

22<sup>nd</sup> April 2024

**Chief Election Commissioner and Election Commissioners,**

Election Commission of India,  
Nirvachan Sadan,  
New Delhi.

**Subject – Provocative statement- Intent to incite violence - Grave violation of IPC and Electoral Laws, MCC by Ms Mamta Banerjee**

Dear Sirs,

We wish to draw your attention to the volatile political atmosphere in West Bengal, where political clashes and violence against Hindus have become new normal. The State and its citizens have been witnessing rise in violence and arson, since, the invocation of Model Code of Conduct.

A few days back Ms. Mamata Banerjee, Chief Minister of West Bengal made a communal and **proactive hate speech in Cooch Behar** with an intent to incite violence against the Hindu community, on the **occasion of Ram Navami**. The primary purpose of instigating statement was to target the Hindu community. Her abusive and communal speeches are the reason behind the attack and violence against the Hindu community across West Bengal on the auspicious eve of Ram Navami.

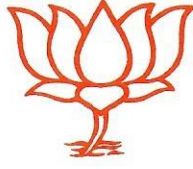
**Below are the incidents reported during Ram Navami;**

1. Rioting in Murshidabad, where the BJP workers and Hindus who were celebrating Ram Navami were brutally attacked and were forced to stop their 'Shobhayatra' and the devotees of Lord Ram suffered injuries.

*The video link of the attack is hereby produced as –*

<https://x.com/amitmalviya/status/1780591874627027390?s=46&t=VIIt7-O-CQ09Hvxw8ihE1ag>

2. Another incident at Medinipur, where the houses of Hindu families were burnt on Ram Navami and the BJP workers were threatened by the goons of TMC to not to celebrate the festival of Shri Ram and also, attacked the BJP Office at **Medinipur**. When the office bearers of BJP visited Igra Police station for lodging of an FIR, the police refused to register it.



*The link of the videos is given here:*

<https://twitter.com/amitmalviya/status/1780682535095165250?t=1GK-nyJAYEDMSAw2Plo7vO&s=19>

3. In another incident, Mamata Banerjee while addressing the rally at Paschim Shalibari Football Ground, **Moynaguri, Jalpaiguri** threatened the public stating "How dare these people are that they are screaming "Chor, Chor, Chor" seeing my car. The election is ahead else, I would have jerked their tongues out." Following is the threat she held out;

Bangla; "আরে এত বড় সাহস, আমার গাড়িকে দেখে বলছে 'চোর-চোর-চোর'। সুযোগ থাকলে জিভটা আমি কেটে নিতাম। ইলেকশন বলে কিছু বলিনি।"

**Hindi; "अरे उनमें इतनी हिम्मत कि ये मेरी गाड़ी को देखकर "चोर-चोर-चोर" चिल्ला रहे हैं। यदि मुझे अवसर मिलता, तो मैं उनकी जीभें काट लेती। चूँकि चुनाव का समय है इसलिए मैंने उन्हें छोड़ दिया।"**

English; "Look at the audacity of these people that they screaming "chor chor chor" seeing my car. Had I gotten an opportunity, I would have ripped off their tongues. Since it is the time of election, hence I left them."

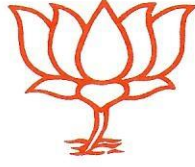
*The link of the video is given here:*

[https://x.com/amitmalviya/status/1780485567559643629?t=6E-7gX67Dz\\_8hAvjmx8bzig&s=08](https://x.com/amitmalviya/status/1780485567559643629?t=6E-7gX67Dz_8hAvjmx8bzig&s=08)

This is not the first time that Ms. Mamata Banerjee has violated various legal provisions under the Indian Penal Code, RPA 1951 or that of the Model Code of Conduct. The Election Commission vide order dated 12<sup>th</sup> April 2021 had indicted Ms Mamata Banerjee and passed the following order:

*"Whereas, the Commission has carefully considered the matter and is of the considered view that Ms. Mamata Banerjee, who also happens to be the Chief Minister of the State, has in violation of the provisions of Model Code of Conduct as well as Section 123(3) & (3A) of the Representation of the People Act, 1951 and Sections 186, 189 and 505 of Indian Penal Code, 1860 made highly insinuating and provocative remarks laden with serious potential of breakdown of law & order and thereby adversely affecting the election process.*





