



May 16, 2022

To,

Shri Iqbal Singh Lalpura
Hon'ble Chairperson
National Commission for Minorities
Government of India
3 rd Floor, Block 3, C.G.O Complex,
Lodhi Road New Delhi- 110003
Ph: 011-24366132/01124360591
Email: chairman-ncm@nic.in

Shri Siddharth Kishore Dev Verman
Secretary
Ph: 024364816
Email: secy-ncm@nic.in

Shri Shariq Saeed
Under Secretary
Ph: 24362527
Email: usgr-ncm@nic.in

Subject: Complaint against Delhi BJP Chief Adesh Gupta for addressing 'Bangladeshis' and 'Rohingyas' as 'Terrorists'

Respected Sir,

We approach the esteemed institution of the National Commission of Minorities (NCM) with due concern, Increasingly, and with a sense of impunity, elected officials in positions of power and authority are using (mis-using) their status and reach and are indulging in remarks that amount not just to hate speech but could well incite violent attacks against the most vulnerable sections of society.

As you are aware, Sir, we at Citizens for Justice and Peace (CJP) Mumbai, a human rights movement dedicated to furthering the constitutional rights of all Indians, are, in this instance, deeply concerned about the repeated remarks made by BJP Chief Adesh Gupta against the Muslim minority and addressing 'Bangladeshi' and 'Rohingya' Muslims as 'Terrorists'.

As can be clearly seen and observed in the video dated 09.05.2022 reported by 'Times Now, Delhi BJP Chief Adesh Gupta brazenly calls Rohingya and Bangladeshi Muslims 'terrorists' while addressing the media regarding the protest by opposition party leaders at Shaheen Bagh demolition drive. "You must have seen how in Delhi, more than 5 lakh Bangladeshis and Rohingyas have been spreading terror", says the BJP chief. These remarks go against the canons of both national jurisprudence on refugees and international law and treaties to which also India is a signatory. In the said video, he strongly objects Delhi's Deputy Chief Minister's decision to provide shelter to Bangladeshis

and Rohingyas in their area, issue them a ration cards along with Aadhar card, grant pension fund to their elders and admit their children in schools. All these steps are well within the bounds of established jurisprudence and practice. To further a narrow and chauvinist politics, he then attacks the Congress and AAP leaders for interrupting the demolition drive and protecting the Rohingyas and Bangladeshi's establishments. This when the Hon'ble Supreme Court of India has also stayed some of the demolitions that took place recently. He says, *"Those people who are trying to protect these encroachers, these Bangladeshi and Rohingyas, these terror spreading people, by lying down in front of these bulldozers, beware, the citizens of this country will bring you down and walk over you. There is nothing more unfortunate than Congress, AAP party supporting these people who come to this country to spread terror. I would also like to add that Rohingya Muslims spread terror and when the bombs that they have planted blasts, it does not differentiate between any religion or caste. When a bomb blasts, people of all religion or caste are affected alike."* He further adds, *"Do not associate this to any religion or caste. At the end of the day terrorists are terrorists. Rohingyas and Bangladeshis who do not belong to our country are not entitled to any rights in our country even if they block our roads or our way. They have no right. I want to warn these opposition party leaders once again that be citizens of the country are watching you. They can see how you are protecting them. The people will take revenge because the leaders have come to the rescue of terrorists, they have to the rescue of Bangladeshis and Rohingyas"*. Finally, he concludes by saying, *"You are claiming the demolitions of illegal encroachment to be communal but when there are riots you raise no objections. Only when action is taken against such riots and rioters you give it a communal angle. Those who are trying to appease people in this manner, who are trying to interfere in the actions taken against the encroachers and terrorists such as Bangladeshis and Rohingyas will have to pay the price"*.

