

**BEFORE THE ELECTION COMMISSION OF INDIA, NIRVACHAN SADAN,
ASHOKA ROAD , NEW DELHI**

**REPLY ON BEHALF OF SH. ARVIND
KEJRIWAL, TO THE SHOW CAUSE
NOTICE DATED 20.11.2013**

RESPECTFULLY SHOWETH:

PRELIMINARY SUBMISSIONS:

I) In the beginning we would like to draw your attention to a portion of the pamphlet, which is the essence of the said pamphlet.

a). Opening lines of the pamphlet say :

“हम आज की गन्दी राजनीती को खत्म करके एकभ्रष्टाचार मुक्त भारत का निर्माण करना चाहते हैं, जहाँ सभी धर्मों के लोग सुख - शांति और अमन-चैन के साथ रह सकें.”

b). On the first page of the pamphlet the idea and the vision of the party has been clarified, in these words

“ मुझे समझ नहीं आता कि हम सभी धर्मों के लोग एक साथ इकट्ठे क्यों नहीं हो जाते ? ये पार्टियां हमें बाँट कर राजनीति करती हैं। आम आदमी पार्टी इस गन्दी राजनीती को खत्म करना चाहती है। आम आदमी पार्टी इस देश में दंगे बंद करके अमन और चैन कायम करना चाहती है। आम आदमी पार्टी मुसलमानों को बराबर का हक

दिलाना चाहती है, उन्हें सुरक्षा देना चाहती है, और उनके मन से दहशत दूर करना चाहती है ”

- c) In the concluding para of the pamphlet the intention of the party is made clear, in the words below:

a. " लेकिन अगर आम आदमी पार्टी की सरकार बनती है तो देश से भ्रष्टाचार दूर करने और सभी धर्मों के बीच अमन -चैन कायम करने का एक ईमानदार प्रयास किया जायेगा। "

- II) It is submitted that here is fundamental distinction between addressing the secular concerns of a community and appealing to the communal feelings. Addressing the members of a class or community does not by itself amount to appealing on the basis of class or communal considerations. The real point here is not who is being addressed but what is the nature of appeal. The Constitution and the practice of Indian state clearly permit addressing the secular, this-worldly, concerns of members of one particular community or class of citizens. What is not permissible is invoking religious or caste solidarity or enmity. That is why an appeal like “ xxxx religion is in danger, and it is the religious duty of those who believe in xyz religion to vote for party abc” are not permissible. The pamphlet in question clearly belongs to the first category that addresses the secular concerns of a community. In this pamphlet issues of a community were addressed but no appeal was made to communal feelings. There has been a long and healthy tradition of political debates on whether the governments have adequately addressed the needs and demands of various classes of citizens, especially the disadvantaged groups such as women, disabled, the poor, backward castes, SC, ST and religious minorities. It would be travesty of justice if all such discussions were banned on the ground that these involve an appeal to communal feelings. Expression of demands for justice to such sections by any party or group is also politics to strengthen democracy. In parliamentary democracy parties are supposed to express their views on various issues related to different communities, rather it

is their solemn democratic obligation to put forward their views on different issues concerned to different sections. This is very different from appeal to any section of citizens or to any community to unite to fight other community. Aam Aadami Party has addressed the concern of different communities and social groups and has issued letters and pamphlet highlighting understanding of their current situation and presenting its policies and programme for their specific benefits. This view of the party is based on reports given by committees and commission appointed by Government of India.

It is submitted that Pamphlet issued in the name of Muslims brothers and sisters is not an appeal to communal feelings in any manner. It addresses the secular, this-worldly and everyday concerns of one section of citizens, namely the Muslims. It draws attention to their socio, political and economic disadvantage as a section of citizen. This assessment is based on the various committees and commission constituted by the Government of India. Detail reference of Sachar Committee and Rangnath Commission is being given in coming paras of replies. The said pamphlet appeal to their sense of entitlement as a citizen of a democratic country and not to their sense of religious brotherhood or religious identity.

- iii) **The show cause notice refers to sub para (3) of Para I of the “Model Code of Conduct”, which the undersigned has allegedly violated. It would appropriate to reproduce the relevant extract of the Model Code of Conduct applicable herein:**

“MODEL CODE OF CONDUCT FOR THE GUIDANCE OF POLITICAL PARTIES AND CANDIDATES

(3) 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 propaganda.”

- iv) This provision says that promoting or attempting to promote feelings of enmity or hatred between different classes will be punishable. This provision does not say that mere addressing a class of citizens is punishable. Pamphlet was addressed to a class of citizens but with an intentions to promote harmony between classes by promising justice to a class, which is being deprived. If sender/circulator incites a class of citizens against other class or classes, it comes within preview of this provision of law. But in the present case the letter was circulated and addressed to Muslim brothers and sisters and makes promises of fair and good governance and to generate harmony and peace among followers of all religions.
- v) If any such effort to provide justice to or communicate with any class of citizens is considered to be promoting enmity among classes of citizens then constitution of Sachar Committee and formation of Minority Commissions or Commission for Scheduled Castes or Commission for Scheduled Tribes will also amount to promoting hatred among classes.
- vi) Aam Aadmi party does not believe in politics on the basis of caste or religion, rather it believes in politics of justice, peace and harmony among different sections of society. There is no intention to violate model code of conduct. It is submitted that Aam Aadmi Party did not violate Model Code of Conduct, by issuing above said pamphlet. **As is apparent from the bare perusal of the said pamphlet, there has been no attempt to promote enmity or hatred between different classes of citizens of India, and there has only been a genuine attempt to address the various concerns of one of the many disadvantaged communities.**

PARAWISE REPLY

- 1.** That the contents of **para no. 1** of the petition are matter of record and need no reply.
- 2.** That the contents of **para no. 2** of the petition are matter of record and need no reply.

