with a view to create disturbances during elections, the District Administration shall keep a close watch on the vehicles being used by them. If a vehicle is found to be involved in any such mischief or illegal activity, the local administration shall impound the said vehicle and not release it till the completion of elections. Besides, suitable action shall be taken against the owner using it and the occupant(s) of the vehicle and the candidate/political party using it.

[As for flag/banner/sticker/light on campaign vehicle, please refer to para 13.3 of CHAPTER -13 USE OF NATIONAL FLAG/PARTY FLAGS/PARTY BANNERS]

#### 10.5.5 Use of vehicles on poll day

- (i) Section 123(5) of the Representation of the People Act, 1951 provides that the hiring or procuring or use of vehicles by a candidate/his agent or by any other person with the consent of the candidate or his election agent for the free conveyance of the voters to and fro from the polling station shall be a ‘corrupt practice’. It is also an electoral offence, punishable under Section 133, with a fine, which may extend to five hundred rupees.
- (ii) With a view to placing effective curbs on this corrupt practice, the Election Commission has issued the following directions:
  - (A) For an election to the House of the People, each contesting candidate, on the day of poll, will be entitled to:
    - (a) One vehicle for his own use in respect of the entire constituency;
    - (b) In addition, one vehicle for use of his election agent in the Parliamentary Constituency;
    - (c) In addition, one vehicle for use of his election agent or workers or party worker, as the case may be, in each of the assembly segments comprised in the Parliamentary Constituency,
  - (B) For an election to the State Legislative Assembly, on the date of poll in that Constituency each contesting candidate is entitled to:
    - (a) One vehicle for his own use;
    - (b) One vehicle for the use of his election agent;
    - (c) In addition, one vehicle for use of his workers or party workers.

**[Clarification:** *It is clarified that, henceforth, the candidate*

*or his agent or party workers or workers will be allowed to use only four/three/two wheeler vehicles i.e cars (of all types) taxis, auto rickshaws, rickshaws and two wheelers. In a four wheeler vehicle not more than 5 persons, including driver, will be allowed to move on the day of poll. It is further clarified that on the day of poll the vehicle allotted for use of candidate or his election agent will not be used by any other person. However, the candidate or his election agent may accompany other persons, subject to a limit of total 5persons, including driver].*

- (C) As mentioned in para 10.5.4 above, the permits for the vehicles being used by the candidates will be issued by the District Magistrate/Returning Officer. They shall display the permits issued on the wind-screen of the vehicles. No other vehicles shall be allowed to be used by the leaders (including ministers) of the political parties. No exception shall be made, irrespective of the status of the candidate.
- (D) The restriction shall apply to all vehicles propelled by mechanical power or otherwise, including but not restricted to taxis, private cars, trucks, tractors with or without trailers, auto-rickshaws, e-rickshaws, scooters, mini buses, station wagons etc., for a period of 24 hours before the time fixed for closure of poll and till the completion of poll.
- (E) Penal action shall be taken under provisions of the Representation of the People Act, 1951 and Chapter IX A of the Indian Penal Code, in addition to the Motor Vehicles Act against the persons violating the above directions. Any vehicle being used in violation of these directions shall be confiscated.
- (F) The Election Commission does not intend to put a complete ban on vehicular traffic on the polling day and thereby create difficulties or cause harassment to the public. For genuine bonafide use for purposes other than election, the following types of vehicles shall be allowed to be plied on the day of poll and there will be no exception:

- (a) Private vehicles being used by the owners, for their private use, not connected with elections;
- (b) Private vehicles being used by owners, either for themselves or for members of their own family for going to the polling booth to exercise their franchise, but not going anywhere within a radius of 200 meters of a polling station;
- (c) Vehicles used for essential services, namely, hospital vans, ambulance, milk vans, water tankers, electricity, emergency duty vans, police on duty, officers on election duty;
- (d) Public transport carriages like buses plying between fixed terminals on fixed routes;
- (e) Taxis, three wheeler scooters, rickshaws etc. for going to airports, railway station, interstate bus stands, hospital, for journeys which cannot be avoided;
- (f) Private vehicles used by sick or disabled persons for their own use;
- (g) Vehicles being used by the Govt. officers on duty to reach their duty point.

#### **10.5.6 Video-Vans**

- (i) Before giving permission to use Video-Vans to a political party for campaign across the State, Chief Electoral Officer shall ensure that such use of vehicle is in accordance with the Motor Vehicle Act. Attention in this context is invited to the judgments dated 23 June 2006 and 14 February 2007 of Allahabad High Court in Writ Petition No. 3648 (MB) of 2006, which inter-alia, lay down necessary guidelines for compliance by the State Governments while dealing with vehicles plying on roads, till State Legislature/Parliament legislates law to provide for some severe punishments to the offenders. The District Election Officers shall ensure that expenditure incurred on such vehicles is proportionately

distributed amongst the expenditure of the contesting candidates of the party in the areas/constituencies where the Vans/Vehicles have been used.

- (ii) It is further clarified that-
- (a) the permission to use Video-Vans for campaign purpose can be granted at Chief Electoral Officer level only. Transport Nodal Officer must submit certificate to the Chief Electoral Officer that the Video-Van is in conformity with the Motor Vehicle Act.
  - (b) any party/candidate seeking permission to use Video-Vans from Chief Electoral Officer should first obtain necessary permission/no objection certificate from the Competent Authority under the Motor Vehicle Act. This certificate is required to ensure the conformity with the Motor Vehicle Act/relevant provision of law and Court Orders, if any.
  - (c) the contents of material for election publicity on Video-Van shall be pre-certified from Media Certification and Monitoring Committees (MCMCs). A Video-Van of the political party should be used only to propagate programmes and policies of the party. Votes or support for any particular candidate should not be solicited. If it is used for seeking votes/support for a particular candidate/candidates then expenditure of Video-Van shall be accounted for such candidate/candidates appropriately. Expenditure Observers shall closely monitor this.
  - (d) though there is no restriction on the number of Video-Van which can be used in a campaign, but the expenditure for it shall be duly included in the election expenditure account of the political party concerned to be submitted to the Election Commission after election, and also apportioned appropriately among the candidates concerned as provided in sub-para (c) above.
  - (e) route of Video-Van to be used for publicity/campaigning



should be informed to local administration/District Election Officer, in advance. In case of violation, the permission for video van may be withdrawn, after due notice, by Chief Electoral Officer.

#### 10.5.7 Use of Bikes for Campaigning

- (i) A question was raised whether restrictions on plying of vehicles as contained in the Election Commission's Order is also applicable to two wheelers, like, motorcycles and scooters and if so, during which period. It was clarified that in the interest of free and fair elections, these instructions apply in respect of all two wheelers, like, motorcycles and scooters (except bicycles) also, for a period of 24 hours before the time fixed for closure of poll and till the completion of poll. These restrictions would not, however, apply to any Govt. servant on duty or to such two-wheeler which is being used to transport a patient or old/infirm persons.
- (ii) Bike is a two wheeler and its use shall also be restricted for campaign purpose. Number of bikes may be restricted as per provisions relating to convoy of ten vehicles (as provided in Para 10.5.2 above) under no circumstances, be allowed to move in convoy of more than ten bikes, excluding the security vehicles. The convoys exceeding ten bikes shall be broken up, irrespective of the fact that they are carrying any Minister of Central or State Government or any other person. This shall, however, be subject to security instructions issued in respect of any such individual. The local administration shall ensure that no person moves in a convoy of vehicles exceeding the limits prescribed, in spite of the convoy having been broken.
- (iii) Use of bikes, other than those permitted for campaign purpose, would be regulated under the prohibitory order, viz Sec 144 Criminal Procedure Code.
- (iv) During the campaign period, only one flag (of maximum dimension of 2 X 1 ft.) shall be permitted on one bike. Length of pole/stick for carrying flag shall not be more than 3 ft.

### **10.5.8 Regulation of Road Shows During Elections**

The Election Commission, to avoid inconvenience to the general public/ commuters during road shows, issued the following instructions-

- (i) Prior permission for road shows shall be taken from the Competent Authority.
- (ii) As far as possible, road shows, subject to court orders and local laws, should be permitted only on holidays and during non-peak hours, on routes other than those having big hospitals, trauma-centers, blood banks and heavily crowded markets.
- (iii) Number of vehicles and persons expected to join the road show shall be intimated in advance.
- (iv) The road show shall not cover more than half the road width to ensure safety of general public and free movement of traffic on the other half.
- (v) Simultaneous plying of number of vehicles on road including e-rickshaws to be limited to 10. In case it exceeds the limit of 10 vehicles then the convoy shall be broken after every 10 vehicles and a gap of 100 mtrs maintained.
- (vi) Safety of public and persons attending the road show shall be ensured. Bursting of fire crackers and carrying of fire arms shall NOT be permitted at all.
- (vii) Loudspeakers can be used as per the Election Commission's existing instruction and subject to local laws and court orders, if any.
- (viii) Display of animals in road shows is totally banned. Children, particularly school children in uniform, should not take part in road shows.
- (ix) The maximum size of banner to be carried with hand will be 6ft X 4ft.
- (x) Only one flag of the size 1 ft X 1/2 ft with the permission of the Returning Officer concerned would be allowed on campaign

vehicles in a road show.

- (xi) No spot/focus/flashing/search lights and hooters shall be put on any campaign vehicle.

#### **10.5.9 Use of Road Transport by Star Campaigners**

- (i) If a political party uses road transport for availing benefit under clause (a) of Explanation given under Sec. 77 (1) of the Representation of the People Act, 1951, the permit will be issued centrally by the Chief Electoral Officer, irrespective of whether the same vehicle is to be used by a leader for election campaigning throughout the State or different vehicles are to be used by such party leader in different areas.
- (ii) The permit will be issued against the name of the person concerned who will display it prominently on the windscreen of the vehicle being used by him/her. The permits so issued by the Chief Electoral Officer will be of distinctly different colors from those issued by the District Election Officers/Returning Officers for candidates. If the vehicle so permitted is also occupied by any other person (other than the leader referred to above), in that case, the 50% expenditure of the same shall be booked in the expenditure of concerned party candidate from that constituency.

#### **10.6 Use of Official Vehicles by Speaker/Deputy Speaker of State Legislative Assembly or Functionaries of Various Boards/Commissions/PSUs-**

10.6.1 As mentioned in CHAPTER 7 ‘TOURS/VISITS OF MINISTERS/ OTHER DIGNATORIES’, the Election Commission has put restriction on use of official vehicles by Ministers during election period. Increasing amplitude of this instruction, the Election Commission has directed that the restrictions on the use of official vehicles for campaigning, electioneering or election related travel will be equally applicable in the case of Speaker and Deputy Speaker of the State Legislative Assembly at the time of General Election to any State Assembly irrespective of fact whether the Speaker and/or the Deputy Speaker of the Legislative Assembly is a contesting candidate or not at the election.

10.6.2 As mentioned in Exception (b) of Para 10.5.1(ii), of this chapter,

the above restriction shall not apply in case of Speaker/Deputy Speaker of Lok Sabha and Chairman (Vice President)/Deputy Chairman of Rajya Sabha visiting the State from other States. However, at the time of General Election to Lok Sabha, the restriction will be applicable in case of Speaker/Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha.

- 10.6.3 Similarly, during the period of Model Code, non-official functionaries viz. Chairman/Deputy Chairman/President/Vice President/Commissioners of various autonomous boards/organization/PSUs will use official vehicles only for commuting between office and residence and to attend official meetings within the headquarters itself. The District Administration will keep strict vigil on the movement of such vehicles and any vehicle found being misused is to be confiscated forthwith.

## **10.7 Bullet Proof Vehicles Provided for Security Reasons**

- 10.7.1 In 1996, the Election Commission issued instructions providing that a person covered by 'Z' + (Z plus) security would be allowed one state owned bullet proof vehicle, where security agencies prescribed such use during the Model Code period. In that instruction, use of multiple cars in name of stand-by was permitted, unless so specially prescribed by security authorities. The cost of propulsion of such bullet proof vehicles would be borne by that particular person whether he is in office or out, and whether he is a candidate or not.
- 10.7.2 In 2007, the Election Commission modified the above instruction to the extent that the cost of propulsion of the bullet proof vehicle, being used by the particular person covered by Z+ security would be borne by the Government and not by the person concerned.
- 10.7.3 The Election Commission, further reconsidering the above issue decided in 2009 that while the political functionaries including SPG protectee provided with bullet-proof vehicles on security consideration may continue to use the bullet proof vehicle during the period of operation of Model Code, the cost of propulsion of such vehicles was to be borne by the person concerned when it was used for non-official purposes during such period. If the person was a leader of political party in terms of

Explanations 1 and 2 under Section 77(1) of the Representation of the People Act, 1951, the expenditure on propulsion of the vehicle would be borne by the political party concerned for any journey referred to in the said Section-77(1). In no case, the expenditure would be borne by the government in such cases.

- 10.7.4 In 2010, the Election Commission modified the instruction and directed that if the use of spare multiple vehicles had been prescribed in the case of an SPG Protectee by the security authorities due to security reasons, the same would be allowed at Govt. cost (except the vehicle used by the SPG Protectee). There should be no objection to the personal staff of the SPG Protectee accompanying the said Protectee in the B.R. car as the cost of propulsion of such bullet proof vehicle was to be paid by the Protectee or his political party where SPG Protectee was a person covered by Section 77(1) of the Representation of the People Act, 1951 (i.e. leader of the Political Party concerned who is called a star campaigner for the party). In case any other political dignitary was to be allowed to accompany the SPG Protectee, if the situation so warranted, then 50% of the cost of the propulsion should be booked in the election expenditure of the party candidate from the particular constituency concerned. It was further clarified that if such companion was also a star campaigner under the said Section 77(1) no such apportionment of expenditure should be called for.
- 10.7.5 The Election Commission received a reference in 2011, seeking clarification as to whether the political functionaries, who had been provided with bullet proof vehicles on security considerations, if they used such vehicle on payment basis for election campaign, could allow other persons also to travel along with them. The Election Commission decided that there would be no objection, if any other person, including a political functionary or candidate, travels along with a Z+ category political functionary, who has been provided with bullet proof vehicle and for which payment is being made by him or his party. It was further clarified that where the political functionary provided with bullet proof car is a ‘Star Campaigner’ in terms of Explanation (2) to Section 77(1) of the Representation of the People Act, 1951, the expenditure on the use of bullet proof car would not be deemed to be expenditure

incurred or authorized by any candidate. If such political functionary is, however, not a Star campaigner, the expenditure on use of bullet proof car would be included in the account(s) of the candidate(s) in relation to whose election campaign such car is used.

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## CHAPTER 11

# USE/REQUISITION OF HELICOPTERS/ AIRCRAFTS

### **Main topics discussed in the Chapter :-**

- Chartering of Aircrafts and Helicopters
- Maintenance of Record of Non-Scheduled Flights
- Maintenance of Proper Record by District Administration
- Clarification Regarding Use of Private Fixed-Wing Aircraft and Helicopters for Polling/Counting

### **11.1 Introduction**

Political parties hire aircraft/helicopters for star campaigners or high dignitaries like Chief Ministers or Ministers for electioneering. In 1994, The Election Commission issued minimum conditions for procedure to be followed with chartering government/PSU owned aircrafts/helicopters to make the same equitable for all political parties.

### **11.2 Chartering of Aircrafts and Helicopters**

11.2.1 Subsequently, the Election Commission issued further instructions putting restriction on use of aircraft owned by government/public sector undertaking by political functionaries including Chief Minister and Ministers. The only exception

was made for Prime Minister. Requests have been received for some Chief Ministers for relaxation of these restrictions for various reasons including those of security, but the Election Commission has not relaxed the restriction. The Election Commission's existing restrictions do not however prohibit use of private aircraft by such political functionaries including Chief Ministers. The Election Commission makes it clear that such political functionaries including Chief Ministers may, if required, hire private aircrafts and use them for their political campaign and other election related activities. The expenses of use of such aircrafts can be paid for by the concerned political parties and have to be accounted for suitably in their accounts.

### **11.3 Maintenance of Record of Non-Scheduled Flights**

It is important that full records of all such non-scheduled flights are maintained by

the appropriate authorities as required under law and relevant rules. Details like passenger manifests, exact times of departure and arrival of aircrafts at specified places need to be maintained. Election Commission may seek information on these details to verify complaints which are received from time to time. Accordingly, the appropriate authorities of the Central and State Governments shall be allotted to keep meticulous records of these details.

#### **11.4 Maintenance of Proper Record by District Administration**

During the period political parties using helicopters/aircraft, for election campaign and other purposes they may be requested to intimate three days in advance, regarding their itinerary and the details of persons who will travel and the materials that will be carried in the helicopters/aircrafts. The District Administration/District Election Officers should maintain a log book and enter the details of the helicopters/aircrafts which landed and took off in/from the districts and details of persons travelling in the said aircraft/helicopter, purpose of the travelling and whether permission was taken for landing. The District Election Officers shall send daily reports about arrival and departure of such helicopters/aircrafts to the Chief Electoral Officer, with an endorsement to the Election Commission.

#### **11.5 Clarification Regarding Use of Private Fixed-Wing Aircraft and Helicopters for Polling/Counting**

11.5.1 A question was raised whether the leaders of political parties can be permitted to supervise and monitor the process of polling and counting by using private fixed-wing aircrafts and helicopters for movement from constituency to constituency on the days of poll and counting. The Election Commission considered the question. It has maintained that the supervision and monitoring of the polling and counting process by these leaders would amount to interference in the performance of the functions of the Election Commission. Further, for the leaders categorized under various security grading adequate security precautions will have to be taken and security covers provided to them if they move from constituency to constituency. On the days of polling and counting, the police and other security personnel are fully engaged in providing protection to voters, polling parties and polling materials in and around polling stations and counting centres, and in patrolling duties



in the constituencies for maintaining proper law and order and peaceful atmosphere. Any disturbance or distraction in these arrangements to provide security to the leaders of political parties on the move from constituencies to constituencies may have serious impact on the conduct of free and fair poll and smooth and peaceful elections. It would also mean extra strain on the administrative machinery at the district and the sub-divisional levels. Further, their movement, particularly on the days of poll, might also be taken as campaign during the prohibited period of 48 hours. Besides, use of private fixed-wing aircrafts and helicopters by the leaders of political parties on the days of poll and counting would add considerably to the already mounting election expenses. It would be a retrograde step in the direction of reasonable curbs on high expenditure on elections, apart from disturbing the level playing field as the political parties with smaller resources would be placed at disadvantageous position.

- 11.5.2 Having regard to all the above considerations, the Election Commission decided that no leader of a political party shall use private fixed-wing aircraft and helicopters for the purposes of supervising and monitoring the polling and counting process on the days of poll and counting.
- 11.5.3 The Election Commission also decided that the Director General of Civil Aviation shall keep the above directions in view and shall not permit the flights of private fixed-wing aircrafts and helicopters for movements of leaders of political parties for the above purpose on the days of poll and counting, except with the prior permission of the Election Commission in the case of any emergencies.

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## CHAPTER 12

# USE OF SCHOOL GROUNDS/PUBLIC PROPERTIES

### **Main topics discussed in the Chapter:-**

- Use of School/College Premises/Grounds
- Restriction on Use of Public Properties for Political Advertisements
- Restriction on Use of Buses Plying under State Transport Authority for Political Advertisements

### **12.1 Introduction**

For the purpose of holding public meetings in the course of their election campaigns, political parties require big *maidans*, parks, play-grounds, etc. In many cities and towns, political parties often face scarcity of such grounds for their public meetings and they often approach the Election Commission for use of school/college grounds for holding their public meetings. Apart from making a provision in the Model Code of Conduct itself in Part VII (ii) that the parties in power shall not monopolize public places such as *maidans* for holding their election meetings and for using as helipads for helicopters/

aircrafts, the Election Commission has issued clear instructions on the use of play grounds of schools, colleges and other educational institutions and other public properties, which the authorities concerned will have to keep in mind while issuing necessary permission.

### **12.2 Use of School/College Premises/Grounds**

12.2.1 The Election Commission has allowed use of school/college grounds for political meetings provided that:

- (i) academic calendar of school/college is not disturbed under any circumstances.
- (ii) the school/college management has no objection and prior permission for such campaigning is obtained from them as well as Sub Divisional Officer concerned.
- (iii) such permission is granted on first-come-first served basis and no political party is allowed to monopolize use of such grounds.

- (iv) there is no order/direction of any court prohibiting use of any such premise/ground.
- (v) the political parties/candidates/campaigners shall ensure that no Model Code norms are violated.
- (vi) any violation in allotment of school/college grounds for political meetings will be viewed seriously by the Election Commission. The accountability in this regard lies with the Sub Divisional Officer.

12.2.2 The political party which has been permitted to use grounds for campaigning purpose will be responsible to return the ground to school/college authority concerned, without any damage or with the requisite compensation for the damage caused, if any.

### **12.3 Restriction on Use of Public Properties for Political Advertisements**

12.3.1 While prohibiting use of space in public places/public properties like railway stations, government dispensaries/hospitals, post offices, bus stands, airports, bridges, railways flyovers, roadways, government buses, government/public buildings/premises, civil structures, electric/telephone poles, municipal/local bodies buildings, etc. for political advertisements, the Election Commission has directed that no wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted during election period as part of election campaign.

12.3.2 It is further directed that subject to relevant law or court order, if any, the government departments (whether central or state) local authorities, joint sector undertakings etc., municipalities, municipal corporations, marketing boards etc., while entering into a contract for providing space for publicity purpose with private advertising agencies, shall make a provision in the contract that use of the assets for political advertisement during the period Model Code will be subject to directions of the Election Commission.

12.3.3 The above restriction shall also apply in case of building/premises owned by PSUs and they shall be treated at par with government buildings for that purpose.

12.3.4 In case there is no specific provision in the bye-laws of PSUs or in their agreements with the advertisement agencies (to whom they might have let out space for advertisements) for prohibiting display of political advertisement, PSUs may be instructed to add a para in their agreements with commercial agencies/companies while providing space on lease to the advertisement agency for placing commercial advertisements that “No political advertisement shall be displayed/pasted at the space provided on lease for commercial advertisement during the period of Model Code of Conduct. If there is any political advertisement in the provided space, the same shall be removed immediately on enforcement of the Model Code of Conduct”.

## **12.4 Restriction on Use of Buses Plying under State Transport Authority for Political Advertisements**

12.4.1 State Road Transport Corporation buses and buses owned by Municipal Corporation etc. and other government owned vehicles shall not be used for display of political advertisement during the period when Model Code is in force.

12.4.2 If local law expressly permits or provides for slogan writing, display of posters, erecting of cut-out/hoardings etc. for political advertisements in any public place on payment basis or otherwise, then it may be allowed, strictly in accordance with the relevant provisions of law and subject to court orders, if any, on this subject. The District Election Officer should ensure that such space is equitably distributed and it is not dominated by any particular party/candidate.

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## CHAPTER 13

# USE OF NATIONAL FLAG/PARTY FLAGS/ PARTY BANNERS

### **Main topics discussed in the Chapter:-**

- Use of National Flag
- Use of Party Flags/Banners by Party Workers at their Residences
  - ✓ Number of party flag to be displayed
- Number and Size of Banners/Flags to be Displayed on Vehicles
- Campaign Related Items

### 13.1 Use of National Flag

13.1.1 During election campaigning, political parties/candidates sometimes use National Flag. A petition was filed in the High Court of Allahabad seeking directive to the Central Government, State Government of Uttar Pradesh and the Election Commission not to allow use of national flag in rallies of political parties. The High Court while disposing of the petition by its order dated 30 January, 2014 observed that there is no prohibition of proper use of national flag by political parties in rallies and that it is the bounden duty of the authorities concerned to ensure strict compliance and observation of the provisions of the Flag Code and the provisions of Emblem and Names (Prevention of Improper use)

Act, 1950 and the Prevention of Insults to National Honour Act 1971. (Annexure XIV)

13.1.2 In a bye election in 2017, it was brought to notice of the Election Commission that during campaign a dummy coffin of a departed political leader wrapped in national flag was used for electoral gains. The Election Commission considered it inappropriate. The Election Commission directed that the authorities concerned were bound to observe strictly and comply with the provisions of the Flag Code, Emblem and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 for proper use of national flag in rallies by political parties. On a reference from the Chief Electoral Officer, Punjab sending a request from the Chief Minister of Punjab who was campaigning in Rama Mandi to allow him to travel to Ferozpur for hoisting the National Flag on 26 January, 2012. The

Election Commission, while allowing, in this regard directed that the Ministers should not hoist flags in their home districts nor in the districts in which the constituencies from where they were contesting elections, are located.

## **13.2 Use of Party Flags/Banners by Party Workers at their Residences**

- 13.2.1 Subject to restrictions under any local law or any court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, buntings, flags, cut-outs, on their own property, provided they do so on their own volition, voluntarily and without any pressure from any party, organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else. If such display of banners, flags etc. aims to solicit vote for any particular candidate, then the provisions of *Section 171H* of the Indian Penal Code would be attracted and necessary action should be taken under the said provisions.

*[Section 171H of the Indian Penal Code stipulates that whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate].*

- 13.2.2 Number of party flag to be displayed:** There should be only three number of flags of a party/candidate to be used at party workers’/ supporters’ residence and at party offices. In case, some person wants to display flags of more than one party or candidate, then it shall be restricted to only one flag of each party/candidate. Display of flags would be subject to local law and court orders, if any. However, the expenditure shall be strictly accounted for as per existing directions of the Election Commission.

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### 13.3 Number and Size of Banners/Flags to be Displayed on Vehicles

13.3.1 As for maximum number and size of party flag to be used by party workers on vehicles, Election Commission has instructed as follows:

- (i) Two wheelers- One flag of maximum size 1ft X ½ ft. may be permitted on one two wheeler including bike. No banner shall be allowed. 1 or 2 small stickers of appropriate size may be permitted on each vehicle.
- (ii) Three wheelers, four wheelers, e-rickshaws- One flag of maximum size 1ft X ½ ft. No banner will be allowed. 1 or 2 small stickers of appropriate size may be permitted on each vehicle.
- (iii) As for a road show, only one flag of the size of 1 ft. X ½ ft. would be allowed by the Returning Officer on a campaign vehicle.
- (iv) Length of pole/stick for carrying flag shall not be more than 3 feet.
- (v) It is clarified that if a party is having a pre-poll alliances/seat sharing arrangement with another party then campaign vehicle of a candidate/political party may display one flag each of such parties.
- (vi) During a road show, the maximum size of a banner to be carried out with hand will be 6 ft. X 4 ft.

13.3.2 While using flags or stickers on any vehicle, due care shall be taken that visibility of the driver (of concerned vehicle or any other vehicle on road), and any passenger from front or rear view is not hampered in any manner.

13.3.3 No spot/focus/flashing/search lights and hooters shall be put on any campaign vehicle.

13.3.4 No person shall put any flag or banner or sticker of big size on any vehicle except with prior permission of the Competent Authority, and subject to the relevant provisions of law and court direction/orders, if any.

13.3.5 Chief Electoral Officer shall ensure that all the local law, court's directions/orders and provisions of Motor Vehicle Act are uniformly applied throughout the State.

### **13.4 Campaign Related Items**

Subject to accounting for the expenditure, the Election Commission has permitted the following campaign related items:-

- (i) In processions and rallies etc., flags, banners, cutouts etc. can be carried subject to local laws and prohibitory orders in force;
- (ii) In such procession, wearing of special accessories like cap, mask, scarf etc. supplied by political party/candidate may be permitted. However, supply of main apparels like saree, shirt, etc. by party/candidate is not permitted.

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## CHAPTER 14

# USE OF LOUDSPEAKERS

### **Main topics discussed in the**

#### **Chapter:-**

- ✓ Duration of use of loudspeakers during elections
- ✓ Permission to use loudspeakers a must
- ✓ Restriction on use of loudspeakers during the last 48 hours
- ✓ Sound must be within permissible limit

### **14.1 Introduction**

14.1.1 Loudspeaker is the most common and effective mode of election campaign in India because of its loud sound and mobility. With a loudspeaker mounted on a vehicle, a political party/candidate can reach to a large number of electorate simultaneously in every nook and corner of a locality. But due to its high decibel, loud speaker is a serious menace to environment. It disturbs to various sections of society like sick/infirm/old age people/students or house hold animals. To strike a balance between right of political parties to use loudspeakers as means of election campaign on one hand and right of general public on the other hand, the Election Commission issued some regulations on 13 January, 1994, which, inter alia, provided for time for use of loudspeakers between 8 a.m. to 7 p.m with prior permission from authorities during the period from announcement of election to declaration of results.

14.1.2 At the time of some bye-elections in Tamil Nadu in May 1994, these instructions were challenged by AIADMK before the Madras High Court, which stayed the operation of the Election Commission's order. The Election Commission filed an appeal in the Supreme Court against the High Court's order. The Supreme Court set aside the High Court's order and while modifying the Election Commission's order allowed use of loudspeakers between 6 a.m. and 10 p.m.

### **14.2 Consolidated Instructions**

14.2.1 On 26 December 2000, the Election Commission issued fresh consolidated instructions superseding all its earlier instructions on the subject. These were modified vide letter dated 26.09.2005 (**Annexure-**

**XV).** The instructions provide:

- (i) **Duration of use of loudspeakers during elections:** A public address system or loudspeaker or any sound amplifier, whether fitted on vehicles of any kind whatsoever, or in static position, used for public meeting for electioneering purposes, shall not be used at night between 10.00 p.m. and 6.00 a.m.
- (ii) Use of loudspeakers, whether for general propaganda or for public meetings or procession, and whether fitted on moving vehicles or otherwise, shall be restricted during the hours mentioned above and not beyond.
- (iii) Loudspeakers being used beyond the hours as prescribed above, shall be confiscated along with all apparatus connected.
- (iv) **Permission to use loudspeakers a must:** The political parties/candidates/any other persons using loudspeakers on moving vehicles, including but not restricted to trucks, tempos, cars, taxis, vans, three wheeler scooters, cycle rickshaws, etc. shall intimate registration identification number of those vehicles to the authorities granting permission to use loudspeakers and such registration identification numbers of the vehicles shall be indicated on the permits granted by the authorities concerned.
- (v) Any vehicle on which a loudspeaker is used without the said written permit shall be confiscated forthwith along with the loudspeaker and all the apparatus used.
- (vi) All political parties, candidates and even other person using a loudspeaker either on a moving vehicle or at a fixed place shall intimate -
  - (a) the Returning Officer of the Constituency, and
  - (b) local Police authorities, in writing, the full details of the permits obtained by them before using any of those loudspeakers. In the case of mobile loudspeakers, the registration identification numbers of the vehicles shall also be registered by them with the Returning Officer and the

local Police authorities.

- (vii) It shall be the responsibility of the State Government authorities granting permits for use of loudspeakers and the local Police authorities to strictly enforce that no loudspeaker is used by anyone in violation of the above directions,

**14.2.2 Restriction on use of loudspeakers during the last 48 hours:** No loudspeakers fitted on vehicles of any kind or in any other manner whatsoever shall be permitted to be used during the period of 48 hours ending with the hour fixed for the conclusion of the poll in any polling area. Even after the close of poll, proper law and order is required to be maintained till completion of election after the declaration of result. Use of loudspeakers is generally regarded as source of public nuisance and can often give rise to tension in a politically surcharged atmosphere. The District Administration should, therefore, consider any application for permission to use loudspeakers after the aforesaid prohibitory period of 48 hours, on merit of each application and keeping in view the need to maintain proper law and order till the completion of election.

**14.2.3 Sound must be within permissible limit:** The Election Commission has further directed that it should be ensured by the concerned authorities of state pollution control boards that decibels of the sound generated by loud speakers/amplifiers doesn't exceed the permissible limit as fixed under relevant law/guidelines. The District Election Officers shall monitor this by putting suitable mechanism, in place.

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## CHAPTER 15

# PRINTING OF PAMPHLETS/POSTERS

### **Main topics discussed in the**

#### **Chapter:-**

- Surrogate Advertisements
- Action in case of Advertisements with Traceable Source
- Hoardings/Flex Boards within Meaning of 'Poster'

### **15.1 Introduction**

15.1.1 During elections, political parties or candidates or their supporters resort to publication of political advertisements through print media or election pamphlets/posters for distribution among voters. Sometimes, these published materials do not bear name and identity of the publisher. To restrict publication of such political advertisements, the election law has made a provision in the Representation of the People Act, 1951, in form of Section 127A.

15.1.2 Section 127A of the Representation of the People Act, 1951, states that-

- (1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.
- (2) No person shall print or cause to be printed any election pamphlet or poster-
  - a) Unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate, and
  - b) Unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document;
    - (i) Where it is printed in the capital of the State, to the Chief Electoral Officer
    - (ii) In any other case, to the direct magistrate of the

district, in which it is printed.

- (3) For the purposes of this section:-
  - (a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression “printer” shall be construed accordingly; and
  - (b) “election pamphlet or poster” means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.
- (4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both”.

## **15.2 Surrogate Advertisements**

It has been observed that surrogate advertisements appear in print media, especially newspapers, for and against particular political parties and candidates during election period. In many cases such advertisements are for the prospects of election of a particular candidate. As per Section 77(1) of the Representation of the People Act, 1951, expenditure involved in such advertisements in connection with the election of any candidate has to be added to the account of election expenses of the candidate, required to be maintained under that Section. Further, Section 171H of the Indian Penal Code, 1860, prohibits incurring of expenditure on, inter-alia, any advertisement, circular or publication, for the purpose of promoting or procuring the election of a candidate, without authority from the candidate. The surrogate advertisements defeat the purposes of the aforesaid provisions of law.

**15.3** In order to sub-serve the requirements of the provisions of law as mentioned above, the Election Commission has directed that in the case of any advertisements/

election matters for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter/advertisement.

#### **15.4 Action in case of Advertisements with Traceable Source**

In case of advertisements, the source of which is traceable, the following action may be taken:-

- (i) if the advertisement is with the consent or knowledge of the candidate, it will be treated to have been authorized by the candidate(s) concerned and will be accounted for in the election expenses account of the candidate(s);
- (ii) if the advertisement is not with the authority from the candidate, then action may be taken for prosecution of the publisher for violation of Section 171H of the Indian Penal Code, 1860, (incurring expenditure in advertisement without written authority from the candidate(s) concerned).
- (iii) if the identity of the publisher is not indicated in the advertisement, then the newspaper concerned may be contacted and information may be obtained, and appropriate action, as above may be considered.

#### **15.5 Hoardings/Flex Boards within Meaning of ‘Poster’**

The hoardings, flex boards, etc. containing any election related advertisement have to be treated as coming within the meaning of ‘poster’ mentioned in Section 127A of the Representation of the People Act, 1951. As such the requirement for giving the name and address of the publisher should be followed in the case of hoardings, flex boards, etc., including hoardings of photos of party leaders.

- 15.6** As regards the provisions of sub-section (2) of Section 127A, the Election Commission has directed that before displaying hoardings, flex boards, etc., prior permission is required to be obtained from the owner of the property. In case of such materials whether in public place or in private premises, the party/candidate concerned has to give information to the Returning Officer as per the prescribed format along with two photographs of such hoardings/flex boards. **(Annexure XVI)**

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## CHAPTER 16

# DEFACEMENT OF PUBLIC/PRIVATE PROPERTY

### **Main topics discussed in the**

#### **Chapter:-**

- Defacement of Public Places
- Defacement of Private Places
- Defacement of Halls, Auditoriums and Other Government Owned Properties
- Defacement of Vehicles
- Timeline for Removal of Unauthorized Defacement

### **16.1 Introduction**

16.1.1 Clause (6) of Part I of the Model Code of Conduct for the Guidance of Political Parties and Candidates provides that:

No political party or candidate shall permit its or his followers to make use of any individual's land, building, compound wall, etc., without his permission for erecting flag-staffs, suspending banners, pasting notices, writing slogans etc.