The video uploaded on Times Now website dated 09.05.2022 is marked and annexed hereto as Annexure A

These words of an elected official of the ruling party are not made in isolation. The said person, a hate offender, in our view, goes on to incite extra-judicial action fro non-state actors, his party-men and women, again in violation of criminal law, the police act etc. In a well-publicised open letter dated 07.05.2022, BJP chief Gupta asked his party workers and citizens to report illegal encroachments by Rohingya and Bangladeshi migrants so that necessary action, including "use of bulldozers" can be taken, reported *Hindustan Times (HT)*. According to the HT report dated 08.05.2022, Gupta had said, *"It is being seen that AAP MLAs and leaders are helping Rohingya and Bangladeshi Muslims illegally open scrap shops, meat shops and set up vending carts to sell fruits and vegetables. They are also using the EWS quota to help their children get admission in government schools. If you get to know about any such encroachment, then immediately inform the police and local administration... It is important to use bulldozers wherever such encroachments have taken place"*.

A copy of the report by Hindustan Times dated 08.05.2022 is marked and annexed hereto as Annexure B

Sir, it is not insignificant in the chronology of recent events to note that the demolition drive in Jahangirpuri also came after he wrote a letter to the North MCD mayor Raja Iqbal Singh urging them to identify and demolish "illegal" encroachments and constructions belonging to those arrested and accused of violence in Jahangirpuri, as reported by *the Hindustan Times* in its report dated 20.04.2022. In ur humble view this sequence of events needs to be also acted against.

A copy of the report by Hindustan Times dated 20.04.2022 is marked and annexed hereto as Annexure C

In a video dated 23.04.2022 uploaded by MH One News on YouTube website, Adesh Gupta openly claims, “Now MCD’s (Municipal Corporation of Delhi) bulldozer will run over Rohingyas and Bangladeshis”.

The video dated 23.04.2022 by MH One News uploaded on Youtube website is marked and annexed hereto as Annexure D

As per report dated 28.04.2022 by India Today, while specifically targeting the Rohingyas and Bangladeshis, Adesh Gupta has said, “Illegal Bangladeshi and Rohingya migrants are a big threat to Delhi. The illegal construction by them shall be removed for the safety of Delhi”.

A copy of the report dated 18.04.2022 by India Today is marked and annexed hereto as Annexure E

As a citizens civil rights group concerned with the equality and dignity of all Indians, we are concerned that such repeated offenders enjoy protection and impunity from powerful political forces. Muslim community are subject to an orchestrated right-wing campaign which is made worse with the tacit complicity of the government of the day that harbours a hate-filled ideology and holds undisputed sway and power.

Rohingya and Bangladeshi Muslims have migrated from troubled countries such as Myanmar and Bangladesh to seek refuge in India. They live in well distinguished and established camps, often in poor conditions, well in the know of central government and other authorities, in accordance to some basic conditions that India, as a country wedded to international law, is committed to grant. All such persons are asking is they be treated with dignity, be allowed to live in peace and be given an opportunity to contribute to the economy. Even if the authorities deem that the properties belonging to them are “illegal”, we believe that they should examine and act upon the issue from the point of view of the right to shelter being a fundamental right under Article 21 and due process of law a fundamental pre-requisite for any executive action. Whipping up mass hysteria and passing such derogatory remarks against the community affects their right to live with dignity and causes them mental trauma.

In the video marked as Annexure A above, Gupta also claims that in the past 1.5 months, the Corporation has previously taken action atleast 40 times in various parts of Delhi such as Madanpur Khadar, Badarpur, Okhla, Kirari, Rithali, Rohini, Karol Bagh. The fact that most of these places are Muslim dominated areas and the targeted demolition of the houses belonging to the ‘rioters’ makes it quite evident that the demolition drive undertaken in Delhi is nothing but yet another way to target and harass the Muslim minority in India under the garb of tackling “external aggression and terrorists”. As we are all aware there are many such illegal encroachments in other parts of Delhi, in colonies and homes of the rich and powerful, but the selective act of demolitions undertaken by the Corporation raises questions regarding the intentions and motives of the people in power.

This level of incriminating speech that is illegal and unconstitutional violates the following provisions of the law:

Indian Penal Code, 1860:S. 153. Wantonly giving provocation with intent to cause riot—if rioting be committed; if not committed. —

Whoever maliciously, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be **punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.**

S.153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony—

(1) Whoever—

a) by words, either spoken or written, or by signs or by visible representation or otherwise, promotes, or attempts to promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feeling of enmity, hatred or ill-will between different religious, racial, language or regional groups castes or communities, or

b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language, or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquillity,

shall be punished with imprisonment which may extend to three years, or with fine or with both.