3. That the contents of **para no. 3** of the petition are matter of record and need no reply.
4. **Para no. 4:** The fact that the Hon'ble Election Commission of India has received a complaint from some Sh. Harish Khurana is a matter of record and need no reply.
5. The show cause notice also refers to sub para (3) of Para I of the "Model Code of Conduct", which the undersigned has allegedly violated. It would appropriate to reproduce the relevant extract of the Model Code of Conduct applicable herein:

***"MODEL CODE OF CONDUCT FOR THE GUIDANCE OF
POLITICAL PARTIES AND CANDIDATES***

(3) 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 propaganda."

6. That as mentioned above, AAP has committed no act, overt or covert, intentionally or unintentionally, *to aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic*. In fact, it has been a constant endeavour of AAP to stress and work towards peace, harmony, cooperation and reconciliation amongst various classes and communities. There has been no attempt whatsoever, to create any ill will or mutual hatred. In fact, AAP's attempt of addressing the problems faced by and concerns of various communities and classes is also an endeavour towards creating a happier, cohesive and peaceful polity, where no section feels unduly deprived.
7. Furthermore, there has been no violation of the *Model Code of Conduct*, as AAP confined its criticisms to the programmes, approach and actions of the main opposition parties, namely the Bhartiya Janta Party and the Indian National Congress, qua the Muslim community, and in general, given that

both the said political parties have been in power in Delhi as well as at the Centre.

8. It is also pertinent to mention there was no appeal to communal feelings in order to garner votes, but only an attempt to address the specific and general issues pertaining to a community. In fact, AAP clearly positions itself as an honest and secular alternative, and does not ask for votes on the basis of any particular religion. There is also no reference to the religion of the party's candidates in order to garner votes. AAP's endeavour was just to contrast its approach, thinking and position, vis-à-vis other parties.

9. It is submitted in regard of Para 5 of the show cause notice: That it is the undersigned's humble submission that the prima facie view taken by the Hon'ble Election Commission that by distributing the aforesaid pamphlet the undersigned has violated the provisions of the Model Code of Conduct [sub para (3) of Para 1 of the MCC] is erroneous, wrong and not the correct interpretation of facts. The reasons for the same are as follows:

a. It is categorical understanding of the party that till now no political party in government has cared enough for the deprived sections of Indian society, including the Muslim Community and that the Aam Aadmi Party will take all possible steps to ensure their empowerment and welfare and shall endeavour to take all care of their concerns. This is because AAP believes that a corruption free India shall be a critical step towards empowerment of all. In fact the pamphlet it has been stated in the beginning:

“हम आज की गन्दी राजनीती को खत्म करके एकभ्रष्टाचार मुक्त

भारत का निर्माण करना चाहते हैं, जहाँ सभी धर्मों के लोग सुख -

शांति और अमन-चैन के साथ रह सकें"

b. The allegation made are categorically denied and is false, baseless and untrue. They is also a misinterpretation of the statements made in the said pamphlet. The intent of the pamphlet was to address some of the common issues being faced by a community of Indian citizens, held

common by the religion they profess. The issues raised in the said pamphlet of are great concern to the said community and thus required to be directly addressed by the party. It is pertinent to note that given that the AAP is entering the electoral fray for the first time, the party has sought to address issues concerning the common citizens at an individual, group, locality, constituency and community level, as a part of its philosophy of democratic decentralisation and the said pamphlet was part of the exercise.

- c.** Thus, it is relevant to mention here that Party had written letters to different sections of the society, including to those who have been empirically shown to be on the margins of society, because previous governments failed to ensure adequate and sufficient policies for their empowerment. This also includes the muslim community, which has been systematically deprived, as documented by Government of India's Sachar Commission Report.
- d.** AAP is fighting election to ensure care all those who have been deprived in the political system because of socio-economic reasons as a result of which they do not have their due voice in the electoral process. There are also some sections of society which have become the victims of vote bank politics and are being deprived of justice and rights as Indian citizens.
- e.** AAP is not in politics to be in power but the party is in politics to give power to the ordinary people who are being deprived of the same. It is fact that some sections of the society are still on margins and are entitled to get justice. AAP is committed to take care of all such sections including Muslims. As stated above these letters were not written to various sections with the intention to create or incite communal feelings but in search of possibilities of communal harmony, peace and reconciliation which is possible through justice.
- f.** Letters written to other sections are annexed herewith as **ANNEXURE A (COLLY.)**

g. As stated above this letter was written with an idea to express concern for a segment which has been said to be relatively under privileged as per Government of India reports. This is not being stated just to garner votes of a community or inflame their communal feelings, rather it is based on facts. The Government of India appointed *Sachar Committee* report of 2006 was the first of its kind with reference to the Muslim Community. It revealed the extreme deprivation of Muslims in India and the low status the community has been relegated to. A report by the *Justice Ranganath Mishra Commission*, which came out in 2007, further emphasized the deplorable condition of Muslims on socio-economic indicators and strengthened the findings, arguments and recommendations of the Sachar Committee report. These statistics show that Muslims have been denied equal participation in the development process (evident from poverty and discrimination indicators), have been denied fair and equal access to justice in the case of both targeted violence during communal riots as well as day-to-day identity-based discriminatory practices in accessing rights and entitlements.

h. The National Commission for Minorities compiled the observations & recommendations made by Sachar Committee & Ranganath Mishra Commission¹. as under:

1. ***** The “non-implementation” of recommendations of several earlier*
2. *Commissions and Committees have made the Muslim community wary of any new initiative. “Tired of presenting Memorandums”, many wanted results. There was a sense of despair and suspension as well.*
3. ***** While setting up of educational institutions under Article 30 of the*
4. *Constitution is a right of Minorities, it was not meant to become their only option available for them.*