16.1.2 But it is observed that at the time of elections, political parties indulge in defacement of public as well as private buildings, by sticking posters and wall writings and sometimes without permission of owners of the buildings. After elections are over, the

cost of removing the posters and wall writings are borne by the public exchequer in case of a public building, and the individuals in case of private buildings. In either case, it is the general public at large which has to bear the loss for no fault of theirs'.

16.1.3 Some States have local laws under which the authorities are empowered to prevent such defacement and bring to book the defaulters. There was a special enactment in the State of West Bengal called the West Bengal Prevention of Defacement of Property Act (which was later on repealed) to deal with the menace. The Election Commission recommended the enactment of similar provisions in other states also. Some of the state governments passed legislations. Infact, except a few states, namely, Assam, Gujarat, Kerala, Manipur, Meghalaya, Orissa, Rajasthan, Uttar Pradesh and West Bengal and Union Territories of Dadra & Nagar Haveli, Daman & Diu and Lakshadweep, all states have now their own

state laws.

16.1.4 On 5 January 1994, the Election Commission issued instruction to ensure strict compliance with the provisions of the local laws relating to prevention of defacement of property and to prosecute and proceed against those who were indulging in the violation of those laws. Main highlight of this instruction was that the party/association/body/candidate or any other person who had written or painted or pasted any slogans, symbols or posters on any public or private building without written permission of the owner of the building should be required to get the defaced walls and buildings whitewashed or painted at its/his cost so as to restore them to the original position.

## 16.2 Consolidated Instructions

16.2.1 The Election Commission's above instruction made a salutary effect on the cleanliness of the public and private properties and reduced the expenditure of political parties and candidates considerably. However, it was noted that despite several states having enacted state laws, there was no uniformity throughout the country and therefore, a need was felt for comprehensive guidelines on defacement of property for guidance of political parties, law enforcing authorities and the Election Commission's observers deployed during elections. Accordingly, the Election Commission issued fresh detailed guidelines superseding all earlier instructions on 7<sup>th</sup> October, 2008 (**Annexure XVII**). With subsequent modifications, the latest instructions in respect of defacement of property are as follows:-

### (i) Defacement of Public Places

- (a) No wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted on any Government premises (including civil structures). A Government premise would include any government office and the campus wherein the office building is situated.
- (b) If the local law expressly permits or provides for writing of slogans, displaying posters, etc., or erecting cut-outs,



hoardings, banners, political advertisements, etc., in any public place, (as against a government premises) on payment or otherwise, this may be allowed strictly in accordance with the relevant provisions of the law and subject to Court orders, if any, on this subject. It should be ensured that any such place is not dominated/monopolized by any particular party(ies) or candidate(s). All parties and candidates should be provided equal opportunity in this regard.

- (c) If there is a specifically earmarked place provided for displaying advertisements in a public place, e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period.

**(ii) Defacement of Private Places**

- (a) In the States where there is no local law on the subject, and subject to the restrictions under the law where there is a law, temporary and easily removable advertisement materials, such as flags and banners may be put up in private premises with the voluntary permission of the occupant. The permission should be an act of free will and not extracted by any pressure or threat. Such banner or flag should not create any nuisance to others. Photo-copy of the voluntary permission in writing obtained in this connection should be submitted to the Returning Officer within 3 days of putting up the flags and banners.
- (b) In those states where the state/local defacement law specifically prohibits display of flags, banners, hoardings etc., the provisions in the law will strictly apply and such material shall not be displayed on private property or

property in public view;

- (c) If the state/local law does not so specifically prohibit display of flag or hoarding or banner, etc. on private property, then such material (flag, banner, hoarding) can be allowed to be displayed on private property, on own volition of the owner/occupier of the property, subject, however to any court decision/direction to the contrary. In the case of display on others’ property, prior permission should be obtained from the owner/occupier concerned.
- (d) If the local law does not expressly permit wall writing, pasting of posters, and similar other permanent/semi-permanent defacement which is not easily removable, the same shall not be resorted to under any circumstances, even on the pretext of having obtained the consent of the owner of the property. This will also apply in the states where there is no local law on the subject of prevention of defacement of property.
- (e) Where the local law expressly permits wall writings and pasting of posters, putting up hoardings, banners, etc. on private premises with the owner’s permission, the contesting candidates or the political parties concerned shall obtain prior written permission from the owner of the property and submit photocopy of the same within 3 days to the Returning Officer or an officer designated by him for the purpose, alongwith a statement giving the particulars in the prescribed format. The statement in such cases and in the cases mentioned in sub-para (a) above should clearly mention the name and address of the owner of the property from whom such permission has been obtained, and expenditure incurred or likely to be incurred for the purpose.
- (f) Nothing inflammatory or likely to incite disaffection amongst communities shall be permissible in wall writings/ displays.

- (g) The expenditure incurred in such specific campaign of candidate(s) shall be added to the election expenditure made by the candidate. Expenditure incurred on exclusive campaign for a political party (without mentioning any candidate) shall not be added to candidate's expenditure.
- (h) The contesting candidate shall furnish such information village/locality/town-wise, to the returning officer, or the authorized officer within 3 days of obtaining the requisite permission, for easy checking by the officers or the election observer.
- (i) Subject to restrictions under any local law or any court orders in force, the political parties/candidates/their agents/workers and supporters may put banners, buntings, flags, cut-outs, on their own property, provided they do so on their own violation, voluntarily and without any pressure from the party/organization or/ any person. It should be ensured that these do not cause any inconvenience in any manner to anyone else. If such display of banners, flags etc. aims to solicit vote for any particular candidate, then the provisions of Section 171H of the Indian Penal Code, 1860 would be attracted and would have to be followed. [Section 171H of the IPC stipulates that whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisements, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate].

**(iii) Defacement of Halls, Auditoriums and Other Government Owned Properties**

In case of hall/auditoriums/meeting venues owned/controlled by the Government/local authorities/PSUs/cooperatives, there is no objection to use them if the law/guidelines governing their use do not preclude political meetings. However, it shall be ensured that the allocation is done on equitable basis and that there is no monopolization by any political party or candidate. In such venues, displaying of banners, buntings, flags, cut-outs, may be permitted during the period of meetings subject to any restrictions under the law/guidelines in force. Such banners, flags, etc. shall be got removed by the party/individual who used the premises, immediately after the meeting is over. Permanent/semi-permanent defacement such as wall writing/pasting of posters etc. shall not be permitted in such premises.

**(iv) Defacement of Vehicles**

- (a) In private vehicles, subject to the provisions of the Motor Vehicles Act and made rules thereunder and subject to court orders in force, if any, flags and stickers can be put on the vehicles by the owner of the vehicle on his own volition, in such a manner that they do not cause any inconvenience or distraction to other road users. If such display of flags and stickers aims to solicit vote for any particular candidate, then the provisions of Section 171H of the Indian Penal Code, 1860 would have to be followed.
- (b) On commercial vehicles, display of any flag, sticker etc. shall not be permitted, unless such vehicle is a vehicle being validly used for election campaign after obtaining the requisite permit from the district election officer/returning officer and the said permit is displayed, in original, on the wind screen of the vehicle.
- (c) External modification of vehicles including fitting of loudspeaker thereon, would be subject to the provisions of the Motor Vehicles Act/Rules and any other local act/rules.

Vehicles with modifications and special campaign vehicles like Video Rath etc., can be used only after obtaining the requisite permission from the competent authorities under the Motor Vehicles Act.

- 16.2.2 If any political party/association/candidate/person indulges in defacement of any property in violation of the local law, if any, or the above instructions, the returning officer/district election officer shall issue notice to the offender for removing the defacement forthwith. If the political party/association/candidate/person does not respond promptly, the district authorities may take action to remove the defacement, and the expenses incurred in the process shall be recovered from the political party/association/candidate/person responsible for the defacement. Further, the amount also shall be added to the election expenditure of the candidate concerned, and action should also be initiated to prosecute the offender under the provisions of the relevant law (under the law relating to preventions of defacement, if any, or under the provisions of the general law for causing willful damage to the property of others).

### **16.3 Timeline for Removal of Unauthorized Defacement**

The Election Commission has fixed the following timelines for removal of unauthorized display of electioneering material:-

- (i) Defacement of Government property- For this purpose, a Government premise would include any Government office and the campus wherein the office building is situated. All wall writing, posters/papers or defacement in any other form, cutout/hoardings, banners, flags etc, on Government property shall be removed within 24 hours from the announcement of elections by the Election Commission.
- (ii) Defacement of public property and misuse of public space- All unauthorized political advertisements, in the form of wall writings/posters/papers or defacement in any other form, cutouts/hoardings, banners/flags etc. at public property and in public space like railway stations, bus stands, airports, railway bridges, roadways, government buses, electric/telephone poles, municipal/local bodies' buildings etc., shall be removed within 48 hours from the announcement of elections.

- (iii) Defacement of private property- Subject to any local law and Court's direction, all unauthorized political advertisements displayed at a private property, shall be removed within 72 hours from the announcement of elections by the Election Commission.

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## CHAPTER 17

# BAN ON SALE OF LIQUOR

### **Main topics discussed in the**

#### **Chapter:-**

- Statutory Restriction
- Restriction during the last 48 hours and day of poll/repoll
- Restriction on day of counting
- Additional Measure to Check Use of Liquor to Bribe Voters

### **17.1 Introduction**

Liquor is generally believed to be in great demand during any elections. It is a common belief that liquor and other intoxicants are offered as inducement to electors, particularly poor electors, to colour their judgement and to garner their votes. That apart, excessive consumption of liquor and other intoxicating drinks often gives rise to ugly scenes, and sometimes even to violence, disturbing public order and creating law and order problems.

Therefore, some restrictions in one form or the other on the sale, storage and serving of liquor and other intoxicants at the time of every election have been in force from the very beginning.

### **17.2 Statutory Restriction**

17.2.1 Prior to August 1996, there was no specific provision in the election law prohibiting sale of liquor, etc, during the election period. In August 1996, however, an express provision to that effect was made in the Representation of the People Act, 1951, by the insertion of a new Section 135C therein, by the Representation of People (Amendment) Act, 1996. Sub-section (1) of the new 135C provides that:

*No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.*

17.2.2 Sub-section (2) of that section makes any contravention of the above provisions an electoral offence, punishable with imprisonment for a term extending upto six months, or with fine extending upto Rs. 2,000 or with both. Under sub-section (3) thereof, any spirituous, fermented

or intoxicating liquors or other substances of a like nature found in the possession of the person contravening the above provisions are liable to confiscation and disposal in such manner as may be prescribed. However, no such manner has so far been prescribed for the disposal of the confiscated liquors, etc. under the Act.

### 17.3 Election Commission Instructions

**17.3.1 Restriction during the last 48 hours and day of poll/repoll:** With the above amendment to the law in August, 1996, the Election Commission revised its directions on 21 September 1996, asking the state governments only to ensure that the liquors shops and vends remain closed during the period of 48 hours prescribed in Section 135C of the Representation of the People Act, 1951 and during the period of poll. The Election Commission has clarified that the same restrictions will also apply on the date of repoll, if any, in any constituency. The Election Commission has instructed that steps shall also be taken to prohibit sale of liquor in adjoining areas of concerned constituency(ies) (even in the neighbouring states) so that there is no chance of clandestine movement of liquor from those areas where the restriction has not been in operation.

**17.3.2 Restriction on day of counting:** Though the law does not make any provision for closure of liquor shops during the counting period, still the Election Commission instructs the state governments to issue appropriate orders under the relevant state laws for observance of ‘dry days’ on the day(s) of counting.

### 17.4 Additional Measure to Check Use of Liquor to Bribe Voters

The Election Commission has directed to State authorities to launch special drives to unearth illicit liquor-making factories and other bootlegging activities. Further, special watch has to be kept on sale of liquor even by the authorized outlets during the period from the date of notification of election till the date of poll by:

- (i) closely monitoring the production of IMFL, beer, country liquor with reference to production figures in previous year;
- (ii) watching the off take of IMFL, beer, country liquor from central



- stocks and if there are major deviations then a follow-up trial should be established;
- (iii) ensuring that stock limits of licensed stockists, in no case, exceed permissible limits. Furthermore, all major stock points should be placed under video surveillance round the clock and excise pickets with police help be posted at these points,
  - (iv) daily receipt and offtake of retails sellers should be monitored. Excise department officials should submit it every evening to the district election officer who would take action on suspicious offtake,
  - (v) opening and closing time of liquor vending shops must be meticulously followed.
  - (vi) intensive vigil over inter-state movement of vehicles at RTO check posts and border check posts by excise staff should be kept by special enforcement staff under the state excise department,
  - (vii) for effective checking of the vehicles at border check posts, assistance of transport department should be obtained and joint checking of vehicles by excise and transport officers should be carried out,
  - (viii) inter-state co-ordination among excise commissioners of bordering states should be done for monitoring of inter-state movement of IMFL, beer and country liquor;
  - (ix) district-level nodal officers and state-level nodal officer of excise department should be identified to monitor the above aspects and conduct raids to seize illicit liquor;
  - (x) district-level nodal officer will submit daily reports to the state-level nodal officer with copy to the district election officer concerned and the state-level nodal office will, in turn, submit daily report on excise activity of the entire state to the chief electoral officer with a copy to the expenditure monitoring cell in the Election Commission.

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## CHAPTER 18

# ELECTION MANIFESTOS

### **Main topics discussed in the Chapter:-**

- Supreme Court Directives on Election Manifestos
- The Election Commission's Guidelines on Election Manifestos
- Election Manifesto Not Legally Enforceable

### 18.1 Introduction

18.1.1 Political parties normally release their manifestos on the eve of elections, containing the declared ideology, in general, and their policies and programmes for the people and electorate, in particular, in the context of the coming elections. Election Manifesto serves as a reference document or benchmark for the public at large for what a political party stands for and what it offers or promises to offer to the electorate, in particular, if it comes to power. The manifestos thus afford an opportunity to the electorate to weigh and analyse the relative

merits of the parties and decide which of them deserves their support at the hustings to meet their expectations and aspirations.

18.1.2 Earlier, political parties were generally not issuing manifestos. This is a recent phenomenon as multiple political parties at the national and state levels are now vying to woo the electorate to gain power in the election fray by making more attractive offers to the people to induce them to vote in their favour. In this competitive race, they not only project their policies and programmes for the common good of the people at large, but also make promises of certain tangible materials, which are now being called in common parlance as ‘freebies’.

### 18.2 Supreme Court Directives on Election Manifestos

18.2.1 On the eve of general elections in the State of Tamil Nadu in 2006, certain civil society organisations and private individuals approached the Madras High Court questioning the promises of certain gift items in the manifestos of the prominent political parties. The High Court (Madurai Bench) saw no merit and dismissed the writ petition (No. 9013 of 2006-S. *Subramaniam Balaji v The Government of Tamil Nadu & Ors*). The

matter was taken by the petitioner to the Supreme Court. The Supreme Court, by its order dated 5 July 2013, maintained that although the law is obvious that the promise in the election manifesto cannot be construed as ‘corrupt practice’ under Section 123 of the Representation of People Act, 1951, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people.

- 18.2.2 The Hon’ble Court further stated that it has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past, has been issuing instructions under Model Code. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections.
- 18.2.3 The Supreme Court added that considering that there is no enactment that directly governs the contents of the election manifesto, the Court hereby directs the Election Commission to frame guidelines for the same in consultation with all the recognized political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power etc. In the similar way, a separate head for guidelines for election manifesto released by a political party can also be included in the Model Code of Conduct for the guidance of Political Parties & Candidates.

### **18.3 The Election Commission’s Guidelines on Election Manifestos**

- 18.3.1 Pursuant to the above direction of the Supreme Court, the Election Commission called a meeting of all recognized national and state political parties on 12 August 2013 for consultation on the issue of framing guidelines for election manifestos of political parties. Majority of the parties opposed the idea of framing any guidelines on manifestos, considering it to be an infringement of their right to frame their policies and programmes which, in their wisdom, were best suited to meet the expectations and aspirations of the people, at large, and the electorate, in particular. While the Election Commission agreed in principle with their

point of view, having due regard to the above direction of the Supreme Court, issued the guidelines to be adhered to by the political parties and candidates while releasing their election manifesto for any election to the Parliament or State Legislatures.

18.3.2 These guidelines were incorporated as Part VIII of the Model Code of Conduct and it was clarified that the above guidelines would be applicable from the date, a political party issues its manifesto irrespective of whether such date is before or after the date of announcement of the election schedule by the Election Commission. (**Annexure XVIII**)

These guidelines are as follows-

- (i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code.
- (ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare in election manifesto. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.
- (iii) In the interest of transparency, level playing field and credibility of promises, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.

18.3.3 The Election Commission has further directed to all political parties to send a copy of their election manifestos along with Hindi/English version (if the original version is in the regional language) whenever released, within 3 days of its release, for the Election Commission's record. The political parties have also been requested to submit a declaration along with manifesto that the program/policies and promises made therein are in consonance with Part VIII of the Model Code of Conduct. The Chief Electoral Officers have been asked to obtain 3 copies of manifestos as

well as declaration from the political parties/candidates within 3 days of its release and analyze such election manifestos vis-à-vis the guidelines on manifestos issued by the Election Commission, with their comments.

## 18.4 Election Manifesto Not Legally Enforceable

- 18.4.1 The Supreme Court held in *Mithilesh Kumar Pandey v Union of India* that there is no provision in law which makes promises made by political parties in their election manifestos enforceable against them.
- 18.4.2 Likewise, in *Ashwini K Upadhyay v Government of National Territory of Delhi*, the Supreme Court observed that a poll manifesto does not have a statutory backing and hence its enforceability is not within the purview of the courts and therefore, rejected the prayer of the petitioner in that case to give a direction to Delhi Government to pass Jan Lokpal Bill and Swaraj Bill, as promised by Aam Admi Party in their party manifesto.
- 18.4.3 Though the courts have refused to entertain complaints seeking enforcement of the promises made in the manifestos of political parties, the Election Commission, on the basis of some complaints, issued notices to Dravida Munnetra Kazhagam and All India Anna Dravida Munnetra Kazhagam relating to the manifestos released by them in the context of the general election to the Tamil Nadu Legislative Assembly held in April-May 2016. It was alleged that Model Code was violated by the political parties by not substantially adhering to the Election Commission's above-mentioned guidelines dated 19 February 2014 in as much as the said manifestos did not give rationale for the promises made and also did not broadly indicate the ways and means to meet the financial requirements for fulfilling those promises. Whereas, All India Anna Dravida Munnerta Kazhagam was censured by the Election Commission as the explanation of the party was not considered satisfactory, Dravida Munnetra Kazhagam was advised to be more circumspect and adhere to the provisions of Model Code. The Election Commission observed that though the party provided explanation in their reply with regard to the rationale and ways and means to meet the promises, the same should have been given in the manifesto.

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## CHAPTER 19

# MODEL CODE AND GOVT. OFFICIALS

### **Main topics discussed in the Chapter:-**

- Policy on Transfers/Postings
  - ✓ Conditions of transfer
  - ✓ Applicability of the policy
  - ✓ Relaxation/Exemption
  - ✓ Consultation with Chief Electoral Officer
  - ✓ Transfer/posting of Officials involved in preparation of Electoral Roll
- Clarification on Transfers of Sub-Inspector of Police
- Ban on Transfers of Officials Connected with Election
- Briefing of Chief Minister/Home Minister by Police Officers
- Video Conferencing Between Ministers and Government Officials
- Restrictions on Tours /Leave of the Officers Whose Spouses are Active in Political Arena

### **19.1 Introduction**

19.1.1 The Election Commission conducts elections to Parliament and State Legislatures with the assistance of administrative machinery of State Governments. Article 324(6) of the Constitution provides that the President, or the Governor of a State shall, when so requested by the Election Commission, make available to the Election Commission, as may be necessary for discharge of the functions conferred on it. In view of this at the time of elections, the election machinery gets augmented by inducting large number of government officials and police officials, in addition to regular field machinery in the States, consisted of the Chief Electoral Officer, District Election Officers, Returning Officers/ Assistant Returning Officers etc.

19.1.2 Government official is backbone of the whole electoral system in the country. Though a government official serves under the government of the day but during elections he is expected to perform the duty with impartiality and commitment towards democratic values. It is therefore, the election laws (Section 129 of the Representation of the People Act, 1951) provide that government officials are not to act for candidates or to influence voting. The Election Commission has put restriction even on a private meeting between a government servant and a political functionary during the period of Model Code.

## **19.2 Policy on Transfers/Postings**

In interest of free and fair election and to ensure that there is no scope for public complaints, the Election Commission has been following a consistent policy that government officials directly connected with election are not posted in home district or districts where they have served for considerably long period. The purpose behind this policy is to neutralize the familiarity effect of local politician and to ensure impartiality of the government officials. During general elections to State Assemblies of Chhattisgarh and Bihar in 2013 and 2015, respectively, complaints were received against some officers that they were reposted to the same constituency/district where they were posted during previous elections. The Election Commission, after obtaining factual reports from the Chief Electoral Officers concerned, ordered to transfer out the said officers. It was noted that such practice of reposting an officer to the same constituency/district, where he was posted during the last elections, may have some political motive. So, the Election Commission decided to include a new stipulation in its directions issued on 7 September 2016, on the lines that “while taking decision of transfer/posting of an officer it should be taken care that he/she may not be posted to that constituency/district where he/she was posted in previous elections”. The Election Commission further approved that smaller states who may have problem of shortage of officers may seek exemption for specific cases if they are unable to follow the above instructions. Accordingly, before 4-5 months period from the date on which term of existing state assembly is to expire, the Election Commission issues following guidelines to the concerned State Governments:

### **19.2.1 Conditions of transfer**

- (i) No officer connected directly with elections shall be allowed to continue in the present district of posting:-
  - (a) if she/he is posted in her/his home district.
  - (b) if she/he has completed three years in that district during last four (4) years or would be completing 3 years (on or before the last day of the month in which the term of the House is going to expire).
- (ii) While calculating the period of three years, promotion to a post within the district is to be counted.

- (iii) While implementing the above said instructions/transferring officers, the concerned departments of the State Govt. should take care that they are not posted to their home districts. During January, 2019, the Commission with regard to the General Election to the House of People, 2019 and certain State Assemblies has further directed that it shall also be ensured that no District Election Officer/Returning Officer/Assistant Returning Officer/Police inspector/Sub-inspector or above is posted back or allowed to continue in the Assembly Constituency/district where he/she was posted in last Assembly election/any bye election held prior to 31<sup>st</sup> May, 2017 (i.e. the period of two years from the date of expiry of the House/Assembly).
- (iv) If any small state/UT with a few number of districts, face any difficulty in compliance of the above instruction, then it may refer the specific case with reasons, to the Election Commission through Chief Electoral Officer for exemption and the Election Commission would issue directions, if considered necessary.

### **19.2.2 Applicability of the policy**

- (i) These instructions shall cover not only officers appointed for specific election duties like District Election Officers, Deputy District Election Officers, Returning Officers/Assistant Returning Officers, Electoral Registration Officers/Assistant Electoral Registration Officers, officers appointed as nodal officers of any specific election works but also district officers like Additional District Magistrates, Sub Divisional Magistrates, Dy. Collector/Joint Collector, Tehsildar, Block Development Officers or any other officer of equal rank directly deployed for election works.
- (ii) These instructions shall also be applicable to the police department officers such as Range Inspector Generals, Deputy Inspector Generals, Commandants of State Armed Police, Senior Superintendent of Police, Superintendent of Police, Addl. Superintendent of Police, Sub-Divisional Head of Police, Station House Officers, Inspectors, Sub-Inspector, Reserve Inspectors/Sergeant Majors or equivalent ranks, who are responsible for



security arrangement or deployment of police forces in the district at election time.

- (iii) The Police Sub-Inspectors and above should not be posted in their home district.
- (iv) If a police sub-Inspector has completed or would be completing a tenure of 3 years out of four years on or before the cutoff date, in a police sub-division, then he should be transferred out to a police sub-division which does not fall in the same Assembly Constituency. If that is not possible due to small size of district, then he/she should be transferred out of the district.

**19.2.3 Relaxation/Exemption:-** The following government officials are not covered under the transfer policy mentioned above-

- (i) The police officials who are posted in functional departments like computers, special branch, training, etc. are not covered under these instructions.
- (ii) During an election a large number of employees are drafted for different types of election duty and the Election Commission has no intention of massive dislocation of state machinery by large scale transfers. Hence, the aforesaid transfer policy is normally not applicable to officers/officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer, which on enquiry, are found to be substantiated, then Chief Election Officer/Election Commission of India may order not only for transfer of such official but also for appropriate departmental action against him/her.
- (iii) The officers appointed as Sector Officer/Zonal Magistrate involved in election duties are not covered under these instructions. However, the observers, Chief Electoral Officer/District Election Officers and Returning Officers should keep a close watch on their conduct to ensure that they are fair and non-partisan in performance of their duties.
- (iv) These instructions do not apply to the officers posted in the State

headquarters of the department concerned.

- (v) It is further directed that the officers/officials against whom the Election Commission had recommended disciplinary action in past and which is pending or which has culminated with a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty. However, an officer who was transferred during any past election under the Election Commission's order without any recommendation of disciplinary actions will not be, just on this ground, considered for transfer, unless specifically so directed by the Election Commission. The Chief Electoral Officer must ensure compliance of the Election Commission's instructions contained in letter no. 464/INST/2008-EPS dated 23 December 2008. **(Annexure XIX)**
- (vi) The Election Commission further desires that no officer/official, against whom a criminal case is pending in any court of law, be associated with/deployed on election related duty.
- (vii) Any officer, who is due to retire within the coming six months will be exempted from the purview of the Election Commission's above-mentioned directions. Further, officers falling in the category (home district/3+ criteria, if they are due to retire within 6 months) shall not be engaged for performing election duties without permission of the Election Commission.
- (viii) It is further clarified that all the officials of the State (except those posted in the office of the Chief Electoral Officer), who are on extension of service or re-employed in different capacities, will not be associated with any election related work. All election related Officers will be required to give a declaration in the format specified to the District Election Officer concerned, who shall inform to Chief Electoral Officer, accordingly. **(Annexure XX)**

**19.2.4 Consultation with Chief Electoral Officer:** The Chief Electoral Officer of the State shall invariably be consulted while posting the persons in place of present incumbents who stand transferred as per the above policy of the Election Commission. A copy of each of the transfer orders

issued under these directions shall be given to the Chief Electoral Officer without fail.

**19.2.5 Transfer/posting of Officials involved in preparation of Electoral Roll:** The transfer orders in respect of officers/officials, who are engaged in the electoral rolls revision work, if any, during an election year shall be implemented only after final publication of the electoral rolls, in consultation with the Chief Electoral Officer. In case of any need for transfer due to any extra ordinary reasons, prior approval of the Election Commission shall be taken.

### **19.3 Clarification on Transfers of Sub-Inspector of Police**

19.3.1 There may be cases where it may be difficult to affect the transfer of Police Officers who are in-charge of Thana in compliance of the policy laid down in the abovementioned instruction of the Election Commission, in big Metro cities/smaller states having less number of districts. In such cases, the territorial consideration for such police officer may be sub-division as an exception. In rest of the other cases the territorial jurisdiction may be district, with prior approval of Election Commission.

19.3.2 A question has been raised whether this instruction is applicable for the Sub-Inspector of Police. It is clarified that, where the Sub-Inspector of Police is in-charge of Thana, he is covered by this instruction and hence is required to be transferred as per guideline laid down above.

### **19.4 Ban on Transfers of Officials Connected with Election**

19.4.1 With announcement of election, the Election Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to:

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- (i) The Chief Electoral Officer and Additional/Joint/Deputy Chief Electoral Officers;
- (ii) Divisional Election Commissioners;
- (iii) The District Election Officers, Returning Officers, Assistant

- Returning Officers and other Revenue Officers connected with the conduct of elections;
- (iv) Officers of the Police Department connected with the management of elections like Range IGs and DIGs, Senior Superintendents of Police and Superintendents of Police, sub-divisional level Police Officers like Deputy Superintendents of Police and other Police officers who are deputed to the Election Commission under Section 28A of the Representation of the People Act, 1951;
  - (v) The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when Model Code came into effect should not be given effect to without obtaining specific permission from the Election Commission.
  - (vi) In those cases where transfer of an officer is considered necessary on account of administrative exigencies, the State Government may, with full justification, approach the Election Commission for prior clearance.
  - (vii) No appointments or promotions in Government / Public Undertakings shall be made during this period, without prior clearance of the Election Commission.
  - (viii) This ban shall be effective till the completion of the election process.

## **19.5 Briefing of Chief Minister/Home Minister by Police Officers**

19.5.1 The Election Commission has issued instructions to the effect that government officials shall not be called for any meeting other than the official meeting by Ministers or political functionaries. In this connection, the Election Commission has also clarified that security briefings of Chief Minister or the Home Ministers when considered essential should be undertaken by the Home Secretary or the Chief Secretary, who in turn should be briefed by the police agencies. The instructions further state that in case where police agency's/official's presence is considered essential, the Chief Secretary/Home Secretary may require them to be present in such briefings.

19.5.2 These instructions should not be construed as restriction to any security related activity of the law and order enforcing agencies. Therefore, in situation where it is so warranted, the law and order enforcing agencies should not take the plea of Election Commission’s instructions for any inaction or delay in action on their part. Whatever is required under the circumstances, including informing the political executives by the Director General of Police and taking directions from them, should be undertaken by the police agencies in the bonafide performance of their duty or exercise of their authority.

## **19.6 Video Conferencing Between Ministers and Government Officials**

19.6.1 The Election Commission had directed that during the period of operation of Model Code, no video-conferencing shall take place between the Chief Minister/Ministers/ political functionaries of the Union and State Govts. with the Government officials.

19.6.2 The Election Commission reviewed the matter in the light of certain requests to permit video-conferencing to assess/monitor situation in the event of natural calamity and decided that in the immediate aftermath of any calamity of significant scale/magnitude, if video-conferencing is considered essential, the Chief Minister or Minister concerned may hold the one with the officials, subject to the following conditions:-

- (i) Prior approval of the Chief Electoral Officer should be obtained by the department concerned before holding video conference. For any subsequent VC, permission from the Election Commission shall be obtained;
- (ii) Only the Collector/District Magistrate and senior officials in charge of the relief in connection with the natural calamity of the area concerned alone shall be called to attend the video-conferencing;
- (iii) No issue other than rescue/relief and other aspects connected to the calamity shall be discussed in the VC;
- (iv) No publicity whatsoever shall be given for the VC, either before or after the VC,

- (v) The VC should not be open to media;
- (vi) An Audio/Video recording of the proceedings of the VC shall be maintained by the Department concerned and a copy of the same given to the Chief Electoral Officer;
- (vii) No announcement or promise of any grant, assistance in cash or kind, and no statement of political nature or announcement capable of influencing the electors shall be made through the VC.
- (viii) A representative of the Chief Electoral Officer will be present during the VC.

19.6.3 The above exception is only in the immediate aftermath of a calamity of significant scale/magnitude, otherwise the ban on video-conferencing by Ministers and political functionaries with the officials during the period of operation of Model Code will continue to apply as generic principle.

## **19.7 Restrictions on Tours /Leave of the Officers Whose Spouses are Active in Political Arena**

19.7.1 Several instances have come to notice of the Election Commission where spouses of the officers belonging to the Indian Administrative Service, Indian Police Service and State Governments are active in the political arena either as candidates in elections or as active members of political parties.

19.7.2 The Election Commission in the interest of free and fair poll, directs that in all such cases the concerned officers should not leave their Headquarters either on leave or on tour till the elections are complete in all respects.

19.7.3 If for some reason they are required to leave their Headquarters during the election period, then specific written permission of the Chief Secretary has to be obtained before they leave, who should ensure that such officers do not get involved in any way with the political activities of their spouses.

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## CHAPTER 20

# MODEL CODE DURING BYE-ELECTIONS

### **Main topics discussed in the**

#### **Chapter:-**

- Applicability of Model Code
- Tours of Ministers
- Announcement of New Schemes/Projects
- Announcement of Dearness Allowance
- Publication of Advertisements
- Removal of References of Ministers from Official Websites
- Restriction on Promises/ Statements on Religious/ Communal Ground
- Transfer/Postings of Government Officials
- ✓ Bye-election to the Assembly Constituency (ies)
- ✓ Bye-election to the Assembly Constituency (ies)

### **20.1 Introduction**

In the case of a bye-election, Model Code is applied in the district or districts in which the constituency concerned falls. The Election Commission has noticed a disturbing trend during certain bye-elections, when political functionaries of various ruling parties, including their Ministers, try to circumvent the spirit behind Model Code. It is seen that Ministers frequently hold official meetings in neighbouring districts, categorizing their visits for official work and, while stationed there, carried out political activities for the bye-elections. Officials from the district(s) where bye-elections take place are also called for such meetings. Sometimes it is observed that more than half the cabinet stations itself in neighbouring districts on official work, and carries out the political activities relating to the bye-elections there. Keeping all this in view, the Election Commission has laid down specific guidelines to be observed on ground, in case of bye-elections.

### **20.2 Applicability of Model Code**

20.2.1 As soon as the program of a bye-election is announced by the Election Commission, Model Code is enforced in the entire district, in which the Assembly/Parliamentary Constituency is located. Certain State Governments have requested the Election Commission to suitably modify the

instruction as application of Model Code in the entire district during bye-election affects the developmental work in the whole of the district whereas only a part of the district may be involved in the election

process. The Election Commission has considered the issue and in partial modification directed that in case the constituency going to bye-election is comprised in the state capital/metropolitan city/municipal corporation, Model Code would be applicable in the particular assembly constituency segment only and not in the whole of the district. In all other cases, Model Code would be enforced in the entire district(s) covering the constituency going for bye-election(s).

- 20.2.2 In case of bye-elections to the Lok Sabha/State Legislative Assemblies, Model Code will cease to be in operation immediately after the formal declaration of the result of the bye-election by the Returning Officer concerned.

### **20.3 Tours of Ministers**

- 20.3.1 No Ministers belonging whether to Central Govt. or State Govt., shall combine in any manner their official tours with election work after the announcement of the bye-elections. They shall return to their headquarters on completion of their official tours. All and any visits to the district (s) where bye-election is being held and Model Code is in force have to be completely private in nature and such private visits should begin and end at the Minister's headquarters. Further, it is clarified that if a Minister or person holding equivalent rank/status combines his official visit with campaign by en routing his journey for official purposes to a place where Model Code is not in force and then proceeding from that place to the area where Model Code is in force for election campaign, expenses on the entire journey shall be treated as election expenditure.
- 20.3.2 In case where a Minister travelling on official work transits through the district(s) where the bye-election is being held en route to any other district on official visit, he shall not halt and attend to any political work in the district (s) where Model Code is in force.
- 20.3.3 No official of any rank of the district (s) where the bye-election is being held shall be called to attend any meeting by any Minister in any district, that is to say, even in the other districts where election is not being held.
- 20.3.4 Any official who meets the Minister on his private visit to the constituency



where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129(1) of the Representation of the People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that section and liable to penal action provided thereunder.

