

Webinar on “Search and seizure of cash and other prohibited items during elections”

Date and Time: 14th February, 2022, 5 PM (IST)

Background Note

Section 171 B and 171 C of the Indian Penal Code and Section 123 of Representation of People Act makes use of money, muscle or any other form of influence in the process of elections illegal in India. To maintain the purity of elections, the election commission of India issued the Standard operating procedure **issued vide Commission's letter no. 76/instructions/EEPS/2015/Vol-II dated 29-05-2015** which states that the information pertaining to the search and seizure of cash, liquor, narcotic items, precious metals and all other kinds of prohibited items and freebies should be compiled and maintained by State CEOs/ECI. Further public should be made aware regarding use of money and muscle power during elections through print and electronic media. However, **currently awareness regarding the use of money during elections is limited and cases of seizure are also not being maintained in a consolidated format by the ECI and the State CEOs.** To ensure the implementation of the SOP, Flying squads, Static Surveillance Teams (SST) have to be deployed in each district to check the implementation of guidelines and seize prohibited cash and other items if found on candidates. If cash/other items are seized, it has to be reported to committees formed comprising of three officers of the district, namely 1) CEO, Zila Parishad/CDO/P.D,DRDA 2) Nodal officer of Expenditure monitoring in the District Election Office 3) District Treasury Officer who shall suo-motu examine each case of seizure. Further, a police officer in charge of the SST has to file an FIR/complaint within 24 hours of seizure.

THE STATE OF KARNATAKA & ANR. Vs. PRATHIK PARASRAMPURIA, SLP(CrI) No. 003549 / 2016

The Supreme Court in the matter of State of Karnataka vs. Prathik Parasrampur, SLP (Cr) No. 003549/2016 has taken note of this very important and critical issue. The SLP was filed by the Karnataka government against Karnataka High Court's order that had quashed a criminal case against accused named Prathik Parasrampur from whom over Rs 20 lakh was recovered during the search and seizure procedure in the 2014 Lok Sabha byelection in Bellary constituency. It is indeed shocking that during every election, large sums of money and other prohibited items like drugs, liquor, gold and other forms of freebies are seized by the Commission, however, there is no clarity about the outcome of such cases or the cash and other prohibited items that are seized during every seizure. This indeed amounts to a rampant display of black money. In Spite of Election Commission's SOP/guidelines on search and seizure in place, numerous court orders (i) one being of Madras High Court (W.P 7011/2011 where it had directed the ECI to widely publish in the language known to the people of the State about the above provisions of search and seizure and MCC in force, (ii) A candidate, his/her agent or followers are prohibited from carrying cash exceeding Rs 50,000 in

the constituency during the election process as per the Supreme Court judgment dated 30-11-2012 in Election Commission Vs. Bhagyoday Jan Parishad and Ors. nothing concrete has been done by various central agencies like ECI, CBDT, I.T dept etc.

The focus points for the webinar are as follows:-

1. Misuse of money power and other forms of undue influence in electoral campaigns and possible recommendations/solutions.
2. The SOP of Election Commission of India regarding search and seizure and its role in preventing distribution of cash and other forms of freebies during elections as also critical analysis of the implementation of the SOP.
3. Unavailability of information regarding status of cases of seizure, action taken against candidates, outcome of each case/prosecution/FIR registered, the complaints lodged on real time basis, list carrying names of specific political parties and candidates involved, absence of mechanism for state-wise tracking of cases of search and seizures during elections, disposal of the money and other items seized etc.
4. Lack of awareness among the State CEOs staff as well as other concerned authorities regarding the SOP devised by the Commission on search and seizure.
5. Steps to be taken in view of current predicament in law like non- binding nature of Model Code of Conduct issued by the Election Commission of India, bribery still not a cognisable offence or a ground for immediate disqualification.
6. The way forward to address the issue of money/other influences in political funding.

To have more transparency and accountability around Search and Seizure, ADR further requested for information from the ECI through a letter dated 20th January, 2022-

1. Complete details of cases where FIR/complaint was filed. Cases where no FIR/complaint was filed and the reason for the same.
2. Steps taken by the Election Commission of India as well as the State CEOs to ensure the availability of information on search and seizure with the citizens including concrete steps taken so that such information is readily available for the citizens to inspect without getting caught in the bureaucratic red tape and multiple follow ups with no returns.
3. Any stringent action taken by ECI against the use of muscle or money power during elections.
4. Role played by ECI in the maintenance and disposal of cases relating to search and seizure.
5. Steps taken by ECI to enhance awareness among the state CEOs as well as other concerned authorities regarding the SOP devised by the Commission on search and seizure.

6. In this backdrop it is requested that the Election Commission should grant permission to the following State/UT CEOs to speak with us and provide the required information:

Uttar Pradesh
Madhya Pradesh
Puducherry
Tamil Nadu
Kerala
Uttarakhand
Punjab
Bihar
Jharkhand
Odisha
Maharashtra
Assam
Gujarat
West Bengal

We have not received any response from the ECI for the information sought above and even responses to our RTI applications have been scattered as the State CEO/ECI has provided us with incomplete information/no information.

Hence, ADR is organising a webinar to identify recommendations/suggestions that can be sent to the ECI along with possible solutions which can lead to a decline in use of cash and other freebies during elections as well as create more transparency. Further, we want to start a public discourse regarding this issue to create awareness among voters.