S.153B. Imputations, assertions prejudicial to national integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, -

(a) makes or publishes any imputation that any class of person cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of person shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religions, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Sec. 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall **be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**”

Sec 503. Criminal intimidation.—

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Sec 506. Punishment for criminal intimidation.—

Whoever commits the offence of criminal intimidation shall **be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;**

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 8 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be **punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

S.504. Intentional insult with intent to provoke breach of the peace:

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall **be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

S.505. Statements conducing to public mischief:

(1) Whoever makes, publishes or circulates any statement, rumour or report,-

a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to three years, or with fine, or with both.s

Judicial precedent:

We urge that this case be considered with the seriousness of the offence as done by the Uttarakhand High Court (March 2022) in the case of *Jitendra Narayan Tyagi alias Waseem Rizvi vs. State of Uttarakhand*. In that case, the Hon'ble Uttarakhand High Court rejecting the bail application of serial hate offender, Jitendra Tyagi, held that Hate Speech didn't fall under the purview of the fundamental Right to Freedom of Speech and Expression granted under Article 19(1(a) of the Indian Constitution. The Court insisted moreover that "a balance has to be struck between the right to individual liberty and the interest of society," the Uttarakhand High Court overturned an earlier order by a Sessions Court. Examining closely the balancing rights available under the Indian Constitution, the Court further held, "No right can be absolute, and reasonable restrictions can be placed on them."

The statements made by BJP Chief Adesh Gupta are a grave threat to peace, unity and integrity of India. Especially so, in view of the sensitive atmosphere today when aggression is being unleashed on sections of our population. It is quite clear so far that the minority community in various parts of India already feels insecure and threatened. Such statements are bound to generate communal disharmony or feelings of ill will, enmity and hatred between the people of different communities. It is an act which is prejudicial to the maintenance of harmony between different groups and is likely to disturb the public tranquillity. Most importantly, such open intimidation only makes the targeted group more vulnerable to violent acts.

In the case of *Amish Deygan vs Union Of India 2021 1 SCC 1*, the Supreme Court quoted Benjamin Franklin, "It remains difficult in law to draw the outmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, so as to constitute a criminal offence. The difficulty arises in ascertaining the legitimate countervailing public duty, and in proportionality and reasonableness of the restriction which criminalises written or spoken words. Further, criminalisation of speech is often demarcated and delineated by the past and recent significant events affecting the nation including explanation of their causes. Therefore, constitutional and statutory treatment of 'hate speech' depends on the values sought to be promoted, perceived harm involved and the importance of these harms. 57 Consequently, a universal definition of 'hate speech' remains difficult, except for one commonality that 'incitement to violence' is punishable."

In that judgement, the Hon'ble Supreme Court elaborated on the concept of Hate Speech by identifying three elements:

- **Content-based:** Open use of words and phrases generally considered to be offensive to a particular community and objectively offensive to the society.
- **Intent-based:** Speaker's message to intend only to promote hatred, violence or resentment against a particular class or group.
- **Harm-based/ impact-based:** There is an element of harm to the victim which can be violent or such as loss of self-esteem, economic or social subordination, physical and mental stress, silencing of the victim and effective exclusion from the political arena.

In the same case, the Apex court also cited Andre Sellars from his essay 'Defining Hate Speech' where he examined the concept of hate speech in different democratic jurisdictions and formulated common traits in defining 'hate speech'. He says:

- Hate speech targets a group, or an individual as a member of the group
- One should be able to objectively identify the speech as an insult or threat to the members of the targeted group, including stigmatising the targeted group by ascribing to it qualities widely disregarded as undesirable
- Speech should cause harm, which can be physical harm such as violence or incitement and true threats of violence
- Speech should have no redeeming purpose, which means that 'the speech primarily carries no meaning other than hatred towards a particular group'

In the case of *State of Karnataka and anr vs. Dr Pravinbhai Togadia (2004) 4 SCC 684*, the Supreme Court held, "Communal harmony should not be made to suffer and be made dependent upon the will of an individual or a group of individuals whatever be their religion bit of a minority or that of the majority... the valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests needs and necessities to preserve the very core of democratic life preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take private reactions must be left to the discretion of those entrusted with the duty of maintaining law and order and interposition of courts..."