- 20.3.5 No pilot car(s) or car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his private visit to the constituency even if the state administration has granted him a security cover requiring presence of armed guards accompanying him on tour.
- 20.3.6 The ministers have been permitted to take one non-gazetted official to accompany them during their private visits to attend to urgent official work.
- 20.3.7 The Election Commission has further laid down that the Chief Electoral Officer of the state shall be kept informed, in advance, of visits proposed to be undertaken by any minister(s) of the State or Central government to the district where bye-election is being held, by the District Election Officer. The Chief Electoral Officer shall forthwith communicate the same to the Election Commission.

## **20.4 Announcement of New Schemes/Projects**

- 20.4.1 No work shall start, in respect of which, work orders may have been issued but the work has actually not started in the field. These works can start only after completion of election process. However, if a work has actually started, that can continue.
- 20.4.2 The schemes which have been cleared and funds provided/released and materials procured and reached the site, may be executed as per programme.
- 20.4.3 There shall be no bar to release of payments for completed work(s) subject to the full satisfaction of the concerned officials.
- 20.4.4 No fresh release of funds for any schemes, in operation under MPLAD (including Rajya Sabha members)/MLALAD/ MLCLAD shall be made, till the completion of election process.

## **20.5 Announcement of Dearness Allowance**

There is no instruction during the bye-elections prohibiting State Governments to take decisions which have State wide effect. In this context the Election Commission, after taking into consideration all relevant factors in this regard, has decided that announcement of Dearness Allowance by the State Governments may be done as a routine affair and it should not be publicized as the Government's achievement.

## **20.6 Publication of Advertisements**

20.6.1 It is observed that the governments of the day publish advertisements of various kinds, including advertisements on their accomplishments and achievements. Such advertisements are often released on special occasions such as Republic Day, Independence Day, birthdays of prominent leaders, anniversary of government etc. On such occasions, if bye-elections are in progress, the issue of Model Code comes into question. It is not technically possible to block such advertisements, especially in the print media, in the specific areas covered under Model Code, while publishing it in the other places.

20.6.2 The Election Commission has considered the issue and taking into account all aspects of the matter, directed that release/publishing of advertisements at the cost of public exchequer during the period of operation of Model Code in bye-elections will be regulated as follows:-

- (i) An advertisement of general nature in connection with specific occasions of importance may be published, however, the same shall be restricted to the dates coinciding with the said occasion only, and it shall not be published on other days. The advertisement shall not bear photograph of any Minister or other political functionaries.
- (ii) No advertisement having a specific/pointed reference or connotation to the areas covered by the constituencies going to bye-election shall be released/published on any date during the period.
- (iii) Further, it is clarified that no new schemes should be advertised in

the districts where the bye-election is being conducted.

## **20.7 Removal of References of Ministers from Official Websites**

The Election Commission's existing instructions relating to general election provide that during the period when Model Code is in force, all references to ministers/politicians/political parties on concerned state/central government's official websites, shall be taken off/ purged of. During bye-elections, these instructions may be confined to only those politicians/ministers who themselves are contesting such bye- elections.

## **20.8 Restriction on Promises/Statements on Religious/Communal Ground**

20.8.1 It has come to the notice of the Election Commission that during the bye-elections, the party in power or the sitting MPs/MLAs tend to make promises/appeals on religious/communal grounds in those parts of the districts/areas in their State where Model Code is not in operation so as to avoid the violation of Model Code. This has, however, indeed far reaching implications as it would certainly influence the minds of electors of the Assembly Constituency/Parliamentary Constituency where the bye election(s) is going on and, thus, vitiate the free and fair elections in that constituency(ies).

20.8.2 The Election Commission has directed that as soon as bye- election(s) to any Assembly Constituency/Parliamentary Constituency is announced in a State, the Chief Electoral Officer concerned shall issue an advisory to all the recognized political parties in the State/UT to request their Ministers and sitting MPs/MLAs not to make promises/statements on religious or communal ground, even in those areas where Model Code is not in force so that the purity of election process is maintained and no ill feeling is generated among the general public.

## **20.9 Transfer/Postings of Government Officials**

20.9.1 The Election Commission, in its task of conducting free and fair elections has followed the consistent policy to ensure that government officials, who are connected with the conduct of bye-election in the States, are not posted in their home constituency and the areas falling in the Assembly/ Parliamentary Constituency(ies) where they have served for long.

(i) **Bye-election to the Assembly Constituency (ies):**

(A) No officer connected directly with the conduct of Bye-elections, should be allowed to continue in the present posting within the Assembly Constituency limits:-

(a) If she/he is posted in her/his home Assembly Constituency limit;

(b) If she/he has completed three years during last four years or would be completing 3 years on or before the last day of the sixth month from the date of occurrence of the casual vacancy.

(B) Such officers shall be shifted out of the Assembly Constituency limit.

(a) These instructions cover Returning Officers and Assistant Returning Officers of the Assembly Constituencies going for bye-elections. These instructions will also cover other officers viz. Deputy/ Assistant Collectors, Sub-Divisional Magistrates, Tehsildars and Block Development Officers located in Assembly Constituency limits. It is however clarified that officers appointed as Sector Officers, though directly involved in election duties will not be covered under these instructions as they are deployed in field duties where their knowledge of the area/ terrain is crucial to effective performance of their duties. The Chief Electoral Officer, District Election Officer and Returning Officer should however, keep a close watch on them during the election period to ensure that their performance is strictly impartial.

(b) As far as officers in the **Police Department** are concerned, these instructions shall be applicable to the Sub-Divisional Head of Police, Dy.SP/Circle Officers, Inspectors, Sub-Inspectors or equivalent ranks posted in the field within the Assembly

Constituency limit.

- (C) Accordingly, a detailed review may, be undertaken and all such officers be posted out of their home constituency limits where they have completed or will complete, on the aforesaid date, tenure of three years in Assembly Constituency limit out of the last four years, immediately. Further, for uniformity, the three year period shall be reckoned backwards from the last day of the sixth month as mentioned from the date of occurrence of the casual vacancy.

**(ii) Bye-election to the Parliamentary Constituency (ies):**

- (A) No officer connected directly with the conduct of Bye-elections to the Parliamentary Constituency going for bye-election, shall be allowed to continue in the present posting within the Parliamentary Constituency limits:-

(a) If she/he is posted in her/his home district within the concerned Constituency limit;

(b) If she/he has completed three years during last four years or would be completing 3 years on or before the last day of the sixth month from the date of occurrence of the casual vacancy.

- (B) Such officers shall be shifted out of the Parliamentary Constituency limit.

(a) These instructions cover Returning Officers and Assistant Returning Officers of the Parliamentary Constituencies going for bye-elections. These instructions will cover only that District Election Officer who is designated as Returning Officer. Other District Election Officers, even if some part of their district falls in the Parliamentary Constituency going for bye-elections shall not be covered under these instructions. The instructions will however cover other officers viz. Additional Collector,

Additional District Magistrate, Deputy Collectors, Assistant Collectors, Sub-Divisional Magistrates, Tehsildars and Block Development Officers located in Parliamentary Constituency limit. It is however clarified that officers appointed as Sector Officers, though directly involved in election duties will not be covered under these instructions as they are deployed in field duties where their knowledge of the area/terrain is crucial to effective performance of their duties. The Chief Electoral Officer, District Election Officer and Returning Officer should, however, keep a close watch on them during the election period to ensure that their performance is strictly impartial.

- (b) As far as officers in the Police Department are concerned, these instructions shall be applicable to the Superintendent of Police located in the District whose District Election Officer is also the Returning Officer. Other Superintendent of Police, even if some part of their district falls in the Parliamentary Constituency going for bye-elections shall not be covered under these instructions. These instruction will however cover Additional SP, Sub-Divisional Head of Police, Dy.SPs/ Circle Officers, Inspectors, Sub-Inspectors or equivalent ranks posted in the field within the Parliamentary Constituency limit.
- (C) Accordingly, a detailed review may, be undertaken and all such officers be posted out of their home constituency limits where they have completed or will complete, on the aforesaid date, tenure of three years in Assembly constituency limit out of the last four years, immediately. Further, for uniformity, the three year period shall be reckoned backwards from the last day of the sixth month from the date of occurrence of the casual vacancy.

20.9.2 Normally, bye-election is held to fill up a casual vacancy within a period

of six months from the date of occurrence of vacancy (excepting a situation beyond control of the Election Commission). Hence, it would be advisable if the State Government initiates steps for implementation of these guideline immediately after occurrence of a casual vacancy in a constituency so that last moment dislocation of officers can be avoided.

- 20.9.3 The Election Commission has in the past received complaints that while the State Government transfers officials in the above categories, in pursuance of the direction issued by the Election Commission, the individuals try to circumvent the objective by proceeding on leave and physically not moving out of the district from which they stand transferred. The Election Commission has viewed this seriously and desired that all such officials who stand transferred in pursuance of the instructions referred to above shall be asked to move physically out of the district from which they stand transferred immediately on receipt of the transfer orders.
- 20.9.4 Any officer, who is due to retire within the next six months, will be exempted from the purview of the above-mentioned directions of the Election Commission. Further, officers falling in category (home/3+ criteria) shall not be engaged for performing election duties during the elections, if they are due to retire within 6 months.
- 20.9.5 The officers/officials against whom Election Commission has recommended disciplinary action or who have been charged for any lapse in any election or elections related work, in the past, shall not be assigned any election related duty.
- 20.9.6 No officer/official against whom a criminal case is pending in any Court of Law will be associated with the election work or election related duty.
- 20.9.7 Applicability of the instructions: The above instructions will be applied within the area falling under the concerned Assembly/Parliament Constituency. The District Election Officer/Returning Officer should ensure that deployment of any officer from outside the constituency for any election related duty, is done in conformation to the transfer policy of the Election Commission.

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## CHAPTER 21

# MODEL CODE DURING BIENNIAL ELECTIONS

### **Main topics discussed in the**

#### **Chapter:-**

- Restriction on visits of Ministers and announcement of new schemes etc.
- Restriction on Use of Vehicles
- Recording of Minister’s Visit
- Meeting with Government officials
- Ban on transfer of Government officials
- Use of maidan/helipads etc.
- Accommodation at Government Dak Bangalows
- Restriction on the presence of political functionaries in a constituency during the last 48 hours
- Ban on sale of liquor
- Appointment of MCMC
- Bulk SMS and Voice messages during election campaigning

### **21.1 Introduction**

21.1.1 The Election Commission has been enforcing Model Code during election to Legislative Council for graduates, teachers and local authority constituencies. Even in 2010, biennial election to Karnataka Legislative Council the Election Commission censured two Bharatiya Janata Party leaders for canvassing in a college premises without obtaining permission from the college management. Still, there was a lack of clarity with regard to applicability of Model Code in such elections.

21.1.2 To examine the matter and submit suggestions on enforceability of Model Code in elections to Council Constituencies, the Election Commission constituted a Working Group. After having considered the report of the Working Group and the matter in its entirety, the Election Commission decided in December 2016, that all the provisions of Model Code of Conduct for the political parties and candidates’ shall apply *mutatis mutandis* in biennial election including bye elections to the State Legislative Councils from Graduates’ & Teachers’ Constituencies as well as Local Authorities’ Constituencies. Consequently, various instructions issued by the Election Commission from time to time in clarification of Model Code provisions would also apply for such elections (from the date of announcement of election till the date of completion of election).



## **21.2 Consolidated Instructions (Annexure XXI):-**

**21.2.1 Restriction on visits of Ministers and announcement of new schemes etc.-** Visits/tours of Ministers, whether Central or State, including Chief Minister any district(s) in which any Biennial/Bye-election from a Council Constituency is being held will be subject to the following conditions: -

- (i) Official visit shall not be combined with the election related work/ tours.
- (ii) There shall be no announcement of new policy programme/ policy likely to influence the graduates, the teachers and members of Local Authorities who form the electorate of the Constituencies going to poll.
- (iii) No policy announcement or programme, which influences the electorate either directly or indirectly, shall be initiated in the Government Departments till the completion of elections.
- (iv) They shall not do any inauguration/laying of foundation stones of any educational institution, which are constituents of Graduates' and Teachers' Constituencies.
- (v) No fresh sanction of work using the IT platform depending upon the MP/MLA/MLC schemes for work that would amount to influencing the electorate.

[Clarification: It is clarified that Model Code provisions relating to sanction out of discretionary funds, announcement of financial grant, laying foundation stones of projects, promises of construction of roads/drinking water lines and adhoc appointments, contained in Part VII clauses (v) and (vi) would be applicable only with regard to graduates/teachers/local authority constituencies where election is being held].

**21.2.2** The practice of keeping the electors in hotels/resorts and other similar places during election period would amount to bribing of electors.

### **21.2.3 Restriction on Use of Vehicles**

- (i) The provision regarding prevention of misuse of vehicles and regulation of convoys during campaign period as in the case of

elections to House of People / Legislative Assemblies shall be made applicable for Council elections too.

- (ii) No pilot car(s) or other car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his private visit to the constituency, even if the State administration has granted him a security cover requiring presence of armed guards accompanying him on tour.
- (iii) The restrictions on “official tours” of Central and State Ministers will also be applicable to the use of any “official cars” by “office bearers” of local authorities, like, Mayors of Municipal Corporations, Presidents of Municipal Councils and Zilla Parishads. The use of official cars by them shall only be allowed for travel to and from office to residence.

#### **21.2.4 Recording of Minister’s Visit**

Due recording will be done of visits and public meetings by Ministers and important political dignitaries made in the constituencies where biennial election is being held. For that purpose, District Election Officer/Returning Officer, in consultation with Chief Electoral Officer of the state and Election Commission’s Observer, should put in place a special video team for every tehsil and as per the requirement. The Observer shall see the video recording in the evening of the same day so that he can report violation, if any, to the Election Commission, in the prescribed format.

#### **21.2.5 Meeting with Government officials**

- (i) No official of any rank of the district(s) dealing with election related work where the biennial/bye-elections are being held shall be called to attend meeting by any Minister at any place, even in another district, where election is not being held.
- (ii) Any official who meets the Minister on his private visit to the constituency where elections are being held shall be deemed to be guilty of misconduct under the relevant service rules; and if he happens to be an officer mentioned in Section 129 (1) of the

Representation of the People Act, 1951, he shall be additionally considered to have violated the statutory provisions of that section and liable to penal action provided thereunder.

- (iii) No member of any local authority which forms part of the electorate of a Local Authorities' Constituency shall be called for any meeting/video conference by any Minister (in his capacity as Minister). Routine meetings of the local bodies, when essential, may be held with the prior permission of the District Election Officer of the District concerned.

**21.2.6 Ban on transfers of Government officials:** There shall be a total ban on the transfers of Returning Officers and Assistant Returning Officers of biennial elections/bye-elections to State Legislative Councils from the announcement to completion of elections. The transfer orders in respect of the above officers issued prior to the date of announcement but not implemented should not be given effect to without obtaining specific permission of the Election Commission. In those cases, where transfer of an officer is necessary on account of administrative exigencies, the State Govt. may, with full justification, approach the Election Commission, for prior clearance.

**21.2.7 Use of maidan/helipads etc:-** Public places such as maidans etc., for holding election meetings and helipads for landing of helicopters/aircrafts in connection with elections shall not be monopolized by the party in power. Other parties and candidates shall also be allowed to use them on first-cum-first served basis.

**21.2.8 Accommodation at Government Dak Bangalows:** Model Code provides that circuit houses/dak bangalows or other government accommodations shall not be monopolized by the party in power or its candidates. *[The phrase 'rest houses, dak bangalows or other government accommodation' includes guest houses of all institutions that are getting government assistance in any form of grant in aid].*

**21.2.9 Restriction on the presence of political functionaries in a constituency during the last 48 hours-** The restriction on staying of political functionaries in the poll going constituency after the campaign period is over i.e., 48 hours before the closure of the poll, shall be made

applicable for Council elections also.

**21.2.10 Ban on sale of liquor:-** Under Section 29 of the Representation of the People Act, 1951 read with Rule 69 of the Conduct of the Election Rules, 1961, a place of poll is fixed for conducting poll in respect of election to the Council of States and the State Legislative Councils by MLAs. As per Section 135C, “dry day” is to be declared in polling areas.

*[Clarification: ‘Polling area’ is defined in Section 25 of the Representation of the People Act, 1951, which is also applicable to elections from Constituencies i.e. for elections to Lok Sabha, Legislative Assemblies and elections to Legislative Councils from Graduates’, Teachers’ and Local Authorities’ Constituencies.]*

21.2.11 In order to conduct free and fair elections and to keep a check on adverse role of money power, particularly the movement of black money during biennial elections/bye-elections to Legislative Council, the Standard Operating Procedure (SOP) issued on 29.05.2015, excepting deployment of Static Surveillance Teams, should be made applicable.

**21.2.12 Appointment of MCMC:-** As prescribed in the Compendium of Instructions on Election Expenditure Monitoring, immediately on announcement of biennial/ bye elections, State and District Media Certification and Monitoring Committee (MCMC) shall be appointed, for pre-certification of election advertisements as in case of TV channels / cable network, radio including private FM Channels, cinema halls, audio-visual displays in public places, social media and monitoring the general conduct of political functionaries during campaign.

**21.2.13 Bulk SMS/Voice messages during Election campaigning:-** The bulk SMSs/Voice messages on phone in election campaigning shall also be in the purview of pre-certification of election advertisements as in case of TV Channels / cable network, radio including private FM channels, cinema halls, Audio-Visual displays in public places and social media. The legal provisions, as applicable to other modes of electronic media shall also be applicable to such bulk SMSs/ Voice messages.

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## CHAPTER 22

# MISCELLANEOUS

### **Main topics discussed in the Chapter:-**

- Use Of Guest Houses
- Participation of Political Functionaries in Celebration of Important Days
- Holding of Feast/Party on a Religious Occasion During Elections:-
- Temporary Campaign Office
- Use of animals in election process
- Major tenders and auctions – relating to liquor vendors/ tendu leaves etc.
- Applicability of Model Code on Matters relating to Defence Forces
- Engagement of Child Labour in the Election Related Activities
- Restriction on Use of Plastic during Electioneering

### **22.1 Use Of Guest Houses**

22.1.1 Model Code provides that rest houses, dak bungalows or other Government accommodations shall not be monopolized by the party in power or its candidates and such accommodations shall be allowed to other parties and candidates in a fair manner. No party or candidate shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda.

22.1.2 The Election Commission has maintained that circuit houses/dak bungalows are only for temporary stay (boarding and lodging) during transit of such functionaries and their use should restrict to that purpose only. The Election Commission has directed that:

(i) Even casual meetings by members of political parties inside the premises of the Government owned guest house etc. are not permitted and any violation of this shall be deemed to be a violation of Model Code.

(ii) Only the vehicle carrying the person allotted accommodation in the guest house and not more than two other vehicles, if used by the person, will be permitted inside the compound of the guest house,

(iii) Rooms should not be made available for more than 48 hours to any single individual.

- 22.1.3 There will be freeze on such allocations from 48 hours before the close of poll till completion of poll or re-poll.
- 22.1.4 In April 2006, the Election Commission considered the issue regarding use of guest houses in the light of requests received from various state governments and political parties and decided that accommodation in government guest houses/rest houses or guest houses of Public Sector Undertakings of the Centre or State Government in the States (or the districts) where elections have been announced or are taking place can be given to the political functionaries who are provided security in Z scale or above or equivalent by various State Government, on equitable basis. This shall be subject to condition that such accommodation is not already allotted or occupied by election related officials or observers. No political activity will be carried out by any political functionary while staying in such government guest houses/rest houses or guest houses of Public Sector Undertakings.

## **22.2 Participation of Political Functionaries in Celebration of Important Days**

References have been made to the Election Commission whether Central Ministers/Chief Ministers/Ministers can participate in celebration and do honours of days of national importance like Republic Day, Gandhi Jayanti, Sadbhawana Diwas, State Day, etc., falling during election period, the Election Commission has decided that there is no objection to Central Ministers/Chief Ministers/Ministers in the States participating in celebration and do the honours in the function at various locations subject to the following conditions:-

- (i) In their speeches, they should confine themselves to extolling the achievements of the martyrs in securing freedom of the country, glorification of the Indian State/or to there of the occasion and so on. Under no circumstances, these functions should become platform for political campaign.
- (ii) No Central Minister/Minister or any other political functionary in the State/Ex-MPs shall do the honours at any function at any location of within their home district or constituency or from where he or she is a contesting candidate or intends to contest. The Prime Minister/Chief

Minister may however do so from the National Capital/State Capital as per long standing conventions.

- (iii) The celebration should carry no photograph of the minister/political functionary.
- (iv) The Election Commission has also no objection to organisation of kavi sammelans, mushairas or other cultural functions organised in connection with the Independence Day celebrations and being attended by the Central Ministers/Chief Ministers/Ministers in the States and other political functionaries. However, utmost care should be taken to ensure that no political speeches highlighting the achievements of party in power are made on such occasions.
- (v) The Election Commission has further decided that investiture ceremonies and such other functions at the national and state level and distribution of Tamra Patras to freedom fighters, etc. will be done according to the existing conventions.

### **22.3 Holding of Feast/Party on Religious Occasions During Elections:-**

A reference was received in the Election Commission from the State of Bihar in 1998 seeking a clarification as to whether Iftar Party could be hosted by the then Chief Minister for about 10,000 invitees, the expense for which would be made from the State exchequer. It was informed that any entertainment at State cost on a religious occasion specially during elections would not be correct though, an individual is free by all means to host any such party in his personal capacity and meeting the expense from his/her personal account.

### **22.4 Temporary Campaign Office**

The Election Commission has issued following instructions on setting of temporary campaign offices by political parties and candidates:

- (i) No such office will be opened by way of any encroachment either of public or private property.
- (ii) No such office will be opened in any religious place or campus of such religious place.
- (iii) No such office will be opened contiguous to any educational institution/

hospital.

- (iv) No such office will be opened within 200 metres of an existing polling station.
- (v) Only one party flag and banner with party symbol/photographs can be displayed at such office.
- (vi) The size of banner used in such office should not exceed ‘4 feet X 8 feet’ subject to the further condition that if the local laws prescribe a smaller size for banner/hoarding etc.; then the size prescribed by local law shall prevail.
- (vii) The Expenditure Observer should closely monitor to ensure that expenditure on such office is properly booked in the account of candidate.

## **22.5 Use of Animals in Election Process**

The Election Commission has advised the political parties and candidates, to refrain from using any animal for election campaign in any manner. Even a party, having reserved symbol depicting an animal should not make live demonstration of that animal in any election campaign of the Party/any of its candidate.

## **22.6 Major Tenders and Auctions – Relating to Liquor Vendors/Tendu Leaves etc.**

22.6.1 In 1996, to avoid possibility of auctions/tenders relating to liquor vendors/ tendu leaves etc., resulting in unfair advantage to the party in power, the Election Commission directed that in all such cases where major auctions etc. are to be held, should be put off till the last date of completion of elections in the concerned areas and the State Government should make interim arrangements where unavoidably necessary.

22.6.2 During 2009 general elections, the Election Commission laid down the following procedure in the matter of allotment of liquor vends, during the period of operation of Model Code–

- (i) Where the extant excise laws of a State empower the State Govt. or the authorities thereunder to make an interim arrangement beyond the current financial year, pending arrangement, such



interim arrangement may be made with the concerned contractor/ vendors on the existing terms and conditions.

- (ii) Where no such enabling provision is available in the existing excise laws, the State Govt. may go ahead with the normal practice followed in the previous years strictly in accordance with the existing laws for grant of new licenses/contracts for the ensuing financial year.

## **22.7 Applicability of Model Code on Matters relating to Defence Forces:-**

In reply to a reference received from M/o Defence in March 2014, seeking permission for procurement of edible oil and ration items for troops during election period, the Election Commission clarified that Model Code is not applicable to any matter pertaining directly to the defence forces, be it the recruitments/promotions for defence forces, any service matters pertaining to them, defence purchases of any kind, tenders relating to the matter of the defence forces and therefore no reference in such matters need to be sent to the Election Commission. **(Annexure XXII)**

## **22.8 Engagement of Child Labour in the Election Related Activities**

The Election Commission, in the light of Judgment dated 15 July, 2013 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 9767 of 2009- Court on Its Own Motion Vs. Government of NCT of Delhi and connected matters, has advised political parties to take a note of provision of Juvenile Justice (Care and Protection of Children) Act 2000 relating to children of the age of 14 to 18 years, and not to do anything in election campaign against the observation of High Court of Delhi in aforesaid case.

## **22.9 Restriction on Use of Plastic during Electioneering**

The Election Commission in the interest of environment, has advised the political parties/candidates vide letter dated 16 March 2016 to avoid use of plastic/polythene and similar non-biodegradable materials for preparation of posters, banners etc., during election campaign.

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## CHAPTER 23

# LANDMARK JUDGMENTS ON MODEL CODE

### 23.1 Introduction

The Election Commission has been mandated with constitutional responsibility of holding elections by the Constitution. The Election Commission exercises the powers in conformity with the statutes for purpose of fulfilling the responsibility of conducting a free and fair election. The position of the Election Commission has been strengthened by the judiciary, through several landmark judgments, giving interpretations to the constitutional and legal provisions. These judgments have been the guiding light for the Election Commission, electoral machinery and all other stakeholders including the political parties. Some selected landmark judgments on issues relating to Model Code of Conduct have been summarized and put together in this chapter.

#### (1) **Ghasi Ram vs Dal Singh & Others (1968) (Supreme Court)**

**(AIR 1191, 1968 SCR (3) 102)**

##### **Summary**

Sh. Ghasi Ram, appellant challenged the election of Sh. Dal Singh to the Haryana Legislative Assembly at the election held on 19 February 1967 by an election petition on the grounds, inter alia, that prior to his election, Sh. Dal Singh, as Minister in the State Government had used certain discretionary funds to bribe the voters. It was alleged that prior to the election he had visited several villages in his constituency and made various discretionary grants to Gram Panchayats, given funds for the construction of a sacred tank in one village, for building public utility works, community centres and for repairs of Harijan well in different villages. It was also alleged that he had used his position as Minister to favour some of the villagers by providing certain irrigation facilities in some villages with a view to securing support for his candidature.

The High Court dismissed the election petition.

On appeal, the Supreme Court held that the High Court had rightly dismissed the petition. The law requires that a corrupt practice involving bribery must be

fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election. The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If every one of his official acts done bona fide is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a stand-still. In the present case, the money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt this had the effect of pushing forward the respondent's claims but that was inevitable even if no money was spent but good administration changed the people's condition. It could not therefore be held that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes, the result might have been different, but there was no such evidence.

The Supreme Court further observed that “Although we have held in this case that the action of the first respondent cannot be characterized as not innocent, we are constrained to say that the attitude of Government is far from laudable. Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided”.

## (2) **Union of India Vs Harbans Singh Jalal and Others**

### **(Special Leave Petition (C) No. 22724 of 1997 (Supreme Court))**

#### **Summary**

The Punjab and Haryana High Court, by judgment dated 27.05.1997 in C.W.P. No. 270/1997 held that model code of conduct could be enforced from the date of announcement of an election. The Union of India filed an SLP before the Supreme Court against this judgment. As the SLP was pending, the issue was

settled vide O.M. dated 16.04.2001 of the Ministry of Law and Justice issued in consultation with the Commission. In view of the O.M. dated 16.4.2001, the SLP and connected matters were disposed of by the Supreme Court vide Order dated 26.4.2001.

Copy of O.M. dated 16.4.2001 and summary of the observations made by the Punjab and Haryana High Court in judgment dated 27.05.1997 in **Harbans Singh Jalal Vs. Union of India and others** (C.W.P. No. 270/1997) is given below:-

Copy of O.M. dated 16.4.2001

No. H. 11022/1/2001-Leg.11  
Government of India  
Ministry of Law, Justice & Co. Affairs  
(Legislative Department)

New Delhi, the 16<sup>th</sup> April, 2001.

### **OFFICE MEMORANDUM**

Subject: **SLP(C) No. 22724/97: Union of India Vs. Harbans Singh Jalal and others – regarding Model Code of Conduct, pending for adjudication before the Hon'ble Supreme Court of India.**

\* \* \* \* \*

In continuation of this Department's endorsement of even number dated 26.3.2001 on the subject mentioned above, the undersigned is directed to state that Election Commission of India vide their letter No. 509/2001/JS-1/912 dated 11.4.2001 (copy enclosed) has agreed to modify the existing formulation in the Model Code of Conduct (1998) as under:

Paragraph VII(vi)(b) of the Model Code of Conduct would be substituted as below:

“(b) (except civil servants) lay foundation stones, etc. of projects or schemes of any kind; or

Further, after Clause (d) of sub-Para (vi) of Para VII, the following shall be inserted:

**Note:-** The Commission shall announce the date of any election which shall be a date ordinarily not more than three weeks prior to the date on which the notification is likely to be issued in respect of such elections.”

2. in terms of the above settlement agreed to between the Union of India and the Election Commission of India, further necessary steps to withdraw the aforesaid SLP filed by the Union of India are required to be taken by filling a joint affidavit. The Central Agency Section's File No. 2263/97-CAS refers.
3. Accordingly, it is requested that the matter may be placed before the learned Attorney General. The SLP is already listed for hearing and likely to come up today. In case any other material/information is required in this regard, the undersigned may be contacted.

Sd/-

(N.L.Meena)

Joint Secretary and Legislative Council

To,

The Department of Legal Affairs,  
(Attn.: Shri R. N. Poddar, JS&LA, In-Charge),  
Central Agency Section)  
Lawyer's Chamber No. 63,  
Supreme Court Compound,  
New Delhi-01.

Copy to:

The Secretary (Attn.: Shri K.J. Rao), the Election Commission of India, Nirvachan Sadan, New Delhi for information with reference to their letter dated 11.4.2001 cited above.

Sd/-

(Surender Kumar)

Under Secretary to the Govt. of India

## **Summary of Harbans Singh Jalal Vs. Union of India and others- Punjab & Haryana High Court**

(Civil Writ Side Civil Writ Petition No. 270 of 1997)

The Election Commission announced the programme for the general election to the Punjab Legislative Assembly on 30 December, 1996. Simultaneously, the Commission informed the State Government and all other authorities concerned that Model Code of Conduct would come into effect from the date of announcement of the election schedule by the Commission (i.e. on 30 December, 1996). Prior to the announcement of the election schedule by the Election Commission, the political party in power in the State, namely, Indian National Congress, had announced certain welfare measures and schemes at a State level conference on 22 December, 1996. These welfare measures and schemes were to be implemented with effect from 1 January, 1997. Enforcement of Model Code of Conduct from 30 December, 1996 affected the implementation by the State Government of the said welfare schemes from 1st January, 1997. A writ petition was filed before the Punjab and Haryana High Court contending, inter alia, that Model Code of Conduct could be brought into force only from the date of actual notification of the election by the Governor of the State and not from the date of announcement of the election schedule by the Election Commission and that the Election Commission could not control the activities of the Government during the period between the announcement of the election schedule and the notification of the election by the Governor.

The High Court dismissed the writ petition, holding that the Election Commission is entitled to take necessary steps for the conduct of a free and fair election, even anterior to the date of issuance of notification of election by the Governor, and from the date of announcement of the election by the Election Commission. While doing so, Model Code of Conduct adopted to be followed by all political parties, can be directed by the Election Commission to be followed from the date of announcement of election schedule by it.

The High Court recorded that "it is evident that activities on the eve of election should also be for the conduct of a free and fair election. "Eve of election" can only be the period prior to the date of notification of election. By the date of notification, the process of election starts. It is not with reference to the date

after process of commencement of election, their lordships referred to the period 'on the eve of election'. So, according to us, during the eve of election also, the Election Commission should ensure that nothing which tends to interfere with the conduct of free and fair election, takes place. Viewed in this light, we are of the considered view that Election Commission should take necessary steps for conduct of free and fair election even before the date of the issue of the notification.

Petitioner has no case that Election Commission acted against any statutory provision. Their action in directing the Government to follow model code of conduct did not amount to issuing direction to act against any provision of law. When it is seen that the Election Commission has been entrusted with the responsibility to have a free and fair election which should be pure, and the source of their power is Article 324 of the Constitution, we are clear in our mind that the action taken by them in issuing Annexure p-5 is not at all illegal or arbitrary.

The existence of political parties and their participation in election cannot be denied by any one. In the present democratic system prevailing in India, political parties play a vital role in the administration of the country. Leaders of the political parties, in their wisdom, evolved a model code of conduct, to be followed by them in election. That was so framed by them under the auspices of the Election Commission. That code does not contain any provision contrary or derogatory to any enactment. Such a code of conduct when it is seen that it does not violate any of the statutory provisions, can certainly be adopted by the Election Commission for the conduct of free and fair election which should be pure as well.

On the eve of election, political parties or candidates may come forward with tempting offers to the electorate to win their favour. If such a course is allowed to be resorted to by the parties or the candidates contesting the elections, it will certainly undermine the purity of elections. In such a situation, if Election Commission took steps to implement the code of conduct which in no way infringes any of the laws, this Court, in exercise of the powers under Article 226 of the Constitution, is not to interfere.

Election Commission has not taken any step to prevent activities of the party which is in power during the period prior to the date of announcement of the

election. Knowing the situation, Election Commission announced the election more than three weeks prior to the issuance of the notification under section 15 of the Act. This period of three weeks is to apprise the political parties of the ensuing elections, for enabling them to prepare for the election. The said period intervening between the date of announcement and date of notification, is not at all unreasonable. During the short period preceding the notification, the Election Commission compels the political parties, the party in power and the candidates to behave in a manner which will not undermine conduct of free and fair election.

On the basis of the observations made by the Supreme Court regarding payments from the discretionary grants at the disposal of the Ministers on the eve of election, Election Commission suggested law to be passed on the issue. Government of India, after considering that suggestion, took a decision that instead of making provisions in the rules regulating the disbursements from the discretionary grants, a convention should be adopted that for a period of three months immediately prior to the polling no expenditure should ordinarily be incurred from the Ministers' discretionary grants. So also, the Government of India in their communication dated October 28, 1969, took the view that instead of making any specific provision in the rules regulating disbursement from discretionary grants, a convention should be evolved that for a period of three months immediately prior to the polling, no expenditure should ordinarily be incurred from a Minister's discretionary grant. These decisions taken by the Government show that Government was inclined to have conventions on these matters and not to have statutory provisions. In such a situation, the action on the part of the Election Commission in directing Governments to follow the model code of conduct adopted by the various national parties appears to be quite legal and proper.

Election Commission has categorically stated that they have not interfered with the day to day decisions of the State Government. They only wanted officers connected with election to be retained as their respective places. They also wanted to ensure the conduct of free and fair election without interference by officers as well. If permanent executives of the State took into their heads that some of the actions which the political executive wanted to implement, as violative of directions given by the Election Commission, the Election Commission cannot be faulted. No direction of the Election Commission having the effect of



interfering with the day to day decisions of the Government, has been brought to our notice either. In such a situation, we are not in a position to find any illegality in the action resorted to by the Election Commission.

The High Court further held that “In view of what has been stated above, we are clear in our mind that the Election Commission are entitled to take necessary steps for the conduct of a free and fair election even anterior to the date of issuance of notification, from the date of announcement of the election. While doing so, the model code of conduct adopted to be followed by all political parties including the political party in Government, can be directed to be followed by the Election Commission. Action of the Commission in this regard cannot be faulted, for the said model code of conduct adopted by the political parties does not go against any of the statutory provisions. It only ensures the conduct of a free any fair election which should be pure.

Writ petition fails. It is accordingly dismissed”.

