

Operational Guidelines on Expenditure Monitoring in elections (to be used by the State Election Officers, the Returning Officers and the Officer-in-Charge of Expenditure Monitoring Cells in the Districts)

Disclaimer:

Please note that this is intended to be a brief operational guideline to help the DEO's & others in coordinating functions in relation to expenditure monitoring. Always refer the original set of guidelines issued by the Election Commission of India (No.76/Instructions/2011/EEM dtd.07/02/2011). For the provisions in the Acts and Rules please refer to the relevant provisions in the IPC 1860, the Representation of the Peoples' Act 1951 & Conduct of Election Rules 1961.

Legal Provision

Representation of the Peoples' Act 1951

Sec.77 of the Act stipulates that every candidate at an election shall either by himself or by election agent keep a separate and correct account of all expenditure in connection with election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration thereof, both dates inclusive.

Sec.78 of the Act specifies that every contesting candidate at an election shall within 30 days from the date of election of the returned candidate lodge with the District Election Officer an account of his election expenses.

Sec.10 A of the said Act indicates that if the EC is satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by or under this act and has no good reason or justification for the failure the Election Commission shall, by order published in the gazette, declare him to be disqualified and an such person shall be disqualified for a period of 3 years from the date of the order.

Conduct of Election Rules, 1961

Rule 86 specifies the manner in which the accounts are to be maintained by the candidate or his election agent.

Rule 87 specifies the provision of notice by the district election officer for inspection of accounts within 2 days from the date on which the account of election expenses has been lodged by a candidate.

Rule 88 indicates that any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf (Rupee 1/- per page for written document and Rs.50/- per copy of a CD) be entitled to obtain attested copies of such account or any part thereof.

Rule 89 specifies the action by the District Election Officer after the expiration of the time specified for lodging of election expenses. The DEO is supposed to report to the Commission name of each contestant candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and these

Rules. The same Rule also specifies the follow-up action by the Commission and the District Election Officer after expiration of the period of lodging of accounts.

Rule 90 specifies maximum ceiling of election expenses by the contesting candidates. As per latest amendment, the ceiling for the State of W.B. is Rs.40/- lakhs for a Parliamentary Constituency and Rs.16/- lakhs for an Assembly Constituency.

Indian Penal Code

Sec.171B specifies the offence of bribery in connection with election. Punishment for such act of bribery has been specified in **Sec.171E**.

Sec.171C deals with undue influence at election punishment for which has been specified at **Sec.171F**.

Sec.171H specifies illegal payment in connection with elections and penalty there for.

Sec.171I stipulates the penalty for failure to keep election accounts.

In L.R .Shivarama Gowde Vs P M Chandrasekhar (AIR 1999 SC 252) Supreme Court of India has observed that that the Commission can go into the correctness of the account lodged by the contesting candidate and subsequently disqualify a candidate U/s Sec.10A of the RP Act,1951.

Types of Election Expenditure

In para 2 of the set of instructions, the Commission broadly put election expenses in two categories-

(1) permissible under the law and

(2) not permissible under the law. Any expenditure not permitted under the law and/ or not authorized by the candidate shall be construed to be an offence under relevant provisions of the IPC (171B/171C/171H/171I). On detection of instances of any such unauthorized expenditure, the Returning Officer has to initiate cases against the persons involved as per legal provision.

Expenditure Monitoring Mechanism

Commission shall appoint Expenditure Observers who will reach the Constituency one day after the notification of the election by the Commission and shall remain in the Constituency during the entire campaign period and shall leave the Constituency only after the poll. He/she shall again visit the district between 30-45 days of the declaration of the results and assist the DEO in scrutinizing the statements of accounts of election expenditure submitted by the candidates after the declaration of the results.

