

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi 110001

No.437/6/COMP/ECI/LET/FUNCT/MCC/2024

Dated: 09.04.2024

NOTICE

Whereas, the Election Commission of India vide its Press Note No. ECI/PN/23/2024, dated 16th March, 2024 has announced General Election to the Lok Sabha and Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim and provisions of Model Code of Conduct for political parties and candidates have come into force from that very date; and

2. Whereas, Clause (2) of Part I 'General Conduct' of Model Code of Conduct for the Guidance of Political Parties and Candidates states that:

“Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties..”

3. Whereas, Para 3.8.2(ii) of Manual on Model Code of Conduct, 2019 provides that: -

“(a) 3.8.2 (ii): Nobody should indulge in any activities or make any statements that would amount to attack on personal life of any person or statements that may be malicious or offending decency and morality.”

4. Whereas, the Commission's advisory issued to the political parties on 1st March 2024 regarding plummeting levels of political discourse, inter-alia provides that: -

“9. iii. No aspect of the private life, not connected with the public activities of the leaders or workers of other parties is to be criticized. Low level personal attacks to insult the rivals shall not be made.”

5. Whereas, the Commission's above advisory further states that:

“9. v. The political parties and candidates to refrain from any deeds/action/utterances that may be construed as being repugnant to the honour and dignity of women.”

6. Your attention is also drawn to the various judicial pronouncements from time to time expressing the judiciary's concern over the low level of criticism, personal attacks and vilification of political rivals-

The Hon'ble Supreme Court of India in its judgment titled as "Subramaniam Swamy Vs. Union of India & Ors.", (2016)-7 SCC 221 observed that:

"If freedom of speech and expression is protected by Article 19(1)(a) of the Constitution, the right to reputation is also considered to be an inextricable part of the right to life protected by Article 21 and balancing these two rights is a constitutional necessity."

The Hon'ble Supreme Court in *Guruji Shirhari Baliram Jivatode v. Vithalrao* reported in 1969 1 SCC 82 held:

"The freedom of criticism may sometimes be misused, but the advantage gained from free criticism--though sometimes it may turn out to be irresponsible--in the long run outweighs the disadvantages. It is in the interests of democracy that such criticism should be allowed. However, democracy will be a farce if interested persons are allowed to freely indulge in character assassination during election. A political party may not be affected by passing winds but a campaign of slander against an individual is likely to create prejudice in the mind of the people against him. Section 123(4) is designed to achieve the dual purpose of protecting freedom of speech and prevention of malicious attack on the personal character and conduct of rivals."

7. Whereas, the Commission has received a complaint dated 5th April, 2024 (copy enclosed) wherein it is alleged that you have made sexist, vulgar and unethical public utterances against the dignity of BJP Member of Parliament, Smt. Hema Malini while campaigning in Haryana which are violative of the provisions and Model Code of Conduct. It has been further alleged that the following comments made by you have not only caused great insult to Smt. Hema Malini and disrespect to her position as a Member of Parliament but also heaped insult upon all women legislators and women in public life or otherwise:

"MLA/MP क्यों बनाते हैं? ताकि वो हमारी आवाज़ उठा सकें, हमारी बात मनवायें, इसीलिए बनाते होंगे। कोई हेमा मालिनी तो है नहीं, जो चाटने के लिए बनाते हैं?"


8. Whereas, on careful examination, the comments have been found to be highly undignified, vulgar and uncivilised and to be prima facie violative of the aforesaid provisions of the Model Code of Conduct and the Commission's above-referred advisory dated 1st March 2024; and

9. Now, therefore, you are hereby called upon to show cause by **17.00 hrs of 11th April, 2024** as to why appropriate action for violation of Model Code of Conduct should not be taken against you.

10. In the event of no response from your side within the stipulated time, it will be presumed that you have nothing to say in the matter and the Election Commission will take appropriate action or decision in the matter without making any further reference to you.

11. President of your Party is being separately reminded of Commissions advisory dated 1st March, 2024 and recent one dated 1st April, 2024.

By Order,


(Narendra N Butolia)
Sr. Principal Secretary

To,

Shri Randeep Singh Surjewala,
Member of Parliament,
General Secretary,
Indian National Congress,
24, Akbar Road, New Delhi



भारतीय जनता पार्टी
Bharatiya Janata Party

5th April 2024

To,
Chief Election Commissioner & Commissioners,
Election Commission of India,
Nirvachan Sadan, Ashok Road,
New Delhi 110001.