**(3) Election Commission of India Petitioner(s) Vs. Rajaji Mathew Thomas & Ors. (Supreme Court)**

(Special Leave to Appeal (Civil) No(s).8891/2011)

**Summary**

General elections to the Kerala State Legislative Assembly were announced by the Election Commission on 1st March, 2011. Prior to the announcement of elections, on 25 February, 2011, the State Government issued an Order granting administrative sanction to a scheme to extend the existing scheme of providing food grain at the rate of Rs.2/- per kilogram to certain categories of people in the State, namely, the ration-card holders categorized as BPL/AAY, the families of fishermen, Scheduled Castes, Scheduled Tribes and Ashraya Scheme and the workers of forty-one unorganized/traditional sectors including those who have worked under the National Employment Guarantee Scheme for at least 50 days, to all the ration-card holders in the State, subject to certain conditions. Pursuant to issuance of the aforesaid Order dated 25 February, 2011, certain complaints were received by the Election Commission of India and the Chief Electoral Officer from various quarters, including a sitting Member of Parliament, two members of the Legislative Assembly, one of whom is the former Chief Minister of Kerala, and others. The District Collectors of Kollam and Kannur,

also sought certain clarifications from the respondents Nos.1 and 2 regarding implementation of the scheme for distribution of rice at Rs.2/- per kilogram in terms of the Government's decision dated 25 February 2011. The matter was thereupon forwarded by the Government to the Election Commission for obtaining its permission for implementing the scheme. In reply thereto, on 7 March, 2011, the Chief Electoral Officer, Kerala observed as follows:

**"Extension of the scheme to new beneficiaries as per G.O. NO.11/2011/F&CS, dated 25 February, 2011, may be deferred till the election process is over." The aforesaid view of the Chief Electoral Officer was ratified by the Election Commission by its letter dated 11 March, 2011".**

Aggrieved thereby, the respondent, filed Writ Petition No.8178(S) of 2011, in the Kerala High Court, which was disposed of by the Division Bench of the High Court by its judgment and order dated 21 March, 2011, holding that the impugned direction of the Election Commission and the Chief Electoral Officer to defer the implementation of the decision taken by the State Government on 25 February, 2011, to extend the benefits of the scheme, which was already in existence in relation to 4 others, as wholly arbitrary and unconnected with the purpose sought to be achieved for securing a level playing field to all the political parties contesting the elections. The aforesaid order of the Kerala High Court was challenged by the Election Commission.

On behalf of the Election Commission, it was submitted that the Election Commission had no objection to the continuance of the scheme which was in operation prior to 25 February, 2011. However, as far as extending the benefits to new sections of the populace of the State are concerned, the same would amount to disturbing the level playing field for all political parties in the election process. It was submitted that the action taken by the Election Commission in requesting the State Government to defer the proposed extension of the scheme to new sections of the people, was neither arbitrary nor meant to prevent any benefit being given to such sections of the people, except during the period of election.

The State Government submitted that since the decision to extend the scheme to new sections of the people was taken prior to the announcement of the elections

in Kerala, it could not be said that the same had been hit by Model Code, which was promulgated subsequently.

The Supreme Court maintained that what was intended by Model Code was that no action should be taken by a party in power in close proximity to the date on which the elections are announced so as to derive any benefit therefrom during the elections or to disturb the level playing field for all political parties involved in the electoral process. Furthermore, although, the administrative sanction to the proposed extension of the scheme to the new sections of the population was given on 25 February, 2011, prior to the announcement of the elections, its implementation could not have been possible prior to the announcement of the elections on account of the various procedures involved in giving effect to the same. In fact, the said position would be clear from the reference made by the State Government to the Election Commission seeking permission to implement the scheme and was also corroborated by the learned counsel appearing for the State admitting that the scheme, as extended, had been implemented only after the impugned judgment of the High Court.

Accordingly, the Supreme Court issued notice on the Special Leave Petition and directed to stay the judgment of the High Court.

**(4) S. Subramaniam Balaji Vs The Government of Tamil Nadu & Ors. (Supreme Court)**

(CIVIL APPEAL NO. 5130 OF 2013  
(Arising out of SLP (C) No. 21455 of 2008))

**Summary**

On the eve of general elections in the State of Tamil Nadu in 2006 and 2011, certain civil society organisations and private individuals approached the Madras High Court questioning the promises of certain gift items in the manifestos of the prominent political parties in the state, which the petitioners considered as ‘freebies’. The Madras High Court (Madurai Bench) dismissed on 25 June 2007 the writ petition (No. 9013 of 2006–*S. Subramaniam Balaji v The Government of Tamil Nadu & Ors*) filed in the context of the 2006 general election. The matter was taken by the petitioner to the Supreme Court in 2008, and he also got his writ petition filed in the context of 2011 general election and which was pending before the High Court, transferred to the Supreme Court. The Supreme Court,

while disposing of the above matters, by its order dated 5 July 2013, summarized its findings, conclusions and directions as under:

- (i) After examining and considering the parameters laid in Section 123 of RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law. A reference to a decision of this court will be timely. In Prof. Ramchandra G. Kapse vs. Haribansh Ramakbal Singh (1996) 1 SCC 206 this Court held that “..Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party.
- (ii) Further, it has been decided that the schemes challenged in this writ petition fall within the realm of fulfilling the Directive Principles of State Policy thereby falling within the scope of public purpose.
- (iii) The mandate of the Constitution provides various checks and balances before a Scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies withdrawn for the implementation of schemes by passing suitable Appropriation Bill, the court has limited jurisdiction to interfere in such schemes.
- (iv) We have also emphasized on the fact that judicial interference is permissible only when the action of the government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State.
- (v) It is also asserted that the schemes challenged under this petition are in consonance with Article 14 of the Constitution.
- (vi) As there is no legislative vacuum in the case on hand, the scope for application of Vishaka principle does not arise.
- (vii) The duty of the CAG will arise only after the expenditure has incurred.
- (viii) Since this petition is fit for dismissal de hors the jurisdiction issue, the issue of jurisdiction is left option.

## **2. Directions:**

- (i) Although the law is obvious that the promise in the election manifesto cannot be construed as ‘corrupt practice’ under Section 123 of RP Act,

the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree. The Election Commission through its counsel also conveyed the same feeling both in the affidavit and in the argument that the promise of such freebies at government cost disturbs the level playing field and vitiates the electoral process and thereby expressed willingness to implement any directions or decision of this Court in this regard.

- (ii) As observed in the earlier part of the judgment, this Court has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instruction under the Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject matter of the order of Election Commission is covered by a legislative measure.
- (iii) Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognized political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power etc. In the similar way, a separate head for guidelines for election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties & Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process.

- (iv) We hereby direct the Election Commission to take up this task as early as possible owing to its utmost importance. We also record the need for a separate legislation to be passed by the legislature in this regard for governing the political parties in our democratic society.

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# ANNEXURES





## ANNEXURE- I

(CHAPTER – 2 STATUS AND SCOPE OF MODEL CODE)

# MODEL CODE OF CONDUCT FOR THE GUIDANCE OF POLITICAL PARTIES AND CANDIDATES

## I. General Conduct

- (1) No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.
- (2) Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.
- (3) 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.
- (4) All parties and candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.
- (5) The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his political opinions or activities. Organising demonstrations or picketing before the houses of individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances.
- (6) No political party or candidate shall permit its or his followers to make use of -  
3 - any individual's land, building, compound wall etc., without his permission

for erecting flag-staffs, suspending banners, pasting notices, writing slogans etc.

- (7) Political parties and candidates shall ensure that their supporters do not create obstructions in or break up meetings and processions organised by other parties. Workers or sympathisers of one political party shall not create disturbances at public meetings organised by another political party by putting questions orally or in writing or by distributing leaflets of their own party. Processions shall not be taken out by one party along places at which meetings are held by another party. Posters issued by one party shall not be removed by workers of another party.

## **II. Meetings**

- (1) The party or candidate shall inform the local police authorities of the venue and time any proposed meeting Well in time so as to enable the police to make necessary arrangements for controlling traffic and maintaining peace and order.
- (2) A Party or candidate shall ascertain in advance if there is any restrictive or prohibitory order in force in the place proposed for the meeting if such orders exist, they shall be followed strictly. If any exemption is required from such orders, it shall be applied for and obtained well in time.
- (3) If permission or license is to be obtained for the use of loudspeakers or any other facility in connection with any proposed meeting, the party or candidate shall apply to the authority concerned well in advance and obtain such permission or license.
- (4) Organisers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create disorder. Organisers themselves shall not take action against such persons.

## **III. Procession**

- (1) A Party or candidate organizing a procession shall decide before hand the time and place of the starting of the procession, the route to be followed and the time and place at which the procession will terminate. There shall ordinary be on deviation from the programme.
- (2) The organisers shall give advance intimation to the local police authorities of the programme so as to enable the letter to make necessary arrangement.

- (3) The organisers shall ascertain if any restrictive orders are in force in the localities through which the procession has to pass, and shall comply with the restrictions unless exempted specially by the competent authority. Any traffic regulations or restrictions shall also be carefully adhered to.
- (4) The organisers shall take steps in advance to arrange for passage of the procession so that there is no block or hindrance to traffic. If the procession is very long, it shall be organised in segments of suitable lengths, so that at convenient intervals, especially at points where the procession has to pass road junctions, the passage of held up traffic could be allowed by stages thus avoiding heavy traffic congestion.
- (5) Processions shall be so regulated as to keep as much to the right of the road as possible and the direction and advice of the police on duty shall be strictly complied with.
- (6) If two or more political parties or candidates propose to take processions over the same route or parts thereof at about the same time, the organisers shall establish contact well in advance and decide upon the measures to be taken to see that the processions do not clash or cause hindrance to traffic. The assistance of the local police shall be availed of for arriving at a satisfactory arrangement. For this purpose the parties shall contact the police at the earliest opportunity.
- (7) The political parties or candidates shall exercise control to the maximum extent possible in the matter of processionists carrying articles which may be put to misuse by undesirable elements especially in moments of excitement.
- (8) The carrying of effigies purporting to represent member of other political parties or their leaders, burning such effigies in public and such other forms demonstration shall not be countenanced by any political party or candidate.

#### **IV. Polling Day**

All Political parties and candidates shall –

- (i) co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction.
- (ii) supply to their authorized workers suitable badges or identity cards.
- (iii) agree that the identity slip supplied by them to voters shall be on plain (white)

paper and shall not contain any symbol, name of the candidate or the name of the party;

- (iv) refrain from serving or distributing liquor on polling day and during the forty eight hours preceding it.
- (v) not allow unnecessary crowd to be collected near the camps set up by the political parties and candidates near the polling booths so as to avoid Confrontation and tension among workers and sympathizers of the parties and the candidate.
- (vi) ensure that the candidate’s camps shall be simple .The shall not display any posters, flags, symbols or any other propaganda material. No eatable shall be served or crowd allowed at the camps and
- (vii) co-operate with the authorities in complying with the restrictions to be imposed on the plying of vehicles on the polling day and obtain permits for them which should be displayed prominently on those vehicles.

## **V. Polling Booth**

Excepting the voters, no one without a valid pass from the Election Commission shall enter the polling booths.

## **VI. Observers**

The Election Commission is appointing Observers. If the candidates or their agents have any specific complaint or problem regarding the conduct of elections they may bring the same to the notice of the Observer.

## **VII. Party in Power**

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular –

- (i) (a) The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work.
- (b) Government transport including official air-crafts, vehicles, machinery and personnel shall not be used for furtherance of the interest of the party in power;

- (ii) Public places such as maidens etc., for holding election meetings, and use of helipads for air-flights in connection with elections shall not be monopolized by itself. Other parties and candidates shall be allowed the use of such places and facilities on the same terms and conditions on which they are used by the party in power;
- (iii) Rest houses, dark bungalows or other Government accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidate shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;
- (iv) Issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.
- (v) Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced by the Commission; and
- (vi) From the time elections are announced by Commission, Ministers and other authorities shall not –
  - (a) announce any financial grants in any form or promises thereof; or
  - (b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or
  - (c) make any promise of construction of roads, provision of drinking water facilities etc.; or
  - (d) make any ad-hoc appointments in Government, Public Undertakings etc. which may have the effect of influencing the voters in favor of the party in power.

**Note :** The Commission shall announce the date of any election which shall be a date ordinarily not more than three weeks prior to the date on which the notification is likely to be issued in respect of such elections.

- (vii) Ministers of Central or State Government shall not enter any polling station or place of counting except in their capacity as a candidate or voter or authorized agent.

### **VIII. Guidelines on Election Manifesto**

1. The Supreme Court in its judgment dated 5th July 2013 in SLP(C) No. 21455 of 2008 (S. Subramanian Balaji Vs Govt. of Tamil Nadu and others) has directed the Election Commission to frame guidelines with regard to the contents of election manifesto in consultation with all the recognized political parties. The guiding principles which will lead to framing of such guidelines are quoted below from judgment:-
  - (i) “Although, the law is obvious that the promises in the election manifesto cannot be construed as ‘corrupt practice’ under Section 123 of RP Act, the reality cannot be ruled out that distribution of freebies on any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree”.
  - (ii) “The Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the party of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution which mandates the Commission to hold free and fair elections.”
  - (iii) “We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process”.
2. Upon receiving the above direction of the Hon’ble Supreme Court, the Election Commission held a meeting with the recognized National and State Political Parties for consultation with them in the matter and took note of their conflicting views in the matter. During consultations, while upon some political parties

supported the issuance of such guidelines, others were of the view that it is their right and duty towards voters to make such offers and promises in manifesto in a healthy democratic polity. While the Commission agrees in principle with the point of view that framing of manifestos is the right of the political parties, it cannot overlook the undesirable impact of some of the promises and offers on the conduct of free and fair elections and maintaining level playing field for all political parties and candidates.

3. The Constitution under Article 324 mandates the Election Commission, to conduct elections inter alia to the Parliament and the State Legislatures. Having due regard to the above direction of the Supreme Court and after consultation with the Political Parties, the Commission, in the interest of free and fair elections, hereby directs that Political parties and candidates while releasing election manifesto for any election to the Parliament or State Legislatures, shall adhere to the guidelines :-
- (i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code of Conduct.
  - (ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare in election manifesto. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.
  - (iii) In the interest of transparency, level playing field and credibility of promises, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.

## ANNEXURE- II

(CHAPTER – 3 ENFORCEMENT OF MODEL CODE)

ECI letter No. 437/6/INST/2008-CC&BE dated: 19<sup>th</sup> March, 2009 addressed to the Cabinet Secretary, Govt. of India, Chief Secretaries and Chief Electoral Officers of all States and UTs.

### **Sub: Applicability of Model Code of Conduct to Commissions, Corporations, Committees, etc**

I am directed to state that the Commission has decided to clarify that the provisions of Model Code of Conduct apply to all organizations/committees, corporations/commissions etc, funded wholly or partially by the Central Govt. or any State Govt. like the Commonwealth Games Organizing Committee, DDA, Electricity Regulatory Commissions, Jal Boards, Transport Corporations, any other development authority etc. Any action in contravention of the provisions contained in the Model Code of Conduct for the political parties and candidates including any publication of its advertisements by them highlighting their achievements or announcing new subsidies, tariffs or schemes would attract the provisions of the Model Code of Conduct and tantamount to violation of the same.



## ANNEXURE- III

(CHAPTER – 3 ENFORCEMENT OF MODEL CODE)

ECI letter No. 437/6/INST/2014-CC&BE, dated 26.04.2014 addressed to the Chief Electoral Officers of all States and UTs.

**Subject: Election related campaign activities undertaken by persons other than political parties and candidates-reg.**

Complaints are being received by the Commission from various quarters that some social, cultural or religious organizations, associations, formations etc., are making appeals to electors amounting to election campaign in favour of, or against, certain political parties or candidates, by holding congregations, yoga shivers, conclaves, meetings, processions, etc. These complaints also point out that some of these organizations/associations, in their campaign, are also invoking religion and are playing on the religious sentiments of electors to whom such appeals are addressed.

2. The Commission, having considered the matter, hereby lays down the following guidelines to be observed in the matter of such campaigns by organizations and persons other than political parties/candidates, during the period when Model Code of Conduct is in operation in connection with an election:

- (i) They should not invoke, in any manner, religion or religious grounds in any manner, or any activities likely to create disharmony among different classes or groups of people, in their campaign. Such activities/ statements are prohibited being offences under various provisions of the law, like, section 125 of the Representation of the People Act, 1951 sections 153A, 153B, 171C, 295A, 505(2) of the Indian Penal Code and Religious Institutions (Prevention of Misuse) Act, 1988.
- (ii) They should not indulge in any activities or make any statements that would amount to attack on personal life of any person or statements that may be malicious or offending decency and morality.
- (iii) when persons and organizations seek permission to hold public programmes, they should be asked to give a declaration/undertaking to abide by the above guidelines.
  - (i) The public programmes of such persons and organizations should be

closely monitored through videography. If anyone indulges in violation of the above guidelines’ the state and district authorities concerned with the maintenance of proper law and order should take appropriate remedial and penal actions expeditiously in all such cases. Further, the District Administration shall ensure that such persons who violated the undertaking are not granted any permission to hold any further programmes during the period of that election.

(ii) If the programmes involve incurring expense and amounts to directly promoting the electoral prospects of any particular candidate or candidates, prior special authority from the candidate concerned for incurring the expense shall be obtained in writing, as required under Section 171H of the IPC, and such authorization should be submitted to the District Election officer within 48 hours. Any violation should result in action for prosecuting the person concerned.

3. These guidelines may be brought to the notice of all election related authorities in the State/UT for strict compliance. This may also be given wide publicity for information of all concerned.

## **ANNEXURE- IV**

(CHAPTER – 4 SPECIAL MEASURES TAKEN BY THE ELECTION COMMISSION TO ENFORCE MODEL CODE)

ECI letter No. 437/6/2017(Policy) dated. 10<sup>th</sup> January, 2017 addressed to president/ secretary/General secretary, all recognized National and State political Parties. Copy endorsed to CEOs of all state/UTs

### **Subject- General Election to Legislative Assemblies 2017 – MCC – reg.**

As you are kindly aware the MCC and various provisions of IPC, inter alia, provide that political parties and their leaders should desist from making statements to the effect of creating disharmony between different sections of society on the basis of religion as the same disturb peace and tranquilly of the society which is absolutely essential for free and peaceful conduct of elections. Even the Hon’ble Apex Court of the country has expressed its deep concerns in the matter vide its judgment and order dated 02.01.2017 in Civil Appeal No. 37 of 1992 (Abhiram Singh Vs C.D.Commachen) and with Civil Appeal no. 8339 of 1995.

The Commission will not remain a silent spectator if the provisions of law or MCC are violated and no one can do it with impunity. The Commission will take stern action for any violation under all powers available.

## ANNEXURE- V

(CHAPTER – 4 SPECIAL MEASURES TAKEN BY THE ELECTION COMMISSION TO ENFORCE MODEL CODE)

Election Commission's letter No. 464/INST/2007-PLN-I Dated: 07.01.07 addressed to The Chief Secretaries and the Chief Electoral Officers of all States and Union Territories.

### **Subject: CODE OF CONDUCT – DOs & DONT's**

The Commission has issued various instructions on observance of code of conduct from time to time. Important aspects of the code of conduct are reiterated below:

#### **On Welfare schemes and governmental works:**

1. Announcement of new projects or programme or concessions or financial grants in any form or promises thereof or laying of foundation stones, etc., which have the effect of influencing the voters in favour of the party in power is prohibited.
2. These restrictions apply equally to new schemes and also ongoing schemes. But it does not mean that in the case of national, regional and State utility schemes, which have already been brought up to the stage of completion, their utilization or functioning in public interest should be stopped or delayed. The coming into force of the Model Code of Conduct cannot be given as an excuse for not commissioning such schemes or allowing them to remain idle. At the same time, it should be ensured that the commissioning of such schemes is done by civil authority and without associating political functionaries and without any fanfare or ceremonies whatever, so that no impression is given or created that such commissioning has been done with a view to influencing the electorate in favour of the ruling party. If in doubt, a clarification should be obtained from Chief Electoral Officer/Election Commission of India.
3. It is further clarified that simply because a budget provision has been made for any particular scheme or the scheme has been sanctioned earlier or a reference to the scheme was made in the address of the Governor or the budget speech of the Minister it does not automatically mean that such schemes can be announced or inaugurated or otherwise taken up after the announcement of elections while the Model Code of conduct is in operation, since they will clearly be intended to

influence the voters. Such actions if undertaken will be considered a violation of the model code of conduct.

4. No fresh sanctions for governmental schemes should be made. Review by political executive (Ministers etc.) and processing of beneficiary oriented schemes, even if ongoing, should be stopped till completion of elections. No fresh release of funds on welfare schemes and works should be made or contract for works awarded in any part of the state where election is in progress without prior permission of the Commission. This includes works under the Member of Parliament (including Rajya Sabha members) Local Area Development fund or MLAs / MLCs Local Area Development Fund, if any such scheme is in operation in the state.
5. No work shall start in respect of which even if work orders have been issued before the model code came into effect, if the work has actually not started in the field. These works can start only after the completion of election process. However, if a work has actually started, that can continue.
6. There shall be no bar to the release of payments for completed work(s) subject to the full satisfaction of the concerned officials.
7. Commission does not refuse approval for schemes undertaken for tackling emergencies or unforeseen calamities like providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc. In these matters, however, prior approval of the Commission should be taken and all ostentatious functions should be strictly avoided and no impression should be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office so as to influence the electors in favour of the party in power which at the same time will adversely affect the prospects of the other parties.

### **On Transfers and posting of officials:**

The Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to: -

- (i) The Chief Electoral Officer and Additional/Joint/Deputy Chief Electoral Officers;
- (ii) Divisional Commissioners;

- (iii) The District Election Officers, Returning Officers, Assistant Returning Officers and other Revenue Officers connected with the Conduct of Elections;
- (iv) Officers of the Police Department connected with the management of elections like range IGs and DIGs, Senior Superintendents of Police and Superintendents of Police, Sub-divisional level Police Officers like Deputy Superintendents of Police and other Police officers who are deputed to the Commission under section 28A of the Representation of the People Act, 1951;
- (v) Other officers drafted for election works like sector and zonal officers, Transport cell, EVM cell, Poll material procurement & distribution cell, Training cell, Printing Cell etc. Senior officers, who have a role in the management of election in the State, are also covered by this direction.
- (vi) The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when model code came into effect should not be given effect to without obtaining specific permission from the Commission.
- (vii) This ban shall be effective till the completion of the election process.
- (viii) In those cases where transfer of an officer is considered necessary on account of administrative exigencies, the State Government may, with full justification, approach the Commission for prior clearance.
- (ix) No appointments or promotions in Government / Public Undertakings shall be made during this period, without prior clearance of the Commission.

### **On Misuse of Official Machinery:**

1. Official vehicles cannot be used for electioneering work. ‘Official Vehicles’ include all vehicles belonging to
  - o Central and State Government,
  - o Public Undertakings of the Central and State Government,
  - o Joint Sector Undertakings of Central and State Government,
  - o Local Bodies, Municipal Corporations, Municipalities,
  - o Marketing Boards (by whatever name known),
  - o Cooperative Societies,

- o Autonomous District Councils, or
  - o Any other body in which public funds, howsoever small a portion of the total, are invested, and also
  - o Vehicles belonging to the Ministry of Defence and the Central Police Organizations under the Ministry of Home Affairs and State Governments.
2. It is open for a minister of the Union or State to make private visits using his or her private vehicle(s). For such private visits, the official personal staff of the ministers shall not accompany them. However, if a Minister is traveling in some emergent situation, out of his HQ on purely official business, which cannot be avoided in public interest, then a letter certifying to this effect should be sent from the Secretary concerned of the Department to the Chief Secretary of the state where the Minister intends to visit, with a copy to the Commission. During such tour, the Chief Secretary may provide the Minister with Government vehicle and accommodation and other usual courtesies for his official trip. However, immediately preceding or during or in continuation of such an official tour, no minister can carry out or combine any election campaign or political activity. The Commission will keep watch on such arrangements in due consultation with its Chief Electoral Officer.
3. No Minister, whether of union or state, will summon any election related officer of the constituency or the State, for any official discussions during the period of elections commencing with the announcement of the elections. Only exception will be when a Minister, in his capacity as in charge of the department concerned, or a Chief Minister undertakes an official visit to a constituency, in connection with failure of law and order or a natural calamity or any such emergency which requires personal presence of such Ministers/Chief Ministers for the specific purpose of supervising review/salvage/relief and such like purpose.
4. Ministers are entitled to use their official vehicles only for commuting from their official residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity.
5. Ministers, whether of the Union or State, shall not combine in any manner their official tours with election work.
6. Whether on a private or official visit, no pilot car(s) or car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind shall be used by any

political functionary, even if the State administration has granted him a security cover requiring presence of armed guards to accompany him on such visit. This is applicable whether the vehicle is government owned or private owned.

7. Any official who meets the Minister on his private visit to the constituency where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided there-under.

#### OTHER ‘DOS AND DON’TS’ FOR THE GUIDANCE OF THE CANDIDATES AND POLITICAL PARTIES TO BE OBSERVED FROM THE ANNOUNCEMENT OF AN ELECTION AND UNTIL THE COMPLETION OF THE PROCESS OF ELECTION.

The Commission has drawn up a list of **‘Dos’ and ‘Don’ts’** to be followed by candidates and political parties after the announcement of elections and till the completion of the process of elections. The Commission has directed that this be given the widest possible publicity and its contents brought to the knowledge of all candidates and political parties including in the official language of the State.

It must be clearly brought to the notice of candidates and political parties that the list of Dos’ and Donts’ is only illustrative and not exhaustive and is not intended to substitute or modify other detailed directions/instructions on the above subjects, which must be strictly observed and followed.

#### **DO’S**

- (1) On-going programmes, which actually started in the field before the announcement of elections may continue.
- (2) Relief and rehabilitation measures to the people in areas affected by floods, drought, pestilence, and other natural calamities, can commence and continue.
- (3) Grant of cash or medical facilities to terminally or critically ill persons can continue with appropriate approvals.
- (4) Public places like maidans must be available impartially to all parties/contesting candidates for holding election meetings. So also use of helipads must be available impartially to all parties/contesting candidates, to ensure a level playing field.



- (5) Criticism of other political parties and candidates should relate to their policies, programme, past record and work.
- (6) The right of every individual for peaceful and undisturbed home life should be fully safeguarded.
- (7) The local police authorities should be fully informed of the venue and time of the proposed meetings well in time and all necessary permissions taken.
- (8) If there are any restrictive or prohibitory orders in force in the place of the proposed meeting, they shall be fully respected. Exemption, if necessary, must be applied for and obtained well in time.
- (9) Permission must be obtained for the use of loudspeakers or any other such facilities for the proposed meetings.
- (10) The assistance of the police should be obtained in dealing with persons disturbing meetings or otherwise creating disorder.
- (11) The time and place of the starting of any procession, the route to be followed and the time and place at which the procession will terminate should be settled in advance and advance permissions obtained from the police authorities.
- (12) The existence of any restrictive orders in force in the localities through which the procession has to pass should be ascertained and fully complied with. So also all traffic regulations and other restrictions.
- (13) The passage of the procession must be without hindrance to traffic.
- (14) Cooperation should be extended to all election officials at all times to ensure peaceful and orderly poll.
- (15) All Workers must display badges or identity cards.
- (16) Unofficial identity slips issued to voters shall be on plain (white) paper and not contain any symbol, name of the candidate or name of the party.
- (17) Restrictions on plying of vehicles during the campaign period and on poll day shall be fully obeyed.
- (18) (Except voters, candidates and their election/polling agents), only persons with a specific valid authority letter from the Election Commission can enter any polling booth. No functionary however highly placed (e.g. Chief Minister,

Minister, MP or MLA etc) is exempt from this condition.

- (19) Any complaint or problem regarding the conduct of elections shall be brought to the notice of the observer appointed by the Commission/Returning Officer/Zonal/Sector Magistrate/Election Commission of India.
- (20) Directions/orders/instructions of the Election Commission, the Returning Officer, and the District Election Officer shall be obeyed in all matters related to various aspects of election.
- (21) Do leave the constituency after the campaign period is over if you are not a voter or a candidate or candidate's election agent from that constituency.

### **DON'Ts**

- (1) Any and all advertisements at the cost of the public exchequer regarding achievements of the party/Government in power is prohibited.
- (2) No Minister shall enter any polling station or the place of counting, unless he or she is a candidate or as a voter only for voting.
- (3) Official work should not at all be mixed with campaigning/electioneering. (4) No inducement, financial or otherwise, shall be offered to the voter.
- (5) Caste/communal feelings of the electors shall not be appealed to.
- (6) No activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes, communities or religious or linguistic groups shall be attempted.
- (7) No aspect of the private life, not connected with the public activities, of the leaders or workers of other parties shall be permitted to be criticized.
- (8) Other parties or their workers shall not be criticized based on unverified allegations or on distortions.
- (9) Temples, Mosques, Churches, Gurudwaras or any place of worship shall not be used as places for election propaganda, including speeches, posters, music etc., on electioneering.
- (10) Activities which are corrupt practices or electoral offences such as bribery, undue influence, intimidation of voters, personation, canvassing within 100 meters of a polling station, holding of public meetings during the period of 48 hours ending

with the hour fixed for the close of the poll and conveyance of voters to and from polling stations are prohibited.

- (11) Demonstrations or picketing before the houses of individuals by way of protesting against their opinion or activities shall not be resorted to.
- (12) Subject to the local laws, no one can make use of any individual's land, building, compound wall, vehicles etc. for erecting flag staffs, putting up banners, pasting notices or writing slogans etc. without specific permission of the owner (to be shown to and deposited with the District Election Officer).
- (13) No disturbances shall be created in public meetings or processions organized by other political parties or candidates.
- (14) Processions along places at which another party is holding meetings shall not be undertaken.
- (15) Processionists shall not carry any articles, which are capable of being misused as missiles or weapons.
- (16) Posters issued by other parties and candidates shall not be removed or defaced.
- (17) Posters, flags, symbols or any other propaganda material shall not be displayed in the place being used on the day of poll for distribution of identity slips or near polling booths.
- (18) Loudspeakers whether static or mounted on moving vehicles shall not be used either before 6 a.m. or after 10a.m. and without the prior written permission of the authorities concerned.
- (19) Loudspeakers shall also not be used at public meetings and processions without the prior written permission of the authorities concerned. Normally, such meetings/processions will not be allowed to continue beyond 10.00 p.m. in the night and will be further subject to the local laws, local perceptions of the security arrangements of the area and other relevant considerations like weather conditions, festival season, examination period, etc.
- (20) No liquor should be distributed during elections.
- (21) On the day of the poll, no person who has been assessed to be having a security threat and therefore given official security shall enter the vicinity of a polling station premise (within 100 meters) with his security personnel. Further, on

the day of the poll no such person shall move around in a constituency with his security personnel. If the person provided with official security happens to be a voter also, then he or she shall restrict his / her movement - accompanied by security personnel, to voting only.

- (22) No person who has been assessed to be having a security threat and therefore provided official security or who has private security guards for himself, shall be appointed as an election agent or polling agent or counting agent.

NOTE: *The above list of Do's and Don'ts is only illustrative and not exhaustive and is not intended to substitute any other detailed orders, directions/instructions on the above subjects, which must be strictly observed and followed.*

The clarification/approval of the Election Commission of India/Chief Electoral Officer of your State should be obtained in cases of doubt. Please acknowledge the receipt of this letter.

## **ANNEXURE- VI**

(CHAPTER – 5 ANNOUNCEMENT OF NEW SCHEMES- RESTRICTION ON FINANCIAL & ADMINISTRATIVE MATTERS)

ECI letter No. 437/6/2009-CC&BE dated 5<sup>th</sup> March, 2009 addressed to the Cabinet Secretary, Govt. of India and the Chief Secretaries and Chief Electoral Officers of all States and UTs.

### **Sub: General Elections – Enforcement of the Model Code of Conduct - reg.**

Sir,

I am directed to state that the Commission has considered various aspects in the context of the Model Code of Conduct during General Elections and decided to issue to following Guidelines regarding implementation/processing of the various projects, schemes, rural development programmers etc. by the Central/State Governments :-

1. All Model Code of Conduct related directions shall be issued only by the Commission. The Cabinet Secretariat or any other government agency should reiterate and disseminate the directions of the Commission for compliance.
2. RBI may continue to take decisions unhindered on monetary policy issues.
3. After the Model Code of Conduct comes into effect, the Ministry of Finance will need to take prior approval of the Commission on any policy announcements, fiscal measures, taxation related issues and such other financial relief. Similarly, other Ministries/Departments will need to take prior approval of the Commission before announcing any relief/benefit.
4. The following types of existing works can be continued by the government agencies without reference to the Election Commission after the Model Code of Conduct comes into force:
  - a. Work-Projects that have actually started on the ground after obtaining all necessary sanctions;
  - b. Beneficiary-projects where specific beneficiaries by name have been identified before coming of the Model Code of Conduct into force;
  - c. Registered beneficiaries of NREGA may be covered under existing projects. New projects under NREGA that may be mandated under the provisions of the Act may be taken up only if it is for the already

registered beneficiaries and the project is already listed in the approved and sanctioned shelf of projects for which funds are also already earmarked.

5. There shall be no bar to release of funds for the completed portion of any work subject to observance of laid down procedures and concurrence of finance department.
6. The following type of new works (whether beneficiary or work oriented) that fulfill all the following conditions before Model Code of Conduct comes into effect, can be taken up under intimation to the Commission-
  - a. Full funding has been tied up.
  - b. Administrative, technical and financial sanctions have been obtained
  - c. Tender has been floated, evaluated and awarded and
  - d. There is contractual obligation to start and end the work within a given time frame and failing which there is an obligation to impose penalty on the contractor.
  - e. In case of any of the above conditions not being met in such cases prior approval of the Commission shall be sought and obtained.
7. Global tenders already floated, can be evaluated and finalized where any time limits are specified for such purpose.
8. Tenders other than global tenders, that are already floated may be evaluated but not finalized without prior approval of the Commission. If they are not already floated, they shall not be floated without prior approval of the Commission.
9. Commission invariably takes a humanitarian view on the work that are necessitated due to man-made or natural calamities.
  - a. Ex-gratia payments and gratuitous relief in the aftermath of a disaster can be given directly to the persons affected at the current rates/scales of assistance presently in force, under intimation to the Commission. No change in the extant and prescribed scales of payments, however, shall be made in the existing rates/scales without prior permission of the Commission.

- b. Payment directly to the hospitals from CM's/PM's Relief Fund, in lieu of direct cash payment to individual patients (beneficiaries) will be permissible without reference to the Commission.
  - c. Emergent relief works and measures that are aimed to mitigate the hardships, directly and solely, of the persons affected in a disaster may be taken up under intimation to the Commission.
  - d. However, new works that may be necessitated by way of preventive measures to mitigate the likely effects of natural disasters like repair of embankments, water channels etc. can be taken up only with prior permission of the Commission.
  - e. Also, an area shall not be declared drought/flood affected or any such calamity affected without prior approval of the Commission. The extent of area already declared to be calamity-effected cannot be expanded without prior approval of the Commission.
  - f. Similarly, any selective assistance to a group of persons from the PM's or the CM's Relief Fund will require prior approval of the Commission.
10. The following type of activities will require prior permission of the Commission:
- a. New works and project cannot be taken up from discretionary funds of whatever nature. Discretionary fund, in this context, includes funds, which are provided for in the budget in a generic manner and for which no identified and sanctioned project exists prior to Model Code of Conduct coming into effect.
  - b. Proposals for revival of sick PSUs, governmental take over of enterprises etc. (or any policy decision on similar lines) cannot be taken up.
  - c. Fresh auctions of liquor vends etc. cannot be held even if the annual auction time falls within the Model Code of Conduct period. Where necessary, the government should make interim arrangements as provided in their respective laws.
  - d. Area of operation of any existing project/scheme/programme can not be extended or expanded.