Commission has stipulated that there shall be one Assistant Expenditure Observer (**AEO**) for each Assembly Constituency. Said AEO will be selected from amongst the officers in the Income-Tax Directorate, Customs, Central Excise or other Central Government/Central PSUs in the district. However, in exceptional circumstances, when sufficient number of officers is not available from Central Government/Central PSUs located in the districts, State Govt. officers from Audit & Accounts Service may also be drafted as AEO. The AEO's shall formally be appointed and trained by the Expenditure Observer. However, the district authority should

organize a briefing session with the officers shortlisted for appointment as AEO before their formal appointment by the Expenditure Observer. Arrangements for accommodation (preferably close to the Office of the Returning Officer) and transport, as and when required shall be made by the DEO.

There shall be one Expenditure Monitoring Cell (**EMC**) located at the Office of the DEO. The Cell shall have a senior officer as the Cell-in-Charge and a small contingent of support staff. Members of different other teams to be formed for the purpose of expenditure monitoring shall also be members of the EMC.

There shall be one Control Room & Call Centre (**CRCC**) at the level of the DEO to attend to the complaints lodged by the political parties/candidates/any other member of the public. The CRCC shall operate on 24 hours into 7 days basis and efforts are being made to make the process of complaint monitoring automated. However, if no such automated system can be put to place, the normal system of maintaining log book entries should be taken recourse to. Any complaint received at the CRCC shall immediately be referred to the concerned team/Returning Officer & action has to be taken within 24 hours from the time of logging of the complaint.

There shall be one Media Certification & Monitoring Committee (**MCMC**) at the level of the DEO. This will be an extension of the media certification committee already in vogue for the purpose of monitoring advertisements & other instances of media coverage, especially from the angle of the Model Code of Conduct (**MCC**). Hence, MCMC shall have the dual function of monitoring media releases/coverage from both the MCC & expenditure angles. At the expenditure side, the Committee shall monitor both print and electronic media including cable networks and keep track of all advertisements /paid news/election related news of the contested candidates and the political parties. As stipulated by the Commission, one senior officer of the district and the DICO will be included as members of the MCMC. Since Press Council of India is yet to nominate any local media person as member of the Committee, the MCMC may function with official members only. The MCMC shall use the format given in Annex-12 (details of advertisements/paid news in print/electronic media) for submission of a daily report, Assembly Constituency and candidate-wise.

Since, the Control Room & Call Centre (CRCC) needs dedicated telephone lines; the Media Certification & Monitoring Committee (MCMC) needs access to electronic and print media and the Expenditure Monitoring Cell (EMC) has to coordinate with both the teams it is advisable to have a spacious room with all the facilities specifically earmarked for the Expenditure Monitoring Cell locating the CRCC & the MCMC within the same room. Television sets should also be there in the room and all newspapers should be supplied to the MCMC for perusal.

There shall be Video Surveillance Teams (**VST**) at the end of the Returning Officer. Number of VSTs for a constituency is not specified. The DEO/RO shall take decision on the number based on the number of candidates, especially those set up by recognized political parties and the nature of campaign in respective constituency. The main idea behind placing VSTs at the disposal of the RO is not to cover all the meetings and rallies conducted by all the candidates but to collect evidences on expenditure in relation to major meetings/rallies organized by the candidates or political parties in the constituency. Whenever, any political meeting relating to election campaigning is organized, the organizers are supposed to submit an expenditure plan. When the said meeting is covered by the VST, evidences are collected to ensure that the

estimate given in the expenditure plan tallies with the actual implementation in the field. When a meeting cannot be covered by the VST, the expenditure plan given by the organizers shall be accepted for entry into the shadow observation register. However, it is reiterated, meetings/rallies involving huge gatherings and meetings/rallies where there are complaints of probable overshooting of estimated expenses must be covered by the VST.

The VST while visiting the meeting venues shall record the date, time, location & important issues having expenditure angle in voice-over mode and also shall capture snapshots of different activities. A cue sheet as given in Annex-7 of the instructions should be filled by the VST at the time of video recording.

