



URGENT

Date: November 14, 2024

To, Annexure A- Video uploaded on Telegram by Hindutva Watch on November 11, 2024, downloaded by CJP

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Subject: MCC Violation complaint against the Assam Chief Minister Himanta Biswa Sarma for inflammatory and communal statements targeting the Muslim Community in election campaign speech in Ranchi, Jharkhand on November 8, 2024

Respected Sirs,

We, Citizens for Justice and Peace (CJP), are filing this complaint against Assam Chief Minister and BJP's Jharkhand election in-charge, Himanta Biswa Sarma for again delivering a highly inflammatory and communal speech targeting the Muslim community during an election rally in Ranchi, Jharkhand, on November 8, 2024. In his speech, Sarma made baseless and provocative claims, stating that if the BJP-NDA does not win, "illegal infiltrators" would infiltrate homes, threaten safety, and seize land. He further stated that the growing Muslim population was part of a conspiracy to capture the Santhal Pargana region, labeling Muslims as "ghuspaihiye" (illegal infiltrators). Sarma also made derogatory remarks about political leaders, implying that support for Muslim leaders equates to betrayal of local Hindu and Adivasi interests.

The remarks made by Assam Chief Minister Himanta Biswa Sarma during his election campaign speech in Ranchi, Jharkhand, on November 8, 2024, are a clear violation of the Representation of People Act, 1951 (RPA) and the Model Code of Conduct (MCC). Such inflammatory rhetoric fosters communal tension, pitting one community against another by portraying a specific group as dangerous outsiders. These statements violate Section 123(3) and Section 123(3A) of the RPA, which prohibit promoting enmity between different classes of citizens and campaigning based on religious or communal grounds. Additionally, the MCC requires political leaders to refrain from using hate speech or language that can incite violence and disrupt communal harmony. By invoking fear and spreading religious polarization, Sarma's remarks undermine the integrity of the election

process and threaten peace and inclusivity, key principles that must be upheld in a democratic election.

Transcripts and context of the speech

"This election is a fight for the identity of Jharkhand. If the BJP or NDA does not win this time, the infiltrators will come inside our homes. Our wives, our daughters-in-law—no one will be safe. They will not leave anyone alone. They will take our land, piece by piece, and leave. What is the Congress party doing today? They are trying to create division among Hindus. They want to divide Hindus. They want to split the Hindu vote. That's why I will tell you, 'Stay united, and you will be safe.' If you stay united, you will be safe; otherwise, the infiltrators will take everything from us" **(Time Stamp: 00:01 – 01:04)**

The statement violates the Model Code of Conduct (MCC) and the Representation of the People Act (RP Act) by promoting divisive and inflammatory rhetoric. It targets a particular community (Muslims) by using the term "infiltrators," implying a threat to the safety and security of the majority community. The statement also incites fear and hatred, suggesting that the election outcome will lead to the loss of land and safety. This kind of speech manipulates voters through fear and communal polarization, violating the principles of fair conduct and non-discrimination outlined in the MCC and RP Act.

"Today, look! the Hindu population is decreasing, the Adivasi population is decreasing, and the Muslim population is increasing. I want to know, how did the Muslim population, which was only 9 percent, grow so much in just 30 years? Where did they come from? These are all infiltrators who have come and taken over Santhal Pargana." **(Time Stamp: 01:05 – 1:42)**

This remark falsely labels the Muslim population as "infiltrators," implying they are illegitimate and posing a threat to the local demographic and land. By associating demographic changes with a negative narrative, it fosters suspicion, fear, and hatred against Muslims, thus polarizing communities. Such statements promote anti-Muslim sentiment, violate the MCC's prohibition on spreading hate, and curtailing the RP Act's principle of ensuring a fair and peaceful election by encouraging hate on religious line.

"Our existence will be finished by these infiltrators. Hemant Sorenji, the court tells you to remove the infiltrators! But you say it's not your job, it's the central government's job. Hemant Sorenji, you are an Adivasi leader, you are a leader of Jharkhand—do you want to allow infiltrators to stay here?" **(Time Stamp: 01:49 – 02:19)**

"Why don't you say that you will work with Narendra Modi for the identity of Jharkhand and remove the infiltrators from Jharkhand? Why don't you say that? You don't say it. You don't love Samari Lal, Jitu Charan Ram, or Sanjay Seth. You love Alamgir Alam, you love Irfan Ansari. You have forgotten—you want to win on the votes of infiltrators. You want to become the Chief Minister. Brothers and sisters, let the BJP government form, and we will remove these infiltrators from Jharkhand one by one, through legal means. This is our promise." **(Time Stamp: 02:21-03:22)**

Additionally, this statement is inflammatory because it uses charged, divisive language to target Muslims, again labeling them as "infiltrators," are a threat to the identity and existence of

Jharkhand. Sarma stokes fear and suspicion by framing the issue as a battle to "remove" these so-called infiltrators, linking them to the political opposition. This creates an atmosphere of hate and distrust, portraying political figures as being complicit in "allowing" a perceived invasion. The rhetoric implies that the state's demographic composition is under siege, and positions the opposition as disloyal to the people of Jharkhand. By calling for the removal of these "infiltrators" through legal means, it fosters a sense of fear, fueling communal divisions. Such language is designed to incite anger, polarize communities, and can provoke violence, violating the principles of peaceful and fair electoral conduct outlined in the MCC and the RP Act, 1951.