- e. No land allocation shall be made by the government to any entity, whether individual or an enterprise.
  - f. Signing a MOU or an agreement where the government is a party will also require prior clearance by the Commission.
11. Regular recruitment/appointment or promotion through the UPSC, State Public Service Commissions or the Staff Selection Commission or any other statutory authority can continue. Recruitments through non-statutory bodies, will require prior clearance of the Commission.
  12. While starting any work (including any relief work) or developmental activity no formal function shall be held involving any political functionary. As a matter of good practice, normal functions and publicity even with the presence of official functionaries should be kept to the minimum.
  13. Where works are to be undertaken or functions are to be held in fulfillment of international commitments, prior concurrence of the Commission shall be taken.
  14. All Government of India references to the Election Commission of India shall be made preferably through the Cabinet Secretariat. In so far as reference from State Governments are concerned, the same shall be made to the Election Commission of India through the Chief Electoral Officer (CEO) of the state concerned.

This may be brought to the notice of all concern authorities.



## ANNEXURE- VII

(CHAPTER – 5 ANNOUNCEMENT OF NEW SCHEMES- RESTRICTION ON FINANCIAL & ADMINISTRATIVE MATTERS)

ECI letter No.437/6/INST/2009-CC&BE dated 9th March, 2009 addressed to the Chief Secretaries and Chief Electoral Officers of all States and UTs

**Subject: General Election to the Lok Sabha-2009-Presentation of Budgets- Model Code of Conduct – reg.**

As you are aware, the General Election to the Lok Sabha, 2009 has been announced by the Commission and Model Code of Conduct has come into force w.e.f. 2nd March, 2009. The Commission has received many references from various States in respect of the introduction of the Budget for the year 2009-10.

2. The Commission would like to point out the prevalent convention that is followed in most of the States is that instead of presenting full budget, only a vote on account is taken for 3-4 months in cases where a General Election is imminent or when the process of General Election has been announced and the Model Code of Conduct is in operation. It contributes to a healthy democratic practice.
3. The Commission, in deference to the State Legislatures, and having regard to such a convention and propriety, would not like to lay down a precept or prescribe a course of action. However, it would advise, in the case of States that are going for Assembly polls, that a vote on account should be taken.
4. The above instructions may be brought to the notice of all concerned and the receipt of this letter may please be acknowledged.

## ANNEXURE- VIII

(CHAPTER – 5 ANNOUNCEMENT OF NEW SCHEMES- RESTRICTION ON FINANCIAL & ADMINISTRATIVE MATTERS)

Election Commission's letter No. 437/6/23/2004 PLN.III, dated 11.03.2004 addressed to the Chief Secretaries of Andhra Pradesh, Karnataka, Maharashtra, Tamil Nadu & Jharkhand.

**Subject: General Elections 2004 - Implementation of drought relief work -regarding.**

The Commission has been receiving various representations from the State Governments regarding the modalities of implementing relief work in areas which have been declared as "drought affected" in the respective States. The Commission after taking into account all relevant factors, directs the following :-

- (i) The drought relief works by way of immediate relief measures to be taken up by the State Governments shall only be in the areas which have been declared as "drought affected" within the parameters laid down under the guidelines for managing of Calamity Relief Fund by the Central Government. No new areas are to be added to the existing list of such "drought affected" areas after the announcement of elections on February 29<sup>th</sup> 2004. Addition of any additional area/village will only be subject to obtaining prior concurrence of the Commission after following the due procedure laid down for seeking assistance under the Calamity Relief Fund/ National Relief Fund laid down by the Government of India for operation of such funds.
- (ii) To provide immediate relief in the areas declared as drought affected, the Commission has provisionally approved the following measures:-
  - (a) Provision of drinking water by way of water tankers.
  - (b) Digging of bore-wells as well as dug-wells in scarcity areas on account of drying of the existing bore-wells/dug-wells.
  - (c) Provision of rice/wheat at prescribed rates for distribution among the destitute without support and who cannot go for work as per mechanism already prescribed in the Calamity Relief Fund Scheme.
  - (d) Provision of fodder for cattle.
  - (e) New works on wage employment (Food for work etc.) where such existing

works have been completed.

- (iii) No minister of the Government or a political functionary will be associated in the management of the drought relief operations in any capacity, supervisory or otherwise, during period of operation of the model code of conduct.
- (iv) The entire relief operation would be taken up by the Division, District and Taluka/sub-District Administration without involving elected representatives and/or non-officials at any level.

Kindly ensure compliance of the directions of the Commission and acknowledge.

## **ANNEXURE- IX**

(CHAPTER – 5 ANNOUNCEMENT OF NEW SCHEMES- RESTRICTION ON FINANCIAL & ADMINISTRATIVE MATTERS)

Election Commission's letter no. 437/6/1/2014-CC&BE dated 05.03.2014 addressed to The Cabinet Secretary, The Secretary Department of Programme Implementation and the Chief Secretaries/Chief Electoral Officers of all States and Union Territories

**Subject: General Elections to Lok Sabha 2014 and State Legislative Assemblies of Andhra Pradesh, Odisha and Sikkim - Release of funds under MPs' /MLAs' Local Areas Development Scheme**

I am directed to refer to the Commission's Press Note No. ECI/PN/10/2014, dated 5<sup>th</sup> **March, 2014** (Press Note available at Commission's web-site – **www.eci.gov.in**) as per which the Commission has announced the enforcement of the Model Code of Conduct for the guidance of the Political Parties and Candidates, consequent on the announcement of General Election to Lok Sabha and to the Legislative Assemblies of the States of Andhra Pradesh, Odisha and Sikkim including certain bye-elections.

2. The Commission has considered the release of funds under the Member of Parliament Local Area Development Schemes and has decided that-
  - a) No fresh release of funds under the Member of Parliament (including Rajya Sabha members) Local Area Development fund shall be made in any part of the country where election is in progress. Similarly no fresh release of funds under the MLAs'/ MLCs' Local Area Development Fund shall be made, if any such scheme is in operation, till the completion of election process.
  - b) No work shall start in respect of which work orders have been issued before the issue of this letter but the work has actually not started in the field. These works can start only after the completion of election process. However, if a work has actually started, that can continue.

There shall be no bar to the release of payments for completed work(s) subject to the full satisfaction of the concerned officials.

## **ANNEXURE- X**

(CHAPTER – 6 PUBLICATION OF ADVERTISEMENTS AT COST OF PUBLIC  
EXCHEQUER)

Election Commission's letter No.509/75/2004/JS-I, dated 15.04.2004 addressed to the Chief Electoral Officers of all the States / Union Territories.

**Subject: - Supreme Court's Order dated 13<sup>th</sup> April, 2004 relating to advertisements of political nature on TV Channel and cable networks.**

I am directed to enclose herewith a copy of the order dated 15<sup>th</sup> April. 2004, passed by the Commission in pursuance of the Order dated 13<sup>th</sup> April. 2004. of the Hon'ble Supreme Court in SLP ( C ) No. 6679 of 2004 (Ministry of Information and Broadcasting Vs. M/s. Gemini TV Pvt. Ltd. and others).

2. It may be noted that the Commission has directed that for pre-viewing, scrutinizing and certifying advertisements to be telecast over TV channels and cable networks by any registered political party or by any group or organization / association, having headquarters in NCT of Delhi, the Chief Electoral Officer, Delhi is to constitute a Committee as directed in paragraph 6 (i) of the Order. Similarly, the Chief Electoral Officers of other States / Union Territories will constitute Committees for dealing with applications by political parties and other associations / groups with headquarters in their States / Union Territories, as per paragraph 6 (iii). Vide paragraph 6 (v) of the Order, the Returning Officer of every Parliamentary Constituency have been declared as Designated Officer for previewing, scrutinizing and certifying advertisements by individual candidates contesting election from the constituency concerned. For the candidates contesting the current general election to the Legislative Assemblies of Andhra Pradesh, Karnataka, Orissa and Sikkim and the bye-elections in some States, the Returning Officer of the Parliamentary Constituency comprising the Assembly Constituency concerned will entertain applications for certification of advertisements.
3. The Chief Electoral Officers of all States / Union Territories are also required to constitute further a Committee to attend to complaints / grievances in regard to the decision of the Committees Designated Officers on the application for certification of advertisements.
4. Each application for certification is to be submitted before the Committee

concerned or the Designated Officer concerned in a statement as per the format prescribed in Annexure-A appended to the Order. The certificate for telecast for an advertisement is to be given by the Committee / Designated Officer in the format as given in Annexure-B appended to the Order. The applicants are required to submit two copies of the proposed advertisements in electronic form alongwith an attested transcript thereof.

5. A proper record in a register should be maintained for all applications received for certification. Each application should be serially numbered and the serial numbers should also be indicated on the two copies in electronic form and the receiving officer should affix his signature on the electronic copy. After issue of certificate, one electronic copy of the advertisement as certified for telecast, should be retained by the Committee / Designated Officer.
6. All Chief Electoral Officers may take immediate action for acquiring, by hiring or purchase, necessary equipments / infrastructure, such as television. VCR, VCD, etc. that may be required for the purpose of previewing and scrutinizing of advertisements by the Committees and Designated Officer in their State / Union Territory. Any purchase made are to be in accordance with the rates and procedures approved by the State Governments for similar items.
7. The Commission's order may be given wide publicity and this may be specifically brought to the notice of all District Election Officers / District Magistrates. Returning Officers, TV Channels, cable operators and political parties in the State / Union Territory.
8. Kindly acknowledge receipt.

**COPY**

**ELECTION COMMISSION OF INDIA**

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.

No. 509/75 2004/JS-I

Dated 15<sup>th</sup> April, 2004.

**ORDER**

1. Whereas, Section 6 of the Cable Television (Regulation) Act, 1995, provides that no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code; and
2. Whereas, Sub- rule (3) of Rule 7 of the Cable Television Network (Regulations) Rules, 1994 laying down the advertising code in terms of the abovementioned Section 6 provides that "no advertisement shall be permitted, the objects whereof, are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end"; and
3. Whereas, the High Court of Andhra Pradesh, by its judgement and order dated 23-03-2004 in WPMP No.5214/2004 (Gemini TV Pvt. Ltd. Vs. Election Commission of India and others), suspended the above mentioned provisions of Rule 7(3) of the Cable Television Network (Regulation) Rules, 1994; and
4. Whereas the Hon'ble Supreme court, by its interim order dated 2-4-2004, in SLP (Civil) No.6679/2004 (Ministry of Information & Broadcasting Vs M/s Gemini TV and Others), in substitution of the order under challenge, had directed as below: -
  - (i) No cable operator or TV channel shall telecast any advertisement, which does not conform to the law of the country and which offends the morality, decency and susceptibility of views or which is shocking, disgusting and revolting;
  - (ii) The telecast shall be monitored by the Election Commissioner of India;
  - (iii) The question as to whether the expenditure incurred by the candidate on inserting such advertisement should or should not be included, shall be considered on 5<sup>th</sup> April, 2004; and

(iv) The modalities whether such advertisements are in conformity with law, shall be laid down by the Election Commissioner of India.

5. Whereas, The Hon'ble Supreme Court of India by its further order dated 13<sup>th</sup> April, 2004, in SLP (Civil) No. 6679/2004 has directed as follows:

“--- Before we pass the order, it will be worthwhile to notice certain provisions of the Cable Television Networks (Regulation) Act, 1995 [for short, “the Act”], as amended from time to time, and the Rules framed there under. The object of the Act is to regulate the operation of the cable television network in the country. Section 6 of the Act provides that no person shall transmit or retransmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code. Section 11 of the Act provides that if any authorized officer has reason to believe that the provisions of the Act have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. Section 12 of the Act provides for confiscation of the equipment in the event of any violation of the provisions of the Act. Similarly, Section 13 of the Act also provides for seizure or confiscation of the equipment and punishment. Section 16 further provides for punishment for contravention of the provisions of the Act. Section 19 lays down that an authorized officer, if he thinks necessary or expedient so to do in the public interest, may, by order, prohibit any cable operator from transmitting or re-transmitting any advertisement which is not in conformity with the prescribed programme code and advertisement code and it is likely to promote enmity on grounds of religion, race, language, caste or community or any other grounds whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religion, racial, linguistic or regional groups or castes or communities or which is likely to disturb public tranquility. Section 22 of the Act empowers the Central Government to frame Rules to carry out the provisions of Act. The Central Government in exercise of the powers conferred on it by Section 22 of the Act is empowered to make Rules which are known as The Cable Television Networks Rules, 1994 [for short, “the Rules”]. Rule 7 of the Rules provides that where an advertisement is carried in the cable service it shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers. Sub-rule (2), inter



alia, provides that no advertisement shall be permitted which derides any race, caste, colour, creed and nationality, is against any provision of the Constitution of India and tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way. Sub-rule (3) further provides that no advertisement shall be permitted the objects whereof are wholly or mainly of religious or political nature, advertisements must not be directed towards any religious or political end. It is in this background, we now propose to pass the following order:

Every registered National and State, political party and every contesting candidate proposing to issue advertisement on television channel and/or cable network will have to apply to the Election Commission/ Designated Officer (as designated by the Election Commission) not later than three days prior to the date of the proposed commencement of the telecast of such advertisement. In case of any other person or unregistered political parties, they will have to apply not later than seven days prior to the date of the telecast. Such application shall be accompanied by two copies of the proposed advertisement in electronic form along with a duly attested transcript thereof. In case of first phase of elections, the application shall be disposed of within two days of its receipt and until decision thereon is taken, our order dated 2<sup>nd</sup> April, 2004, shall apply. In case of subsequent phase of election, the application shall be disposed of within three days of its receipt and until the decision thereon is taken, our order dated 2<sup>nd</sup> April, 2004, shall apply. While disposing of such applications, it will be open to the Election Commission/Designated Officer to direct deletion/modification of any part of the advertisement.

The application for certification shall contain following details:

- (a) The cost of production of the advertisement;
- (b) The approximate cost of proposed telecast of such advertisement on a television channel or cable network with the break-up of number of insertions and rate proposed to be charged for each such insertion;
- (c) It shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/ parties;

- (d) If the advertisement is issued by any person other than a political party or a candidate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or commissioned or paid for by any political party or a candidate; and
- (e) A statement that all the payments shall be made by way of cheque or demand draft.

We find that Section 2(a) of the Act defines “authorized officer”, within his local limits of jurisdiction, as (a) District Magistrate; (b) Sub-divisional Magistrate; or (c) Commissioner of Police. Similarly, Section 28-A of the Representation of People Act, 1951 provides that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under this part and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of results of such election and, accordingly, such officer shall during that period, be subject to the control, superintendence and discipline of the Election Commission.

Since it is not physically possible for the Election Commission to have a pre-censorship of all the advertisements on various cable networks and television channels, it has become necessary to authorize the Election Commission to delegate its powers in this behalf to the respective District Magistrates of all the States or Union Territories, not below the rank of a Sub-divisional Magistrate or a member of the State Provincial Civil Service. This may be done by a general order issued by the Election Commission. These officers shall act under the control, superintendence and discipline of the Election Commission. The Election Commission in its turn may delegate its powers to the Chief Electoral Officer of each State or the Union Territories, as the case may be.

The Chief Electoral Officer of each State or Union Territory may appoint a committee for entertaining complaints or grievances of any political party or candidate or any other person in regard to the decision to grant or to refuse certification of an advertisement. The committee so appointed shall communicate its decision to the Election Commission.

The committee so constituted will function under the overall superintendence, direction and control of the Election Commission of India.

The decision given by the committee shall be binding and complied with by the political parties, candidates, or any other person applying for advertisements in electronic media subject to what has been state above.

The comments and observations for deletion or modification, as the case may be, made, shall be binding and complied with by the concerned political party or contesting candidate or any other person within twenty four hours from the receipt of such communication and the advertisement so modified will be re-submitted for review and certification.

We may clarify that provisions of Section 126 of the Representation of People Act, 1951, shall apply to the advertisement covered by this order.

If any political party, candidate or any other person is aggrieved by the decision taken either by the committee or by the Designated Officer/Election Commission it will be open for them to approach only this court for clarification or appropriate orders and no other court, tribunal or authority shall entertain any petition in regard to the complaint against such advertisement. This order shall come into force with effect from 16<sup>th</sup> April, 2004 and shall continue to be in force till 10<sup>th</sup> May, 2004.

This order is being issued in exercise of the powers under Article 142 of the Constitution of India and it shall bind all the political parties, candidates, persons, group of persons or Trusts who propose to insert the advertisement in the electronic media, including cable network and/or television channels as well as cable operators.

It will be open to the Election Commission to requisition such staff as may be necessary for monitoring the telecast of such advertisements. Where the Election Commission is satisfied that there is a violation of this order or any provisions of the Act, it will issue an order to the violator to forthwith stop such violations and it will also be open to direct seizure of the equipments. Every order shall be promptly complied with by the person(s) on whom such order is served.

The funds to meet the cost of monitoring the advertisements should be made available to the Election Commission by the Union of

India. Adequate publicity of this order shall be given by the Union of India on the electronic media and through print media.

This order is in continuation of the order passed by this Court on 2<sup>n</sup> April, 2004 and shall remain in operation as an interim measure till 10<sup>th</sup> May, 2004.

Subject to the aforesaid order, the judgment of the High Court of Andhra Pradesh dated 23<sup>rd</sup> March 2004 shall remain stayed. This order is passed not in derogation of but in addition to the powers of the Central Government in regard to the breach of the provisions of the Act.”

6. Now therefore, in pursuance of the aforesaid directions of the Hon'ble Supreme Court, the Election Commission hereby directs as follows: -

(i) The Chief Electoral Officer Delhi is hereby directed to constitute a Committee comprising the following persons to deal with the applications by the political parties and organizations mentioned in para (ii) herein below:-

- a) The Joint Chief Electoral officer - Chairperson.
- b) Returning Officer of an > Parliamentary Constituency in Delhi.
- c) One expert being an officer not below the rank of Class-1 officer to be requisitioned from the Ministry of Information & Broadcasting.

(ii) The above Committee will entertain applications for certification of any advertisement to be inserted in a television channel or cable network by the following:-

- a) All registered political parties having their headquarters in NCT of Delhi.
- b) All groups or organizations or associations or persons having their headquarters in NCT of Delhi.

(iii) The Chief Electoral Officer of even- other State/Union Territory is hereby directed to constitute the following Committee to deal with applications by political parties and organizations mentioned in para (iv) below:-

- a) The Additional, Joint Chief Electoral Officer - Chairperson.

- b) Returning Officer of any Parliamentary constituency located in the capital of the State.
  - c) One expert being an officer not below the rank of Class-1 officer to be requisitioned from the Ministry of Information & Broadcasting.
  - (iv) The Committee constituted in para (iii) above will entertain applications for certification for advertisement on television channel and cable network by the following:-
    - (a) All registered political parties having their headquarters in that State /Union Territory,
    - (b) All organizations or group of persons or associations having their registered offices in that State/Union Territory.
  - (v) The Returning Officer of every Parliamentary constituency in the country are hereby declared as Designated Officers for the purpose of entertaining application for certification of an advertisement proposed to be issued on cable network or television channel by an individual candidate contesting the election from the Parliamentary’ constituency of which such Designated Officer is the Returning Officer and candidates contesting in the Assembly constituencies falling within that Parliamentary constituency. The said Returning Officer may co-opt any of the Assistant Returning Officers, not below the rank of a Sub-divisional Magistrate belonging to the State Provincial Civil Service to assist him in the task of certification of applications.
7. The Chief Electoral Officer of every State/Union Territory will constitute the following Committee to entertain complaints/grievances of any political party or candidate or any other person in regard to the decision to grant or refuse certification of an advertisement:-
- (i) The Chief Electoral Officer - Chairperson.
  - (ii) Any Observer appointed by the Election Commission of India
  - (iii) One expert to be co-opted by the Committee other than the one mentioned in paras 6 (i) and 6 (iii) above.
8. The applications for certification of any advertisements by every registered political parties and every contesting candidates shall be made to the

Committees mentioned in paras 6 (i) and 6 (iii) above or the Designated Officer as mentioned in para 6 (iv) above, as the case may be, not later than 3 (three) days prior to the date of the commencement of the telecast of such advertisements. In the case of first phase of elections such applications shall be disposed of within 2 (two) days of its receipt and until decision thereon is taken, the order of the Supreme Court dated 2-4-2004 shall apply.

9. Where an application for certification of advertisement is by any other person or unregistered political parties, it will have to be made not later than 7 (seven) days prior to the date of telecast.
10. Every such application, in the format prescribed at Annexure A, shall be accompanied by the following:
  - (i) Two copies of the proposed advertisement in the electronic form along with a duly attested transcript thereof,
  - (ii) The application for certification shall contain following details:-
    - a) The cost of production of the advertisement:
    - b) The approximate cost of proposed telecast of such advertisement on a television channel or cable network with the break-up of number of insertions and rate proposed to be charged for each such insertion:
    - c) It shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/parties;
    - d) If the advertisement is issued by any person other than a political party or a candidate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or commissioned or paid for by any political party or a candidate:
    - e) A statement that all the payment shall be made by way of cheque or demand draft.
11. While taking a decision on the applications for certification of an advertisement, it will be open for the Committees constituted in para 6 (i) and 6 (iii) above or the Designated Officer as in para 6 (v) above or the review

Committee as constituted in para 7 above to direct deletion/modification of any part of the advertisement. Every such order making comments and observation for deletion and modification shall be binding and be complied by the concerned political party or contesting candidate or any other person within 24 hours from the receipt of such communication. The advertisement so modified will be re-submitted for review and certification.

12. Where the Committees constituted in para 6 (i) and 6 (iii) above or the Designated Officer or the review Committee as constituted in para 7 above as the case may be, is satisfied that the advertisement meets the requirements of the law and in accordance with the directions of the Supreme Court as inserted in paras 4 and 5 above, it should issue a certificate to the effect of the advertisement concerned is fit for telecast. The format for the certificate is at Annexure B.
13. The directions contained in the order dated 13th April 2004 by Supreme Court shall be strictly complied with by everyone concerned and will remain in operation till 10th May 2004 and it shall bind all the political parties, candidates, persons, group of persons or Trusts who propose to insert the advertisements in the electronic media, including the cable networks and/or television channels as well as cable operators.

## **Annexure - A**

### **APPLICATION FOR CERTIFICATION OF ADVERTISEMENT**

#### **I.**

- (i) Name and full address of the applicant
- (ii) Whether the advertisement is by a political party / contesting candidate any other person / group of persons association / organization / Trust (give the name)
- (iii) (a) In case of political party, the status of the party (whether recognized National/ State / unrecognized party)  
(b) In case of a candidate, name of the Parliamentary Assembly Constituency from where contesting
- (iv) Address of Headquarters of political party / group or body of persons / association / organization / Trust
- (v) Channels / cable networks on which the advertisement is proposed to be telecast
- (vi) (a) Is the advertisement for the benefit of prospects of election of any candidate(s)  
(b) If so, give the name(s) of such candidate(s) with full address and name(s) of constituency(ies)
- (vii) Date of submission of the advertisement
- (viii) Language(s) used in the advertisement (advertisement is to be submitted with two copies in electronic form alongwith a duly attested transcript)
- (ix) Title of advertisement
- (x) Cost of production of the advertisement
- (xi) Approximate cost of proposed telecast with the breakup of number of insertions and rate proposed for each such insertion
- (xii) Total expenditure involved (in Rupees)



**II.**

I, Shri/Smt. \_\_\_\_\_ .S/o/D/o/W/o \_\_\_\_\_,  
(full address) \_\_\_\_\_, undertake that all payments related to the production and telecast of this advertisement will be made by way of cheque / demand draft.

Place: Signature of the applicant

Date:

**III.**

(Applicable for advertisement by a person / persons, other than a political party or a candidate)

I, Shri/Smt. \_\_\_\_\_ .S/o/D/o/W/o \_\_\_\_\_.  
( \_\_\_\_\_ f \_\_\_\_\_ u \_\_\_\_\_ l \_\_\_\_\_ l  
address) \_\_\_\_\_

hereby state and affirm that the advertisement(s) submitted herewith is not for the benefit of any political party or any candidate and that this advertisement(s) has / have not been sponsored / commissioned or paid for by any political party or a candidate.

Place: \_\_\_\_\_ Signature of applicant

Date:

## **Annexure - B**

### **CERTIFICATION OF ADVERTISEMENT FOR TELECAST**

#### **I.**

- (i) Name and address of the applicant / political party / candidate ' person / group of persons / association; organization/ Trust
- (ii) Title of advertisement
- (iii) Duration of advertisement
- (iv) Language(s) used in advertisement
- (v) Date of submission of advertisement
- (vi) Date of certification for telecast

#### **II.**

Certified that the above advertisement is fit for telecast as per the guidelines prescribed by the Hon'ble Supreme Court of India.

Signature chairperson/  
members of committee /  
Designated Officer

Place: \_\_\_\_\_

Date: \_\_\_\_\_

## **ANNEXURE- XI**

(CHAPTER – 7 TOURS/VISITS OF MINISTERS/OTHER DIGNITARIES)

Election Commission's letter No.437/6/2007-PLN-III Dated : 23<sup>rd</sup> November, 2007 addressed to The Cabinet Secretary Government of India, the Chief Secretaries and the Chief Electoral Officers of all States and Union Territories.

Subject: - **Tours of Ministers - General Elections**

- Reference :-**
1. Commission's Letter No. 437/6/96/PLN-III dated 17.01.1996
  2. Commission's Letter No 437/6/99-PLN-III dated 15.07.1999
  3. Commission's Letter No 437/6/4/2003-PLN-III dated 12.06.2003

I am directed to state that Ministers may be undertaking visits to the State(s) where election is being held or have been announced and the provisions of Model Code of Conduct are in force, in connection with electioneering. The Commission, in order to ensure a level playing field which is a precondition for free and fair elections, has issued instructions from time to time governing such tours of ministers and has prescribed certain guidelines to ensure that the official machinery is in no way engaged in any election related work by such touring dignitaries. These have been upheld by the Supreme Court of India in the case of Narendra Kumar Gaur vs. Election Commission of India in Writ Petition No. 339 of 1999 on 16.08.99.

2. The Commission's instructions contained in the letters mentioned at the reference above have been consolidated for the sake of convenience in the following paragraphs :-

- (1) If a Minister of the Union is traveling from his/her headquarters to a poll bound state/district on purely official business, which cannot be avoided in public interest, then a letter certifying to this effect should be sent from the Secretary of the department/ministry concerned of the Government of India, to the Chief Secretary of the state which the Minister intends to visit, with a copy to the Commission. On receipt of such information from the Secretary that the Union Minister is proposing a purely official visit and no political activity of any kind is envisaged during such tour, the Chief Secretary may provide the Union Minister with a Government vehicle and accommodation and extend other usual courtesies for his official trip.

While doing so, the Chief Electoral Officer of the State, who is entrusted with the task of monitoring of electoral activity in the State, including the implementation of the Model Code of Conduct, shall be alerted in advance by the Chief Secretary. The Commission will keep watch on such arrangements in consultation with its Chief Electoral Officer. It is hoped that the Union Ministers will avoid making official visits to their home States, Constituency state and particularly to the constituencies from where they are contesting elections while it is open for them to make private visits (See ECI instruction No. 437/6/99 – PLN III dated 15.07.99)

- (2) The Commission also directs that –
- (i) No minister of State Government shall undertake an official visit to any constituency for which elections have been announced by the Commission during the period commencing with announcement of the elections upto end of the election process.
  - (ii) Minister will not summon any election related officer of the constituency or the State in which any elections have been announced, to a place or office or guest house inside or outside the aforesaid constituency for any official discussions during the period of elections commencing with the announcement of the elections from such constituency and ending with the completion of election process.
  - (iii) The only exception to these instructions will be when a Minister, in his capacity as in charge of the department concerned, or a Chief Minister undertakes an official visit to a constituency, or summons any election related officers of the constituency to a place outside the constituency, in connection with failure of law and order or occurrence of a natural calamity or any such emergency which requires personal presence of such Ministers/ Chief Ministers for the specific purpose of supervision review/salvage/relief and other similar purposes. (See ECI instruction No. 437/6/96/PLN III – dated 17.01.96)
- (3) It is clarified that the Ministers are entitled to use their official vehicles in their headquarters from their place of residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity which would include a visit to party office even if it were enroute. No pilot car(s) or car(s) with beacon lights of any colour

or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his/her electioneering visits, even if the State administration has granted him a security cover requiring presence of armed personnel to accompany him on such visit. (See ECI instruction No. 437/6/96/PLN III — dated 17.01.96)

- (4) During **bye elections** from any constituencies, either Parliamentary or Assemblies, the following restrictions will be applicable with regard to the tours of Ministers subject to exceptions mentioned above in para 2(iii) covering situations of grave emergency:-
- (i) All Ministers, whether Central or State, shall not combine in any manner their official tours with election work after the announcement of the bye elections. They shall return to their headquarters on completion of their official tours. All and any visits to the district(s) where bye-election is being held and where Model Code of Conduct is, therefore, in force, have to be completely private in nature and such private visits should begin and end at the Minister’s headquarters.
  - (ii) In case where a Minister traveling on official work transits through the district(s) where the bye-election is being held en route to any other district on official visit, he/she shall not halt in the district(s) where Model Code of Conduct is in force and shall not attend to any political work.
  - (iii) No official of any rank of the district(s) where the bye-election is being held, shall be called to attend any meeting by any Minister in any district, that is to say, even in other districts where election is not being held.
  - (iv) Any official who meets the Minister on his private visit to the constituency where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided thereunder.
  - (v) No pilot car(s) or car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his/her private visit to the constituency where a bye election is under way even if the State administration has granted him a

security cover requiring presence of armed guards to accompany him on such visit. (See ECI instruction No. 437/6/4/2003 – PLN III dated 12.06.03)

- (5) The Commission further directs that the Chief Electoral Officer of the State who is entrusted with the task of monitoring of electoral activities in the State including the implementation of Model Code of Conduct shall be kept informed in advance by the District Election Officer of any visit proposed to be undertaken by any Minister of the State Govt. or any Central Minister to the district where bye-election is being held and the Chief Electoral Officer shall forthwith communicate the same to the Election Commission. (See ECI instruction No. 437/6/4/2003 – PLN III dated 12.06.03)
3. Any violation of these instructions will be viewed as gross infringement not only of the Model code of Conduct but also of the authority of the Commission to promulgate such directions as it considers necessary to ensure peaceful, fair and free poll reflective of the true choice of the people, and will be visited with such action as considered appropriate by the Commission on the merits of the specific circumstances.

**Govt. of India**  
**Ministry of Home Affairs**  
**Office Memorandum**

**Subject: General Election to Lok Sabha Tours of Minister in Connection with election campaign**

The undersigned is directed to say that whenever elections to the Lok Sabha are held, questions are invariably raised in Parliament about the tours undertaken by the Ministers in connection with the election campaign. In reply, as a general policy it has always been made clear that according to existing instructions, tours in connections with election campaign are not to be treated as official tours and that the services of Government officials cannot be utilized for party of election work. The Ministry of Home Affairs have been issuing instructions regarding tours of ministers for non official purposes, including election tours from time to time. These instructions had been summarized and a copy thereof was laid on the Table of the Lok Sabha on 31 st July, 1970. As the general election to the Lok Sabha are due to be held in November, 1989 a copy of the summary of these instructions is enclosed with the request that its contents may be brought to the notice of the Ministers.

Instructions regarding the tours of Minister for non-official purposes including election tours, are contained in several communications issued and reissued from time to time.

**General Instructions:**

- (1) Until a Minister demits office he is in charge of public affairs and accordingly even while on tours, whether for official or private purposes, he must continue to discharge the responsibilities as Minister Hence,
  - (a) he can take with him the minimum personal staff needed for this purpose and such staff is entitled to draw travelling and daily allowance under the rules; and
  - (b) when he visits any place, the district officers must arrange for normal courtesies and security.
- (2) A Minister may claim travelling and daily allowance only in respect of tours undertaken for official purposes i.e. tours, actually necessitated by duties which he could not perform, at headquarters. If an official tour is combined with private business of the Minister, which includes party work, and he has to

undertake any additional journey for this purpose, he is not entitled to any travelling allowance for the additional journey. If a Minister while on official tour devotes any day of his halt exclusively for private business he is not entitled to day allowance for that day.

### **Special instructions regarding election tours:**

- (3) Whenever a Minister decides that meeting which is going to be addressed by him as an election meeting he should ask for arrangements to be made on his behalf non-officially and not by Government Servants. During the election tours Government meetings would be rare and normally public meetings should be considered election meetings and all expenses except those relating to maintenance of law and order, borne privately.
- (4) The role of officials at election meetings should be confined to maintaining law and order and affording normal protection to Ministers.
- (5) No travelling expenses or daily allowance should be charged by Ministers for journeys, which have for their main purpose election campaign. It would be presumed that for some weeks prior to the poll, the activities of Ministers on tour are much more concerned with elections than with their official duties.
- (6) A journey undertaken by a Minister for filing nomination papers and subsequent tours to his constituency should be regarded as being for election purposes.
- (7) If a Minister who has proceeded to his constituency for election purposes at his own expenses, has to proceed to some other place on duty, he may draw travelling allowance limited to the amount admissible from his headquarters to the other place and back to headquarters. If he had to return to headquarters from his own constituency in public interest by interrupting his election work, he may only claim the return air or railway fare. Public interest shall naturally include attendance at all Cabinet Sub-Committee meetings. Other meetings or conferences at headquarters should be avoided as far as possible.
- (7) Where a Minister has been provided with a car exclusively at the expenses of the State, the car should not be used for election purposes. Even where a car is provided by the State but the Minister is given an allowance for maintenance of the vehicle, it is not desirable to use such vehicle for election purposes.



## ANNEXURE- XII

(CHAPTER – 9 DISPLAY OF PHOTO/MESSAGE ON OFFICIAL WEBSITE/GOVT. BUILDINGS/ADVERTISEMENTS)

ECI letter No. 437/6/INST/2014/CC&BE, dated 20.03.2014 addressed to the Cabinet Secretary, Chief Secretaries and Chief Electoral Officers of all States and UTs.

**Subject: Instructions relating to deletion of all references on politicians/Ministers on the official website during election period of General/Bye-election to the Lok Sabha and State Legislative Assemblies -reg.**

I am directed to state that the Commission vide its letter No. 437/6/2007 (INST)-PLN-III, dated 21st November, 2007, issued instructions to deletion of all references on politicians/Ministers on the official website during election period of General/Bye-elections to the Lok Sabha and State Legislative Assemblies.

It has come to the notice of the Commission that the aforesaid instructions of the Commission are not being followed by Central and State Governments during election period. It is clearly mentioned in clause VII (iv) of Model Code of Conduct for guidance of Political parties and candidate:-

“VII. Party in Power

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purpose of its election campaign and in particular

(iv) Issues of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.”

The Commission has considered the question of various references currently available in the Ministerial office website and in the State Government websites pertaining to several Department and Government Organization highlighting their achievements but eulogizing the same as personal achievements of Politicians/Ministers.