It is customary to gather video evidence of the discussions held in the meetings organized for election campaign. The video evidence is later on analyzed to ascertain whether there is any violation of the Model Code of Conduct. Since the VSTs for expenditure monitoring are covering all important meetings, it is advisable to utilize the same team for recording MCC violations as well. The VST should have at least one assistant in addition to the videographer. Police protection may also be required while the VST is in the field.

There shall be a Video Viewing Team (**VVT**) at the level of the RO. The VVT shall view the video CD captured by the VST, segregate expenditure related and MCC related issues and submit their reports to respective authority. The report relating to expenditure will have to be submitted to the accounting team /AEO preferably on the same day.

There shall be Flying Squads (**FS**) to enquire into and take appropriate action against alleged violation of the provisions of the IPC relating to undue influence at election/bribery/illegal payment at elections. Although, the Commission's instruction stipulates that the FS will be at the Police Station level, it has been decided on discussion that to accommodate the problem of manpower shortage, especially, shortage of executive magistrates and police force, the flying squads will be located at the Sub-divisional level. Each FS shall be headed by an Executive Magistrate and shall have a Police Officer of appropriate seniority along with a contingent of police personnel. Since the FS will have jurisdiction over the entire Sub-division, it is advisable to formally associate the SDM and the SDPO with the FS. In case of Kolkata Election Districts, the flying squads shall function under the authority of the Assistant Commissioners' of Kolkata Police.

There shall be Static Surveillance Teams (**SST**) to work under the FS. At least one SST per Police Station shall be formed. The team may be located at the police station/block/a convenient check-post point. The SST shall be the main agency to intercept illegal movement of cash or other items with a potential of use as gratification to electors and initiate appropriate legal action. For Kolkata districts as well, the same system will be followed.

Accounting Teams (**AT**) shall be constituted at the level of the Returning Officer. Said AT shall receive information from the VVT, FS, SST, MCMC & the EMC and shall record expenses in a Shadow Observation Register (**SOR**) specifically maintained for the purpose. The SOR shall be in the form given in Annex-11. The said register shall be maintained candidate-wise. It is not always necessary to have all the expenditures incurred by candidates booked in the SOR. Only expenses as captured by various teams constituted for the purpose with documentary evidences shall be included in the Register.

The Assistant Expenditure Observer (AEO) shall interact with the Returning Officer and different teams at that level. He will also interact with the EMC and other teams formed at the level of the DEO. He will be supervising over the process of maintenance of the SOR for each of the candidates. He may be visiting different places in the Constituency and different meetings/rallies organized by the political parties/contesting candidates to get a first-hand idea of the activities in the field. The AEO shall report to the Expenditure Observer on a daily basis the format for which is given in Annx-6.

Expenditures to be specifically monitored

So far as authorized expenditure is concerned, expenditure of the following kind shall be monitored and the evidences entered into the SOR.

1. Expenditure incurred in organizing public meetings and rallies;
2. Release of advertisements in electronic and print media including cable network
3. Printing of pamphlets and posters and other campaign materials
4. Use of vehicles
5. Accommodating people in hotels, guest-houses;
6. Construction of barricades & nostrums;
7. Use of vehicles during the process of nomination papers, during campaign on the poll day and on the day of counting.

Illegal expenses cover a wide range of activities not reflected in the accounts maintained by the candidates. Following are some of the avenues likely to be used for illegal flow of money in election:-

1. Distribution of gift articles;
2. Serving of food by using community infrastructure;
3. Distribution of tokens to be exchanged for gifts or cash;
4. Cash distribution;
5. Distribution of cash along with disbursement of wages under Govt. schemes;
6. Distribution of liquor;
7. Cash distribution through NGOs;
8. Cash distribution through self-help groups.

