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**16<sup>th</sup> April 2019****To****The Election Commission of India****Nirvachan Sadan, Ashoka Road,****New Delhi 110001**[complaints@eci.gov.in](mailto:complaints@eci.gov.in)

**Subject: Complaint to the Election Commission of India against the Bharatiya Janata Party for violation of the Model Code of Conduct, Representation of Peoples Act and the Indian Penal Code.**

Sirs,

PUCL is appalled at the blatant violation of the Model Code of Conduct, provisions of the Representation of Peoples Act, Indian Penal Code and the Constitution of India by leading members of the Bharatiya Janata Party during the election campaign to the ongoing Lok Sabha elections, 2019. Key leaders of the BJP, the party in power, have made highly objectionable, communal, anti - constitutional and hate inciting, statements in the last few days as part of a high pitched election campaign which has seen new depths of electioneering replete with undisguised, brazenly communal and divisive, threatening and intimidatory speeches and sloganeering.

Details of some of the objectionable statements in the last two days are set out below -

1. BJP issued statement on its official twitter account assuring implementation of National Register of Citizens (NRC) and removal of every single infiltrator except Buddha (Buddhist), Hindu, Sikh to create a "New INDIA".

<https://twitter.com/bjp4india/status/1116246724119371776?s=21>

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2. BJP President, Shri. Amit Shah has promised to remove every single infiltrator from this country and to identify and give Indian nationality to Hindus and Buddhists, during the election campaigning in Assam and Bengal.

<https://wap.business-standard.com/multimedia/video-gallery/general/we-will-ensure-implementation-of-nrc-in-the-entire-country-amit-shah-in-darjeeling-82379.htm>

3. Prime Minister Shri. Narendra Modi, who is currently occupying the highest office in the country, assured implementation of Citizenship (Amendment) Bill and to ensure that no infiltrator's name is present in the National Register of Citizens, while also talking of partition and protecting Hindus in his speech.

<https://m.timesofindia.com/elections/news/pm-modi-amit-shah-pitch-for-vexed-cab-nrc-on-campaign-trail-in-assam-and-bengal/articleshow/68837271.cms>

4. Ms. Maneka Gandhi, Minister for Women and Child Development, Government of India, even while holding office, is reported to have said while addressing members of the Muslim community that if they do not vote for her and later come seeking her help she will not help them, which is nothing but a direct threat.

<https://www.news18.com/news/politics/maneka-gandhi-warns-muslims-wont-get-jobs-if-they-dont-vote-for-her-ec-are-you-listening-2100159.html>

5. BJP candidate and MP from Unnao, Shri. Sakshi Maharaj, threatened to put a curse on those who won't vote for him.

<https://timesofindia.indiatimes.com/elections/lok-sabha-elections-2019/uttar-pradesh/news/sakshi-threatens-to-curse-those-who-wont-vote-for-him/articleshow/68857881.cms>

6. BJP candidate and Leader of Opposition in the Karnataka Legislative Council, Shri. K.S. Eshwarappa justified denial of tickets to Muslims and Christians by BJP stating that they have not been given a tickets because *they are not loyal to the nation*.

<https://navbharattimes.indiatimes.com/video/news/after-muslims-bjp-leader-eshwarappa-targets-christians/videoshow/68859254.cms>

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All the above statements are only a sample of the type of politically divisive and vituperative speeches, slogans and messages sent out by the BJP and its leaders. They constitute a blatant violation of the electoral laws to ensure a free and fair election and are a direct attack on the Indian Constitution. These statements are also a violation of the very spirit of democracy and the cherished values of pluralism, inclusivity, secularism, equality, non-violence and justice. The statements openly made by BJP and its ministers during the election campaigning when the Model Code of Conduct is in force, have been captured on video, are part of official footage / social media posts and circulated on national television and social media. The statements clearly seek votes on ground of religion which is listed as a corrupt practice under S. 123 of the Representation of People Act, 1951. More specifically the Statements of the BJP leaders, including the Prime Minister, constitute the offence of Corrupt practices and Electoral Offences as defined in sec. 123 of the Representation of People's Act, 1961:

- (1) **Sec. 123(1)(A)(b) – Bribery** - any promise by a candidate or his agent ... to any person with the object, directly or indirectly of inducing an elector to vote or refrain from voting;
- (2) **Sec. 123(2) - Undue Influence** ... any direct or indirect interference ... with the free exercise of any electoral right with threat of, amongst other things, "divine displeasure or spiritual censure (sec. 123(2)Proviso (ii))
- (3) **Sec. 123(3)**: The appeal by a candidate or his agent ... to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language.
- (4) **Sec. 123(3A)**: Promoting feelings of enmity or hatred on grounds of race, caste, community or language.

Further, such statements have the effect of creating enmity, mistrust and hatred amongst religious communities, and thereby instigating violence and affecting national security which is an offence under s. 153 A of the Indian Penal Code.

It is pertinent to point out that these statements also violate provisions 1, 3 and 4 under General Conduct (Chapter I) of the Model Code of Conduct (<https://eci.gov.in/mcc/>), which prescribe:

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.*

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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.*

The offences committed by leaders of the ruling BJP are serious in nature and have the effect of subverting the principles of free and fair elections, which the Commission is duty bound to ensure and hold under Article 324 of the Indian Constitution. The statements made during the campaigning constitute blatant infringement of the constitutionally guaranteed legal protections to citizens from religious discrimination, right to equality before the law and equal protection of the law. The statements, coming from senior Ministers currently holding office, both in the Central Government as also State Government, also constitute a gross abuse of their power and position as constitutional functionaries and disrespect for the values enshrined in the Indian Constitution.