¹ The Compilation is available here- <http://ncm.nic.in/pdf/compilation.pdf>

5. **** *A community specific factor for low educational achievement is that Muslims do not see education as necessarily translating into formal employment. The low representation of Muslims in public or private sector employment and the perception of discrimination in securing salaries jobs make them attach less importance to formal 'secular' education in comparison to other SRCs.*
6. **** *Schools beyond the primary level are few in Muslim localities. Exclusive girls' schools are fewer, and are usually at a distance from Muslim localities.*
7. **** *The "communal" content of school textbooks, as well as, the school ethos has been a major cause for concern for Muslims in some States.*
8. **** *Many a time Madarsas are the only educational option available to Muslim children, especially in areas where no schools have reached to the Muslim masses. Very often children go to the Madarsas not out of choice but due to non-availability and inaccessibility of other schools, and a near absence of education in their mother tongue.*
9. **** *Modernizing Madarsas by the government has been a very contentious issue with many differing view-points amongst the Community. While there is a general acceptance of an urgent need for the modernization of Madarsas, the modernization scheme of the government have not really provided much relief to the community as far as quality education is concerned.*
10. **** *The identification of Urdu as a language of Muslims in independent India and its politicization has ensured that its development is relegated to the background. An important area where this neglect of Urdu is visible is in*

schooling and education. Urdu medium schools are in a dismal state.

11. **** *Students of Urdu medium schools have to join regular school without going through a pre-school education experience because of the lack of anganwadis using Urdu language. This affects their preparedness for schooling.*
12. **** *The resistance to recognize Minority Education Institutions by State*
13. *Governments have been a matter of serious concern with the Community in several States. This is also a clear violation of Article 30 of the Indian Constitution. Several people allege that they faced severe difficulties in setting up minority education institutions.*
14. **** *In the dismal scenario of girls' education, there is one big ray of hope; while the education system appears to have given up on Muslim girls, the girls themselves have not given up on education.*

i. It would be pertinent to refer to the main observations made by Justice Ranganath Mishra Commission:-

- (i) *4. Education is the key to development. It is the most important requirement for improving the socio-economic status of the backward sections among religious minorities. The literacy and educational levels among religious minorities vary considerably from one community to the other and from one area to the other. While educational level of Jains, Christians and Parsis is higher, that of Muslims and Buddhists is low and is next to SC/ST. Census Statistics on the status of religious minorities reveals that the educational status of Muslims is relatively low. However, disaggregated data presents a picture of unevenness in the educational status of Muslims and Buddhists cutting across the States. The States of*

Bihar, Madhya Pradesh, Rajasthan and UP, which account for almost 65 percent of the total population of Muslims in the country, present a dismal picture in terms of social indicators of development for the general population also. In terms of educational, social and economic status, in the under-developed or backward States, the poor and socially and economically backward of each community, including the Muslims, are equal victims and suffer equally from disabilities or deprivation. There is, therefore, an urgent need for taking a comprehensive view of socially and economically backward of all communities in an integrated manner and not deal with the issue of educational backward in a segregated manner. The need for expanding coverage and providing quality education, focusing on girls' education and strengthening vocational education is vital for educational development of weaker sections among all backward classes, SCs and STs and Minorities.

- (ii) 11. *Shortfalls and lacunae in the existing policies and programmes, and the anomalies that exist and have come to light in implementation. It has also been highlighted that these have resulted in marginalizing the socially and economically backward of all categories since the benefits have gone to the upper crust within the groups of backwards. Changes in the existing criterion for identifying the eligible out of the backwards is necessary. In a democracy, decentralization of administrative and financial powers and authority is important. This is especially vital in a vast country like ours which has variations in terrain, population distribution, culture, tradition, state of development and needs – area and people-wise. In order to ensure that the socially and economically backward amongst all categories including*

the Minorities are able to take benefits from the schemes and programmes, powers must be vested at a level from where the access to and for each individual / household of socially and economically backward is possible. In order to establish the efficacy of administration, it has to be ensured that the constitutional provision of equal treatment to socially and economically backwards irrespective of caste, creed is followed in word and spirit for ensuring the flow of benefits to the Socially and Economically Backward families.

- j.** Aam Aadmi Party stated in the pamphlet that the party feels concerned about the safety, prosperity and well being of all sections of society. AAP is of the view that citizens of India should be treated as equal and in our democracy all have a right to live freely without any fear.
- k.** A High level committee to prepare a report on the social, economic and education of the Muslim Community of India was constituted by the Government of India by issuing notification dated 9th March 2005. This committee presented its report on 17th November 2006. This is being known as Sachar Committee (Justice Rajinder Sachar was Chairman of the committee).

This committee observed in its report in chapter two as under :

Findings of Sachar Committee (Public Perceptions and Perspectives of / about Muslims):-

2. Identity Related Concerns

Apparently, the social, cultural and public interactive spaces in India can be very daunting for the Indian Muslims. The general sense of unease among Muslims can be seen on a number of fronts — in the relationships that exist between the Muslims and other Socio- Religious Communities (SRCs), as well as, in the variations in understanding and interpreting them. One aspect of this understanding relates to patriotism. They carry a double burden of being labelled as “anti-national” and as being “appeased” at the same time. While Muslims need to prove on a daily basis that they are not “anti-national” and “terrorists”, it is not recognized that the alleged “appeasement” has not resulted in the desired level of socio-economic development of the Community. In general, Muslims complained that they are constantly looked upon with a great degree of suspicion not only by certain sections of society but also by public institutions and governance structures. This has a depressing effect on their psyche. Many also felt that the media tends to perpetuate this stereotypical image of the Muslims.