In the case of *Firoz Iqbal Khan vs Union of India [W.P (Civ.) No. 956 of 2020]*, the Supreme Court had held, "...the edifice of a democratic society committed to the rule of law under a regime of constitutional rights, values and duties is founded on the co-existence of communities. India is a melting pot of civilizations, cultures, religions and languages. Any attempt to vilify a religious community must be viewed with grave disfavour by this Court as the custodian of constitutional values."

In the case of *Pravasi Bhalai Sangathan v. Union of India, (Ref: AIR 2014 SC 1591, at para. 7.)* the Supreme Court has unambiguously stated that hate speech is an effort to marginalise individuals based on their membership to a group, that can have a social impact. Moreover, the Court stated that hate speech lays the groundwork for broad attacks on the vulnerable that can range from discrimination, to ostracism, deportation, violence, and even to genocide. Therefore, the aforementioned news items are tantamount to the perpetration of genocide, and must be considered to be in violation of Article 21 of the Constitution.

We urge this Commission to take cognizance of the matter and ensure that a proper inquiry is instituted and concluded in this matter. If such open intimidation and instigating speeches are allowed to continue unabated, such miscreants will only be encouraged to create such tension and cause mischief that disturb public order not just in those areas but in many other areas across the state. The importance to act strictly and earnestly in this matter cannot be stressed upon enough and we are certain that you understand the magnitude of the situation. We thus, humbly urge you to take necessary action to ensure that effective investigation is carried out in this regard and the miscreant is brought to book so as not to encourage such incidents in any other areas of the state in order to maintain public order and communal harmony.

We crave leave to supplement and buttress this complaint with jurisprudence, Indian and international on the rights of refugees and displaced persons as we know that customary international law, precludes the host country to force or compel the authorities to force such persons back to the country where they face a threat to their lives.

Callous and brazen statements such as this one, made by political leaders and elected officials – sworn to uphold not just the Indian Constitution but canons of Indian jurisprudence and customary international law --at public platforms have far reaching impact and rather perilous repercussions. In order to avoid targeted violence against vulnerable sections to erupt and communal clashes to follow, we urge this Commission to take cognizance and reprimand people, especially political leaders who have a following and influence, to refrain from making comments that would shake the secular fabric of the country.

The extent of hate and anti-refugee and anti-minority sentiment is on the rise all over the country, where public figures such as Delhi BJP Chief Adesh Gupta openly target certain groups. Therefore, this needs your immediate attention and rapid action. We, at CJP, urge this Hon'ble Commission to:

1. Take cognizance of this complaint under section 9(1)(d) of the National Commission for Minorities, 1992;
2. To direct the attendance of Delhi BJP Chief Adesh Gupta along with the members of his organisation before your commission to examine such allegations under section 9(4)(a) of the Act, 1992;
3. Keep a close eye on the investigation and call for the discovery and production of any document, receive affidavits, requisition any public record or copy thereof from any court or office, issue commissions for the examination of witnesses and documents under section 9(4) (b) to (e) under the Act;
4. To direct the DGP, Delhi or any other appropriate authority to investigate the matter thoroughly, register FIRs against such blatant hate speech ensuring that all relevant sections of the Indian Criminal law and Police Acts are included in the said criminal complaint;
5. Issue directions to the Delhi Police to submit an Action Taken Report and give updates to this Commission regarding progress in investigation in the case;
6. Issue any other directions to Delhi Police as the Commission may deem fit and proper in the circumstances of the case;
7. Undertake any other action as the Commission may deem fit.



Yours sincerely,

Nandan Malsute, President

Teesta Setalvad, Secretary

Annexures

Annexure A Video uploaded on Times Now website dated 09.05.2022

Annexure B Copy of the report by Hindustan Times dated 08.05.2022

Annexure C Copy of the report by Hindustan Times dated 20.04.2022

Annexure D Video uploaded on YouTube website by MH One News dated
23.04.2022

Annexure E Copy of the report by India Today dated 18.04.2022