



**Urgent/MCC Violation**

**Date: November 21, 2024**

To,

**Shri S. Chockalingam**

Chief Electoral Officer, Maharashtra,  
6th Floor Annex Building, Madam Cama Marg,  
Hutatma Rajguru Chowk,  
Mantralaya, Mumbai - 400 032  
Email: [ceo\\_maharashtra@eci.gov.in](mailto:ceo_maharashtra@eci.gov.in)

**Dr. Kiran Kulkarni**

Additional Chief Electoral Office  
Maharashtra State Election Commission

**Subject: Complaint under section 123(2), 123(3) and 123(3A) of the Representation of People Act (RPA), 1951, against the far-right influencer Harsha Thakur, allegedly guilty of hate speech, for delivering anti-Muslim and divisive hate speech at Delgur, Nanded, Maharashtra on October 29, 2024**

**Respected Sir,**

We, at Citizens for Justice and Peace (CJP), a human rights movement dedicated to advancing the constitutional rights of all Indians, are deeply concerned about the gross violation of the Model Code of Conduct (MCC) and sections 123(2), 123(3) and 123(3A) of the RP Act 1951 in Delgur, Nanded, Maharashtra, stemming from the hate-filled rhetoric delivered by right-wing leader Harsha Thakur at a recent public event. Her speech, which was made while campaigning for independent Hindu nationalist candidate Dr. Virupaksha Maharaj, blatantly violates the MCC and undermines the principles of free and fair elections. These comments, made on October 29, 2024, in Delgur, Nanded, Maharashtra, were inflammatory and divisive, clearly aimed at inciting hostility and polarizing communities.

In her speech, Thakur urged voters, "Don't vote for a candidate who gives employment to Muslims!" and further stated, "India will never work on Sharia law," while also spreading unfounded fears about the Waqf Board. This rhetoric is not only inflammatory but also divisive, promoting religious intolerance and fear-mongering. By appealing to voters on religious lines and stoking fear about Muslims and their institutions, Thakur's speech creates a dangerous environment of communal polarization.

Such statements violate the MCC, which explicitly prohibits appeals based on religion, and contravene the Representation of the People Act (RP Act), which bars attempts to influence voters through communal or caste-based rhetoric. This kind of speech has no place in a democracy

committed to upholding equality, justice, and pluralism. We call for immediate action to address this breach and ensure accountability.

We would like to bring your attention to the instigating speech video that has surfaced from the Delgur, Nanded event, urging you to take stringent action against the perpetrator to ensure that these hate-driven speeches are not left unchecked, and the peace and harmony of our country is not affected direly.

#### **Extracts from the Speech:**

"Those who go against our religion and treat their neighbor as their 'Abbu' (father), giving them funds for their livelihood, Hindus, do not vote for them, remember this. There are certain constraints here, which is why I am not saying much, but Sharia law—this country follows Dr. Babasaheb Ambedkar, it follows the Constitution. Sharia law will not prevail here. If Sharia law is implemented, the 400 crore rupees worth of land in Delgur district will go to the Waqf Board. If that happens, what will happen? Do not vote based on caste, stay religiously dedicated, stay unified, and support your saints and holy men." **(Time Stamp: 04 – 00:46)**

This statement violates both the Model Code of Conduct (MCC) and the Representation of the People Act (RP Act), 1951 because it uses religion as a tool to influence voters, creating communal divides. Furthermore, it perpetuates Islamophobic views by portraying Muslims, Sharia law, and Muslim institutions like the Waqf Board as harmful to the interests of Hindus, stoking fear and mistrust. Such rhetoric not only undermines the principles of fair elections but also promotes division and hatred between communities.

Its is important to note that this statement is hateful because it incites religious division and fosters distrust between Hindus and Muslims. By labeling Muslims and their institutions, like the Waqf Board, as a threat to Hindu interests, it promotes the idea that Muslims are enemies of the majority community. The mention of Sharia law and fear of land being taken by Muslims serves to create unnecessary panic, portraying Muslims as dangerous or manipulative. This kind of rhetoric is Islamophobic as it wrongly paints an entire religious group as a threat based on baseless fears. It exploits religious identity for political gain, violates the secular values that are foundational to India's democracy. The appeal to voters based on religion, especially during elections, violates the **Model Code of Conduct (MCC) and Representation of the People Act (RP Act), 1951** which prohibit such communal divisiveness. This kind of speech deepens societal rifts, perpetuates hate, and undermines social harmony.

