



Date: October 10, 2023

To,

Shri Rajiv Kumar

Chief Election Commissioner

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Shri Anup Chandra Pandey

Election Commissioner

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CC: Shri Madhukar Gupta

State Election Commissioner

Rajasthan State Election Commission

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Subject: Shubhakaran Choudhary's speech promoting electoral corrupt practices

Respected Sirs,

We at Citizens for Justice and Peace (CJP), are concerned about a speech video of Shubhakaran Choudhary, Rajasthan BJP leader and former member of the Rajasthan Legislative Assembly from Udaipurwati Vidhan Sabha constituency, which seeks to promote corrupt practices in elections.

The video had been uploaded on October 1 on 'X' (formerly known as Twitter) by Prakash Kanojia, national campaign in-charge of the Rashtriya Janata Dal (RJD) and a former journalist. Sharing the said video, Kanojia wrote, "This is a BJP leader and he is also a former MLA. Name Shubhakaran Chaudhary and see how he captures the booth and casts fake votes. Is this what BJP does?"

In the aforementioned video, Choudhary can be seen addressing a crowd and guiding people regarding 'the best time to cast fake votes.' In the video, he can be heard saying, "***Surround the EVM booth before 10:00 am in the morning. In the morning the crowd is less, so come in the morning to cast your fake votes. Fake votes are cast early in the morning. Originals are cast later.***"

(The speech has been translated to English)

The aforementioned video can be accessed here:

<https://twitter.com/KanojiaPJ/status/1708374723397382387?s=20>

The clipping of the video as available on 'X' and downloaded by CJP has been attached and annexed hereto as Annexure A

The impugned video and speech by Choudhary had also been reported on Newsbytes (Hindi) on September 27, 2023.

The article of the Newsbytes (Hindi) dated September 27, 2023 has been attached and annexed hereto as Annexure B

Respected Sirs/ Ma'am, this speech of BJP leader Choudhary, promoting corrupt practices and manipulation of votes are in blatant contravention of election law, the principle of voluntary, free and fair elections and amount to undue influence from a man in a politically powerful position. Through his speech, he has openly uttered words that defy the laws established and has the potential to impact the trust and belief every citizen has in the free and fair election process of India. His speech also stands in violation of all equality and non-discrimination provisions (secular and democratic values) enshrined in the Constitution of India and also amounts to the offences defined as "corrupt practices" under the Representation of the People Act, 1951. **(Section 123, detailed below).**

As you may be aware, the state of Rajasthan will be going into election of November 23, 2023. Through the carefully calculated words uttered by Choudhary, along with the show of impunity, there is a clear intention to promote corrupt practices that result in manipulation of the votes of the general public.

Sirs, exercising one's right (and freedom) to cast vote and choose their representatives is a basic right that is granted to every citizen of India. It is necessary that these brazen violative acts are evaluated and acted upon for what they are, not individual misdemeanours but concerted attempts to not only vitiate the social and political atmosphere but also to intimidate voters as well as tempt them into indulging in a corrupt electoral practice.

It is urgent and essential that these statements condoning and promoting corruption and influencing the results are taken strict action upon. It should also be considered that this speech are emanating from a senior leader of the political party and a former MLA from the state, and if left unchecked, will raise serious questions of allegiance of that party to the Indian Constitution and in fact are evidence of a blatant breach.

Violations of the Representation of People Act, 1951

Choudhary stands in violation of the following sections of the Act:

123. Corrupt practices. —The following shall be deemed to be corrupt practices for the purposes of this Act: —

(2) **Undue influence**, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 5[with the consent of the candidate or his election agent], with the free exercise of any electoral right: Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause. 6[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidates or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: 7[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

123.(3A). Definition of Corrupt Practices under the Act: The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.] 8[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election

agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation. —For the purposes of this clause, “sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]

Previous instances of questionable speeches and statements

Sirs, it is also crucial to highlight here that this is not the first time that BJP leader Choudhary has made the headlines for delivering a speech that goes against the values and ethics promoted by our Constitution. For a public leader, certain ethical standards are set, which might be higher than the ones in place for a common person, as per which they are evaluated. And yet, Choudhary has refused to abide by these standards and the values promoted by India’s Constitution and has indulged in violent and controversial speeches.

In the year 2018, prior to the Vidhan Sabha elections in Rajasthan, a video of Choudhary had surfaced on the social media where he had issued a threat of for cutting the fingers and gouging out the eyes of those who raise it against the poor people of the society. As per a report of the Amar Ujala, Choudhary had allegedly said “whoever points a finger towards the poor people of the society, his fingers will be cut off. I will take out the eyes of anyone who shows eyes to poor people.”