This is only an indicative list and there may be different other avenue for distribution of incentives at elections. All these are illegal and strict action is to be taken against all the parties involved including the recipients under relevant provision of the IPC. If any such cash/incentive is found to enter into the electoral process financial involvement must be worked out and entered into the SOR.

There should be enquiries into large cash withdrawal by individuals from banks during the electioneering process. The DEO is to instruct all banks and financial institutions in the district to provide information on all withdrawals exceeding Rs.1 lakh on a day on a daily basis. If any such withdrawal is prima facie seen as having possibility of entering into the election process, the DEO shall label it as suspicious transaction and shall refer the case to concerned law enforcement agencies including the officers of the Income-Tax Department.

Since the flying squads and static surveillance teams have been mandated to intercept any suspicious movement of cash, it is advisable that an advisory be issued to the public requesting them not to carry large amount of cash without appropriate documentation. If intercepted, people should be able to explain the source and end-use of the fund intercepted. In case sufficient explanation is not available, the law enforcement agency will look into the criminal angle and take appropriate action as per provision of relevant law in force. Moreover, the fact of interception of suspicious cash movement shall also be intimated to the officers of the Income Tax Department who will examine the same from income tax angle.

Notification of Rates

Immediately on the issue of Press Note by the EC, the DEO shall notify rates for different kinds of expenditure to be incurred by candidates for use during election. Effort should be made to prepare an exhaustive list of items covering expenses for construction of pandals, podium, barricades and rostrums; hiring charges of microphones, loudspeakers and sound-systems, printing of handbills, fliers, posters, banners, hoardings, flexes, pamphlets, leaflets etc.; preparation of cut-outs in cloth/flex/wood. Hiring charges of different kinds of vehicles with and without fuel on daily/per hour/per km basis; hiring charges of different kind of accommodation in hotels, guest-houses, community centres, dharmasalas etc.; hiring charges of tables, chairs, benches etc; hiring charges of rickshaws and other modes of moving campaign; advertisements in print and electronic media; different stationery items. While fixing rates, the focus should be not on the lowest rate as obtained through quotations/tender, but on the prevailing market rate. To ascertain prevailing market rate, there may be a quick market survey by the officials and also a round of discussion with the suppliers of different items of expenditure. It is advisable that the political parties be consulted during the process of rate fixation. There may be different rates for different constituencies, especially for the urban/rural, hills/plain, riverine/non-riverine areas within a district. It should also be mentioned in the notification of rates that the list is not exhaustive and expenditure against items not mentioned in the list shall be accounted for at actual.

The DEO should hold a meeting with political parties in 3 days from the date of issue of the press-note and handover the rates finalized against different items of expenditure. In the said meeting, different provisions of relevant Acts and Rules for the purpose of accounting of expenditure, penalty or other provisions for non-compliance with instructions, the detailed instructions of the Commission regarding expenditure monitoring the do's and dont's for the political parties and contesting candidates should be explained in detail. Copies of the commission's instruction on expenditure monitoring should also be made available to the political parties.

Coordination with the Income Tax Officials

Income Tax Department shall designate an officer of the rank of Assistant Director or above for Expenditure Monitoring for each of the districts. If such officers are deployed from outside the district, the DEO shall arrange their accommodation. Vehicles shall also be provided to the Officer concerned.

In cases of suspicious withdrawal from the Banks, interception of cash/ other valuable items, Income Tax Officers shall be intimated for examination from the IT angle.

Coordination with the Excise Directorate Officials

Superintendent of Excise of the district shall be asked to conduct vigorous raids on illicit liquor dens and also inspection of licensed liquor shops to obtain figures relating to stock and daily sale in comparison to the same on the same day of the previous years. Although the reports are to be sent directly to the nodal officer of the Excise Directorate, some co-ordination from the end of the DEO may be required.