The video had been uploaded on Telegram by Hindutva Watch on November 16, 2024.

**The video of the speech has been downloaded by CJP and is marked and annexed hereto as Annexure-A.**

The video can be accessed through this link: <https://t.me/hindutvawatchin/825>

It is important to mentioned that these statements violate the Model Code of Conduct (MCC) and the Representation of the People Act, 1951, as they promote communal polarization and attempt to incite violence, hate, and religious animosity during an election period.

**Recent Directions of the Supreme Court on preventing/prosecuting hate speakers in Maharashtra.**

As you must know, the issue of rampant hate speech being delivered in Maharashtra and the inaction by law enforcement agencies has been highlighted before the Supreme Court multiple times since 2023. We would like to highlight that on February 3, 2023, the Supreme Court issued directions with respect to an event which was scheduled to be held in Mumbai on February 5, 2023 by the Sakal Hindu Samaj, another extremist fringe Hindutva group. The petitioner, Shaheen Abdullah, had contended that similar to its anti-Muslim speech during 'Hindu Jan Aakrosh Morcha' held in Mumbai on January 29, it can be apprehended that the same will be repeated during the February 5 meeting as well. The apex court had thus sought a video of the entire event to be scrutinised by the court at the next hearing. The court has also taken an undertaking from the government of Maharashtra that if permission for this event is granted “it will be subject to the condition that nobody will make any hate speech and in defiance of law or disturbing the public order.”

The court also outlined directives with respect to taking preventive action in such cases:

*“We also direct that the Officer(s), in case, permission is granted and, in case, the occasion arises for invoking the power under Section 151 of Cr.P.C. as aforesaid, it shall be the duty of the Officer(s) concerned to invoke the said power and to act as per the mandate of Section 151 of the Cr.P.C.”*

Even in 2024 itself, while on January 17, the Supreme Court bench of Justices Sanjiv Khanna and Dipankar Datta had expressed their anguish at the petitioners being forced to approach the Supreme Court multiple times against individuals and organisations even after there being guidelines for tacking and taking action against hate speeches. During the said hearing, the Supreme Court issued an order directing the District Magistrate and Superintendent of Police at Yavatmal, Maharashtra and Raipur, Chhattisgarh to take ‘appropriate steps’ to ensure that no incitement to violence or hate speech occurs at the rallies scheduled in the said districts in the coming few days of January. The said order was passed following the concerns raised by the petitioners over delivery of potential hate speeches at rallies planned by Hindu Janajagruti Samiti and Bharatiya Janata Party legislator T Raja Singh in the month of January. The court had outlined directives with respect to taking preventive action in such cases:

*“We would require the authorities to be conscious that no incitement to violence and hate speech are permissible. The concerned District Magistrates and Superintendent of Police of Yavatmal, Maharashtra and Raipur, Chhattisgarh will take necessary steps, as may be required. If necessary and deemed appropriate, police/ administration will install CCTV Cameras having recording facilities, so as to ensure identification of the perpetrators in the event of any violence/ hate speech.”*

### **Circulars issued by DGP Maharashtra in February 2023 and May 2023 urging strict action on Hate Speech**

In Circular No. DGP 20/ Petition No.940/ 2022/54.2023. issued by Dr Suhas Warke (Spl. Inspector General of Police (L&O) for The Director General of Police M.S., Mumbai), dated February 2, 2023, the Supreme Court order dated January 13, 2023 has been highlighted where the court had asked the police to ensure that as and when any speech which attracts offences such as

Sections 153A, 153B and 295A and 505 of the IPC take place, suo moto action is taken if no complaint is forthcoming.

The circular had directed all Unit Commanders to follow the Supreme Court order.

The Circular No. DGP/20/Petition No. 940-2022/54/2023 issued by Dr Suhas Warke (Spl. Inspector General of Police (L&O) for The Director General of Police M.S., Mumbai), dated April 3, 2023, entails “measures to be taken to maintain law and order due to agitations, morchas, speeches etc.”

