

Date: 04-02-2020

To

Shri Sunil Arora

Chief Election Commissioner
Election Commission of India (ECI)

Shri Ashok Lavasa

Election Commissioner
Election Commission of India (ECI)

Shri Sushil Chandra

Election Commissioner
Election Commission of India (ECI)

Matter related to hate speeches made by leaders of political parties during the election campaign for the upcoming Delhi Assembly Elections, 2020

Subject: Request for an immediate action against political party leaders making controversial and communally divisive speeches during poll campaign, in violation of the Model Code of Conduct (MCC), the penal provisions under the Indian Penal Code, 1860 and others.

Dear Sir (s),

1. The Association for Democratic Reforms (ADR) and National Election Watch (NEW) analysed the self-sworn affidavits of contesting candidates and sitting MPs for the 17th Lok Sabha. Analysis reveals that many of the contesting candidates and our current MPs, who are designated law makers have actually declared cases related to "Hate Speech" against themselves. Of the 7928 candidates analysed by ADR, **95 candidates** have declared cases related to Hate Speech and **29 MPs** of the 539 sitting MPs analysed have **declared cases related to Hate Speech**. The details of the same are attached with this letter for your reference.
2. It is significant to note that such speeches are **not only in violation of the Model Code of Conduct** under the provisions of which the EC has taken action but **also attract punitive action under the provisions of the Indian Penal Code (IPC), 1860**. IPC under sections 153A, 153B, 295A, 298, 505(1) and 505(2) declares that word, spoken or written, or employing signs or any kind of visual representation that 'promotes disharmony, enmity, hatred or ill-will' or 'offends' or 'insults' on the basis of religion, ethnicity, culture, language, region, caste, community, race etc is a punishable

offence. There are a plethora of laws pertaining to hate speech; The Representation of the People Act, 1951, The Code of Criminal Procedure, 1973, Information Technology Act, 2000, Unlawful Activities (Prevention) Act, 1967, The Protection of Civil Rights Act, 1955, The Religious Institutions (Prevention of Misuse) Act, 1988, The Cable Television Network Regulation Act, 1995 and The Cinematograph Act, 1952.

3. On 12th March, 2014 the Supreme Court of India in the matter of *Pravasi Bhalai Sangathan vs. Union of India and others*; AIR 2014 SC 1591 while observing that the issue of 'Hate Speech' deserves deeper consideration by the Law Commission of India had also stated that there is inaction on the part of the executive for whatsoever reason. The relevant paragraph of the judgment is reproduced below;

"27. As referred to herein above, the statutory provisions and particularly the penal law provide sufficient remedy to curb the menace of "hate speeches". Thus, person aggrieved must resort to the remedy provided under a particular statute. The root of the problem is not the absence of laws but rather a lack of their effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime. Effective regulation of "hate speeches" at all levels is required as the authors of such speeches can be booked under the existing penal law and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter. Enforcement of the aforesaid provisions is required being in consonance with the proposition "salus reipublicae suprema lex" (safety of the state is the supreme law)."

4. While examining the scope of hate speech laws in India, the Law Commission of India in its 267th report published on 27th March, 2017 had recommended further introducing new provisions within the Indian Penal Code, 1860 that specifically punish incitement to violence in addition to the existing ones. The Commission in its report had suggested amendments to IPC and Cr.P.C by adding new provisions namely Section 153C on 'Prohibiting incitement to hatred' following Section 153B IPC and Section 505A on 'Causing fear, alarm or provocation of violence in certain cases' following Section 505 IPC and accordingly amending the first schedule of the Cr.P.C.

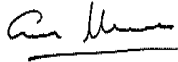
The relevant Paragraph of the report is reproduced below:

"6.33 In view of the above, the Law Commission of India is of considered opinion that new provisions in IPC are required to be incorporated to address the issues elaborately dealt with in the preceding paragraphs. Keeping the necessity of amending the penal law, a draft amendment bill, namely, The Criminal Law (Amendment) Bill, 2017 suggesting insertion of new section 153C (Prohibiting incitement to hatred) and section 505A (Causing fear, alarm, or provocation of violence in certain cases) is annexed as Annexure-A for consideration of the Government."

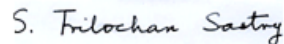
5. While the Election Commission found the political leaders making hate speeches guilty and violative of the MCC, it did not take any action against them under the criminal justice system. As a result of which, political leaders continue to unabatedly stoke hate and divisiveness in their election campaigns in the run up to the Delhi Assembly elections on February 8, 2020. The incidents of the past few days involving three instances of shootings in four days in Delhi are clear cases of motivating unscrupulous elements to take up arms and indulge in hate crime.
6. Therefore, to prevent a more serious situation from developing, it is expected that the Election Commission will look into the aforementioned matter in detail and act more assertive and promptly by taking necessary action in proportion to the offense committed by the leaders of political parties for indulging in hate speech and divisiveness for electoral gains. The EC must act against politicians responsible for promoting or attempt to promote, feelings of enmity or hatred between the citizens of India under the provisions of the Indian Penal Code.

We hope that the Commission will take swift action in this regard and uphold the faith of the public in it such that the action taken is fair and equitable for all offenders indulging in hate speech, irrespective of the position they occupy and the power they yield.

Yours sincerely,



Maj. Gen. (Retd.) Anil Verma
Head, ADR and NEW
+91-8826479910
anilverma@adrindia.org



Prof. Trilochan Sastry
Founder Member
ADR and NEW
Professor, IIM Bangalore
+91-94483-53285
tsastry@gmail.com



Prof. Jagdeep Chhokar
Founder Member
ADR and NEW
Former Director IIM-A
+91-99996-20944
jchhokar@gmail.com

CC: Shri Umesh Sinha, Secretary-General
Shri Chandra Bhushan Kumar, Deputy Election Commissioner