Subject: Complaint against Shri Randeep Singh Surjewala (Indian National Congress) for making vulgar, sexist and disparaging public utterances against Smt. Hema Malini.

Dear Sir/s,

We wish to bring to your notice the sexist, vulgar and unethical public utterances against the dignity of BJP Member of Parliament, Smt. Hema Malini, constituting grave violation of Model Code Of Conduct, as well as other laws of the land.

While campaigning in Haryana, Shri Randeep Singh Surjewala had made a sexist remark saying that:

“MLA/MP क्यों बनाते हैं? ताकि वो हमारी आवाज़ उठा सकें, हमारी बात मनवायें, इसीलिए बनाते होंगे कोई हेमा मालिनी तो है नहीं, जो चाटने के लिए बनाते हैं?”

Translation: Why make MLA/MP? So that they can raise our voice, get our demand met, that is why. Not like Hema Malini, made for licking her.

The link of the video is attached:

<https://t.co/sG6ZDmM1po>
(https://x.com/RanjeetBLive/status/1775556064563589210?t=gVBm_z0WwKEm1NkNAXiSCq&s=03)

Shri Randeep Surjewala has not only caused a grave insult to Smt. Hema Malini and disrespect to her position as an Member of Parliament; he, as a senior leader of Indian National Congress, has disgracefully heaped insult upon all women legislators and women in public life. In fact this shows his utter contempt for all the women playing sterling role in India's democracy, as well as its growth story in all sectors. Sexist remarks not only perpetuate harmful stereotypes, but also contribute to a culture of disrespect towards women in general.

Despite being an eminent legal professional himself, Shri Surjewala has deliberately and knowingly has violated the following provisions of the Laws, which is an indicative and not exhaustive list:-



भारतीय जनता पार्टी
Bharatiya Janata Party

Indian Penal Code:

294. Obscene acts and songs.—Whoever, to the annoyance of others,
(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,
shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both

499. Defamation.—

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

509. Word, gesture or act intended to insult the modesty of a woman.—

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, 1 [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

Representation of Peoples Act 1951

Section 123 (4) - The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

While this section may speak of 'candidates' of their agents, but by implication, it applies, on a larger canvas, to the political parties and their campaigners too.

Model Code of Conduct



(a) Clause 3.8.2 (ii) states, "Nobody should indulge in any activities or make any statements that would amount to attack on personal life of any person or statements that may be malicious or offending decency and morality"

Furthermore, the Manual on Model Code of Conduct underscores the prohibition against attacking an individual's personal life or making statements that may offend decency and morality. Surjewala's insinuation of derogatory motives among women politicians, including Smt. Hema Malini, can be viewed as an attack on her personal life, which is contrary to the principles outlined in the Manual.

Additionally, the Advisory to Political Parties and Candidates emphasizes refraining from criticism of private life aspects not connected with public activities. Surjewala's statement, by insinuating ulterior motives among women politicians, including Smt. Hema Malini, constitutes criticism of private life aspects unrelated to their public roles. This contravenes the Advisory's directive and contributes to a discourse that strays from issues relevant to governance and public policy.

Shri Surjewala's words are obscene words which falls under the ambit of section 294 Indian Penal Code which may annoy or offend those present, particularly women politicians like Smt. Hema Malini. The provision prescribes penalties of imprisonment for a term extending up to three months, or a fine, or both, for individuals found guilty of committing obscene acts or utterances in public places. Such remarks are considered obscene under the law, contribute to a hostile environment as they cause distress or discomfort to those targeted.

I Therefore, it is imperative that exemplary action be taken to address this egregious misconduct and uphold the dignity of the women politicians and democracy.

Hence, we request the Commission to;

1. To severely reprimand Shri Randeep Singh Surjewala and direct him to make an unconditional public apology to all women of India for his sexist public utterance.
2. Direct that Shri Randeep Singh Surjewala must not be allowed to make any public utterances though any medium during the period of present Lok Sabha elections
3. Order filing of FIR against Shri Randeep Surjewala under various provisions of Indian Penal Code, Representation of People Act 1951 and other applicable law

Yours faithfully,


Om Pathak