It gives detailed instructions on what steps are to be taken when any morchas are to be held:

2. All the Unit Commanders should hold a meeting with the concerned organizers before such a morcha and fix the route of the morcha with appropriate terms and condition. A combined meeting of all social groups should be taken to convey clearly to all that they should maintain peace and keep law and order during the morcha. Preventive action against Anti-social elements should be taken. Those elements who help in maintaining peace and harmony should be encouraged. Audio Video recording of the morcha should be done. Police Head Quarters should ensure adequate supply of equipment's, like Lathi, Helmets, etc. to police men deployed for morcha bandobast. If any law-and-order situation arises, offences should be registered immediately and arrest should be made. Intelligence machinery should be activated to collect advance information about morcha, agitation and efforts should be made to pre-empt any communal incidents.

### **Action taken against hate speakers and offenders**

Sir, on April 28, 2023 the Supreme Court had held that all States/UTs, including Maharashtra, are enjoined and bound to take suo moto action to register FIR against hate speeches, without waiting for any formal complaint. In its order, the Supreme Court bench comprising Justices KM Joseph and BV Nagarathna had said the following:

*"Respondents (states) shall ensure that immediately, as and when any speech or any action takes place which attracts offences such as Section 153A, 153B, 295A and 506 of IPC etc, without any complaint being filed suo moto action be taken to register cases and proceed against the offenders in accordance with law. Respondents will issue directions to the subordinates so that appropriate action can be taken at the earliest. We further make it clear that such action be taken irrespective of the religion of the maker of the speech, so that the secular character of Bharat as envisaged by the Preamble is preserved."*

The apex court has, thus, again outlined already codified statutory duties of a police officer which makes it mandatory for them to take action under section 151 of CrPC in case there is apprehension of hate speech. Sir, given the well-orchestrated and numerous instances of hate speech and actual hate crimes being committed, the minority community in various parts of India already feels insecure and threatened. Furthermore, this was spoken at a public event and this speech has reached not only the audience at the event but also all those who may have seen these videos on their mobile phones, by the medium of social media. How large and wide the reach of social media can be, we are sure you must be aware. The consequences of such an inflammatory speech could have been worse.

Besides the Supreme Court we are sure that you are aware that the Bombay High Court is also currently hearing a petition on hate speeches by another habitual hate offender, Vikram Pawaskar. In the matter, the court has raised questions on the inaction of the police over the FIRs filed against Pawaskar for delivering violent anti-Muslim hate speeches.

### **Laws Violated by the Hate Speech**

#### **Under Bharatiya Nyaya Sanhita, 2023**

The inflammatory and divisive speech delivered by Harsha Thakur amounts to insightful, hate speech which is a punishable offence under the various sections of the Bharatiya Nyaya Sanhita (BNS):

**Section 196** - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

**Section 197 (1)** - Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise, —

*(a) makes or publishes any imputation that any class of persons 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;*

**Section 352** - Whoever intentionally insults in any manner, 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.

**Section 353** - (1) Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means—

*(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 tranquility; 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.*

#### **Violations under the Representation of People Act, 1951**

We believe that the content of the speech clearly violates provisions under the Representation of People Act, 1951, particularly Section 123(2), 123(3) and 123(3A):

1. Section 123(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 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right.*

This section prohibits any efforts to promote enmity or hatred among different groups of citizens based on religion, caste, community, or language for electoral gain.

1. Section 123(3): *The appeal by a candidate or his agent or by any other person with the consent of a candidate 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:*
2. Section 123 (3A): *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.**

This section explicitly bars any candidate or their agents from appealing to religious or communal sentiments to garner votes. The statement violates **Sections 123(2), 123(3), and 123(3A)** of the **Representation of People Act, 1951**.

- **Section 123(2)** prohibits attempts to interfere with the free exercise of electoral rights by promoting enmity or hatred among groups based on religion, caste, or community. The speech calls for Hindus to reject candidates who support Muslims, fostering religious division and influencing voters based on religious identity.
- **Section 123(3)** forbids appeals to voters on the basis of religion. By urging Hindus to vote against those who support Muslims and invoking Sharia law, the speaker makes a direct appeal to religious sentiments.
- **Section 123(3A)** bans promoting enmity or hatred between communities for electoral gain. The speech stokes fear and division by portraying Muslims as a threat, further deepening communal animosity.