2.1 Identity — Visibility in Public Spaces

One of the major issues around the question of identity for Indian Muslims is about being identified as ‘a Muslim’ in public spaces. Being identified as a Muslim is considered to be problematic for many. Markers of Muslim Identity — the burqa, the purdah, the beard and the topi — while adding to the distinctiveness of Indian Muslims have been a cause of concern for them in the public realm. These markers have very often been a target for ridiculing the community as well as of looking upon them with suspicion. Muslim men donning a beard and a topi are often picked up for interrogation from public spaces like parks, railway stations and markets. Some women who interacted with the Committee informed how in the corporate offices hijab wearing Muslim women were finding it increasingly difficult to

find jobs. Muslim women in burqa complain of impolite treatment in the market, in hospitals, in schools, in accessing public facilities such as public transport and so on.

2.2 Identity — Housing and Education

Muslim identity affects everyday living in a variety of ways that ranges from being unable to rent/buy a house to accessing good schools for their children. Buying or renting property in localities of one's choice is becoming increasingly difficult for Muslims. Apart from the reluctance of owners to rent/sell property to Muslims, several housing societies in “non-Muslim” localities ‘dissuade’ Muslims from locating there.

Muslim identity also comes in the way of admitting their children to good educational institutions.³ This has given rise to a number of Muslim denominational schools, which according to some, are the only source of good education for Muslims today. A large majority of Muslims would apparently prefer to send their children to ‘regular mainstream’ schools. It was argued that while setting up of denominational institutions is a right of minorities under the Constitution, it was not meant to become their only option.

2.3 Identity and Gender

Many suggested that gender issues in the Community are also given a Muslim slant. To the exclusion of all other aspects of a Muslim woman's life (income, jobs, education, security and even caloric intake), the rules of marriage, right to divorce and maintenance have become the benchmarks of a gender-just existence. The obsessive focus on select cases of Muslim women passionately discussed in the media results in identifying the Muslim religion as the sole locus of gender injustice in the Community. Consequently, the civil society and the State locate Muslim women's deprivation not in terms of the ‘objective’

reality of societal discrimination and faulty development policies, but in the religious-community space. This allows the State to shift the blame to the Community and to absolve itself of neglect.

Women in general are the torchbearers of community identity. So, when community identity is seen to be under siege, it naturally affects women in dramatic ways. Women, sometimes of their own volition, sometimes because of community pressure, adopt visible markers of community identity on their person and in their behaviour. Their lives, morality, and movement in public spaces are under constant scrutiny and control. A gender-based fear of the 'public', experienced to some degree by all women, is magnified manifold in the case of Muslim women. The lines between 'safe' and 'unsafe spaces' become rigid. The community and its women withdraw into the safety of familiar orthodoxies, reluctant to participate in the project of modernity, which threatens to blur community boundaries. It was said that for large number of Muslim women in India today, the only 'safe' space (both in terms of physical protection and in terms of protection of identity) is within the boundaries of home and community. Everything beyond the walls of the ghetto is seen as unsafe and hostile — markets, roads, lanes and public transport, schools and hospitals, police stations and government offices. Interestingly though, in many meetings women participants emphasized that given appropriate opportunities to work and get educated, they would 'manage' all these issues.

The 'identity crisis' combined with the apparent lack of commitment on the part of the Government often results in a perverse response even to well intended programmes. The fear of the Community with respect to accessing health programmes of the State is a case in point. The poor rate of success of the polio

vaccination drive in Muslim majority areas is one such response arising out of the fear of an alleged plot to reduce the Muslim birth rate.

3. Security Related Concerns

Lack of a sense of security and a discriminatory attitude towards Muslims is felt widely. However, there is considerable variation in the gravity, intensity and magnitude of such a feeling across various states. Communal tension or any untoward incident in any part of the country is enough to make Muslims fear for their safety and security. The lackadaisical attitude of the government and the political mileage sought whenever communal riots occur has been very painful for the Community. The governmental inaction in bringing to book the perpetrators of communal violence has been a sore point. On the other hand, the police, along with the media, overplay the involvement of Muslims in violent activities and underplay the involvement of other groups or organizations. There is an underlying feeling of injustice in the context of compensation to riot victims. It was also suggested that the amount of compensation fixed by the government post riots has been discriminatory against the Muslims. Besides, there is also delay in giving compensation to the victims, especially when they happen to be Muslims. Public Perceptions and Perspectives

3.1 Attitude of the Police and Law Enforcing Agencies

Concern was expressed over police highhandedness in dealing with Muslims. Muslims live with an inferiority complex as “every bearded man is considered an ISI agent”; “whenever any incident occurs Muslim boys are picked up by the police” and fake encounters are common. In fact, people argued that police presence in Muslim localities is more common than the presence of schools, industry,

public hospitals and banks. Security personnel enter Muslim houses on the slightest pretext. The plight of Muslims living in border areas is even worse as they are treated as 'foreigners' and are subjected to harassment by the police and administration.

Violent communal conflicts, especially like some recent ones in a state, in which there is large-scale targeted sexual violence against Muslim women has a spread affect even in regions of the country not directly affected by the violence. There is immense fear, a feeling of vulnerability, and consequently a visible impact on mobility and education, especially of girls. The lack of adequate Muslim presence in the police force accentuates this problem in almost all Indian states as it heightens the perceived sense of insecurity, especially in a communally sensitive situation.

3.2 Ghettoisation and Shrinking of Common Spaces

Fearing for their security, Muslims are increasingly resorting to living in ghettos across the country. This is more pronounced in communally sensitive towns and cities. However, while living in ghettos seems to be giving them a sense of security because of their numerical strength, it has not been to the advantage of the Community. It was suggested that Muslims living together in concentrated pockets (both because of historical reasons and a deepening sense of insecurity) has made them easy targets for neglect by municipal and government authorities. Water, sanitation, electricity, schools, public health facilities, banking facilities, anganwadis, ration shops, roads, and transport facilities — are all in short supply in these areas. In the context of increasing ghettoisation, the absence of these services impacts Muslim women the most because they are reluctant to venture beyond the confines of 'safe' neighborhoods to access these facilities from elsewhere. Increasing ghettoisation of the Community implies a shrinking space for it in the public sphere; an unhealthy trend that is gaining ground. Social boycott of Muslims in certain parts of the

country has forced Muslims to migrate from places where they lived for centuries; this has affected their employability and means of earning a livelihood. Ghettoisation, therefore, has multiple adverse effects: inadequacy of infrastructural facilities, shrinking common spaces where different SRCs can interact and reduction in livelihood options.