The Commission has decided that during the period when Model Code of Conduct is in force in connection with General Election to the Lok Sabha/State Legislative Assemblies currently going on, all references of Ministers, Politicians or Political Parties

available on such Central/State Government’s official website, shall be removed.

The above instruction of the Commission may kindly be communicated to all concerned for strict compliance.

## ANNEXURE- XIII

(CHAPTER – 10 USE/REQUISITION OF VEHICLES)

Letter no. 464/INST/2014/EPS dated 10<sup>th</sup> April, 2014.

### 2.1 Meaning of 'vehicle'

The expression 'vehicle' means, and shall include, any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise and will include, but not restricted to, trucks, lorries, tempos, jeeps, cars, auto rickshaws, e-rickshaws, buses, boats and helicopters, etc. The word 'official vehicle' will cover all vehicles belonging to the (i) Central Government, (ii) State Government/UT Administrations , (iii) public undertakings of the Central and State governments, (iv) Joint Sector Undertakings of Central and State Governments, (v) Local Bodies, (vi) Municipal Corporations, (vii) Municipalities, (viii) Marketing Boards (by whatever name known), (ix) Cooperative Societies, (x) Autonomous District Councils or any other body in which public funds, howsoever small a portion of the total, are invested and also include those belonging to the Ministry of Defense and the Central Public Organizations under the Ministry of Home Affairs and State Governments.

### Directions of ECI

- 2.2 Subject to exceptions mentioned herein, there shall be a total and absolute ban on the use of official vehicles for campaigning, electioneering or election related travel during election period starting with the announcement of election schedule by the ECI and ending with the completion of election process.** There shall be a total prohibition on the use of any official vehicles (except as regulated by the Commission's order No. 464/INST/2014/EPS dated 10<sup>th</sup> April, 2014 on the subject - see Annexure I) by any political party, candidate or any other person connected with election (except officials performing any election related official duty).
- 2.3** The District Administration shall keep a close watch to find out if any official vehicle belonging to any authority specified in the preceding para is being used for electioneering purposes. In case it is so, the District Magistrate shall, forthwith, requisition or cause to be requisitioned such vehicles, after following

due procedure, for election work, under section 160 of the Representation of the People Act, 1951 and such requisitioned vehicles shall not be released until after the completion of the process of elections.

## Clarifications

**2.4** It is clarified that the ban on the use of vehicles will equally apply to the vehicles in or from any States not going to the polls but whose vehicles are attempted to be used for campaign either openly or clandestinely in any other state going to poll. The Chief Secretary of each State/Union Territory/the Secretary to the Government of India in the concerned Department, as the case may be, will be personally responsible for any misuse of any vehicle under Ministry/Department or of any of the public sector or joint sector undertakings or Autonomous Bodies or attached offices under that Ministry/Department. The officers under whose charge such vehicles are entrusted will also be equally responsible for any violation.

It is further clarified that use of such vehicles belonging to any of these authorities by anyone, including Ministers of the Central or State Government, even on payment basis, for campaigning or on tours connected with elections with the alleged and bogusly certified purpose of official work in their capacity as Ministers is totally prohibited.

## Exception

**2.5** The only exception from the above said prohibition will be Prime Minister and other political personalities, who might, in view of extremist and terrorist activities and threat to their lives, require security of a high order and whose security requirements are governed by any statutory provisions made by the Parliament or the State Legislature in this behalf.

The above restrictions shall also not apply in the case of the President and Vice-President of India, Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha and such other dignitaries visiting the State from other States. However, it is further clarified that in the case of Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha these restrictions will be applicable at the time of General Elections to the Lok Sabha as in respect of any Ministers of the Union or any State Government.

- (a) The Commission would like to make it clear that if it has any material to doubt that the assessment of security requirements made by authorities under Special Protection Group Act, 1988 or any other special enactment/ instruction of the Government have been manifestly or unduly excessive with the intention of promoting indirectly the electoral interests of a particular party or candidate, the Commission will bring the matter to the notice of the concerned Government for immediate and appropriate corrective steps.
- (b) For this purpose, the Commission may call for any information from the Central Government or the State Government concerned with regard to the assessment of the security requirements made in respect of any such personality. Such information shall be furnished to the Commission by the concerned Government forthwith.
- (c) If security requirement of a person, as assessed by security agencies, requires him to travel in bulletproof vehicle, only one such vehicle may be provided by the government on payment of cost of propulsion of such vehicle by such person. In such bullet proof vehicle, no other political leader/worker (except his personal/medical attendant) shall be allowed to travel.

### **Restriction on convoy of vehicles**

**2.6** Vehicles shall, under no circumstances, be allowed to move in convoys of more than ten vehicles, excluding the security vehicles. All bigger convoys exceeding ten vehicles shall be broken up and a gap of 100 mtrs would be maintained, even if they are carrying any Minister of Central or State Government or any other person. This shall, however, be subject to any security instructions issued by the competent authority in respect of any such individual.

If any vehicle moves in a convoy of vehicles exceeding the limits prescribed above, in spite of the convoy having been broken, it shall be the duty of the local administration to ensure that such vehicles are not allowed to be used by flouting the Commission's direction, till the process of election is completed.

### **Use of vehicles during filing of nominations:**

**2.7** The maximum number of vehicles that will be allowed to come within the periphery of 100 meters of Returning Officers'/ Assistant Returning Officers'

**office on behalf of any candidate who comes to file his nomination paper in a procession/convoy of vehicles** shall be three. It is also clarified that this periphery of 100 meters should clearly be demarcated by RO/DEO. It is also directed that only one door shall be kept open for entry of candidate +4 other authorized persons and all other doors should be closed. A CCTV camera should be placed at the entry door to record actual time of entry.

### **Use of vehicles for electioneering purposes:**

- 2.8** There is no limit on vehicles, which a candidate may use for electioneering purposes.
- 2.9** But before the campaigning commences, the candidate shall have to furnish the details of all such vehicles and the areas in which they would be used for campaign purposes, to the District Election Officer or such other Officer(s) as may be specifically authorized by the District Election Officer in this behalf, who after necessary scrutiny would issue a permit to the candidate in respect of each such vehicle. The original copy (not the photo copy) of permit should be displayed on the wind screen of the vehicle. Needless to mention that the permit should be of such dimension, that it can easily be seen from a distance. Permit must contain the number of the vehicle, date of issue of permit, name of candidate and the area (where it shall be used for campaigning).
- 2.10** Any further deployment of any additional vehicles can take place only after notice to this effect is given by the candidate or his/her agent and permits obtained for the same, before the actual deployment of the vehicles.
- 2.11** The details so obtained from the candidate should be conveyed by District Election Officer to the Election Expenditure Observer(s) so that they can check whether the expenditure in this regard is correctly included in the expenditure account of the candidate.
- 2.12** If the vehicle for which permission is given to a particular candidate is found being used for campaign purpose by or for another candidate, then the permission has to be withdrawn and the vehicle is to be seized by or under the authority of DEO.
- 2.13** If the candidate, after obtaining permission from the District Election Officer, does not intend to use the campaign vehicle(s), for any period of more than two days, he/she shall intimate to the District Election Officer, to withdraw the

permission for such vehicle(s). If the candidate, after obtaining permission does not intimate the District Election Officer, to withdraw the permission of such vehicle(s), it will be presumed that the candidate has used the permitted vehicles for campaign purpose and accordingly, the expenditure as per the notified rates on use of such vehicles shall be added to his/her account of election expenses.

- 2.14** Any vehicle used for campaigning without due authorization/permit by the aforesaid officers, shall be deemed to be unauthorisedly campaigning for the candidate and may attract penal provisions of chapter IX A of the Indian Penal Code and shall, therefore, be immediately taken out of the campaigning exercise.
- 2.15** The vehicles employed for election campaign as per intimation given by the candidates or their election agents to the District Administration should not be requisitioned by the administration.
- 2.16** For availing the benefit of clause (a) of Explanation (1) given under Sec. 77 (1) of R. P. Act, 1951 by the leaders of the political parties, i.e. star campaigners, the permission for the mode of road transport will be issued centrally by Chief Electoral Officer, irrespective of whether the same vehicle is to be used by any such leader for election campaigning throughout the State or different vehicles are to be used by such party leaders in different areas. The permit in such cases will be issued against the name of the star campaigner concerned and shall need to be displayed prominently on the windscreen of the vehicle being used by him/her in any area. The permits so issued by the CEO will be of distinctly different colour from the permits to be issued by the DEOs for other campaign vehicles of candidates.
- 2.17** On receipt of a request from a recognized political party, the DEO would issue permit for one vehicle to be used by the district level office bearer of the recognized party (other than the star campaigners) for his visit to multiple ACs within the district for electioneering purpose. The permit should be issued indicating the number of the vehicle, the name of political leader and the period for which issued and should be of different colour so that it can easily be identified. An attested copy of the permit shall be pasted on wind screen and original kept with the driver for checking by police or other authorities. The expenditure in this regard shall be booked against the political party and not the candidates. If such vehicles are used for election campaign of any particular candidate/candidates then the expenditure should be added to the account of candidate(s)

appropriately.

- 2.18** The CEO may issue permits for vehicles that can move throughout the state for use of office bearers of recognized political parties for party work. For states having more than 100 Assembly Constituencies, the CEO may issue permits for a maximum of five vehicles and for remaining States/UTs for a maximum of three vehicles to a recognized political party. The expenditure on these vehicles shall be incurred by the political party and not by the candidate. If such vehicles are used for election campaign for any particular candidate(s), then expenditure should be added to the account of the candidate(s) appropriately.
- 2.19** If any political party makes a request to the Chief Electoral Officer for grant of vehicle permission for distribution of publicity material to their various party offices in the State, the Chief Electoral Officer may grant permission for one vehicle for a recognized political party (National/State). However, the concerned political party (the applicant) will have to specify the names of the Districts, the route map and the dates for which the vehicle will be required for the above purpose. For such vehicles, the CEO may issue permission, but ensure that such vehicles will also be subjected to normal checks and they will not be used for election campaigning. The expenditure on account of such vehicle shall be incurred by the political party and not by the candidate.

### **Clarification**

- 2.20** A cycle rickshaw is also a vehicle as defined in Section 160 of Representation of People Act, 1951, which may be used for election campaign. If it is being used, then a candidate has to account for its expenditure in his account of election expense. To ensure this, the candidate should give details of such rickshaws being used for his election campaign and, if the rickshaw does not have any Municipal registration/permit for its identification, the rickshaw driver may be given a permit in his personal name by the District Election Officer which the rickshaw driver should carry on his person while using that rickshaw for campaign purposes. However, rickshaws being used for normal commercial purposes of carrying passengers in ordinary course, etc., may be exempted, if they are displaying only one poster showing the name or party symbol of a candidate, presuming they are doing so on their own free will.
- 2.21** During the period of electioneering, with a view to checking misuse of private



vehicles by the candidates, their agents and party leaders and/or party supporters for carting anti-social elements so as to create a sense of fear in the minds of the electorate and/or to smuggle illicit arms and ammunition etc. with a view to creating disturbances during elections, the Commission further directs that the District Administration shall keep a close watch on the vehicles used by persons accompanying the contesting candidates and their party's leaders for any possible mischief, including criminal activities like carrying of illegal arms and weapons. If any of these vehicles, either of a party or a private owner, is found to be involved in any such act or for carting anti-social elements with a view to intimidating or creating terror in the mind of the electorate, it shall be the duty of the local administration to impound such vehicles and not to release them till the process of elections is completed. In addition, criminal action against the owner, the occupants(s) and the candidate/political party which is involved in such illegal activities shall also be taken as per law.

(Please refer to ECI's instruction in letter number 464/INST/2014-EPS dated 10.4.2014 - Annexure I)

## **2.22 Use of vehicles on poll day**

The use of vehicles on the day of poll is regulated by Paras 26 to 31 of the Commission's letter No. 464/INST/2014-EPS dated 10.4.2014 (Annexure I).

The ECI's instructions in the said letter No. 464/INST/2014-EPS, dated 10<sup>th</sup> April, 2014, inter-alia, provide for restraints on unlawful use of vehicles on poll day by candidates/his agent or by any other person with the consent of the candidate or his election agent. For the purpose of restrictions imposed by said instructions it is clarified that the vehicle would mean all the vehicles propelled by mechanical power or otherwise.

## **2.23 Video-vans (see Annexure 2)**

In case of Video Vans, etc., to be used by a political party for campaign across the state, before any permission to use Video-Vans for campaign is given, it should be ensured by Chief Electoral Officer that such use of vehicle is in accordance with the Motor Vehicle Act. Attention in this context is invited to the judgments dated 23.06.2006 and 14.02.2007 of the Hon'ble Allahabad High Court in Writ Petition No. 3648 (MB) of 2006, which inter-alia, lay down necessary guidelines for compliance by the State Government while dealing with vehicles plying on

road till State Legislature/Parliament legislates law to provide for some severe punishments to the offenders. The District Election Officers shall ensure that expenditure incurred on such vehicles is proportionately distributed amongst the expenditure of the contesting candidates of the party in the areas/constituencies where the Vans/Vehicles have been used.

It is further clarified that

- (i) *The permission to use Video-Vans for campaign purpose can be granted at Chief Electoral Officer level only. Transport Nodal Officer must submit certificate to the Chief Electoral Officer that the Video-Van is in conformity with the Motor Vehicle Act.*
- (ii) *The contents of material for election publicity on the Video-Van shall be pre-certified from Media Certification and Monitoring Committees (MCMCs). The Video-Van of the political party should be used to propagate programme and policies to seek votes. Votes or support for any particular candidate should not be solicited. However, if it is used for seeking votes/support for a candidate/candidates then expenditure of Video-Van shall be accounted for by such candidate/candidates appropriately. Expenditure Observers to closely monitor this.*
- (iii) *Any party/candidate seeking permission to use Video-Vans from Chief Electoral Officer should first obtain necessary permission/no objection certificate from the Competent Authority under the Motor Vehicle Act. This certificate is required to ensure the conformity with the Motor Vehicle Act/relevant provisions of law and Court Orders, if any, on this subject for plying of Video-Van on the road.*
- (iv) *Though there is no restriction on the number of Video-Van which can be used in a campaign, but the expenditure for it shall be duly included in the Election Expenditure Account of the party, to be submitted to ECI after election, and also apportioned appropriately among the candidates concerned as provided in sub-Para (ii) above.*
- (v) *Route of Video-Van to be used for publicity/campaigning should be informed to local administration/District Election Officer in advance. In case of violation, the permission for video van may be withdrawn, after due notice, by CEO.*

## **ANNEXURE- XIV**

(CHAPTER – 13 USE OF NATIONAL FLAG/PARTY FLAGS/PARTY BANNERS)

ECI letter No. 509/35/2014-RCC, dated 04.03.2014 addressed to the President/General Secretary/Chairperson of all recognised National and State Political Parties and copy endorsed to the Chief Electoral Officers of all States/UTs.

**Subject: In the Allahabad High Court at Lucknow Bench-W.P. (PIL-Civil) (B) No. 603 of 2014-Pratap Chandra Vs. Union of India & others.**

I am directed to forward herewith a copy of the Order dated 30/01/2014 passed by the Hon'ble High Court of Allahabad at Lucknow Bench on the issue of use of National flag in rallies of political parties. The relief claimed in the petition was for a direction to the respondents (Central Government, State Government of Uttar Pradesh, Election Commission and State Election Commission) not to allow the use of national flag in rallies of political parties. The Hon'ble High Court of Allahabad disposed of the petition with the observation that there is no prohibition of proper use of national flag by political parties in rallies and that it is the bounden duty of the authorities concerned to ensure strict compliance and observation of the provisions of the Flag Code and the provisions of Emblem and names (Prevention of Improper use) Act, 1950 and the Prevention of insults to National Honour Act 1971.

The above said Order of the Hon'ble High Court may be noted and also brought to the notice of the cadres of the party at all level to ensure that there is no violation of the provisions of the Flag Code and the Acts mentioned in the Order.

Kindly acknowledge receipt.

### **COPY**

**Legalix – Allahabad High Court Judgment Information System** (*Judgment/Order in text Format*)

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HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH  
Court No.2

Case:-MISC. BENCH No.-603 of 2014

Petitioner:- Pratap Chandra (P.I.L.)

Respondent:- Union of India Through Secretary Ministry of Home & Others

Counsel for Petitioner:- Vijay Kumar Pandey

Counsel for Respondent:- C.S.C., A.S.G., Aprajita Bansal, Manish Mathur

Hon'ble Imtiyaz Murtaza, J.

Hon'ble Devendra Kumar Upadhyaya, J.

Heard Sri Vijay Kumar Pandey, learned counsel for the petitioner, Sri K.C. Kaushik, Assistant Solicitor General of India for respondent no.1, Sri Manish Mathur for respondent no.2, learned Chief Standing Counsel for respondent no.3 and 4 and Ms. Aprajita Bansal for respondent no.5.

Through the instant Public Interest Litigation, a direction has been sought to be issued to the respondents not to allow the use of the National Flag in any particular rallies of any political parties.

For proper use of the National Flag, Flag Code of India has been notified by the Government of India, wherein certain provisions have been made. According to paragraph 2.1. of the said Code, there is no restriction in display of National Flag by members of general public, private organisations, educational institutions etc., except to the extent provided in the Emblems and Names (Prevention of Improper Use) Act, 1950 and Prevention of Insults to National Honour Act, 1971 or any other law enacted for the said purpose.

The Flag Code specifically prohibits the use of National Flag for commercial purpose in violation of the Emblems and Names (Prevention of Improper Use) Act, 1950. It also clearly envisages that the Flag shall not be dipped in salute to any person or thin and further that the Flag shall not be flown at half-mast except on occasions on which the Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government. There are certain other instructions in the Flag Code.

The Flag Code and other enactments referred to hereinabove have been promulgated for their strict observance. We may also refer that any contravention of the

provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950, attracts penal action.

On a specific query being put to the learned counsel for the petitioner, as to whether there is any prohibition for proper use of National Flag by the political parties, he could not satisfy the Court. However, he stated that it is the bounden duty of the State authorities to ensure that the national flag is used only in proper manner and in accordance with the provisions contained in the Flag Code of India as also in the enactment, namely, the Emblems and Names (Prevention of Improper Use) Act, 1950 and the provisions of the Prevention of Insults to National Honour Act, 1971. Needless to say that in order to preserve the honour and respect attached to the National Flag, it is the bounden duty of the authorities concerned to ensure strict compliance and observance of the provisions of the Flag Code of India and the legislations, as referred to hereinabove. We hope and expect that strict compliance thereof shall be ensured by all concerned.

With the aforesaid observation, the petition is disposed of finally.

Order Date:- 30.1.2014

MFA/-

## ANNEXURE- XV

(CHAPTER – 14 USE OF LOUDSPEAKERS)

Election Commission's letter No.3/8//2000 J.S.II dated 26.12.2000 addressed to the Chief Electoral Officers of all States and Union Territories.

**Subject: Use of Loudspeakers for election campaigns- Consolidated instructions**

All political parties, candidates and their workers, supporters and sympathizers are using loudspeakers for their electioneering campaigns. These loudspeakers are not only used from fixed rostrums but are also used mounted/fitted on vehicles like trucks, tempos, cars, taxis, vans, three wheeler scooters, cycle rickshaws, etc. These vehicles move on all roads, streets and lanes and also so around villages, basties, Mohallas, colonies and localities with the loudspeakers broadcasting at very great volume. This results in serious 'noise pollution' and causes great disturbance to the peace and tranquility of the general public. The student community, in particular, gets seriously disturbed as their studies are badly hampered because the loudspeakers stall blaring from very early hours in the morning and continue to do so throughout the day and till extremely late hours in the night. The aged, the infirm and the sick whether in institutions, hospitals, etc. or at home are also put to severe discomfort.

2. The Commission is aware that the use of loudspeakers cannot be stopped altogether during the election period as the loudspeakers are one of the means of election propaganda and imparting information to public. But. at the same time, indiscriminate and unfettered use of loudspeaker at odd hours and at odd places at very high volumes which have the effect of disturbing peace and tranquility and causing annoyance to the general public, the sick, and the student community in particular cannot be permitted. Some reasonable restrictions are essential.
3. After considering all aspects of the matter, the Commission, in exercise of its powers conferred by Article 324 of the Constitution and all other powers enabling it in this behalf and in supersession of its earlier instructions, hereby DIRECTS that the use of loudspeakers at all future elections shall be strictly regulated as follows:-
  - (i) The use of loudspeakers, whether fitted on vehicles of any kind whatsoever, or in static position used for public meetings for electioneering purposes,

during the entire election period starting from the date of announcement of election and ending with the date of declaration of results shall be permitted only (a) between 6.00 a.m. and 11.00 p.m in rural areas i.e. areas outside corporation or municipal Limits: and (b) between 6.00 a.m. and 10.00 p.m. in other areas, i.e. areas falling within corporation or municipal limits. ***(This para has been substituted vide Election Commission’s letter No.3/8/2005/JS-II, dated 26<sup>th</sup> September, 2005 reproduced at Item No.184 as under:-***

***“3(i) A public address system or loudspeaker or any sound amplifier, whether fitted on vehicles of any kind whatsoever, or in static position, used for public meetings for electioneering purposes, shall not be used at night between 10.00 p.m. and 6.00 a.m.”***

- (ii) All loudspeakers whether used for general propaganda or for public meetings or procession, and whether used on moving vehicles or otherwise, shall be used during the restricted hours only mentioned in clauses (ii) above and never beyond.
- (iii) All loudspeaker being used beyond the hours as prescribed above, shall be confiscated along with all the apparatus connected with the use of these loudspeakers.
- (iv) All political parties, candidates and any other persons using any loudspeakers on moving vehicles including but not restricted to trucks, tempos, cars, taxis, vans, three wheeler scooters, cycle rickshaws, etc. shall intimate the registration identification number of those vehicles to the authorities granting permission to use the loudspeakers and such registration identification numbers of the vehicles shall be indicated on the permits granted by the authorities concerned.
- (v) Any vehicle on which a loudspeaker is used without the said written permit shall be confiscated forthwith along with the loudspeaker and all the apparatus used along with it.
- (vi) All political parties, candidates and even other person using an\ loudspeaker either on a moving vehicle or at a fixed place shall intimate -
  - (1) the Returning Officer of the Constituency, and

- (2) local Police authorities, in writing, the full details of the permits obtained by them before using any of those loudspeakers. In the case of mobile loudspeakers, the registration identification numbers of the vehicles shall also be registered by them with the Returning Officer and the local Police authorities.
- (vii) It shall be the responsibility of the State Government authorities granting permits for use of loudspeakers and the local Police authorities to strictly enforce that no loudspeaker is used by anyone in violation of any of the above directions,
4. No loudspeakers fitted on vehicles of any kind or in any other manner whatsoever shall be permitted to be used during the period of 48 hours ending with the hour fixed for the conclusion of the poll in any polling area. Even after the close of poll proper law and order is required to be maintained till completion of election after the declaration of result. Use of loudspeakers is generally regarded as source of public nuisance and can often give rise to tension in a politically surcharged atmosphere. The District Administrations should, therefore, consider any application for permission to use loudspeakers after the aforesaid prohibitory period of 48 hours, on merit of each application and keeping in view the need to maintain proper law and order till the completion of election.
  5. The above directions of the Commission, which will check noise pollution and disturbance of public peace and tranquility must be scrupulously implemented and strictly enforced by all State government authorities concerned. Any violation there of will be viewed by the Commission with grave concern and will invite severe disciplinary action against the defaulting officers.
  6. A copy of this order shall be made available to local units of all recognized National and State parties in English/Hindi and in local official languages, and 10 each candidate at the time of his nomination, under acknowledgement.
  7. The receipt of this letter should be acknowledged immediately.



## ANNEXURE- XVI

(CHAPTER – 16 DEFACEMENT OF PUBLIC/PRIVATE PROPERTY)

Election Commission's letter No.437/6/1/ECI/INST/FUNCT/MCC/2017, dated 25.10.2017 addressed to Cabinet Secretary, Chief Secretary and CEO of Gujarat

**Subject: Immediate action to be taken for enforcement of Model Code of Conduct after announcement of General Election to the Legislative Assembly of Gujarat-regarding.**

I am directed to state that the Election Commission has announced the schedule for holding General Election to Legislative Assembly of Gujarat, operation of 'MODEL CODE OF CONDUCT' comes into effect with the announcement of elections by the Commission. In view of the general election to the Legislative Assembly of Gujarat, the Commission has given following directions for effective enforcement of provisions of MCC:-

1. **Defacement of Property-** ECI instructions contained in letters, No. 437/6/INST/2015-CCS, dated 29<sup>th</sup> December, 2015, No. 437/6/INST/2012-CC&BE dated 18<sup>th</sup> January, 2012 and No. 3/7/2008 JS-II dated 7<sup>th</sup> October, 2008 , provide for prevention of defacement of property. The Commission has directed to ensure strict compliance of its instructions and to take time bound action as prescribed below-
  - (a) **Defacement of Government property-** For this purpose a Government premise would include any Government office and the campus wherein the office building is situated. All wall writing, posters/papers or defacement in any other form, cutout/hoardings, banners, flags etc, on Government property shall be removed **within 24 hours** from the announcement of elections
  - (b) **Defacement of public property and misuse of public space-** All unauthorized political advertisement, in the form of wall writing/posters/papers of defacement in any other form, cutout/hoardings, banners flags etc. at public property and in public space like railway station, Bus stands, Airports, railway Bridges, Roadways, Govt. Buses, Electric/Telephone poles , municipal/local bodies' buildings etc., shall be removed **within 48 hours** from the announcement of elections by the Commission.

- (c) **Defacement of private property-** All unauthorized political advertisement displayed at private property and subject to local law and court's directions, if any, shall be removed **within 72 hours** from the announcement of elections by the Commission.
2. **Misuse of official vehicle-** The ECI's Consolidated instructions contained in letter No. 464/INST/2014/EPS, dated 10<sup>th</sup> April 2014, among other things, provides that **there shall be a total ban on use of official vehicle by any political party, candidate or any other person connected with election (except officials performing any election related official duty) for campaigning, electioneering or election related travel during elections (subject to certain exception mentioned therein).** The expression official vehicle means and shall include , any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise and will include trucks, lorries, tempos, jeeps, cars, auto rickshaws, e-rickshaws, buses, belonging to Central Government, State Government/UT Administrations, public undertakings of Central/State Government, Joint sector undertakings of Central/State Government, local bodies, municipal corporations, marketing boards, cooperative societies or any other body in which public funds , however small a portion of the total, are invested. **The CEOs/DEOs shall take necessary action for compliance of ECI instructions within 24 hrs of the announcement of the elections.**
3. **Advertisement at the cost of public exchequer-** ECI instructions contained in letters, No. 437/6/1/2014-CC&BE, dated 5<sup>th</sup> March, 2014 provides that at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided. No advertisements shall be issued in electronic and print media highlighting the achievements of the Govt. at the cost of public exchequer. If any advertisement has already been released for telecast/broadcast or publication in the print media, it must be ensured that the telecast/broadcast of such ads on electronic media is stopped forthwith and that no such ad is published in any newspapers, magazines, etc., i.e. in print media, from the date of announcement and it should be immediately withdrawn. **The CEOs/DEOs has to take immediate action to remove/stop any advertisement , in the print/electronic media, showing the achievements**

**of the Government soon after the announcement of elections.**

4. **Photograph of political functionary at official website-** ECI instruction contained in letter No. 437/6/INST/2014-CC&BE dated 20<sup>th</sup> March, 2014 provides that all references of Ministers, Politicians or political parties available on central/state Government's official website, shall be removed. The CEOs have to take **immediate action** to remove/hide the photographs of any political functionary from official websites of state department.
5. **Development/construction related activities- within 72 hours** of announcement of elections, the CEO/DEO shall obtain the following list of works for reference in case of validating any complaint on violation of MCC:
  - (i) List of work which has already been started on ground.
  - (ii) List of fresh work which has not started on ground.
6. **Activities for Expenditure Monitoring and enforcement of MCC-** Flying squad, FST, video team, intensive checking for liquor/Cash/Contra banned drugs, flying squads of excise department to check illicit trafficking of Drug/ Narcotics to be **immediately activated** after announcement.
7. **Complaint Monitoring System-** The poll going states shall have a complaint redressal mechanism based on website and call center. The toll free number of call center is 1950. Complaints can be registered by making calls to the toll free call center numbers or on the web site. Complainants will also be informed of the action taken by SMS and by the call center. Complainants can also see the details of the action taken on their complaints. This system should be **operational within 24 hours** of the announcement . All complaint should be dealt with promptly and properly. The 24x7 control Room at the district level must be activated and sufficient deployment of manpower and other logistics be ensured in particular, round the clock personnel should be deployed in the control room and their duty roaster must be issued to avoid any evasion or confusion.
8. **IT Application-** All IT applications including official website and social media shall be **operational with the announcement.**
9. **Dissemination of information for Awareness of Voters and political parties.** Publicity of major election activity would be given through CEO/DEO/RO. For this purpose, all necessary information shall be disseminated through radio, tv,

cinema. Government channel to display voter education material.

10. **Active cooperation from Educational Institution and Civil Societies-** Cooperation can be sought from educational institution and civil societies for giving wide publicity to the election related information to the general public and other stakeholders.
11. **Media Centre-** Effort should be made for awareness among the voters, political parties and other stakeholder through media center about election system including use of EVM/VVPAT.
12. **MCMC/DEMC-** ECI instruction contained in letter no. 491/MCMC/2014/ Communication dated 24<sup>th</sup> March, 2014 provides that all registered political parties will approach the Media Certification and Monitoring Committees (MCMC) at District and State level, as the case may be, for pre-certification of their political advertisements proposed to be issued on electronic media. The Commission has directed to ensure strict compliance of its instructions contained in above said letter.
13. **Control Room-** **The 24x7 control room at district level must be activated immediately and sufficient deployment of manpower and other logistics be ensured by the DEO/CEO. A control room with complaint Monitoring Centre would also be set up at ECI Secretariat** during the entire election process.

## **Enclosure-I**

Election Commission's letter No. 437/6/INST/2012-CC&BE dated 18<sup>th</sup> January, 2012 addressed to Cabinet Secretariat, the Chief Secretaries and the Chief Electoral Officers of all States and UTs.

**Subject- Prevention of defacement of Property and other campaign related items revised instructions - regarding.**

I am directed to state that on the announcement of the General Elections to the Legislative Assemblies of the States of Goa, Manipur, Punjab, Uttar Pradesh and Uttarakhand, the provisions of Model Code of Conduct have come into force w.e.f. 24<sup>th</sup> December, 2011. The Commission has decided to reiterate its instructions issued vide its letter no. 3/7/2008/JS-II dated 7<sup>th</sup> October, 2008 (copy enclosed) contained in Para 5 under the heading 'DEFAACEMENT OF PRIVATE PLACES', as under: -

**Sub-para (d) "Subject to any restrictions under any local law or any court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, buntings, flags, cut-outs, on their property, provided they do so on their own volition, voluntarily and without any pressure from any party, organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else. If such display of banners, flags etc. aims to solicit vote for any particular candidate, then the provisions of Section 171H of IPC would be attracted and would have to be followed. Section 171H of the IPC stipulates that whoever without the general or special authority in writing of a candidates incurs or authorizes expenses on account of the holding of any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidates, shall be punished with fine which may extend to five hundred rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."**

## Enclosure-II

Election Commission's letter No.3/7/2008/JS-II dated 7<sup>th</sup> October, 2008 addressed to the Secretary to the Govt. of India, MHA, the Chief Secretaries and the Chief Electoral Officers of All States and Union Territories.

**Sub: Prevention of defacement of property and other campaign related items – revised instructions- regarding.**

I am directed to invite a reference to the Commission's letter No.3/7/2007/JS-II, dated 16<sup>th</sup> October, 2007, regarding prevention of defacement of property in connection with election campaign.

2. In the past, the Commission has suggested the enactment of special laws by state governments for dealing with defacement of properties effectively. Some states have enacted special legislations to govern and regulate defacement of property, While the other states have legislation that either only cover specific areas, like municipalities etc., or have no legislation at all. A tabular statement on respective positions obtaining in the states in this respect based on the information available in the Commission is enclosed in the schedule appended to this circular (marked as Annexure-I). Since a uniform law throughout the country is not available, what is enforceable differs from state to state. Keeping in view the forthcoming general election to the Lok Sabha due in 2009, it has become necessary to lay down, for smooth conduct of campaign during elections and for clear understanding of all authorities who have the responsibility for the implementation at the field level as also of the observers who are deputed to oversee the elections in different states/constituencies, a comprehensive set of guidelines with respect to defacement of property.
3. After considering all aspects of the matter in depth, the Commission has, in **supersession of the earlier instructions**, laid down the following directions, to be followed by political parties, candidates, individuals and organizations etc. during the election period:

### DEFACEMENT OF PUBLIC PLACES

- 4 (a) No wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted on any Government premise (including civil structures therein). For

this purpose a Government premise would include any Govt. office and the campus wherein the office building is situated.

- (b) If the local law expressly permits or provides for writing of slogans, displaying poster, etc., or erecting cut-outs, hoardings, banners, political advertisement, etc., in any public place (as against a Govt. premise) on payment or otherwise, this may be allowed strictly in accordance with the relevant provisions of the law and subject to Court orders, if any on this subject. It should be ensured that any such place is not dominated/ monopolized by any particular party(ies) or candidate(s). All parties and candidates should be provided equal opportunity in this regard.
- (c) If there is a specifically earmarked place provided for displaying advertisements in a public place, e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through the municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period.

## **DEFACEMENT OF PRIVATE PLACES**

- 5. (a) In the States where there is no local law on the subject, and subject to the restrictions under the law where there is a law, temporary and easily removable advertisement materials, such as flags and banners may be put up in private premises with the voluntary permission of the occupant. The permission should be an act of free will and not extracted by any pressure or threat. Such banner or flag should not create any nuisance to others. Photo-copy of the voluntary permission in writing obtained in this connection should be submitted to the Returning Officer within 3 days of putting up the flags and banners in such cases in the manner prescribed in sub-para(c) below.
- (b) If the local law does not expressly permit wall writing, pasting of poster, and similar other permanent/semi-permanent defacement which is not easily removable, the same shall not be resorted to under any circumstances, even on the pretext of having obtained the consent of the owner of the property. This will also apply in the states where there is no local law on the subject of prevention of defacement of property.