### **Violation of the Model Code of Conduct (MCC)**

Given that the Model Code of Conduct (MCC) is now in effect, following the announcement of the election schedule, the hate speech also stands in violation of several key guidelines of the MCC. Specifically:

1. **Part I, General Conduct, Clause 1:** This clause clearly stipulates that political parties and candidates must refrain from any activities that may exacerbate existing divisions or foster mutual hatred among communities. her speech clearly violates Part I, General Conduct, Clause 1 of the Model Code of Conduct (MCC), which prohibits activities that exacerbate divisions or foster hatred among communities. The speaker's call for Hindus to avoid supporting candidates who help Muslims promotes religious division and encourages communal hostility, undermining national unity.



- 2. Part I, General Conduct, Clause 3:** As, 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 propoganda. It also breaches **Clause 3** of the MCC, which forbids appeals based on caste or communal sentiments. By invoking **Sharia law** as a threat and associating it with the **Waqf Board**, the speech encourages voters to base their decisions on **religion**. This communal appeal is a clear violation of the MCC's prohibition on using religion for electoral gain.

### **The current political climate and potential impact**

The atmosphere in Maharashtra ahead of the assembly elections is already highly charged, with political parties striving to consolidate their voter bases. The presence and activity of habitual hate offenders and right-wing groups raise serious concerns about the fairness and freedom of voter participation. Given the history of Harsha Thakur and her track record of promoting divisive agendas, there is a growing apprehension that fake narratives and communal agendas may undermine the electoral process in the state.

Maharashtra has a rich history of religious diversity, and this sort of messaging risks deepening communal divides at a time when political stability and social harmony are paramount. The possibility that such events and speeches could serve as a rallying cry for certain sections of society while alienating others is an issue that cannot be taken lightly. It is the duty of the Election Commission to ensure that the electoral process remains free from communal bias and that all voters, regardless of their religious or communal affiliations, can exercise their franchise in a secure and impartial environment.

Given the history of communal polarisation and violence during election periods, we are deeply concerned that ignoring of such communal events could have serious consequences for public order. Such messaging can quickly escalate tensions, potentially leading to violence and unrest, which would be devastating for both the electoral process and the people of Maharashtra.

### **Our prayer**

In light of these grave concerns, we respectfully request the following actions from the Maharashtra State Election Commission:

- 1. Call for proactive action**

We pray for the Commission to implement suo-motu actions against hate-speech offenders and to actively monitor events in line with Hon'ble Supreme Court's directions, ensuring that such incidents do not disrupt the electoral process.

- 2. Registration of FIR against habitual offenders**

We urged the immediate registration of an FIR against Harsha Thakur, a known habitual and repeated offender of hate speech. This action will serve as a deterrent and help prevent further occurrences of such harmful rhetoric.

3. **Stringent enforcement of the Model Code of Conduct:** We request that the Election Commission ensure the strict enforcement of the MCC, particularly with regard to preventing the use of communal appeals, inflammatory rhetoric, and any activity that may disturb public peace or target religious communities for political gain.

We trust that the Maharashtra State Election Commission will take immediate and decisive action to address this issue, thereby safeguarding the integrity of the electoral process and ensuring that the people of Maharashtra can vote in an environment free from fear and communal discord.

On April 28, 2023, the division bench of Justice KM Joseph and BV Nagarathna in *Ashwini Kumar Upadhyay v. Union of India [W.P. (C) No. 943 of 2021]*, directed all States/UTs to register Suo moto FIR against Hate Speech irrespective of religion. The court added that when any speech or any action takes place which attracts offences such as Section 153A, 153B and 295A and 505 of the IPC etc., suo moto action will be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law.

This foregoing highlights a clear violation of the Model Code of Conduct and the Representation of the People Act, as it underscores the need for political parties and candidates to avoid actions that may deepen existing divisions or foster animosity between communities.

Ma'am/Sir, do note that we are sending this complaint, by email and registered post, on which we urge you to register an FIR if one has not been filed yet.

Thanking you,

Yours sincerely,

Nandan Maluste, CJP President

Teesta Setalvad, CJP Secretary

### **Annexures**

Annexure A- Video uploaded on Telegram by Hindutva Watch on November 16, 2024, downloaded by CJP