The video had been uploaded on Telegram by Hindutva Watch on November 11, 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/782>

The harmful impact of divisive rhetoric on Jharkhand's social fabric and democratic values

The Assam CM's statement has a dangerous and harmful impact on the social fabric of Jharkhand and undermines the state's democratic values. By framing the election as a battle for the state's "identity" and referring to Muslims as "infiltrators," the Assam CM promotes divisive rhetoric that stokes communal fear and distrust. Such language suggests that the safety and land of the majority community (Hindus) are under threat from a minority group, fueling an "us vs. them" mentality. This rhetoric manipulates voters through fear, claiming that if the opposition wins, the state will be overrun by so-called infiltrators, with dire consequences for families and land ownership.

Additionally, by labeling demographic changes, especially the growth of the Muslim population, as a threat, the CM Sarma creates unnecessary divisions, falsely portraying a legitimate minority population as "illegitimate outsiders." This promotes anti-Muslim sentiment and encourages polarization. The speaker's repeated calls for the removal of these "infiltrators" through legal means further exacerbates communal tensions, making it difficult for communities to coexist peacefully.

Additionally, this divisive language undermines the democratic values of inclusivity, informed choice, and public welfare that elections are meant to uphold. Elections are intended to focus on policies and governance, not on inciting fear and division. By prioritising polarising rhetoric over development, politicians erode the foundation of democracy, weaken public trust, and leave behind social rifts that persist long after election season. This calculated diversion of discourse away from issues of governance and welfare risks causing lasting harm to Jharkhand's democratic health and social harmony.

Impact on the electoral environment

This divisive language significantly impacts voting behaviour by encouraging choices based on communal anxieties rather than on substantive issues of governance, development, or social welfare. In place of reasoned debates on pressing state concerns like economic growth, healthcare, and infrastructure, the political discourse shifts toward identity politics and exclusionary agendas. This kind of electoral mobilisation drives a wedge between communities, reducing elections to contests for communal dominance rather than forums for collective progress. Voters, rather than

evaluating candidates on their merits and policies, are swayed by alarmist narratives that exploit religious and cultural insecurities, diminishing the democratic integrity of the electoral process.

Furthermore, CM Sarma's approach erodes public trust in democratic institutions and processes. When high-ranking political leaders openly resort to communal narratives, it sets a troubling precedent that prioritises polarisation over unity, and antagonism over dialogue. This shift damages the foundation of a representative democracy, where diverse groups should be encouraged to coexist and engage constructively. By transforming elections into arenas of communal mobilisation rather than inclusive civic engagement, CM Sarma's rhetoric risks inciting social unrest, which could have lasting implications for peace and stability in Jharkhand.

Violations of the Model Code of Conduct (MCC)

The MCC, enforced by the Election Commission of India, aims to ensure free, fair, and peaceful elections by prohibiting divisive and inflammatory rhetoric. CM Sarma's statements contravene the following specific guidelines under the MCC

1. **Part I, General Conduct:** MCC mandates that political parties and candidates avoid any activities that aggravate existing differences, such as communal and caste tensions. CM Sarma's speeches, which repeatedly incite distrust and hostility towards Muslims, specifically flout this rule.
2. **Part V, Election Campaigning:** According to MCC, political parties should refrain from making appeals based on caste, religion, or communal sentiments. CM Sarma's statement violates Part V of the Model Code of Conduct (MCC), which prohibits appeals based on religion or communal sentiments. By linking the growth of the Muslim population to "infiltrators" and presenting it as a threat to local communities, he fosters division and uses religion to gain electoral support, undermining fair campaigning.

Legal violations under the Representation of People Act, 1951

The speeches by Assam Chief Minister, Himanta Biswa Sarma constitute clear violations under Section 123 of the Representation of People Act, 1951, specifically in the following sub-sections:

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 [with the consent of the candidate or his election agent], with the free exercise of any electoral right.*

This section prohibits any attempt to interfere with the free exercise of electoral rights. CM Sarma's statements intend to intimidate or coerce voters, particularly targeting Muslims by labelling them as "infiltrators" and undermining their safety and status in society.