- (c) Where the local law expressly permits wall writings and pasting of posters, putting up hoardings, banners, etc. on private premises with the owner's permission, the contesting candidates or the political parties concerned shall obtain prior written permission from the owner of the property and submit photocopies of the same within 3 days to the Returning Officer or an officer designated by him for the purpose, together with a statement in the **enclosed proforma** (marked as Annexure-2). The statement in such cases and in the cases mentioned in sub-para (a) above should clearly mention therein the name and address of the owner of the property from whom such permission has been obtained together with expenditure incurred or likely to be incurred for the purpose. Nothing inflammatory or likely to incite disaffection amongst communities shall be permissible in such writings/display. The expenditure incurred in this mode on specific campaign of candidate(s) shall be added to the election expenditure made by the candidate. Expenditure incurred on exclusive campaign for a party without indicating any candidate shall not be added to candidate's expenditure. The contesting candidate shall furnish such information village/locality/town-wise, to the Returning Officer, or the authorized officer within 3 days of obtaining the requisite permission, for easy checking by the Returning Officer or the Election Observer or any officer connected with the conduct of elections.
- (d) Subject to any restrictions under any local law or any court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, bunting flags, cut-outs, on their own property, provided they do so on their own volition, voluntarily and without any pressure from any party, organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else. If such display of banners, flags etc. aims to solicit vote for any particular candidate, then the provisions of Section 171H of the IPC would be attracted and would have to be followed. Section 171H of the IPC stipulates that whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred



rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

## **DEFACEMENT OF HALLS/AUDITORIUMS AND OTHER PUBLIC PROPERTIES**

6. In the case of Halls/Auditoriums/Meeting venues owned/controlled by the Government/local authorities/PSUs/Cooperatives, if the law/guidelines governing their use do not preclude political meetings therein, there is no objection to it. It shall be ensured that the allocation is done on equitable basis and that there is no monopolization by any political party or candidates. In such venues, displaying of banners, buntings, flags, cut-outs, may be permitted during the period of meetings subject to any restrictions under the law/guidelines in force. Such banners, flags, etc. shall be got removed by the party/individual who used the premises immediately after conclusion of the meeting, and in any case within a reasonable period after the meeting is over. Permanent/Semi-Permanent defacement such as wall writing/pasting of posters etc. shall not be permitted in such premises.
7. If any political party/association/candidate/person indulges in defacement of any property in violation of the local law, if any, or the above instructions, the Returning Officer/District Election Officer shall issue notice to the offender for removing the defacement forthwith. If the political party/association/candidate/person does not respond promptly, the district authorities may take action to remove the defacement, and the expenses incurred in the process shall be recovered from the political party/association/candidate/person responsible for the defacement. Further, the amount also shall be added to the election expenditure of the candidate concerned, and action should also be initiated to prosecute the offender under the provisions of the relevant law (under the law relating to prevention of defacement, if any, or under the provisions of the general law for causing willful damage to the property of others).

## **DEFACEMENT OF VEHICLES**

8. (a) In private vehicles, subject to the provisions of the Motor Vehicles Act,

Rules thereunder and subject to court orders in force, if any, flags and stickers may be put on the vehicles by the owner of the vehicle on his own volition, in such a manner that they do not cause any inconvenience or distraction to other road users. If such display of flags and stickers aims to solicit vote for any particular candidate, then the provisions of Section 171H of the IPC would be attracted and would have to be followed.

- (b) On commercial vehicles, display of any flag, sticker etc. shall not be permitted, unless such vehicle is a vehicle validly used for election campaign after obtaining the requisite permit from the District Election Officer/ Returning Officer and the display thereof in original on the wind screen.
- (c) External modification of vehicles including fitting of Loudspeaker thereon, would be subject to the provisions of the Motor Vehicles Act/Rules and any other Local Act/Rules. Vehicles with modifications and special campaign vehicles like Video Rath etc., can be used only after obtaining the requisite permission from the competent authorities under the Motor Vehicles Act.

## **OTHER CAMPAIGN RELATED ITEMS**

- 9. Subject to accounting for the expenditure, the following may be permitted:-
  - (a) In processions and rallies etc., flags, banners, cutouts etc. can be carried subject to local laws and prohibitory orders in force;
  - (b) In such procession, wearing of party/candidate supplied special accessories like cap, mask, scarf etc. may be permitted. However, supply of main apparels like saree, shirt, etc. by party/candidate is not permitted.
  - (c) Educational institutions including their grounds {whether Govt. aided, private or Govt.} shall not be used for political campaigns and rallies.
- 10. The Chief Electoral Officers are requested to bring the directions of the Commission to the notice of the District Election Officers, Returning Officers and all other election related authorities, and all political parties in the State, including State units of recognized National and State parties, and all registered un-recognized parties based in the State, and also the contesting candidates (at the time of elections) for information and compliance.
- 11. Please acknowledge receipt of this letter. The Chief Electoral Officers may kindly confirm that action as required above has been taken.

## Annexure-1

### Defacement of Properties – Law

Sl. No.	Name of State/ UT	Name of Act/Rule	Extent of applicability
1.	Andhra Pradesh	The Andhra Pradesh Prevention of Disfigurement of Open Places and Prohibition of Obscene and Objectionable Posters and Advertisements Act, 1997	It extends to the entire State.
2.	Arunachal Pradesh	The Arunachal Pradesh Prevention of Defacement of Property Act, 1997.	It extends to the entire State.
3.	Bihar	The Bihar Prevention of Defacement of Property Act, 1985.	It extends to the entire State.
4.	Chhattisgarh	No separate law/Act framed by the State. But the Madhya Pradesh Sampatti Virupan Nivaran Adhiniyam, 1994 is applicable in the state.	It extends to the entire State.
5.	Goa	<b>The Goa Prevention of Defacement of Property Act, 1988 as amended vide Act of 1992 and 2001.</b>	It extends to the entire State.
6.	Haryana	<b>The Haryana Prevention of Defacement of Property Act, 1989 as amended vide Act of 1996.</b>	It extends to the entire State.

7.	Himachal Pradesh	The Himachal Pradesh Open Places (Prevention of Disfigurement) Act, 1985.	It extends to the entire State and come into force in the areas comprised in the Municipal Corporation of Shimla at once and shall come into force in the remaining part of the State on such date as the State Govt. may by notification, appoint.
8.	<b>Jharkhand</b>	No separate law/Act but the Bihar Prevention of Defacement of Property Act, 1985 is applicable in the state.	It extends to the entire State.
9.	Jammu & Kashmir	The Jammu & Kashmir Prevention of Defacement of Property Act No. XIX of 1985.	It extends to the entire State.
10.	Karnataka	The Karnataka Open Places (Prevention of Disfigurement) Act, 1981 as amended vide Act of 1983.	It extends to Bangalore, Mysore, Hubli, Dharwar, Mangalore and Belgaun constituted or continued under the Karnataka Municipal Corporation Act – 1976, or under any other law on 05.05.81 and come into force in the Municipalities, notified areas, sanitary Boards, constituted or continued under the Karnataka Municipalities Act – 1964, or under any other law, or in any other local area, on such date, as the State Government may by notification appoint.

11.	M a d h y a Pradesh	The Madhya Pradesh Sampatti Virupan Nivaran Adhiniyam, 1994.	It extends to the entire State.
12.	Maharashtra	Maharashtra Act No. VIII of 1995 – regarding prevention of Defacement of Property.	Nothing is specifically mentioned about the extent of applicability.
13.	Mizoram	<b>The Mizoram Prevention of Defacement of Property Act, 1995.</b>	It extends to the entire State.
14.	Nagaland	<b>The Nagaland Prevention of Defacement of Property Act, 1958.</b>	It extends to the notified areas constituted under the Assam Tribal Areas (Administration of Tow Committee) regulation 1950, in any other local area or areas, on such date, as the State Govt. may by notification may appoint.
15.	Punjab	<b>The Punjab Prevention of Defacement of Property Act, 1998.</b>	It extends to the entire State.
16.	Sikkim	<b>The Sikkim Prevention of Defacement of Property Act, 1988.</b>	It extends to the entire State.
17.	Tamil Nadu	The Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, as amended vide Act of 1992.	It extends to the entire State.

18.	Tripura	<b>The Tripura Prevention of Defacement of Property Act, 1976 in conjunction with Tripura (Prevention of Defacement of Property) Amendment Bill, 1998 now in force in the State.</b>	It extends to the entire State and shall apply in the first instance to municipal limits of Agartala Town, but the State Govt. may from time to time by notification in the official Gazette, apply to such other local areas or areas as may be specified in the notification.
19.	Uttarakhand	<b>The Uttaranchal Prevention of Defacement of Public Property Act, 2003</b>	It extends to the entire State.
20.	Andaman & Nicobar	<b>The Andaman &amp; Nicobar Islands Prevention of Defacement of Property Regulation, 1987.</b>	It extends to the entire Union Territory of the Andaman and Nicobar Islands.
21.	Chandigarh UT	The West Bengal Prevention of Defacement of Property Act, 1976 has been made applicable in Chandigarh UT.	It extends to the entire State.
22.	<b>Delhi</b>	The West Bengal Prevention of Defacement of Property Act, 1976 was made applicable in Delhi. (A separate act is under consideration).	It extends to the entire State.
23.	Pondicherry	The Pondicherry Open Places (Prevention of Disfigurement) Act, 2000.	It extends to whole of the Union Territory of the Pondicherry.

States in which there is no specific Law on the subject of Prevention of Defacement of Property

Sl. No.	Name of State/UT	
1.	Assam	No law/Act
2.	Gujarat	No law/Act
3.	Kerala	No law/Act
4.	Manipur	No law/Act
5.	Meghalaya	No law/Act
6.	Orissa	No law/Act
7.	Rajasthan	No specific law on the subject but there is a provision in Section 198 of Rajasthan Municipalities Act, 1959 that without the consent of the owner or occupier and in case of Municipal property, without the permission in writing of the board, affixing any poster, bill, placard or other paper or means of advertisement is punishable with fine which may extend to twenty rupees.
8.	Uttar Pradesh	No law/Act
9.	West Bengal	<b>There earlier West Bengal Prevention of Defacement of Property Act, 1976, (West Bengal Act XXI of 1976). This Act has since been repealed.</b>
10.	Dadra & N. Haveli	No law/Act
11.	Daman and Diu	No law/Act
12.	Lakshdweep	No law/Act

## **Annexure-2**

**Statement showing the details of wall-writings/posters/hoardings/banners, etc. displayed by Shri/Smt./Ms....., contesting candidate in ..... Parliamentary Constituency/ Assembly Constituency Name of the Village/Town/ Locality.....**

S. No.	Name and address of the owner of the private property from whom written permission has been obtained	Details of Wall-Writing or Hoardings or Banners or Poster (Size of wall writing/ hoarding/banner/ poster shall be indicated	Expenditure incurred or likely to be incurred on the wall-writing/hoarding/ banner/posters, etc. (Rs.)
			Total



## **ENCLOSURE-III**

Election Commission's letter No. 464/INST/2014/EPS dated: 10<sup>th</sup> April, 2014 addressed to the Chief Electoral Officers of all States/Union Territories.

### **Sub: General Election to the Lok Sabha, 2014 - Consolidated Instructions on use of vehicles during elections - regarding.**

With a view to ensuring level playing field for all candidates and other stake holders and further to check the vitiating role of money and misuse of official machinery. The Commission has issued in the past a number of instructions on the above cited subject for sake of clarity and easy reference, the same have been consolidated and are being re-issued for compliance and guidance during all General/Bye elections to the Lok Sabha, State Legislative Assemblies and all Biennial/Bye elections from Graduates' and Teacher's constituencies of Legislative Councils.

#### **Period of applicability-**

2. These instructions shall come into effect from the date of announcement of elections till the completion of elections.

#### **Meaning of 'Official Vehicle'**

3. The expression 'official vehicle' means, and shall include, any vehicles used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise and will include trucks, lorries, tempos, jeeps, cars, auto rickshaws, e-rickshaws, buses, belonging to the (i) Central Government, (ii) State Governments/UT Administrations, (iii) Public Undertakings of the Central and State Governments, (iv) Joint Sector Undertakings of Central and State Governments, (v) Local Bodies, (vi) Municipal Corporations, (vii) Municipalities, (viii) Marketing Boards (by whatever name known), (ix) Cooperative Societies, (x) Autonomous District Councils or any other body in which public funds, howsoever small a portion of the total, are invested and also include those belonging to the Ministry of Defence and the Central Public Organizations under the Ministry of Home Affairs and State Governments.

#### **Directions of ECI**

4. **The Commission directs that, subject to exceptions mentioned herein, there shall be a total and absolute ban on the use of official vehicles for campaigning, electioneering or election related travel during elections.**

There shall be a total prohibition on the use of any vehicles such as helicopters, aircrafts, (except as regulated by the Commission's order on the subject) cars, jeeps, automobiles, boats, hovercrafts, etc., belonging to the (i) Central Government, (ii) State Government/UT Administration (iii) Public Undertakings of the Central and State Governments, (iv) Joint Sector Undertakings of the Central and State Governments, (v) Local Bodies, (vi) Marketing Boards, (vii) Co-operative Societies, (viii) Autonomous District Councils or any other body in which public funds, howsoever small portion of the total, are invested for any purpose connected with the elections, by any political party, candidate or any other person connected with election (except officials performing any election related official duty).

5. The Commission further directs that the District Administration shall keep a close watch to find out if any official vehicle belonging to any authority specified in the preceding para is being used for electioneering purpose. In case it is so, the District Magistrate shall, forthwith, requisition or cause to be requisitioned such vehicles, after following due procedure. For election work, under Section 160 of the Representation of the People Act, 1951 and such requisitioned vehicles shall not be released until after the completion of the process of election.

### **Clarifications**

6. It is clarified that the ban on the use of vehicles will equally apply to the vehicles in or from any States not going to the polls but whose vehicles are attempted to be used for campaign either openly or clandestinely in any other State going to poll. The Chief Secretary of each State/Union Territory/the Secretary to the Government of India in the concerned Department, as the case may be, will be personally responsible for any misuse of any vehicle under Ministry/Department or of any of the public sector or joint sector undertakings or Autonomous Bodies or attached offices under that Ministry/Department. The Officers under whose charge such vehicles are entrusted will also be equally responsible for any violation.
7. It is further clarified that the use of such vehicles belonging to any of these authorities by anyone, including Ministers of the Central or a State Government, even on payment basis, for campaigning or on tours connected with elections but with the alleged and bogusly certified purpose of official work in their capacity as Ministers is totally prohibited.

### **Exception**

8. The only exception from the prohibition will be the Prime Minister and other political personalities, who might, in view of extremist and terrorist activities and threat to their lives, require security of a high order and whose security requirements are governed by any statutory provisions made by the parliament or the State Legislative in this behalf.
9. The above restrictions shall also not apply in the case of the President and Vice-President of India. Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha and such other dignitaries visiting the State from other States. However, it is further clarified that in the case of Speaker and Deputy Speaker of Lok Sabha and Deputy Chairman of Rajya Sabha these restrictions will be applicable at the time of General Elections to the Lok Sabha but not during LA election. It is also clarified again that such exceptions shall not be made in respect of any Ministers of the Union or any State Government.
10. (a) The Commission would like to make it clear that if it has any material to doubt that the assessment of security requirements made by the authorities under Special Protection Group Act, 1988 or any other special enactment/instruction of the Government have been manifestly or unduly excessive with the intention of promoting indirectly the electoral interests of a particular party or candidate. The Commission will bring the matter to the notice of the concerned Government for immediate and appropriate corrective steps.
10. (b) For this purpose, the Commission may call for any information from the Central Government or the State Government concerned with regard to the assessment of the security requirements made in respect of any such personality. Such information shall be furnished to the Commission by the concerned Government forthwith.

### **Restriction on convoy of vehicles**

11. The Commission further directs that cars/vehicles shall, under no circumstances, be allowed to move in convoys of more than ten vehicles, excluding the security vehicles. All bigger convoys exceeding 10 (ten) vehicles shall be broken up, even if they are carrying any Minister of Central or State Government or any other person. This shall, however, be subject to any security instructions issued in respect of any such individual.

12. If any person moves in a convoy of vehicles exceeding the limits prescribed above, in spite of the convoy having been broken, it shall be the duty of the local administration to ensure that such vehicles are not allowed to be used by flouting the Commission's directions, till the process of election is completed.

**During Filing of Nomination:**

13. The maximum number of vehicles that will be allowed to come within the periphery of 100 meters of Returning Officers/Assistant Returning Officers office shall be three.

**Use of vehicles for electioneering purpose**

14. There is no limit on vehicles, which a candidate may use for electioneering purposes.
15. But before the campaigning commences, he shall have to furnish the details of such vehicles and the areas in which they would be used for campaigning purposes, to the District Election Officer or such other officer(s) as may be specifically authorized by the District Election Officer in this behalf, who after necessary scrutiny would issue a permit. The original copy (not the photo copy) of permit should be displayed on the wind screen of the vehicle. Needless to mention that the permit should be of such dimension, that it can easily be seen from a distance. Permit must contain the number of the vehicle, date of issue of permit, name of candidate and the area (where it shall be used for campaigning).
16. Any further deployment of any additional vehicles can take place only after notice to this effect is given by the candidate or his/her agent and permits obtained for the same, before the actual deployment of the vehicles.
17. The details so obtained should be conveyed by District Election Officer to the Election Expenditure Observers so that they can check that the expenditure in this regard is correctly included in the expenditure account of the candidate.
18. Any vehicle used for campaigning without due authorization/permit by the aforesaid officers, shall be deemed to be unauthorisedly campaigning for the candidate and may attract penal provisions of Chapter IX A of the Indian Penal Code and shall therefore be immediately taken out of the campaigning exercise.
19. The vehicles employed for election campaign as per intimation given by the candidates or their election agents to the District Administration should not be

requisitioned by the administration.

20. For availing the benefit of clause (a) of explanation (1) given under sec. 77 (1) of R.P. Act, 1951 by the leaders of the political parties, i.e., star campaigners. The permission for the mode of road transport will be issued centrally by the Chief Electoral Officer, irrespective of whether the same vehicle is to be used by any leader for election campaigning throughout the State or different vehicles are to be used by such party leaders in different areas. The Permit will be issued against the name of the star campaigner concerned and shall need to be displayed prominently on the windscreen of the vehicle being used by him/her in any area. The permits so issued by the CEO will be of distinctly different colour from the permits to be issued by the DEOs/ROs for other campaign vehicles of candidates.
21. On receipt of a request from a recognized political party, the DEO would issue permit for one vehicle to be used by the district level office bearer of a recognized party (other than the star campaigner) for their visit to multiple ACs within the district for electioneering purposes. The permit should be issued indicating the number of the vehicle. The name of political leader and the period for which issued and should be of different colour so that it can easily be identified. An attested copy shall be pasted on wind screen and original be kept with the driver for checking by police or other authorities. The expenditure in this regard shall be booked against the political party and not the candidates.
22. The CEO may issue permits for vehicles that can move throughout the State for use of officer bearers of recognized political parties for electioneering purposes only. For the States having more than 100 Assembly Constituencies, the CEO may issue permits for a maximum of five vehicles and for remaining States/UTs, for a maximum of three vehicles to a recognized political party. The expenditure on these vehicles shall be incurred by the political party and not by the candidate.
23. If any political party makes a request to the Chief Electoral Officer for grant of vehicle permission for distribution of publicity material to their various party offices in the State, the Chief Electoral Officer may grant permission for one vehicle for a recognized political party (National/State). However, the concerned political party (the applicant) will have to specify the names of the Districts, the route map and the dates for which the vehicle will be required for the above purpose. For such vehicles, the CEO may issue permission, but ensure that

such vehicles will also be subjected to normal checks and they will not be used for election campaigning. The expenditure on account of such vehicle shall be incurred by the political party and not by the candidate.

24. In case of Video-Vans etc. to be used by a political party for campaign across the States, before any permission to use Video- Vans for campaign is given, it should be ensured by Chief Electoral Officer that such use of vehicle is in accordance with the Motor Vehicle Act. Attention in this context is invited to the judgments dated 23.06.2006 and 14.02.2007 of Allahabad High Court in Writ Petition No. 3648 (MB) of 2006.

### **Clarification**

25. A cycle rickshaw is also a vehicle as defined in Section 160 of Representation of People Act, 1951, which may be used for election campaign. If it is being used, then a candidate has to account for its expenditure in his account of election expenses. To ensure this, the candidate should give details of such rickshaws being used for his election campaign and, if the rickshaw does not have any Municipal registration/permit for its identification, the rickshaw driver may be given a permit in his personal name by the Returning Officer which the rickshaw driver should carry on his person while using that rickshaw for campaign purposes. However, rickshaws being used for normal purposes of carrying passengers in ordinary course etc. may be exempted, if they are displaying only one poster showing the name or party symbol of a candidate, presuming they are doing so on their own free will.

### **Use of vehicles on poll day**

26. Section 123(5) of the Representation of the people Act, 1951 provides that the hiring or procuring or use of vehicles by a candidate/his agent or by any other person with the consent of the candidate or his election agent for the free conveyance of the voters to and fro from the polling station shall be a 'corrupt practice' and it is also an electoral offence punishable under section 133, with fine which may extend to five hundred rupees.
27. With a view to placing effective curbs on this practice, the Commission issues the following directions:
- (A) For an election to the House of the People, each contesting candidate, on the day of poll, will be entitled to:

- (a) One vehicle for his own use in respect of the entire constituency;
  - (b) In addition, one vehicle for use of his election agent in the Parliamentary Constituency;
  - (c) In addition, one vehicle for use of his election agent or workers or party worker, as the case may be, in each of the assembly segments comprised in the Parliamentary Constituency,
- (B) For an election to the State Legislative Assembly, on the date of poll in that Constituency each contesting candidate is entitled to:
- (a) One vehicle for his own use;
  - (b) One vehicle for the use of his election agent;
  - (c) In addition, one vehicle for use of his workers or party workers.

### **Clarification**

28. It is clarified that, henceforth, the candidate or his agent or party workers or workers will be allowed to use only four/three/two wheeler vehicles i.e cars (of all types) taxies, auto rickshaws, rickshaws and two wheelers. In these four wheel vehicles not more than 5 persons including driver will be allowed to move on the day of poll. It is further clarified that on the day of poll no other person will be allowed to use the vehicle allotted for candidate's or his election agent's use. However, the candidate or his election agent may be accompanied in his car by other persons subject to 5 including driver.
29. The permits for the vehicles indicated above will be issued by the District Magistrate/Returning Officer. The candidates must furnish particulars of their vehicle to be used on poll day to DEO/RO concerned and shall display the permits issued on the wind-screen of the vehicles. No other vehicles shall be allowed to be used by the leaders of the political parties including Ministers, workers, agents and sympathizers of any candidate. No exception shall be made, irrespective of the status of the candidate.

### **Meaning of vehicle**

30. The aforementioned restrictions shall apply all vehicles propelled by mechanical power or otherwise, including but not restricted to taxies, private cars, trucks, tractors with or without trailers, auto-rickshaws, e-rickshaws, scooters, mini

buses, station wagons etc., also, and shall be made applicable for a period of 24 hours before the time fixed for closure of poll and till the completion of poll.

31. Penal action, both under the provisions of the R.P. Act, 1951 and chapter IX A of the Indian Penal Code shall be taken against anyone offending the above directions, in addition to action under the Motor Vehicles Act. All vehicles being used in violation of these directions shall be confiscated.

### **Exception**

32. There is no intention on the part of the Commission to put a complete ban on all vehicular traffic on the polling day and thereby create difficulties or cause harassment to the public. For genuine bonafide use for purposes other than election, the following types of vehicles shall also be allowed to be plied on the day of poll and there will be no exception:

- (a) Private vehicles being used by the owners for their private use, not connected with elections;
- (b) Private vehicles being used by owners either for themselves or for member of their own family for going to the polling booth to exercise their franchise, but not going anywhere within a radius of 200 meters of a polling station;
- (c) Vehicles used for essential services namely hospital vans, ambulance, milk vans, water tankers, electricity emergency duty vans, police on duty, officers on election duty;
- (d) Public transport carriages like buses plying between fixed terminal and on fixed routes;
- (e) Taxis, three wheeler scooters, rickshaws etc. for going to airports, railway station, interstate bus stands, hospital for journeys which cannot be avoided;
- (f) Private vehicles used by sick or disabled persons for their own use;
- (g) Vehicles being used by the Govt. officers on duty to reach their duty point.

33. During the period of electioneering, with a view to checking misuse of private vehicles by the candidates/their agents and party leaders and/or party supporter for carting anti-social elements so as to instill a sense of fear in the minds of the electorate and/or to smuggle illicit arms and ammunition etc. with a view to creating disturbances during elections, the Commission further directs that



the District Administration shall keep a close watch on the vehicles used by persons accompanying the contesting candidates and their party's leaders for any possible mischief, including criminal activities like carrying of illegal arms and weapons. If any of these vehicles, either of a party or a private owner, is found to be involved in any such act or for carting anti-social elements with a view to intimidating or creating terror in the mind of the electorate, it shall be the duty of the local administration to impound such vehicles and not to release them till the process of elections is completed. In addition, criminal action against the owner, the occupant(s) and the candidate/political party which is involved in such illegal activities shall also be taken as per law.

Please inform all concerned and ensure compliance.

**ENCLOSURE-IV**

Election Commission letter No.491/MCMC/2014/Communication, dated 24th March, 2014 addressed to Chief Electoral Officers of all States and UTs

**Sub: Certification of advertisement of political nature on electronic media– reg.**

I am directed to refer to the Commission order issued vide its letter dt 15.04.2004 (copy enclosed) on the subject cited and which was issued consequent upon Hon'ble Supreme Court Order dt 13.04.2004. In para 5 of the said Commission's order it was directed that every registered National and State political party and every contesting candidate proposing to issue advertisement on television channel and/or cable network will have to apply to the Election Commission/Officer designated by Election Commission not later than three days prior to the date of proposed commencement of the telecast of such advertisement and such application shall be accompanied by two copies of the proposed advertisement in electronic form along with a duly attested transcript thereof.

The Commission accordingly appointed Media Certification and Monitoring Committee (MCMCs) and district level and state level and all registered National and State political parties approach these MCMCs, as the case may be, for the certification of their political advertisements proposed to be issued on electronic media (which includes TV channels, Cable network, Radio including private FM channels, Cinema Halls, audio visual displays at public places and Internet) by following the Commission's said Order as specified above.

Now, for the purpose of further facilitating political parties/candidates the Commission has relaxed para 10 (i) of the said order, decided that apart from adopting the existing procedure, the political parties/candidates, if they desire so, may also follow the alternative procedure by first submitting the transcript of the proposed advertisement for certification and once the transcript is vetted/approved by the Committee the party/candidate will submit the final product in electronic form another time for final certification.

2. In such case the time line for each stage will be as per the existing order.
3. This may be brought to the notice of all the MCMCs in the districts and states. Considering that the work of MCMC is likely to increase, proportionately additional support staff may be suitably deployed with the Committee.

## ANNEXURE- XVII

(CHAPTER – 18 ELECTION MANIFESTOS)

ECI letter No. 437/6/Manifesto/2013 dated 19.02.2014 addressed to the President/ General Secretary/Chairperson of All recognised National and State political parties.

**Sub: Judgment dated 5.7.2A13 of the Hon'ble Supreme Court in SLP ( C) No. 21455 of2008 and TC No. 112 of 2011 -S.Subramaniam Balaji Vs. Govt. of TN& Others-framing of guidelines for election manifestos- FINAL GUIDELINES - reg.**

I am directed to refer to this office letter of even number dated 31st January 2014 forwarding therewith a set of draft guidelines on election manifestos for inclusion in the model code of conduct wherein it has requested that all recognized National and State political Parties may offer their comments on the said draft guidelines by 07th February 2014. Having considered the suggestions/comments received from the political Parties and having regard to the directions of the Hon'ble Supreme Court mentioned above, the Commission has finalized the guidelines on Election Manifestos which have now been included as Part VIII of the Model Code of Conduct for the Guidance of the Political parties and Candidates. These guidelines will, henceforth, be applicable and implemented as a part of the Model Code of Conduct for all future elections. A copy of the full text of the **Model Code of Conduct for the Guidance of Political Parties and Candidates** including Part VIII on Election Manifestos is enclosed for your information. You are requested to bring this to the notice of all concerned for their information and compliance.

## ANNEXURE- XVIII

(CHAPTER – 19 MODEL CODE AND GOVT. OFFICIALS)

Election Commission's letter No. 464/INST/2008/EPS, Date: 23<sup>rd</sup> December, 2008. Addressed to the Chief Electoral Officers of all States and Union Territories.

**Subject:- Tracking the names of officers transferred by the order of the Election Commission of India charged with dereliction of duty etc.**

Ref: No. 437/6/2006-PLN.III dated 6<sup>th</sup> November, 2006 & ECI message No. 100/1994- PLN.I dated 28.3.1994 addressed to the CEOs of all States & UTs.

The Election Commission of India vide the instruction referred to above had directed that a detailed review shall be undertaken before every election in all districts and all such officers should be posted out of their home districts or district where they have completed a tenure of 3 years out of 4 years, and had further directed that officers/officials against whom Commission has recommended disciplinary action or who have been charged for any lapse in election or election related work or who were transferred under the orders of the Commission in the matter may not be assigned to any election related duty.

However, it was observed during recent elections that in spite of efforts made by the CEOs and the DEOs to comply the above instruction of the Commission, there were still some instances of the officers who come under the above criteria and liable to be transferred out of the district to a non-election related assignment but related assignment but managed to say back and the Commission came to know about this only at a later stage through complaints being raised by various political parties and members of public. These incidents, though few in numbers, send a wrong signal at the field level and non-maintenance of proper information about the officers liable to be transferred on the above criteria has been recognized as a reason for some stray incidents of non-compliance. In order to remove the possibility of the occurrence of such incidents in future, the Commission has issued the following directions to make the existing instruction more effective:-

- I. The CEO of the State shall maintain a register in which the information about IAS/IPS officers, DEOs, ROs and EROs transferred by the order of the Election Commission and against whom Commission has recommended disciplinary action or who have been charged for any lapse in election or election related work shall be maintained.

- II. Similarly, the DEO will maintain a register containing information about other junior officers and other staff.
  
- III. Within 7 days of the announcement of elections by the Election Commission of India the CEO of the State will send a compliance letter to the Zonal Secretary in the Commission confirming that all the officers coming under the above criteria have been transferred. Similarly he shall obtain a similar compliance certificate from all the DEOs confirming that all the offices/ staff coming under the above criteria have been transferred to non-election related assignment and out of the district.
  
- IV. With reference to transfer of officers coming under '3 years out of 4 years criteria' and the home district criteria, DEOs shall ensure compliance in respect of ROs, EROs, AROs, and AEROs and other election related officials and send a letter to CEO within the time, if any, stipulated for this purpose by the Election Commission of India or CEO and if not, within 7 days of issue of press note announcing the elections. Similarly, information related to DEOs, SSP and SPs and other senior police officials connected with the election work shall be maintained by the CEO and compliance by the State Govt. shall be ensured at his level Compliance regarding the transfer of these officers shall be collected from the DEOs and the CEO of the State shall send a consolidated letter of compliance to the Zonal Secretary within 7 days of the announcement of election.
  
- V. To facilitate the submission of this compliance letter within 7 days of the announcement of election, the CEO and DEO shall collect the information and ensure maintenance of register as stated above well in advance so that no time is lost.
  
- VI. There are many departments in the State Government that are involved in transferring officials and thereby accountable for the compliance of the above instructions of the Commission. The Commission's instruction regarding transfer of the officials during election shall be brought to be notice of the Secretaries of the departments concerned with a copy to the Chief Secretary. The Secretary may be requested by the CEO to ensure that all the departments concerned comply with the Commission's instruction well in time.

- VII. With regard to bye-elections while the officers coming under the category, dealt within Para marked as (I) Shall be transferred out of the district within three days of announcement of bye-election and certainly before the first days of receipt of nomination whichever is earlier.
- VIII. The above instruction be followed without any deviation.

**ANNEXURE- XIX**

(CHAPTER – 19 MODEL CODE AND GOVT. OFFICIALS)

**DECLARATION**

**(To be submitted within 2 days after the last date of nomination papers)**

I.....(Name).....presently posted .....from.....

(Date Do hereby make a solemn declaration, in connection with the current General/ Bye election to Lok Sabha/.....(Legislative Assembly that.....

(a) I am not a close relative of any of the contesting candidates in the current election/leading political functionary of the state/district at the aforesaid election.

(b) No criminal case is pending against me in any court of law.

Note- If answer of (a) or (b) above is 'YES', then give full details in a separate sheet.

Dated.....

(Name)  
Designation

Dated.....

(Name)  
Designation

NOTE- Any false declaration made by any officer shall invite appropriate disciplinary actions.

## ANNEXURE- XX

(CHAPTER – 21 MODEL CODE DURING BIENNIAL ELECTIONS)

No. 322/ECI/INST/FUNC/BIEN-LC /2016

Dated: December, 2016

**To**

The Chief Electoral Officers

1. Maharashtra, Mumbai,
2. Uttar Pradesh, Lucknow,
3. Bihar, Patna,
4. Karnataka, Bangalore,
5. Andhra Pradesh, Hyderabad.
6. Telangana, Hyderabad.

Subject: Biennial/Bye-Elections to the Legislative Councils from Council Constituencies - by Graduates' and Teachers' and Local Authorities' Constituencies - MCC-instructions - regarding.

Sir,

I am directed to state that experience during conduct of elections to Legislative Councils shows that there is lack of clarity with regard to applicability of provisions of Model Code of Conduct in such elections. The Commission constituted a Working Group to examine the matter. The Commission, having considered the report of the Working Group and the matter in its entirety, has directed that all provisions of Model Code of Conduct for the political parties and candidates' shall apply *mutatis mutandis* in Biennial including Bye Elections to the State Legislative Councils from Graduates' & Teachers' Constituencies as well as Local Authorities' Constituencies. Consequently, the various instructions issued by the Commission from time to time in clarification of the MCC provisions would also apply for such elections.

2. I am further to say that the following instructions of the Commission which have been issued from time to time to ensure level playing field and also to



ensure that a party in power doesn't misuse its position for electoral gains, shall also be applicable in connection with Biennial/Bye Elections to the State Legislative Councils from Graduates' & Teachers' Constituencies as well as Local Authorities' Constituencies (from the date of announcement of election till the date of completion of election).

- I. Ministers, whether Central or State (including Chief Minister) may make official visit to any district(s) in which any Biennial/Bye-election from a Council Constituency is being held subject to the following conditions: -
  - a. They shall not do any inauguration/laying of foundation stones of any educational institution, which are constituents of Graduates' and Teachers' Constituencies.
  - b. Official visit shall not be combined with the election related work/ tours.
  - c. There shall be no announcement of new policy programme/ policy likely to influence the graduates, the teachers and members of Local Authorities who form the electorate of the Constituencies going to poll.
- II. No official of any rank of the district(s) dealing with election related work where the biennial/bye-elections are being held shall be called to attend any meeting by any Minister at any place, even in another district, where election is not being held. Any official who meets the Minister on his private visit to the constituency where elections are being held shall be deemed to be guilty of misconduct under the relevant service rules; and if he happens to be an officer mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that section and liable to penal action provided there under.
- III. No member of any Local Authority which forms part of the electorate of a Local Authorities' Constituency shall be called for any meeting/video conference by any Minister (in his capacity as Minister). Routine meetings of the Local Bodies, when essential, may be held with the prior permission of the District Election Officer of the District concerned.
- IV. No pilot car(s) or other car(s) with beacon lights of any colour or car(s)

affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his private visit to the constituency, even if the State administration has granted him a security cover requiring presence of armed guards accompanying him on tour.

- V. No policy announcement or programme, which influences the electorate either directly or indirectly, shall be initiated in the Government Departments till the completion of elections.
- VI. On need basis and in consultation with CEO of the state/ECI Observer, the DEO/RO should put in place for every tehsil a special video team to videograph political meeting at public places and to record visits of the Ministers and other important political functionaries. The ECI observer shall see the video recording in the evening of the same day so that he can report any violation to the Commission in prescribed format.
- VII. In case of elections from Local Authorities’ Constituencies, the restrictions on “Official Tours” by Central & State Ministers will also be applicable to the use of any “Official Cars” by “Office Bearers” of Local Authorities, like, Mayors of Municipal Corporations, Presidents of Municipal Councils & Zilla Parishads. The use of official cars by them shall only be allowed for travel to & from Office to Residence.
- VIII. Public places such as maidans etc., for holding election meetings, and use of helipads for air-flights in connection with elections shall not be monopolized by the party in power. Other parties and candidates shall also be allowed to use them on first-cum-first served basis.
- IX. No fresh Sanction of work using the IT Platform to be used depending upon the MP/MLA/MLC schemes for work that would amount to influencing the electorate.
- X. There shall be a total ban on the transfer of Returning Officers and Assistant Returning Officers appointed for Biennial elections/bye-elections to State Legislative Councils after the announcement of elections and this ban will be in force till the completion of elections. The transfer orders in respect of the above officers issued prior to the date of announcement but not implemented should not be given effect to without obtaining the specific permission of the Commission. In those cases, where transfer of an officer is

necessary on account of administrative exigencies, the State Govt. may with full justification approach the Commission for prior clearance.