Prior to this, in February 2018, Choudhary had given another controversial statement while attending a public function. As per the Amar Ujala report, Choudhary had “threatened to cut off the tongues of his opponents.” Furthermore, he had also openly stated that “if anyone said anything about his personal life, he would forget that he is an MLA and would cut out his tongue. After this, even if he has to go to jail, he will go to jail.”

The article of the Amar Ujala dated November, 2018 has been attached and annexed hereto as Annexure C

Grounds for the present complaint

Sir, our objective behind highlighting the statements made by Choudhary in the past is to depict that he is a repeat offender who spreads consistently indulges in making statements that are violent in nature and are adverse to the values of a secular, socialist and democratic country.

The Hon’ble Election Commission may seriously consider, apart from issuing a notice to this individual candidate, to also issue a notice **to the state and national party in chief of the Bharatiya Janata Party (BJP) as this conduct of one of its own elected representatives puts a responsibility on any party that participates in elections held under the mandate of the Indian Constitution to honour and follow its mandate as laid down in both the Preamble and Fundamental Rights (Chapter III).**

Jurisprudence:**Supreme Court on promise of freebies and corrupt practices**

The issue of freebies and false promises before elections is not new and has been brought to the attention of the court through a writ petition filed in the case of *S Subramaniam Balaji vs State of Tamil Nadu*. In the plea filed, it had been contended that financing such freebies through the State Exchequer amounts to “electoral bribes” as it influences the voters. Based on the arguments made, the Supreme Court had directed the ECI to frame guidelines for general conduct of the political parties. Additionally, the court had also noted that there is a requirement for separate legislation to be passed by the legislature.

In 2022, a clutch of petitions seeking a judicial direction against political parties who make “wild” promises of largesse were referred to a three-judge bench of the Supreme Court by the then Chief Justice of India N V Ramana. The then CJI had said that there was a need to have a relook at the 2013 ruling in the *S Subramaniam Balaji vs State of Tamil Nadu* case. The court also said that it wanted a transparent debate before the three-judge Bench on whether an “enforceable” judicial order can stop political parties from promising and distributing ‘irrational freebies.’ While referring, the court had stated that “freebies may create a situation wherein the State government cannot provide basic amenities due to lack of funds and the State is pushed towards imminent bankruptcy”.

Sirs, as you must be aware, again, as recently as on October 6, 2023 a PIL (Public Interest Litigation) had been filed in the Supreme Court highlighted that the pre-poll promises and freebies distributed by political parties to lure voters before elections were "frittering away taxpayers' money" and amounted to bribery and undue influence.

The plea had a sought for issuance of comprehensive guidelines to bar political parties from indulging in the same. Admitting the said PIL, the Supreme Court had also issued notice to the Madhya Pradesh and Rajasthan governments. The bench comprising Chief Justice DY Chandrachud and Justices JB Pardiwala and Manoj Misra had also issued notices to the Centre, the Election Commission (EC) and the Reserve Bank of India (RBI) on the petition, which also alleged that the money of taxpayers was misused by the Madhya Pradesh and Rajasthan governments to lure voters.

Prayers:

Sirs, in nearly a month, elections will take place in the state of Rajasthan, making it crucial to ensure that the statement made by Choudhary attracts the prescribed penalty. It is pertinent that the voters maintain their trust in the fairness of the electoral process and no attempt to manipulate the votes or the masses is made.

Notably, on October 5, 2023, the Chief Election Commissioner Rajiv Kumar himself had stated that the Election Commission is fully committed to delivering free, fair, transparent, and inducement-free elections. Hon’ble Chief Election Commissioner had said that a very loud and



clear message has been given to enforcement agencies to act strictly against the use of money power during elections.

Considering the above-mentioned, we humbly pray that the commission take cognisance of this serious violation the Representation of People Act, 1951. We pray that you take strict action against BJP leader Shubhkaran Choudhary and pass necessary strictures him. We also pray that the Commission directs Shri Choudhary to issue an unconditional public apology and retraction for his utterances in Rajasthan. Any other action necessary, including a public reprimand by the esteemed Election Commission, may also be taken by the Hon'ble Commission.

Yours sincerely,

Nandan Maluste, President

Teesta Setalvad, Secretary

List of Annexures:

Annexure A: The clipping of the video as available on 'X' and downloaded by CJP

Annexure B: A copy of the article of the Newsbytes (Hindi) dated September 27, 2023

Annexure C: A copy of the article of the Amar Ujala dated November, 2018