The processes of ghettoisation have resulted in another somewhat unusual side effect or an externality in states that have seen severe communal conflicts. 'Insecure' Muslims typically wish to move to Muslim concentration areas. A significant increase in demand for property in these areas has led to more than average rise in property prices. 'Distress' sales mean that the 'migrating' Muslims do not get the full value of their old properties but have to pay higher prices for new ones. It was suggested that often restrictions on property transfers in the 'disturbed areas', instead of restricting 'distress or forced' sales, has created opportunities for illegal transfers.

116. Share of Muslims in security agencies is around 4%.

The report of Sachar Committee is also available online.²

- I. It is pertinent to mention that even the Union Home Minister had written to Chief Ministers of all States stating that “*The Central government has received several representations alleging harassment of innocent Muslim youth by law enforcement agencies...Some of the minority youth have started feeling that they are deliberately targeted and deprived [of] their rights. The government has to ensure that no***

² (i) Sachar Committee report is accessible at
http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf

*innocent person is subjected to undue harassment”*³ This shows the seriousness, importance and pervasiveness of the issue which was highlighted in said pamphlet by AAP.

- m.** It is also pertinent to mention some of reports wherein the issues of wrongful and malicious detention youth from the muslim community all over the country have been highlighted:

In its report titled “*Report on Framing of Muslim Youth in Karnataka*”, the Jamia Teachers Solidarity Association⁴ stated that:

In conclusion, we wish to end by quoting the comments of three judges (cited in the JTSA report) which are self-explanatory.

“Since there is no evidence against the accused in the instance case, as admitted by the prosecution itself, the accused is released in the instant case, henceforth. However, I cannot restrain myself from observing that it is a sorry state of affairs that a citizen of India, since I can no longer refer to him as an accused, has been kept in custody for 90 long days, which for an innocent person can actually be an “entire lifetime.” The meaning of the concept of “Liberty”, which has been enshrined as a basic postulate of our Constitution, really needs to be understood by the police so that “deprivation of a person’s Liberty” does not continue to be justified under the garb of “pending investigation”.

*—Justice Seema Maini, ADJ/CMM-Delhi in
State vs. Tariq Ahmad Dar on 24.1.2007*

³ ‘States asked to ensure no Muslim is wrongly framed in terror cases’, *The Hindu*, September 30, 2013.

Available at <http://www.thehindu.com/news/national/states-asked-to-ensure-no-muslim-is-wrongly-framed-in-terror-cases/article5185640.ece>

⁴ Report on Framing of Muslim Youth in Karnataka, *Jamia Teachers Solidarity Association*. Available at http://document.teacherssolidarity.org/Framing_of_Muslim_Youth_%E2%80%94%20A_Report_from_Karnataka.pdf

Just because a handful of police officials of Special Cell of Delhi Police have given a tag of LeT terrorists to two citizens of our country, this does not become a conclusive proof of their being terrorists. No doubt that LeT has been notified as a terrorist organization which has an aim of destabilising our country, but when a citizen of our country is accused of being a member of such a terrorist organization, then the agency making such an accusation is supposed to have substantive pieces of evidence, howsoever ill gotten those evidences may be.

—Justice Surinder Rathi. Addl. Sessions Judge, Tis Hazari Courts in State vs. Imran Ahmed and Anwar on 26.4.2011

All these police officers have acted in advancement of their self interest in total disregard to the demands of their solemn duty. These four police officers whose duty was to protect and safeguard the citizens have turned persecutors and tormentors... These four police officers have brought utter shame and disrepute to the whole Delhi police force. There cannot be any more serious or grave crime than a police officer framing an innocent citizen in a false criminal case. Such tendency in the police officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand.

—Justice Virender Bhat, Addl. Sessions Judge, Dwarka Courts, News Delhi in State vs. Saqib Rehman on 2.2.2011

Quotes within box, here (from page 102.148 and 152,)”

- n.** It would also be pertinent to mention that there have been several other reports which highlight and give credence to the issues raised by AAP in the said pamphlet.⁵
- o.** These observations of the committee make it clear that the party statement in the pamphlet are not based on surmises or conjectures but on credible reports, such as the reports of the Government of India. It is on the basis of reports such as the Sachar Committee's report that AAP has mentioned the condition of the Muslim community as a whole, in its letter circulated addressing the community's concerns. The letter was addressed to brothers and sisters who profess the Muslim faith, give the huge amount of empirical evidence that was relied on by the AAP which points to their systematic deprivation and backwardness. The pamphlet was issued to make an appeal and to give a call to start a new kind of politics wherein the goal is communal harmony, peace and progress of all sections of society, which cannot be possible without addressing the specific issues of each community.
- p.** It is pertinent to mention that the said pamphlet addresses not just issues of specific concern to a particular community i.e. the Muslim community in this case, but also deals with the stand of AAP regarding several general issues. The pamphlet talks of the issues of electricity, water, healthcare and corruption etc. which are related to everyone at large. AAP believes that if any community/class/group of Indian citizens, bound together by a common thread, has specific issues that need to be addressed, then as a secular and responsible political party, the same ought to be done in a fair manner. Thus, AAP ensured that specific issues are raised and addressed in a responsible and mature

⁵Framed, Damned, Acquitted : Dossiers of a 'Very' Special Cell—A JTSA Report, Available at http://document.teacherssolidarity.org/JTSA_Report.pdf

The Case that Never Was : The SIMI Trial of Jaipur (2012)—A JTSA Report. Available at <http://document.teacherssolidarity.org/The%20Case%20That%20Wasn%E2%80%99t%20The%20SIMI%20Trial%20of%20Jaipur%E2%80%94A%20JTSA%20Report%20%20.pdf>

manner, without making any undue comparisons or inciting communal feelings, while also raising issues of general importance to all citizens of India/residents of Delhi.