*Now, therefore, the Commission hereby condemns such statements portent with serious law & order problems across the State(s) and sternly warns Ms. Mamata Banerjee and advises her to desist from using such statements while making public utterances during the period when Model Code of Conduct is in force. The Commission also imposes a ban of twenty-four hours on Ms. Mamata Banerjee from campaigning in any manner from 8.00 pm of 12.4.2021 till 8.00 pm of 13.4.2021”*

**In her continuing design and pattern of electoral offences, she has once again violated the legal & MCC provisions as under;**

#### **Indian Penal Code**

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

**153B. Imputations, assertions prejudicial to national integration - (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,**

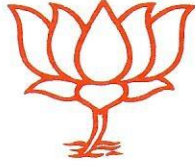
**(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or**

**(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, 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.**

**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.*

**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.**

**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.*

**505. Statements conducing to public mischief -**

**(2) Statements creating or promoting enmity, hatred or ill-will between classes -** *Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*

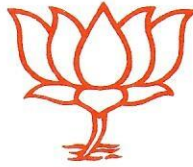
### **The Representation of the People Act, 1951**

**Section-125-Promoting enmity between classes in connection with election —** *Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.*

### **Model of Code of Conduct:**

Clause 4.3.2 states, “maintain high standard of election campaign.”





Clause 4.3.2(ii) states, “Election Commission, while expressing deep anguish on the progressively plummeting levels of political disclosures, **put the political parties on notice that repeated violation of Model Code may invite action against them.**”

Clause 4.4.2 (B) (iii) states, “No party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.”

Clause 4.4.2 (B) (v) states, “Other parties or their workers shall not be criticized based on unverified allegations or on distortions.”

**ECI letter No. 437/6/INST/2014-CC&BE, dated 26.04.2014 addressed to the Chief Electoral Officers of all States and UTs:**

*“They should not invoke, in any manner, religion or religious grounds in any manner, or any activities likely to create disharmony among different classes or groups of people, in their campaign. Such activities/ statements are prohibited being offences under various provisions of the law, like, section 125 of the Representation of the People Act, 1951 sections 153A, 153B, 171C, 295A, 505(2) of the Indian Penal Code and Religious Institutions (Prevention of Misuse) Act, 1988”*

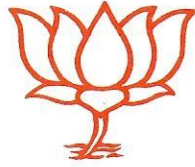
#### **Case Law**

- a. In Amish Devgan v. Union of India and Ors., the Hon’ble Supreme Court of India inter alia held that:**

*“the impact of hate speech depends on the person who has uttered the words and a speech by a person of influence, such as a top government functionary or political leader of following, therefore carries far more credibility and impact than a common person” wherein the Supreme Court had stated that “malicious intent can be derived from the context of the speech itself, the identity of the speaker, the targeted and non-targeted group, the context and circumstances when such speech was made and proximate nexus with the harm,” the petitioners contended that the speeches in the present case were made with the “clear intent to promote hatred and enmity against persons from a particular community” which had led to multiple incidents of “threats and violence”.*

- b. In Brinda Karat vs state of NCT Of Delhi, the Hon’ble Delhi High Court in the made some pertinent observations regarding hate speech inter alia held”**





*“hate speeches especially delivered by elected representatives, political and religious leaders based on religion, caste, region or ethnicity militate against the concept of fraternity, bulldoze the constitutional ethos, and violate articles 14, 15, 19, 21 read with article 38 of the Constitution and are in blatant derogation of the fundamental duties prescribed under article 51-A (a), (b), (c), (e), (f), (i), (j) of the Constitution and therefore warrant stringent peremptory action on the part of Central and State Governments”. The Court also noted that hateful speeches result in defamation and incite offences against a particular sect of religion and therefore, are a reasonable restriction on article 19 of the Indian Constitution.*

- c. *The Hon'ble Apex Court has also expressed its deep concern in the matter of mixing religion and caste with election campaign, vide its Order dated 02.01.2017 in Civil Appeal No. 37 of 1992 (Abhiram Singh Vs C.D. Commachen) and with civil appeal no. 8339 of 1995.*

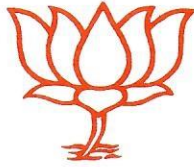
Unfortunately, Ms Mamta Banerjee and TMC have undermined the democratic principles enshrined in the constitution of India which is preventing the voters to exercise their franchise with their own free will. Moreover, the egregious criminal acts of active instigation by Ms Mamata Banerjee and its leaders have led to violence against the Hindus and BJP workers. The remarks made against the Hindus and their festivals are with a motive to flare up communal tensions for the sake of electoral gains by appeasing one particular community. The TMC and Ms Mamata Banerjee is pursuing a very dangerous pattern which will eventually destroy the social fabric of the West Bengal, because it has already become unsafe for BJP workers to live peacefully there.