It is pertinent to note here that even in the election manifesto of the BJP, communal, discriminatory and unconstitutional promises have been made, with a view to unduly influence voters on communal grounds. The communal, anti-constitutional, discriminatory and hate inciting statements made at nos. 1, 2 and 3 in the list set out above, have been made further to promises made under point no. 12 captioned Citizenship Amendment Bill and points no. 7 and 8 captioned Combating Infiltration under the BJP's election manifesto 2019 (<https://images.indianexpress.com/2019/04/bjp-election-2019-english.pdf>). This is in violation of the provisions pertaining to Guidelines on Election Manifestos (chapter VIII) of the Model Code of Conduct, specifically:

3. (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 measures in election manifestos. 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.*

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We would like to emphasise that such egregious election related violations have been brazenly committed by BJP leaders not as a result of overzealous or over enthusiastic actions but as part of a planned and deliberate attempt to polarize and divide the electorate on communal lines; this is revealed by the cynical use by the BJP of pictures and references to the armed forces to claim credit for military operations like cross-border strikes and referring to the armed forces as “*Modiji ki Sena*”. Election stages are replete with party workers dressing in army uniforms and with posters and pictures of armed forces personnel, including the picture of IAF Wing Commander Abhinandan Varthaman, captured by Pakistan where he landed after his aircraft was shot down, and later released by them.

It is necessary to point out that the party has also benefited from what the Media Certification and Monitoring Committee (MCMC) of the Election Commission of India has called ‘*surrogate advertising with political overtones*’ in the form of the promotional music and video films announcing the release of the Modi Biopic. A Show Cause Notice had been issued to the film’s producers, music company T-Series, YouTube channel running the trailer and the newspaper publishers for violations of Chapter 15, Part 2 of the MCC and Sec. 171H IPC which eventually led to the ban of the release of the film<sup>1</sup>. It is equally noteworthy that NaMo TV has been barred from airing political content without certification from the MCMC. These actions though welcome are grossly inadequate as the direct and openly communal and vicious electioneering has put fear in the hearts of the minorities and other citizens of this country. The Election Commission of India must take note of the party’s conduct in order to maintain the sanctity, fairness and dignity of India’s largest elections.

It is important to point out at this juncture that the brazen and deliberate actions of the ruling BJP of stoking communal divides and polarizing communities, effected in a systematic manner across the country using election campaigning as the context, has created heightened sense of fear and alarm amongst many section of the minority community, especially Muslims and Christians. The strident declaration in several places by both the Prime Minister, Mr. Narendra Modi, and Leader of the BJP, Amit Shah, that the party, if voted to power will ensure that all infiltrators – by implication, referring mainly to Muslims and Christians in particular – will be removed from India has willy nilly created a palpable sense of fear and alarm amongst members of these communities as to what the future beholds them.

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<sup>1</sup> See <https://www.thehindu.com/news/national/ec-panel-issues-notice-over-ad-on-modi-biopic/article26613097.ece> and <https://thewire.in/politics/pm-narendra-modi-biopic-election-commission-2>

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We express our concern over the communally surcharged situation that is slowly engulfing many parts of India because of the communally polarizing and divisive election campaign launched by the ruling BJP and its leaders.

The Election Commission of India must take immediate cognizance and strict action against BJP leaders, and ensure that elections are held in an environment of communal harmony and peace and in a free and fair manner.

PUCL calls upon the Election Commission of India and the Chief Election Commissioner and Election Commissioners to forthwith and without any further delay to:

1. Issue notice to Mr. Amit Shah, President of the BJP as to why action should not be taken against the BJP for allegedly violating provisions of the Representation of People's Act, 1951, Model Code of Conduct for Elections, IPC and other laws including to debar and / or disqualify party candidates.
2. Initiate action to prosecute the BJP ministers for the alleged unconstitutional and communally divisive statements inciting hate, including but not limited to, PM Shri. Narendra Modi, Shri. Amit Shah, President of BJP, Ms. Maneka Gandhi, Union Cabinet Minister for Women and Child Development, Shri Sakshi Maharaj, MP and Shri. K.S. Eshwarappa, Leader of Opposition, Karnataka, as per procedure provided under law.
3. Direct the print and electronic media not to publish/ disseminate / telecast such communally divisive speeches, advertisements, posters etc.
3. To take all such actions as may be necessary and required in law including direction for immediate registration of offences against all parties and politicians for the blatant violation of Model Code of Conduct;
4. To take all such actions as are necessary in law for holding a free and fair Elections .
5. A strong directive may be issued by the EC calling upon all political parties to refrain from using religion, caste or community or other divisive language in electioneering, failing which they will invite stringent action including disqualification of candidates.
6. The EC may issue a directive to all election officers and the police machinery to adequately safeguard and protect religious and other minorities so that they can exercise their franchise without fear of reprisal.
7. Initiate firm, independent and unbiased action against all parties and politicians found to be violating the Model Code of Conduct, provisions of the RP Act and other laws by appealing to voters using caste, community and other divisive slogans and hate campaigns. Salutary and immediate corrective action alone will have the effect of

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ensuring that all parties respect the Constitution of India and to adhere strictly to the Model Code of Conduct and follow the rule of the land during election campaigns.

As an independent, constitutional body, we expect the Election Commission of India to uphold the democratic values enshrined in the Indian Constitution. This will help restore the faith amongst all sections of the citizenry of the conduct of free and fair elections and the primacy of the Indian Constitution and the Constitutional spirit and in the fairness and independence of the Election Commission of India.



Mr. Ravi Kiran Jain,  
National President, PUCL

Dr. V. Suresh,  
National General Secretary, PUCL