Opening of Bank Account

The Commission has prescribed that every candidate nominated for an election has to open a bank account in his/her name at least a day before filling of nomination papers. The account may be opened by the candidate as a single account or as a joint account with the election agent as one of the signatories. The joint account cannot be held in the name of any other person and if subsequently the signatory ceases to be an election agent, the operator has to be changed. The account may be opened in any Bank including Co-operative Bank or Post Office. The account number shall be communicated by the candidate in writing to the RO at the time of filing his nomination. All expensed for the purpose of election by the candidate shall be incurred only through this bank account. Any expenses not incurred through this account shall be deemed to be unauthorized expenses and would attract legal action.

Meeting of the RO with contesting candidates

Whereas the expenditure register will be handed over to the candidate on the day of nomination, the RO shall hold a meeting with the contesting candidates immediately after allotment of symbols. In the said meeting, the process of keeping the accounts by the candidates/election agent, monitoring of expenses by the election officials, examination of accounts by the expenditure observer/RO/designated officer and the form and manner in which accounts are to be lodged with the DEO within 30 days from the date of declaration of results will be explained to all the contesting candidates. A set of Commission's instructions on this along with a Bengali guideline on the norms and procedures of accounting and expenditure monitoring shall be handed over to the contesting candidates.

Maintenance of accounts by the contesting candidates

The contesting candidates shall maintain account in the prescribed format as given in the register of accounts. The register will be in 3 parts. In Part A, day to day accounts of election expenditure by the candidate shall be maintained. Part A will be in white pages. In Part B (yellow pages), the candidate / election agents shall enter all cash transactions. This will be known as a Cash Register. Part C shall be the Bank Register in pink pages where all deposits and payments into / from the bank account shall be recorded (Format given at Annex-14).

Examination/ Inspection of accounts

The RO shall notify dates on which the contesting candidates or their election agents shall meet the RO/Expenditure Observer/Designated Officer as per notified schedule. The AEO shall be notified as the officer designated for this purpose. During such meeting, the candidate/election agent shall bring the register of accounts and the shadow observation register will also be made available to the examining officer. If there are discrepancies between expenses shown by the

candidate in the expenditure register and expenses recorded in the shadow observation register, the discrepancy with evidence shall be pointed out to the candidate. If the accounts are not rectified signature of the candidate shall be recorded in the SOR against particular entries and the discrepancy shall also be pointed out, under the signature of the designated officer, in the register brought by the candidate.

If a candidate / election agent fails to turn up as per specified schedule or fails to bring the accounts register or the accounts register is not updated, the RO shall immediately issue instructions to the candidate to appear before him on a date specified along with updated register of accounts. It should be pointed out in the said letter that failure to produce updated accounts on the day shall be construed as failure on the part of the candidate in maintaining accounts of election expenses and will attract penal action.

If on such subsequent date, the candidate or his election agent fails to produce proper accounts of updated expenses incurred the RO shall lodge complain under Sec.171-I of IPC in the competent Court. Also the permission granted to the candidate for use of vehicles for election use shall be withdrawn.

Final Submission of Accounts

Within 30 days from the date of declaration of results for the winning candidate, all contesting candidates shall submit the accounts of election expenses in appropriate register. The accounts in the register shall also be supported by an abstract statement of expenditure and an affidavit in specified format. Formats for the expenditure register is given in Annex-14(Part A for day to day accounts, Part B for cash register & Part C for bank register). Format for abstract statement of expenditure (in 6 parts)is given in Annex-15. Format of affidavit is also part of the same annexure.

Scrutiny of the statement of accounts and the DEO's report to the Commission

Once the period for filing of accounts is over, the DEO shall scrutinize the accounts submitted by the contesting candidates and send his report to the Commission as per Annex-21. The said report shall be supported by a summary report for each constituency (format given at the end of Annex-21). There is also provision of monthly report by the DEO format for which has been given in Annex-23 (Part A & Part B).