Therefore, Election Commission is required to immediately take action. The commission is empowered under Article 324 of the Constitution of India to ensure that no one indulges in making false, unverified, baseless allegations to violate electoral laws. The constitutional authority of the Election Commission of India is sacrosanct and cannot be compromised by any party or any office bearer or constitutional position holder under any circumstances.

**From the submissions above and several other representations that we have made before the Commission in the past few weeks or over past elections, we see a clear sinister design, pattern and a template that Smt. Mamata Banerjee deploys to contest elections and that is;**

1. Smt. Mamata Banerjee has used religion to appeal to and appease her vote bank and has proactively promoted enmity between different groups on the basis of



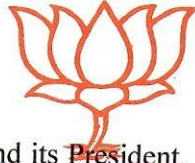


race, place of birth, religion and language. Her speeches under reference and her past record over the past elections bears testimony thereto.

2. In her desperation, she often lapses into opposing not the political party she is contesting against, but the very being of Bharat, the very country of which West Bengal is constituent and integral state. Such transgressions are prejudicial and harmful for national integration.
3. She has maliciously used violence as a potent tool to intimidate her opponents and members of a particular community. The Pre and Post Poll violence in almost all elections in the past, is part of a very sinister design, deployed skillfully by Smt Mamata Banerjee and her party, the TMC.
4. The strangest part the functioning of the state police in West Bengal is that it is the victims who are booked for violence, instead of the perpetrators. The latest incident of violence in Diamond Harbor PC on 9<sup>th</sup> April being a case in point, amongst several others brought to Commission's notice. Not just that in most cases, where TMC workers attack other party workers, the police, despite being present on the spot, does not step in to control violence.
5. Smt Mamata Banerjee and other leaders of TMC, have used fear or favours to drive the state police into absolute submission to her & TMC dictats. The state apparatus and state police have in fact, become co-conspirators in using Violence as a tool to intimidate opponents and the voters, to win elections, thereby subverting the essence of democracy and elections.
6. Election Commissions exhortations in the past elections on Smt. Mamata Banerjee have not been heeded to and she continues to commit the same electoral offences with complete disregard and impunity.

**Hence, we request the Commission to;**

1. Forbid Smt. Mamata Banerjee and TMC from using religion, language or place of birth to divide and incite voters.
2. Reprimand, censure and restrain Smt. Mamata Banerjee from using religion, language or place of birth to divide voters or incite one against the other.
3. Direct the registration of an FIR against Smt. Mamata Banerjee under the relevant and applicable provisions of law for imputations, assertions against National Integration, dividing the society along communal lines, criminal intimidation and inciting violence.



# भारतीय जनता पार्टी Bharatiya Janata Party

4. Issue strict warning to TMC and its President, Smt. Mamata Banerjee to ensure that no TMC functionary either advocates or indulges in physical or verbal violence or aggression.
5. The TMC and its President may be asked to furnish an undertaking to the ECI that such incidents shall never be repeated throughout this election and any deviation or breach of such assurance may attract stringent action by the ECI.
6. Appoint at least four more Zonal Police Observers, each looking after around 10 PC and each of the district Superintendent of Police reporting to such observers – thus ensuring a fair and violence free election in West Bengal.
7. Make provisions for such Police observers including the State special police observer to stay put in the state until 3 three months after the conclusion of elections, i.e upto end of August 2024 and announcement to this effect be made immediately.
8. Empower and invest special authority in ECI appointed General & Police Observers to take immediate and effective action against any such incidents of aggression, intimidation or verbal & physical violence.
9. Take effective steps to curb the violence and empower the central armed forces to take effective actions to bring the situation under control.
10. Take effective steps in enforcing and ensuring a fair level playing field and adherence to constitutional provisions.
11. Appoint Police Observer in every parliamentary constituency to ensure impartiality in maintaining law and order in the State during the election.

Regards .

Yours faithfully,

  
Tarun Chugh

  
Anil Baluni

  
Om Pathak