- XI. In order to conduct free and fair elections to keep a check on adverse role of money power and to check the movement of black money during biennial elections/bye-elections to Legislative Council, the Standard Operating Procedure (SOP) issued on 29.05.2015, excepting deployment of Static Surveillance Teams, should be made applicable.
- XII. State and District Media Certification and Monitoring Committee (MCMC) shall be appointed, as prescribed in the Compendium of Instructions on Election Expenditure Monitoring, immediately on announcement of biennial/ bye elections for pre-certification of election advertisements as in case of TV Channels / Cable Network, Radio including private FM Channels, Cinema Halls, Audio-Visual displays in public place and social media and also monitoring the general conduct of political functionaries during campaign.
- XIII. The bulk SMSs/Voice messages on phone in election campaigning shall also be in the purview of pre-certification of election advertisements as in case of TV Channels / Cable Network, Radio including private FM Channels, Cinema Halls, Audio-Visual displays in public place and social media. The legal provisions, as applicable to other modes of electronic media shall also be applicable to bulk SMSs/ Voice messages.
- XIV. Under Section 29 of the Representation of the People Act, 1951 read with Rule 69 of the Conduct of the Election Rules, 1961, a place of poll is fixed for conducting poll in respect of election to the Council of States and the State Legislative Councils by MLAs. As per Section 135C, “dry day” is to be declared in Polling Areas and polling area is defined in Section 25 of the Representation of the People Act, 1951, which is applicable to elections from Constituencies i.e. for elections to Lok Sabha, Legislative Assemblies and elections to Legislative Councils from Graduates’, Teachers’ and Local Authorities’ Constituencies.
- XV. The provision regarding prevention of misuse of vehicles and regulation of convoys during campaign period as in the case of elections to House of People / Legislative Assemblies shall be made applicable for Council elections also.

XVI. Restriction on the presence of political functionaries in a constituency after the campaign period is over i.e., 48 hours before the closure of the poll as in the case of elections to House of People / Legislative Assemblies shall be made applicable for Council elections from Council Constituencies also.

3. In the context of certain queries that have been raised in this connection, it is clarified that: -

- (a) The practice of keeping the electors in hotels/resorts and other similar places during election period would amount to bribing of electors. It is clarified that such practice shall be construed as violation of sub Para (4) of Para I-General Conduct of MCC apart from being violation of Section 171 B of IPC.
- (b) The phrase 'the rest houses/dak bungalows or other Government accommodation' in paragraph (VII- (iii)) of MCC would also include *Guest Houses* of all institutions that are getting Government assistance in any form of grant-in-aid etc.
- (c) With regard to paragraph (VII-(v) & (vi)) of MCC, it is clarified that these would be made applicable only with regard to the Graduates'/Teachers'/ Local Authorities' Constituencies where the election is being held.

Kindly inform all concerned including all registered and recognized parties based in your state.

Please ensure compliance.

## **ANNEXURE- XXI**

(CHAPTER – 22 MISCELLANEOUS)

ECI letter No. 437/6/CG/2014/CC&BE, dated 27.03.2014 addressed to the Secretary to the Government of India, Ministry of Defence.

**Subject: 1. Permission for routine procurement of 6400 MT edible oil amounting to Rs.65.77 crore for the troops for which tendering activity was held on 31<sup>st</sup> January, 2014.**

**2. Permission for routine procurement of the already approved quantities of scaled ration items for the troops for this year and for next year as approved the respective CFAs-reg.**

I am directed to refer to your D.Os. No. 1/ACDP/2013-PAO each dated 26<sup>th</sup> March, 2014, on the subject cited above, and to state that the Model Code of Conduct is not applicable to any matter pertaining directly to the defence forces, be it the recruitments/promotions for defence forces, all service matters pertaining to them, defence purchases of all kinds, tenders relating to the matter of the defence forces and consequently no reference need to be sent to the Commission pertaining to model code in these matters.

These instructions shall be treated as standing instructions of the Commission and will be applicable for all elections in future. This may be brought to the notice of all concerned for future guidance.

Accordingly the two references cited are covered under these instructions and you may take action accordingly.



# **FREQUENTLY ASKED QUESTIONS (FAQ)**





**Q.1. What is the Model Code of Conduct?**

**Ans.** The Model Code of Conduct for guidance of political parties and candidates is a set of norms which has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said code and also binds them to respect and observe it in its letter and spirit.

**Q. 2. What is the role of Election Commission in the matter?**

**Ans.** The Election Commission ensures its observance by political party(ies) in power, including ruling parties at the Centre and in the States and contesting candidates in the discharge of its constitutional duties for conducting the free, fair and peaceful elections to the Parliament and the State Legislatures under Article 324 of the Constitution of India. It is also ensured that official machinery for the electoral purposes is not misused. Further, it is also ensured that electoral offences, malpractices and corrupt practices such as impersonation, bribing and inducement of voters, threat and intimidation to the voters are prevented by all means. In case of violation, appropriate measures are taken.

**Q. 3. From which date the Model Code of Conduct is enforced and operational upto which date?**

**Ans.** The Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and is operational till the process of elections are completed.

**Q. 4. What is applicability of code during general elections and bye-elections?**

**Ans.**

- a. During general elections to House of People (Lok Sabha), the code is applicable throughout the country.
- b. During general elections to the Legislative Assembly (Vidhan Sabha), the code is applicable in the entire State.
- c. During bye-elections, in case the constituency is comprised in State Capital/Metropolitan Cities/Municipal Corporations, then the code would be applicable in the area of concerned Constituency only. In all other cases the MCC would be enforced in the entire district(s) covering the Constituency going for bye-election(s).

**Q.5. What are the salient features of the Model Code of Conduct?**

**Ans.** The salient features of the Model Code of Conduct lay down how political parties, contesting candidates and party(s) in power should conduct themselves during the process of elections i.e. on their general conduct during electioneering, holding meetings and processions, poll day activities and functioning of the party in power etc.

## **ON OFFICIAL MACHINERY**

**Q.6. Whether a Minister can combine his official visit with electioneering work?**

**Ans.** No

The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work however, the Commission has exempted the Prime Minister from the operation of the model code of conduct provision pertaining to the combining of official visit with electioneering visit.

**Q.7. Whether Govt. transport can be used for electioneering work?**

**Ans.** No transport including official air-crafts, vehicles etc. shall be used for furtherance of the interest of any party or a candidate.

**Q.8. Whether Govt. can make transfers and postings of officials who are related to election work?**

**Ans.** There shall be a total ban on the transfer and posting of all officers/officials directly or indirectly connected with the conduct of the election. If any transfer or posting of an officer is considered necessary, prior approval of the Commission shall be obtained.

**Q.9. Suppose an officer related to election work has been transferred by the Govt. before enforcement of model code of conduct and has not taken over charge at new place. Can such officer take over charge of office at new place after announcement of the code?**

**Ans.** No

Status-quo-ante shall be maintained.

**Q.10. Whether a Minister of Union or State can summon any election related officer of the constituency or the State for any official discussion during the period of elections?**

**Ans.** No Minister, whether of Union or State, can summon any election related officer of the constituency or the State for any official discussions anywhere.

Only exception will be when a Minister, in his capacity as in charge of the department concerned, or a Chief Minister undertakes an official visit to a constituency, in connection with failure of law and order or a natural calamity or any such emergency which requires personal presence of such Ministers/Chief Ministers for the specific purpose of supervising review/salvage/relief and such like purpose.

If Union Minister is traveling out of Delhi on purely official business, which cannot be avoided in public interest, then a letter certifying to this effect should be sent from the concerned Secretary of the Ministry/Department to the Chief Secretary of the concerned State, with a copy to the Election Commission.

**Q.11. Can an official meet the minister on his private visit to the Constituency where elections are being held?**

**Ans.** No

Any official who meets the Minister on his private visit to the constituency shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided thereunder.

**Q.12. Whether Ministers are entitled for official vehicle during the election?**

**Ans.** Ministers are entitled to use their official vehicles only for commuting from their official residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity.

**Q.13. Whether Ministers or any other political functionaries can use pilot car with beacon lights affixed with siren?**

**Ans.** Minister or any other political functionary is not allowed during election period, to use pilot car or car with beacon lights of any colour or car affixed with sirens of any kind whether on private or official visit, even if the State

administration has granted him a security cover requiring presence of armed guards to accompany him on such visit. This prohibition is applicable whether the vehicle is government owned or private owned.

**Q.14. Suppose a vehicle has been provided to Minister by the State and the Minister is given an allowance for maintenance of such vehicle. Can it be used by the Minister for election purposes?**

**Ans.** Where a vehicle is provided by the State or the Minister is given an allowance for maintenance of the vehicle, he cannot use such vehicle for election.

**Q.15. Whether there is any restriction or visits of members of National Commission for Schedule Castes or any other similar National/State Commissions?**

**Ans.** It is advised that all official visits of Members of such Commissions shall be deferred, unless any such visit becomes unavoidable in an emergent situation, till the completion of election exercise to avoid any misunderstanding that may arise in any quarters.

**Q.16. Whether a Chief Minister/Minister/Speaker can attend a “State Day” function of a State?**

**Ans.** There is no objection provided that he does not make any political speech on the occasion and the function is to be conducted only by Govt. officials. No advertisement depicting the photograph of Chief Minister/Minister/Speaker shall be released.

**Q.17. Whether Governor/Chief Minister/Ministers can participate and address the Convocation function of University or Institute?**

**Ans.** Governor may participate and address the Convocation. Chief Minister or Ministers may be advised not to participate and address the Convocation.

**Q.18. Whether “Iftar Party” or any other similar party can be hosted at the residence of political functionaries, the expenses of which will be borne by State exchequer?**

**Ans.** No

However any individual is free by to host any such party in his personal capacity and at his personal expense.

## **ON WELFARE SCHEMES, GOVERNMENT WORKS ETC.**

**Q.19. Is there any restriction on issue of advertisement at the cost of public exchequer regarding achievements with a view to furthering the prospects of the party in power?**

**Ans.** Yes

The advertisement regarding achievements of the party at the cost of public exchequer in the print and electronic media and the misuse of official mass media during the period of election is prohibited.

**Q.20. Whether hoardings/advertisements etc. depicting the achievements of the party(s) in power at Centre/State Governments at the cost of public exchequer can be continued?**

**Ans.** No

All such hoardings, advertisements etc. on display shall be removed forthwith by the concerned authorities. Further, no advertisements should be issued in the newspapers and other media including electronic media at the cost of public exchequer.

**Q.21. Whether a Minister or any other authority can sanction grants/ payments out of discretionary funds?**

**Ans.** No

Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced.

**Q.22. Suppose work order has been issued in respect of a scheme or a programme. Can it be started after announcement of election programme?**

**Ans.** Work shall not be started in respect of which work order has been issued before announcement of election but the work has actually not started in the field. If a work has actually started in the field that can be continued.

**Q.23. Whether fresh release of funds under MPs/MLAs/MLCs Local Area Development Fund of any scheme can be made?**

**Ans.** No

Fresh release of funds under MPs/MLAs/MLCs Local Area Development Fund

of any scheme shall not be made in any area where election is in progress, till the completion of the election process.

**Q.24. There are various rural development programmes/ schemes of Central government like Indira Awas Yojana, Sampoorna Grameen Rozgar Yojana, Swaranjayanti Gram Swarozgar Yojana, National Food for Work programme, National Rural Employment Guarantee Act. Are there any guidelines for implementation of these schemes/programmes?**

**Ans.** Yes

Following guidelines shall be followed in respect of each scheme/programme as enumerated below:-

(a) Indira Awas Yojana (IAY)

Beneficiaries, who have been sanctioned housing scheme under IAY and have started work, will be assisted as per norms. No new constructions will be taken up or fresh beneficiaries sanctioned assistance till the elections are over.

(b) Sampoorna Grameen Rozgar Yojana (SGRY)

Continuing works in progress may be continued and funds earmarked for such works can be released. In case of any Panchayat where all ongoing works have been completed and there is a requirement for taking up new wage employment works and where funds released directly to the Panchayats from the Ministry of Rural Development are available, new works can be started from approved annual action plan for the current year with the prior consent of the District Election Officer. From other funds, no new works shall be started.

(c) Swaranjayanti Gram Swarozgar Yojana (SGSY)

Only those help groups which have received part of their subsidy/ grant will be provided the balance installments. No fresh individual beneficiaries or SHGs will be given financial assistance till the elections are over.

(d) National Food for Work Programme(NFWP)

There is no objection for continuance of old works and sanction of new

works in those districts where no elections have been announced. In those districts where elections have been announced and are in progress, only those works may be undertaken that have already started physically on ground, provided outstanding advance given for implementation of such works at a given time shall not exceed the amount equivalent to work for 45 days.

e) National Employment Rural Guarantee Act (NERGA)

The Ministry of Rural Development shall not increase the number of districts in which it is being implemented after announcement of elections. The job card holders will be provided employment in the ongoing work, if they demand work, after announcement of elections. In case no employment can be provided in ongoing works, the competent authority may start new work(s) from the shelf of projects that has been approved and inform the fact to concerned District Election Officer (DEO). No new work shall be started by the competent authority till such time employment can be given in ongoing works. In case no shelf of project is available or all works available on shelf have been exhausted, then the concerned competent authority shall make a reference to the Commission for approval through the concerned DEO. The competent authority shall also furnish a certificate to DEO to the effect that the new work has been sanctioned as no employment can be given to the job card holder in the ongoing work.

**Q.25. Whether a Minister or any other authority can announce any financial grants in any form or promises thereof or lay foundation stones etc. of projects or schemes of any kinds etc.?**

**Ans.** No

Ministers and other authorities shall not announce any financial grants in any form or promises thereof; or (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or make any promise of construction of roads, provision of drinking water facilities etc. or make any ad-hoc appointments in Government, Public Undertakings etc. In such case, senior Govt. officer may lay foundation stone etc. without involving any political functionary.

**Q.26. A budget provision has been made for a particular scheme or the scheme has been sanctioned earlier. Can such scheme be announced or inaugurated?**

**Ans.** No

Inauguration/announcement of such scheme is prohibited during election period.

**Q.27. Whether ongoing beneficiary scheme can be continued?**

**Ans.** The following types of existing works can be continued by the government agencies without reference to the Election Commission after the Model Code of Conduct comes into force:

- a. Work-Projects that have actually started on the ground after obtaining all necessary sanctions;
- b. Beneficiary-projects where specific beneficiaries by name have been identified before coming of the Model Code of Conduct into force;
- c. Registered beneficiaries of MGNREGA may be covered under existing projects. New projects under MGNREGA that may be mandated under the provisions of the Act may be taken up only if it is for the already registered beneficiaries and the project is already listed in the approved and sanctioned shelf of projects for which funds are also already earmarked.

The following type of new works (whether beneficiary or work oriented) that fulfill all the following conditions before Model Code of Conduct comes into effect, can be taken up under intimation to the Commission.

- a. Full funding has been tied up.
- b. Administrative, technical and financial sanctions have been obtained
- c. Tender has been floated, evaluated and awarded.
- d. There is contractual obligation to start and end the work within a given time frame and failing which there is an obligation to impose penalty on the contractor.
- e. In case of any of the above conditions not being met in such cases prior approval of the Commission shall be sought and obtained.



**Q.28. Is there any bar to release of payments for completed work?**

**Ans.** There shall be no bar to the release of payments for completed work subject to the full satisfaction of the concerned officials.

**Q.29. How the Govt. may meet the emergency situation or unforeseen calamities, when there are restrictions for announcing welfare measures?**

**Ans.** For tackling emergencies or unforeseen calamities like providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc., Govt. may do so after obtaining prior approval of the Commission and all ostentatious functions shall be strictly avoided and no impression shall be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office with any ulterior motive.

**Q.30. Whether financial institutions funded, partially or wholly by the Governments can write off loans advanced to any individual, company, firm, etc.?**

**Ans.** No

The financial institutions funded, partially or wholly by the Governments shall not take recourse to writing off loans advanced to any individual, company, firm, etc. Also, financial limits of such institutions, while granting or extending loans, should not be enhanced by issuing of loans indiscriminately to beneficiaries.

**Q.31. Whether tenders, auctions etc. relating to matters such as liquor vends, Tendu leaves and other such cases can be processed?**

**Ans.** No

Processing of such cases should be deferred till the completion of election process in the concerned areas and the Govt. may make interim arrangements where unavoidably necessary.

**Q.32. Whether meeting of Municipal Corporation, Nagar Panchayat, Town Area Committee, etc. can be convened to review the revenue collection and preparing draft annual budget etc.?**

**Ans.** Yes

Provided that at such meetings only the matters of routine nature relating to

day-to-day administration may be taken up and not the matters relating to its policies and programmes.

**Q.33. Whether political functionaries can participate in the celebration of "Sadbhavna Diwas" which is celebrated throughout the country?**

**Ans.** The Central Ministers / Chief Minister / Ministers in the States and other political functionaries can participate in the celebration of "Sadbhavna Diwas" subject to condition that the "theme" of their speeches should be confined only to the promotion of harmony among the people' and no political speech should be made. Messages, if any, issued in the name of Minister should be confined to the theme of national integration only and should carry no photograph of the concerned Minister.

**Q.34. Whether State-level functions can be held for observance of Martyrdom of Martyrs which may be presided/attended to by Chief Minister / Minister?**

**Ans.** Yes

Provided that the speeches of the Chief Minister and other Ministers should restrict to the Martyrdom of the Martyrs and praising them. No political speech or speech enumerating or referring to the achievements of the Government or party in power should be made.

**Q.35. Whether Kavi Sammelan, Mushiaras or other cultural functions can be organized in connection with the Independence Day/Republic Day celebration and whether political functionaries can attend the same?**

**Ans.** Yes

The Central Ministers / Chief Minister / Ministers in the States and other political functionaries can attend the programme. However, it will be ensured that no political speeches highlighting the achievements of the party in power are made on the occasions.

**Q.36. Whether political advertisements can be printed on back side of the bus-ticket of Govt. owned buses?**

**Ans.** No

**Q.37. Whether minimum support price of wheat and other agricultural products can be determined?**

**Ans.** A reference in the matter shall be made to the Election Commission.

**Q.38. Whether State Govt. can seek clarification/ clearance/approval in respect of any proposal directly from the Election Commission?**

**Ans.** No

Any proposal from State Govt. for seeking clarification/clearance/approval from the Election Commission should only be routed through Chief Electoral Officer, who will make his recommendation or otherwise in the matter.

## **ELECTION CAMPAIGN**

**Q.39. What are the main guidelines for political parties/candidates while making election campaign?**

**Ans.** During the election campaign, no party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic. Further, criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.

**Q.40. Are there any restrictions in using religious places for election propaganda?**

**Ans.** Yes

Religious places like Temple, Mosque, Church, Gurudwara or other places of worship shall not be used as forum for election propoganda. Further, there shall be no appeal to caste or communal feelings for securing votes.

**Q.41. Can a candidate go to the office of Returning Officer for filing a nomination with a procession?**

**Ans.** No

The maximum number of vehicles that will be allowed to come within the periphery of 100 mtrs. of Returning Officer's office has been restricted to 3 and

maximum number of persons that will be allowed to enter the office of Returning Officer has been limited to 5 (including the candidate).

**Q.42. How many persons are allowed at the time of scrutiny of nominations by the Returning Officer?**

**Ans.** The candidate, his election agent, one Proposer and one other person (who can be an advocate) duly authorized in writing by the candidate, but no other person, may attend at the time fixed for scrutiny of nominations by Returning Officer.

(Refer: Sec. 36 (1) of Representation of People Act, 1951)

**Q.43. Are there any guidelines regarding use of vehicles by ministers/political functionaries/candidates, who have been provided security cover by the State?**

**Ans.** Yes

In respect of persons covered by security, the use of State owned one bullet proof vehicle for the particular person (PP) will be permitted in all cases where the security agencies, including the intelligence authorities, have prescribed such use. The use of multiple cars in the name of stand-by should not be permitted unless so specifically prescribed by security authorities. The cost of propulsion of such bullet proof vehicles where such use of bullet proof vehicles is specified will be borne by the particular person. The number of vehicles to accompany the carcade including pilots, escorts etc. will be strictly in accordance with the instructions laid down by the security authorities and shall not exceed them under any circumstances. The cost of propulsion of all such vehicles, whether owned by Government or hired vehicles, will be met by the State Government.

The restrictions do not apply to the Prime Minister whose security requirements are governed by the Government's Blue Book.

**Q.44. Whether there is any restriction for plying of vehicles for electioneering purposes?**

**Ans.** Candidate can ply any number of vehicles (all mechanized/motorized vehicles including two- wheelers) for the purpose of election campaign but he has to seek prior approval of the Returning Officer for plying such vehicles and must display permit issued by Returning Officer in original (not photocopy) prominently on the windscreen of the Vehicle. The permit must bear the number of the vehicle

and name of the candidate in whose favour it is issued.

**Q.45. Whether a vehicle for which permission has been taken for election campaign in the name of a candidate, can be used for election campaign by another candidate?**

**Ans.** No

Use of such vehicle for election campaign by another candidate shall invite action under section 171H of Indian Penal Code.

**Q.46. Can a vehicle be used for electioneering purposes without getting permit from the District Election Officer/Returning Officer?**

**Ans.** No

Such vehicle shall be deemed to be unauthorized for campaigning by the candidate and may attract penal provisions of Chapter IX A of the Indian Penal Code and shall therefore be immediately out of the campaigning exercise and shall not be used for further campaign.

**Q.47. Whether there is any restriction on use of educational institutions including their grounds (whether Govt. aided, Private or Govt.) for political campaigns and rallies?**

**Ans.** The Commission has allowed the use of school and college grounds (except in the States of Punjab and Haryana where there is express prohibition from Punjab and Haryana High Court) for political usage provided that:

School and college academic calendar is not disturbed under any circumstances.

The school/college management has no objection for this purpose and prior permission for such campaigning is obtained from the school/college Management as well as Sub Divisional Officer.

Such permission is granted on first-come-first served basis and no political party is allowed to monopolize the use of those grounds.

There is no order/direction of any court prohibiting the use of any such premises/ground.

Any violation in the allotment of school/college grounds for political meetings will be viewed seriously by the Commission. The accountability in this regard

lies with the Sub Divisional Officer, and

The political parties and candidates and campaigners shall take care to ensure that the above norms are not violated.

If such grounds are utilized for campaigning purpose it should be returned to the authority concerned, without any damage or with the requisite compensation for the damage caused, if any. The political party/parties restoring back the campaign ground to the concerned school/college authority should be responsible for the payment of such compensation, if any.

**Q. 48. Is external fitting/modification allowed in the vehicles used for campaigning?**

**Ans.** External modification of vehicles including fitting of loudspeaker thereon, would be subject to the provisions of the Motor Vehicles Act/Rules as well as other Local Act/Rules. Vehicles with modifications and special campaign vehicles like Video Rath etc. can be used only after obtaining the requisite permission from the competent authorities under the Motor Vehicles Act.

**Q. 49. Is there any restriction or use of rest houses, dak bungalows or other Govt. accommodation for campaign office or for holding any public meeting for the purpose of election propaganda?**

**Ans.** Yes

Rest houses, dak bungalows or other Govt. accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to use by other parties and candidates but no party or candidate shall be allowed to use as campaign office.

Further, it shall be ensured that –

- (i) no functionary can use the Circuit House, Dak bungalow to set up campaign office as the Circuit Houses/Dak bungalows are only for temporary stay (boarding and lodging) during transit of such functionaries,
- (ii) even casual meeting by Members of political parties inside the premises of the Government owned guesthouse etc. are not permitted and any violation of this shall be deemed to be a violation of the Model Code of Conduct,
- (iii) only the vehicle carrying the person allotted accommodation in the guest house and not more than two other vehicles, if used by the person, will be

permitted inside the compound of the Guest House,

- (iv) rooms should not be made available for more than 48 hours to any single individual, and
- (v) 48 hours before the close of poll in any particular area, there will be freeze on such allocations till completion of poll or re-poll.

**Q. 50. Are there any conditions for getting Govt aircraft/helicopters (including Public Sector Undertakings) by political parties/candidates?**

**Ans.** Yes

While allowing the chartering of Govt. aircrafts/helicopters to political parties/candidates or private companies etc., the following conditions should be followed:-

- i There should be no discrimination between the ruling party on the one hand and the other parties and contesting candidates on the other.
- ii The payment will be made by the political parties or the contesting candidates and proper record maintained.
- iii The rates and terms and conditions should be uniform for all.
- iv The actual allotment should be made on the first-come first-served basis. For this purpose, the date and time of receipt of the application should be noted down by the authorized receiving authority.
- v In the rare case when both the date and time of two or more applicants is the same, the allotment will be decided by draw of lots.
- vi No individual, firm, party or candidate will be allowed to charter the aircraft/helicopter for more than three days at a time.

**Q. 51. Is there any restriction on displaying poster, placard, banner, flag etc. of the party concerned or the candidate on a public property?**

**Ans.** Candidate may display poster, placard, banner, flag etc. of the party concerned or the candidate on a public property subject to provisions of local law and prohibitory orders in force. For details, refer Commission's instructions No.3/7/2008/JS-II, dated 7.10.2008 and No. 437/6/Campaign/ECI/INST/FUNCT/MCC-2016 dated 04.01.2017.

**Q. 52. If local law/bye-laws permit wall writings and pasting of posters, putting up hoardings, banners etc. on private premises/properties, is it necessary to obtain prior written permission from the owner of the premises/properties?**

**Ans.** Yes

Candidate is required to obtain prior written permission from the owner of the properties/premises and photocopy(ies) of such permission should be submitted within 3 days to the Returning Officer or an officer designated by him for the purpose.

**Q. 53. Is there any restriction on displaying/carrying poster/ placard/ banner/ flag of the party concerned or of the candidate on the vehicle during the procession?**

**Ans.** The maximum permissible number and size of flags/banners by a party or candidate on a vehicle during procession is as follows-

Two wheelers – one flag of maximum size 1X1/2 ft. No banners are allowed. One or two stickers of appropriate size are allowed.

Three wheelers, four wheelers, e-Rickshaws – No banners are allowed. Only one flag of maximum size 3X2 ft. One or two stickers of appropriate size are allowed.

If a political party has a pre-poll alliance/seat sharing arrangement with another party, then the vehicle of a candidate/political party may display one flag each of such parties.

**Q. 54. Whether there is any ban on use of plastic sheets for making use of posters/ banners during the election campaign?**

**Ans.** The political parties and candidates should try to avoid the use of plastic/ polythene for preparation of posters, banners etc. in the interest of environmental protection.

**Q.55. Is there any restriction on the printing of pamphlets, posters etc.?**

**Ans.** Yes

Candidate shall not print or publish, or cause to be printed or published any election pamphlet or poster which does not bear on its face names and addresses



of the printer and the publisher thereof.

(Refer : Section 127A of Representation of 1951)

**Q. 56. Is wearing of special accessories like cap, mask, scarf etc. of a candidate permitted during the campaigning?**

**Ans.** Yes, provided they are accounted for in the election expenses of the candidate concerned. However, supply and distribution of main apparels like saree, shirt, etc. by party/candidate is not permitted as it may amount to bribery of voters.

**Q. 57. Whether there is restriction to display to the public any election matter by means of cinematograph, television or other similar apparatus?**

**Ans.** Yes

Candidate can not display to the public any election matter by means of cinematograph, television or other similar apparatus during the period of 48 hours ending with the hour fixed for the conclusion of poll.

(Refer: Sec. 126 of Representation of People Act, 1951)

**Q.58. Whether distribution of printed "Stepney Covers" or other similar material containing symbol of party/candidate or without depicting it, is a violation?**

**Ans.** Yes

In case, it is established that such material has been distributed, a complaint may be filed before the area Magistrate by District Administration against the distribution of the said material under section 171 B of the IPC.

**Q.59. Are there conditions/guidelines for setting up and operating of Temporary Offices by Party or candidate?**

**Ans.** Yes

Such offices can not be opened by way of any encroachment either on public or private property/ in any religious places or campus of such religious places/ contiguous to any educational institution / hospital / within 200 meters of an existing polling station. Further, such offices can display only one party flag and banner with party symbol/photographs and the size of the banner used in such offices should not exceed '4 feet X 8 feet' subject to the further condition that if the local laws prescribe a lower size for banner / hoarding etc., then the lower size

prescribed by local law shall prevail.

**Q.60. Is there any restriction on the presence of political functionaries in a constituency after campaign period is over?**

**Ans.** Yes

After the closure of campaign period (starting from 48 Hrs. before closure of poll), political functionaries etc. who have come from outside the constituency and who are not voters of the constituency should not continue to remain present in the constituency. Such functionaries should leave the constituency immediately after campaign period is over. This will not apply in the case of candidate or his election agent even if they are not voters in the constituency.

**Q.61. Whether there is any restriction for holding public meeting or taking out processions?**

**Ans.** Yes.

Prior written permission should be obtained from the concerned police authorities for holding of a meeting at any public or private place and for taking out processions.

**Q.62. Whether loudspeakers can be used for public meetings or for processions or for general propaganda without obtaining permission from Police authorities?**

**Ans.** No.

Prior written permission should be obtained from the concerned police authorities for using loudspeakers.

**Q.63. Whether there is any time limit for using loudspeakers?**

**Ans.** Yes.

Loudspeaker can not be used at night between 10.00 P.M. and 6.00 A.M.

**Q.64. What is the deadline after which no public meetings and processions can be taken out?**

**Ans.** Public meetings cannot be held after 10 PM and before 6.00 AM. Further, Candidate can not hold public meetings and processions during the period of 48 hours ending with the hour fixed for the conclusion of poll. Suppose, poll day

is 15th July and hours of poll are from 8.00 A.M to 5.00 P.M., then the public meetings and processions shall be closed at 5.00 P.M on the 13th July.

(Refer: Sec. 126 of Representation of People Act, 1951)

**Q. 65. Whether there are any guidelines for political parties/candidates for issue of unofficial identity slips to voters?**

**Ans.** Yes.

The unofficial identity slip, on white paper, shall contain only the particulars of the voter i.e. name, Serial number of voter, part No. in the electoral roll, s.no. and name of Polling Station and date of Poll. It should not contain the name of candidate, his photograph and symbol.

**Q. 66. Is there any restriction on appointment of a Minister/M.P./M.L.A/M.L.C or any other person who is under security cover as an Election Agent/ Polling Agent/Counting Agent?**

**Ans.** Yes

A candidate cannot appoint a Minister/M.P./ MLA/MLC or any other person who is under security cover, as an election/polling agent/counting agent, as his personal security shall be jeopardized with such appointment, because his security personnel will not under any circumstances be permitted to accompany him into the 100 meter perimeter of polling stations described as the “Polling Station Neighbourhood” and within the polling booth and campus of counting centre and within the counting centre. Also any person having security cover will not be allowed to surrender his security cover to act as such agent of a candidate.

**Q. 67. Who is the authority to issue permits to Star Campaigners (Leaders) of the Political Parties who avail benefit under Section 77(1) of R.P Act, 1951?**

**Ans.** In case the mode of road transport is to be availed of by Star Campaigners (Leaders) of political, the permit will be issued centrally by the Chief Electoral Officer. If such party applies for issue of permit for the same vehicle to be used by any leader for election campaigning throughout the State, the same may be issued for such vehicle centrally by the Chief Electoral Officer, which will be prominently displayed on windscreen of such vehicle(s) to be used by concerned leader(s). If different vehicles are to be used by such party leaders in different areas, then the permit can be issued against the name of the person concerned

who will display it prominently on the windscreen of the vehicle being used by such leader.

**Q. 68. Whether Opinion poll or Exit poll can be conducted, published, publicized or disseminated at any time?**

**Ans.** No

The result of any opinion poll or exit poll conducted shall not be published, publicized or disseminated in any manner by print, electronic or any other media, at any time-

- (a) during the period of 48 hours ending with the hour fixed for closing of poll in an election held in a single phase; and
- (b) in a multi-phased election, and in the case of elections in difference States announced simultaneously, at any time during the period starting from 48 hours before the hour fixed for closing of poll in the first phase of the election and till the poll is concluded in all the phases in all States.

## **POLL DAY**

**Q.69. Is it necessary to obtain written permission of the concerned Government authorities or local authorities for setting up of election booth?**

**Ans.** Yes

It is necessary to obtain the written permission of the Government authorities concerned or local authorities before setting up of such booths. Written permission must be available with the persons manning the booth for production before the police /election authorities concerned on demand.

**Q. 70. Is there any restriction of canvassing in or near polling station?**

**Ans.** Yes

Canvassing for votes etc. within a distance of one hundred meters of polling station is prohibited on the day of poll.

(Refer : Section 130 of Representation of 1951)

**Q. 71. Is there any restriction of going armed to or near polling station?**

**Ans.** Yes

No person is allowed to go armed with arms as defined in Arms Act 1959 of any kind within the neighbourhood of a polling station on the day of poll.

(Refer: Section 134B of Representation of 1951)

**Q.72. How many vehicles a candidate is entitled for on the day of poll?**

**Ans.**

- (i) For an election to the House of the People, a candidate will be entitled to:
  - (a) One vehicle for candidate's own use in respect of the entire constituency.  
One vehicle for use of candidate's election agent for entire constituency.
  - (b) In addition, one vehicle for use of candidate's workers or party workers, as the case may be, in each of the assembly segments comprised in the Parliamentary Constituency.
- (ii) For an election to the State Legislative Assembly, a candidate will be entitled to:
  - (a) One vehicle for candidate's own use
  - (b) One vehicle for use of candidate's election agent
  - (c) In addition, one vehicle for use of candidate's workers or party workers.

**Q.73. If the candidate is absent from the constituency on the day of poll, can the vehicle allotted in his name be used by any other person?**

**Ans.** No

Vehicle allotted for candidate's use is not allowed to be used by any other person.

**Q. 74. Can any type of entitled vehicle be used on the day of poll?**

**Ans.** No

The candidate or his agent or party workers or workers will be allowed to use only four/three/two wheeler vehicles i.e. cars (of all types), taxis, auto rickshaws, rickshaws and two wheelers. In these vehicles not more than five persons including drivers are allowed to move on the day of poll.

**Q. 75. Whether Political Party/Candidate can make arrangements for transporting voter to and from Polling Station?**

**Ans.** No.

Any arrangement, direct or indirect, to carry any voter to or from polling station by any kind of vehicle used for transport is a criminal offence.

(Refer: Sec. 133 of Representation of People Act, 1951)

**Q. 76. Can a leader of Political party use private fixed-wing aircraft and helicopters for the purposes of supervising and monitoring the polling and counting process on the day of poll and counting?**

**Ans.** No

Leader of a political party is not allowed to use private fixed-wing aircraft and helicopters for the purposes of supervising and monitoring the polling and counting process on the day of poll and counting.





*“No voter to be left behind”*

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# **भारत निर्वाचन आयोग**

## **ELECTION COMMISSION OF INDIA**

**Nirvachan Sadan, Ashoka Road, New Delhi-110001**

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