Action at the level of the Commission on Receipt/Non-Receipt of Accounts

After receiving report of the DEO duly forwarded by the CEO of the State, the Commission shall examine the accounts and take appropriate action. If the Commission issues notices to a contesting candidate, the same notice shall be served by the DEO. On getting service return and response from the candidate, if any, Commission shall take its decision on whether to disqualify a candidate or not.

Action Points for the DEO

1. Notification of rates obtained through market survey and a process of consultation;
2. Communication of rates to political parties (after 3 days from the date of announcement of election & positively prior to the commencement of nomination);

3. All logistic arrangements including LO for the Expenditure Observers
4. Identification of officers to be appointed as AEO;
5. Preparation and authentication of the expenditure register for candidates with the abstract statement format & the format for affidavit;
6. Printing of formats for use by different teams as per specimen in annexures;
7. Preparation of copies of Commission's instructions on expenditure monitoring in elections and also the Bengali version for use by the political parties/candidates;
8. Formation of the cell and different teams
 - a. EMC with Officer-in Charge and 3/4 assistants
 - b. CRCC with an officer and 2 assistants for round the clock duty
 - c. MMCC with a senior officer as Officer-in-Charge, DICO & 2/3 assistants
(It is advisable to locate all three in one comparatively bigger room with provision for television sets, telephone lines and other infrastructure facilities)
9. Formation of cells for deployment at the end of respective ROs;
 - a. VST with one photographer and 1/2 staff
 - b. VVT with one officer and 2 staff
 - c. AT with one officer and 2 staff
10. Formation of Flying Squads (at sub-divisional headquarters with the Sub-divisional Magistrate/Executive Magistrate, the Sub-divisional Police Officer and a contingent of police personnel)
11. Formation of SST at police station level (with 3/4 police personnel under the leadership of the IC/OC of the PS)
12. Training of all functionaries in the cell and different teams formed for expenditure monitoring;
13. Training of AEO (initial briefing of identified prospective AEOs by the DEO to be followed by detailed training by the expenditure observers);
14. Ensuring coordinated action at the district level and transmission of compliance to respective ROs for action within 24 hours;
15. Co-ordination with the IT officials
16. Co-ordination with the Excise officials
17. Receiving accounts from contesting candidates, its scrutiny & submission to the ECI through CEO along with DEOs report;
18. Submission of monthly statements to ECI;
19. Servicing notice to candidates, if issued by the Commission;

Action Points for the RO

1. Infrastructural arrangement for accommodation of VST, VVT & AT;
2. Arrangement for stay & other logistics for the AEO;
3. Infrastructural arrangement for the FS;
4. Obtaining bank account number from the contesting candidates at the time of receiving nomination papers;
5. Handing over of the expenditure register and other formats to nominated candidates;
6. Meeting with contesting candidates for explanation of guidelines and legal provisions regarding maintenance of accounts, inspections and submission thereof;
7. Ensuring submission of expenditure plan by the organizers of meeting/rallies at the time of seeking permission;

8. Sending VVT to the field to capture meetings/rallies etc.;
9. Obtaining reports from other cells/teams relating to election expenditure by candidate/political parties;
10. Ensuring that the AT captures all reported expenses in the SOR
11. Designating AEO as the designated officer for interim inspection of accounts maintained by the candidates;
12. Specifying dates on which the accounts shall be inspected for each individual candidate(at least 3 examinations during the campaign period);
13. Ensuring production of the SOR at the time of inspection of accounts;
14. Ensuring noting of discrepancies at the time of inspection of accounts (between the Candidate's Accounts Register and the SOR) and obtaining signature of candidate/election agent present;
15. Circulating copies of the pages of expenditure register/shadow observation register amongst interested recipients;
16. Maintenance of folder of evidence in support of expenses included in the SOR;
17. Administrative action in case of detection of illegal cash transaction by the FS/SST;
18. Administrative action in case of non-production of registers by the candidates as per inspection schedule;

Please read this set of operational guidelines along with the Instructions from the Commission and the provision of Acts and Rules applicable.