- q.** The said Pamphlet raises question that what Congress Party (through its policies and actions), claims to have given to the Muslim community in the 65 years of their government and responds to what was not given and what was faced by the Muslim community as a whole during Congress government. AAP believes in the idea of justice and 'SARVDHARM SAMBHAV'. Concerns of each section of society must be addressed for a just, peaceful and prosperous society. In this letter party has highlighted all those facts which are required to change for a better and equal society. It is pertinent to mention that AAP's endeavour was the highlighting areas of concerns, or long standing issues, of a community, while raising issues of general importance as well. This, AAP believes, has a positive outcome for all concerned. AAP is trying to provide a vision of a just, equal and peaceful polity, where the concerns, fears and aspirations of all sections of the society are not ignored but are addressed sympathetically and with care and compassion.
- r.** AAP believes that in a democracy where there is inequality and injustice, democratic politics is a means of resolving such issues. We believe that strengthening of democracy may provide justice, but also that democracy can never be strengthened without addressing the concerns of various diverse identities, classes and communities that constitute a democratic polity, such as ours. AAP's endeavour was to democratize politics and also deepen democracy, which will bring harmony in the society. The said pamphlet was an attempt to state the Party's position on various specific and general concerns faced by a community. AAP believes that such a direct manner and honest way of engaging with a deprived community is a way to give hope for justice. AAP is signing a covenant to provide justice to these different segments. With this perspective the letter was written to brothers and sisters professing Islam, and to others also. It is urged that the

letter/pamphlet must be looked at, keeping in view AAP's secular vision and outlook.

- s. The complaint by the Complainant is false and baseless. There nothing to show prima facie or otherwise that AAP has appealed for votes on the basis of religion and has tried to incite communal feeling among a particular community. AAP's only endeavour was to address certain concerns of a community of Indian citizens, which are raised time and again and to clearly spell out AAP's stand regarding the same. Merely addressing and making clear the position of the proposed policies and approach of AAP vis-à-vis the policies proposed and followed by other political parties qua the concerns of a community of Indian citizens, professing the same religion, can by no stretch of imagination be construed to be a violation of Model Code of Conduct or even Section 125 of the Representation of People Act.
- t. As is apparent from the bare perusal of the said pamphlet, there has been no attempt to promote enmity or hatred between different classes of citizens of India, and there has only been a genuine attempt to address the various concerns of one of the many deprived communities. The only effort of the AAP was to clarify its policies and positions regarding the issues especially concerning the Muslim community, and try to differentiate between the its approach and policies, vis-à-vis the approach and policies of other major political parties regarding the same community, which in the opinion of the AAP has been has been grossly inadequate.

REGARDING THE STATEMENT THAT BJP IS A COMMUNAL PARTY

10. It has been stated in the complaint that BJP has been referred to as a communal party. The undersigned and AAP are of the belief that given the past actions, statements, conduct inter alia of the BJP, there is enough material to support the contention that BJP is a communal party. **The moot point here is not whether everyone agrees with this criticism. Nor do we expect an independent body like the Election Commission to have a point of view on the substantive merits of the case. The**

point under consideration in Model Code of Conduct is whether our criticism is based on policy, programme and past performance of our opponent or is simply a slander based on some extraneous consideration. The following are a few examples of the policy, programme and previous track record of the party that we base our criticism upon:

a. Extract from 2009 Lok Sabha Poll Manifesto of the BJP⁶ referring to the construction of Ram Mandir/Temple etc:

(i) Ram Temple

There is an overwhelming desire of the people in India and abroad to have a grand temple at the birth place of Sri Ram in Ayodhya. The BJP will explore all possibilities, including negotiations and judicial proceedings, to facilitate the construction of the Ram Temple in Ayodhya.

The civilisational consciousness of India has been well defined by the sages and philosophers and has its roots in Bharatiya or Hindu world view. This world view is holistic and spiritual. It accepts that diversity is inherent in the scheme of creation; it is the manifestation of the same cosmic entity in different forms. Hence it not only accepts diversity but respects it and even more celebrates it. Hindu or Bharatiya view of life seeks unity in diversity. It is an inclusive approach and one can say that Hinduism is the most ennobling experience in spiritual co-existence. The Bharatiya mind has contemplated beyond national boundaries and the Vedic Rishi declared in the hoary past 'Vasudhaiva Kutumbukam' – that the world is a family. The horizons of India's worldview are known to have extended from

⁶ Available at http://www.bjp.org/index.php?option=com_content&view=article&id=137:manifesto-lok-sabha-election-2009&catid=50:election-manifestos&Itemid=549

Bamiyan / Kandahar to Borobudur / Indonesia on the one hand, and Sri Lanka to Japan on the other. Imprints of Indian culture are found in some other parts of the world as well. In ancient times India was isolated in geography but not in cultural relationship, trade and commerce.

The belief in essential unity of mankind is a unique feature of Hindu thought. The Vedic Rishi had also declared that 'Ekam Sad Viprah Bahudha Vadanti' (truth or reality is one but wise men describe it in different ways). This is essentially a secular thought in the real sense of the term because it accepts that one can follow his own path to reach the ultimate. Hindus are well known for their belief in harmony of religions. And because of this world view almost all religions practised in different parts of the world have existed peacefully in India and will continue to

(ii) *Monasteries and Temples*

The BJP shall ensure autonomous administration of Maths and Mandirs.

