

March 10, 2022

To,

1. Sushil Chandra
Chief Election Commissioner
Email id: schandra@eci.gov.in

2. Rajiv Kumar
Election Commissioner
Email id: ecrk@eci.gov.in

Subject: Ground reports on bogus voting, EVM malfunction, threatening of voters etc in UP

Respected Sirs,

We, at Citizens for Justice and Peace (CJP) are writing to you as we are extremely concerned about certain occurrences at polling booths across the state of Uttar Pradesh. We would like to state here that we have received these ground reports from various sources, but we are unable to authenticate completely the veracity of these incidents. We consider it our responsibility as responsible citizens to forward the same to you so that they can be looked into and necessary action may be taken after due inquiry.

Here are some reports of incidents we have received:

1. EVM defective/Faulty:
 - a. Booth number 238 of 345 Sagdi constituency: EVM machine was not working properly and the voters were told that the booth has been shut down.
2. Bogus voting/ Threats:
 - a. Booth number 167, 168 of 367 Malhani constituency: BJP workers reportedly got bogus voting done.
 - b. Booth number 347 of 391 Sevapuri constituency: BJP workers reportedly got bogus voting done
 - c. Booth number 222 of 389 Varanasi Sauth constituency: BJP workers reportedly got bogus voting done
 - d. Booth number 338 of 344 Copalpur constituency: BJP workers reportedly got bogus voting done
 - e. Booth number 328 of 371 Zafarbad constituency: BJP workers reportedly got bogus voting done and BJP's Gram Pradhan was sitting inside the booth to ensure the same.
 - f. Booth number 106, 107, 108 of 367 Malhani constituency: BJP workers reportedly got bogus voting done. JDU candidate Dhananjay Singh gave death threats to SP agents and was not allowing the voters to cast their votes.

3. Obstruction at booths:
 - a. Booth number 224 of 366 Jaunpur constituency: BJP workers were capturing booths.
 - b. Booth number 311 of 396 Mirjapur constituency: MLA Ratnakar Mishra who is a member of BJP's executive committee was not allowing voters to cast their vote and drove people away.
4. In a viral video on twitter a voter is seen to be telling the journalist how the voters at Booth number 420 of 388 Varanasi North constituency were being handed a slip with their names along with the candidate's name and photo before entering the booth.

A video of the said interview has been annexed and marked hereto as Annexure A

5. In another viral video on twitter posted by public interest lawyer and activist Prashant Bhushan, a man appears to be casting voting on behalf of women.

A video of the said personation has been annexed and marked hereto as Annexure B

6. In a youtube video, National Dastak reveals that Gujarat were called to Benaras to conclude the elections in UP and the Police Officer with the 'Gujarat Police' tag on his uniform is demonstrating his support for Yogi Adityanath and shows confidence in Yogi Adityanath being elected.

A video of the said police officer has been annexed and marked hereto as Annexure C

Violations

The above-mentioned incidents, if found to have been committed, entail the following offences under the Representation of People Act, 1951:

130. Prohibition of canvassing in or near polling station.—(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of 3[one hundred metres] of the polling station, namely:—

- (a) canvassing for votes; or*
- (b) soliciting the vote of any elector; or*
- (c) persuading any elector not to vote for any particular candidate; or*
- (d) persuading any elector not to vote at the election; or*

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

131. Penalty for disorderly conduct in or near polling stations.—(1) No person shall, on the date or dates on which a poll is taken at any polling station,—

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

132. Penalty for misconduct at the polling station.—(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

135A. Offence of booth capturing –

(c) [coercing or intimidating or threatening directly or indirectly] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

Also, offences under the Indian Penal Code may also be invoked:

171C. Undue influence at elections.—

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—
(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

171D. Personation at elections.—Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

In *Lakshman Singh vs. State of Bihar (now Jharkhand)* [Criminal Appeal No. 606 OF 2021; decided on July 23, 2021], the Supreme Court had held thus,

“In the case of People’ss Union for Civil Liberties (supra), it is observed by this Court that freedom of voting is a part of the freedom of expression. It is further observed that secrecy of casting vote is necessary for strengthening democracy. It is further observed that in direct elections of Lok Sabha or State Legislature, maintenance of secrecy is a must and is insisted upon all over the world in democracies where direct elections are involved to ensure that a voter casts his vote without any fear or being victimised if his vote is disclosed.”

The court has further stated that democracy and free elections are a part of the basic structure of the Constitution.

“The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election,” the court added.

In fact, the court observed that the 6 months imprisonment imposed by the trial court was inadequate.

We are aware that this Hon’ble Commission has taken cognizance of the viral video of former Sadar Block chief of Maharajganj, Narendra Kharwar claiming that the recent Uttar Pradesh assembly elections have been compromised and disclosing that atleast 200 EVMs have been changed. Similarly, we request you to take the above-mentioned reports also into consideration. Considering the fact that 40,395 out of 47,393 complaints on model code of conduct violations were found to be correct, it is the need of the hour to take stringent actions against the violators in order to protect the democracy.

It is in this background, we urge this Hon’ble Commission to take note of the ground reports received by us and initiate enquiries into these allegations that may have impacted conducting of free and fair elections in the state of UP and take necessary further action in this regard as well.

The conclusions of a free and fair election under the Indian Constitution can only be seen to be final and duly conducted by the esteemed body of the Election Commission of India when all doubts and complaints have been cleared and not until then.



Yours sincerely,

Nandan Maluste, President

Teesta Setalvad, Secretary

Annexures:

Annexure A: A video of an interview at Varanasi North Constituency

Annexure B: A video of a man casting votes on behalf of women

Annexure C: A video of the Gujarat Police Officer