2. 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*

This section explicitly prohibits appeals to caste or religion to garner votes. By invoking the false narrative of growing of Muslim population and decline in Hindu Population and framing the BJP

as a defender of Hindu identity, CM Sarma makes a direct religious appeal, positioning the party as the only choice for Hindu voters against perceived threats from the Muslim community.

3. 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 forbids any act that promotes feelings of enmity or hatred between different communities on religious grounds. CM Sarma's inflammatory claims about "Bangladeshi infiltrators" and their alleged impact on Jharkhand's demographics constitute a clear attempt to incite hatred towards Muslims, creating a hostile environment for the community in the region.

Laws violated by the hate speech under Bharatiya Nyaya Sanhita, 2023

The inflammatory and divisive speech delivered by Sarma 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 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.

Relevant jurisprudence:

In *Abhiram Singh v. C.D. Commachen* (Civil Appeal No. 37 of 1992; decided on January 2, 2017), a 7-judge bench decided whether the word 'his' under section 123(3) pertained to the identity of the candidate or his rival only (literal interpretation), or also extended to the identity of the voter/s (purposive interpretation). By a 4:3 margin, the court upheld the purposive interpretation of 'his' and thus proscribed any appeal pertaining to the identity of the candidate, his rival or the voter. This meant that electoral appeals to voters based on their religion is a "corrupt practice" which can result in declaring the election of the candidate as void and further disqualification for a period of six years.

Justice T.S. Thakur in his concurring judgment said,

"The State being secular in character will not identify itself with anyone of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature. The elections to the State legislature or to the Parliament or for that matter or any other body in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice. Suffice it to say that the Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State."

In *Ziyauddin Burhanuddin Bukhari vs Brijmohan Ramdass Mehra* (1975 SCR 453), the Supreme Court held thus,

"As already indicated by us, our democracy can only survive if those who aspire to become people's representatives and leaders understand the spirit of secular democracy. That spirit was characterised by Montesquieu long ago as one of "virtue". It implies, as the late Pandit Jawaharlal Nehru once said, "self-discipline". For such a spirit to prevail, candidates at elections have to try to persuade electors by showing them the light of reason and not by inflaming their blind and disruptive passions. Heresy hunting propaganda on professedly religious grounds directed against a candidate at an election may be permitted a theocratic state but not in a secular republic like ours. It is evident that, if such propaganda was permitted here, it would injure the interests of members of religious minority groups more than those of 6 others. It is forbidden in this country in order to preserve the spirit of equality, fraternity, and amity between rivals even during elections. Indeed, such prohibitions are necessary in the interests of elementary public peace and order."

It further held,

"Therefore, candidates at an election to a legislature, which is a part of "the State", cannot be allowed to tell electors that their rivals are unfit to act as their representatives on grounds of their religious professions or practices. To permit such propaganda would be not merely to permit undignified; personal attacks on candidates concerned but also to allow assaults on what sustains the basic structure of our Democratic State."

The above-mentioned are merely excerpts of some of the landmark judgements of the Supreme Court which run into pages and emphasise on upholding of secular character of the Constitution while holding that candidate for elections must at all costs avoid using any language that appeals to religion or that is against any religious community.

Prayer for immediate action

In light of the aforementioned violations and the harmful impact on the communal harmony and electoral integrity in Jharkhand, we respectfully request that the Election Commission consider the following specific actions:

1. **Immediate public censor:** Issue a public censure against Assam CM Himanta Biswa Sarma for delivering speeches in Panki, Sarath, and Jamshedpur that incite communal tensions and violate the Model Code of Conduct (MCC) and sections of the Representation of People Act, 1951. This censor should highlight the divisive nature of his statements and serve as a deterrent for future violations by other political figures.
2. **Prohibition on future campaigning in Jharkhand:** As a preventive measure, prohibit CM Sarma from participating in further campaigning activities within Jharkhand to ensure the preservation of communal harmony and a fair electoral environment.
3. **Take appropriate action:** Take appropriate punitive measures against the BJP for allowing its leaders to engage in corrupt practices under Section 123 of the RPA.
4. **Direction to political parties:** Issue a directive to the Bharatiya Janata Party (BJP) to refrain from using communal rhetoric and appeals in election campaigns in Jharkhand. This directive would remind all party candidates and leaders of their responsibility to uphold the MCC and respect the law.
5. **Monitoring of campaign speeches:** Deploy monitoring teams to review the speeches of all political candidates and campaigners in Jharkhand for the duration of the election period. This measure will ensure compliance with the MCC and safeguard against further hate speech or divisive language.

We trust that the Jharkhand 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 Jharkhand 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.

Thank you for your consideration of this urgent matter.

Yours sincerely,

Nandan Maluste, CJP President

Teesta Setalvad, CJP Secretary

Annexures



Annexure A- Video uploaded on Telegram by Hindutva Watch on November 11, 2024, downloaded by CJP