These institutions have been the heart and hub of dharmic and cultural life and traditions of Indian society. Huge properties were offered to Maths and Mandirs by society for running their religio-cultural activities and service projects for the benefit of all. The management of such institutions should be freed from Government control and handed over to autonomous bodies constituted by the followers and devotees of those seats. Necessary legal framework will be provided for this purpose.

All dharmic activities will be considered as 'charity' with appropriate tax incentives. A special cell will be created to make dharmic organisations' interface with government agencies hassle-free.

- b.** A web page on the BJP's official website (www.bjp.org) titled "Hindutva"⁷ states that:

Monday, 09 February 2009

BJP Philosophy : Hindutva (Cultural Nationalism)

Hindutva or Cultural Nationalism presents the BJP's conception of Indian nationhood, as explained in the following set of articles. It must be noted that Hindutva is a nationalist, and not a religious or theocratic, concept.

"Hinduism and Hindutva: What the Supreme Court Says ?" by Jagmohan

Hindutva: The Great Nationalist Ideology

"Give us this day our sense of Mission" by M.V. Kamath

REVIEW : 'Klaus Klostermaier- On the Ethos and the Future of Hinduism' by Shri Ashok Chowgule

"The Hindutva Judgements: The Distance that Remains" by Arun Shourie

The Eternal Religion's defining movement in time

ESSAY: "Semitic Monotheism -The Root Of Intolerance In India by S. Gurumurthy"

- c.** An extract from the abovementioned essay "*Semitic Monotheism -The Root Of Intolerance In India by S. Gurumurthy*"⁸ which as per the BJP'd website explains BJP's philosophy:

⁷ Available at http://www.bjp.org/index.php?option=com_content&view=article&id=133&Itemid=500

ISLAM IN INDIA

The encounter between the inclusive and assimilative heritage of India and exclusive Islam, which had nothing but theological dislike for the native faiths, was a tussle between two unequals. On the one side there was the inclusive, universal and spiritually powerful -- but temporally unorganized - native Hindu thought. And on the other side there was the temporally organized and powerful -- but spiritually exclusive and isolated -- Islam. Islam subordinated, for some time and in some areas, the Hindu temporal power, but it could not erode Hindu spiritual power. If anything, the Hindu spiritual power incubated the offending faith and delivered a milder form of Islam -- Sufism. However, the physical encounter was one of the bloodiest in human history. We survived this test by fire and sword. But the battle left behind an unassimilated Islamic society within India. The problem has existed since then, to this day.

.....

HINDUTVA AS INDIA'S ANCHOR

The assimilative Hindu cultural and civilizational ethos is the only basis for any durable personal and social interaction between the Muslims and the rest of our countrymen. This societal assimilative realization is the basis for Indian nationalism, and only an inclusive Hindutva can assimilate an exclusive Islam by making the Muslims conscious of their Hindu ancestry and heritage. A national effort is called for to break Islamic exclusivism and enshrine the assimilative Hindutva. This alone constitutes true nationalism and true national

⁸ Available at http://www.bjp.org/index.php?option=com_content&view=article&id=375:essay--qsemitic-monotheismq&catid=92&Itemid=501

integration. This is the only way to protect the plurality of thoughts and institutions in this country. To the extent secularism advances Islamic isolation and exclusivism, it damages Hindu inclusiveness and its assimilative qualities. And in this sense secularism as practiced until now conflicts with Indian nationalism. Inclusive and assimilative Hindutva is the socio-cultural nationalism of India. So long as our national leaders ignore this eternal truth, national integration will keep eluding us.

- d.** The BJP's VISION DOCUMENT 2004⁹ reiterates its demand of the Hindu Ram Temple:

Ram Mandir in Ayodhya: The BJP reaffirms its commitment to the construction of a Ram temple in Ayodhya. As Maryada Purushottam, Ram is an inspiring cultural symbol of India. His birthplace in Ayodhya is also associated with the religious sentiments of crores of Hindus.

.....

Cultural Nationalism: The BJP draws its inspiration from the history and civilisation of India. We believe that Indian nationhood stems from a deep cultural bonding of the people that overrides differences of caste, region, religion and language. We believe that Cultural Nationalism for which Indianness, Bharatiyata and Hindutva are synonyms -- is the basis of our national identity.

- e.** The 1998 Manifesto of BJP¹⁰ states that:

⁹ Available at http://www.bjp.org/index.php?option=com_content&view=article&id=136&Itemid=1005

Chapter2

Saturday, 07 February 2009

Our National Identity

Cultural Nationalism

THE BJP is committed to the concept of "One Nation, One People and One Culture". The unique cultural and social diversity in India is woven into a larger civilizational fabric by thousands of years of common living and common and shared values, beliefs, customs, struggles, joy and sorrow, as well as symbols of high degree of unity without uniformity. Our nationalist vision is not merely bound by the geographical or political identity of Bharat but it is referred by our timeless cultural heritage. This cultural heritage which is central to all regions, religions and languages, is a civilizational identity and constitutes the cultural nationalism of India which is the core of Hindutva. This we believe is the identity of our ancient nation "Bharatvarsha".

Every effort to characterize Hindutva as a sectarian or exclusive idea has failed as the people of India have repeatedly rejected such a view and the Supreme Court, too, finally endorsed the true meaning and content of Hindutva as being consistent with the true meaning and definition of secularism. In fact, Hindutva accepts as sacred all forms of belief and worship. The evolution of Hindutva in politics is the antidote to the creation of vote

¹⁰ Available at

http://www.bjp.org/index.php?option=com_content&view=article&id=140:chapter2&catid=75&Itemid=501

banks and appeasement of sectional interests. Hindutva means justice for all.

The BJP is convinced that Hindutva has immense potentiality to re-energize this nation and strengthen and discipline it to undertake the arduous task of nation-building. This can and does trigger a higher level of patriotism that can transform the country to greater levels of efficiency and performance. It is with such integrative ideas in mind, the BJP joined the Ram Janmabhoomi movement for the construction of Shri Ram Mandir at Ayodhya. This greatest mass movement in post-Independence history reoriented the disoriented polity in India and strengthened the foundation of cultural nationalism.

The BJP is committed to facilitate the construction of a magnificent Shri Ram Mandir at Ram Janmasthan in Ayodhya where a makeshift temple already exists. Shri Ram lies at the core of Indian consciousness. The BJP will explore all consensual, legal and constitutional means to facilitate the construction of Shri Ram Mandir at Ayodhya.

- f.** The above mentioned extracts taken from the official websites of the BJP, and from its Poll Manifestos, Vision documents etc from the last two decades show that a clear communal bias of the BJP is apparent in its demands, programmes and promises.
- g.** The documented actions of the BJP in the form of fact finding reports done by various organizations across the country where the communal agenda and actions of the BJP is clearly documented also go on to show

how it is essentially a communal party. Some examples of the same would be:

- (i) Crossed and Crucified: Parivar's War against Minorities in Orissa, PUCL Bhubaneswar ¹¹

In a report submitted by PUCL Bhubaneswar and Kashipur Solidarity Group published in April 2009 titled as "Crossed and Crucified, Pariwar`s war Against Minorities in Orissa ::

*"Response of the Government of Orissa
"From the very start of these horrible and shameful incidents of communal violence, my government has taken whatever steps it possibly could to bring normalcy and peace back to that disturbed district," said Naveen Pattnaik in an interview on a TV channel with Karan Thapar in early October. Let us examine how the BJD-BJP coalition government responded to the situation in Kandhamal.*

When the Sangh Parivar gave the call for a bandh across Orissa on 25 August 2008, the BJP, a coalition partner in the state government, announced to join the bandh. All that the Chief Minister did was to appeal for a "peaceful" bandh. During the bandh, Christians across the state suffered brutal violence in the hands of the Sangh Parivar. The Chief Secretary to the Orissa Government, said the bandh was "complete, under control and peaceful." When one half of the

¹¹ Available at http://www.pucl.org/Topics/Religion-communalism/2009/Crossed_and_crucified.pdf

government (the BJP) participated in the bandh, thereby in the anti-Christian violence, could one expect the government to protect the Christians? No wonder, it simply chose to allow the attackers to have a free hand. And, the police remained mere onlookers, or worse still, friendly with the perpetrators. "The police failed to stop the crimes and did not protect me from the attackers; they were friendly with the attackers. They tried their best that I did not register an FIR or make any complaints against police. The police did not take down my statement as I narrated in detail. I was raped and now, I don't want to be victimized by the Orissa police. I want a CBI enquiry." Sister Meena, who was raped on the August 2008 in K. Nuagaon said this in a written statement to the press. Both this rape and the killing and burning of Rajni Majhi happened on the same day

In conclusion part it is further observed by the fact finding team :

"The state government allowed Laxmanananda's funeral procession to pass across the district when Section 144 was imposed and allowed Pravin Togadia to participate and make inflammatory speeches in the funeral rites. However, neither the Central Minister of State and opposition leaders of the state were allowed into the district nor was relief by NGOs and others allowed in. The state not only abdicated its responsibility of protecting the lives and belongings of the people, but also gave a free hand to anti-Christian elements to further their heinous

agenda of Brahminical Hinduization and hatred. What transpired is not a saga of failure of the state but its connivance in the butchering of Christians. As this report is going to press, the coalition of the BJD and BJP has broken down. And the Secretary of the BJD has made a public statement, "As per its hidden agenda, the BJP sowed the seeds of hatred in Kandhamal, Gajapati, Sundergarh and Mayurbhanj and the Kandhamal riots are a consequence of this... Being part of the cabinet of ministers, the BJP leaders put pressure on the government not to arrest the perpetrators of violence." (The Samaj 21 March 2009).

(ii) From Kandhamal to Karavali: The Ugly Face Of Sangh Parivar¹²

A fact finding report of nine Human Rights Organisations that visited Orissa & Karnataka was released in Sep.-Oct. 2008, titled as **"From Kandhamal to Karavali: The Ugly Face Of Sangh Parivar"** in very first para it has been observed by the fact finding committee

"This is a report prepared jointly by a number of Rights Organisations and individuals on the large scale violence against Christians in Orissa and Karnataka during August-September 2008. The violence was committed by Sangh Parivar organisations, mainly the Bajrang Dal. Their political wing, the Bharatiya Janata Party (BJP) happens to be in power in both the States, and that has ensured that the police watched benignly as the arson and murder took place in public. The ideology and the rganization of their

¹² Available at http://www.pucl.org/Topics/Religion-communalism/2009/Attacks_on_Christians.pdf

mentor, the Rashtriya Swayamsewak Sangh (RSS), pervades the media in both the States to such an extent that with a few honorable exceptions, the Press has reported the violence in a manner that puts the onus on the victims: they were at fault and had it coming."

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"It is not that the fault in such sectarian conflicts is always on one side. If we are looking at the particular issue which is at the starting point of a conflict, the fault could lie with any one, unless the issue is itself intentionally contrived. But what makes it a riot is preparedness and organization to convert the conflict into a riot or worse still an assault, and of that there is plenty with the Sangh Parivar. In many cases there is no issue at all but an intentional creation of a riot, or even a one-sided assault on select targets. The proportion of such incidents has increased with the growth of the Sangh Parivar's political face, the BJP, first to importance, then to half power and finally to full power under Yeddyurappa. But communal conflicts only serve to scare the minorities and give confidence to the cadre. They do not fully serve the 'larger' purpose of consolidating the Hindu community behind the Sangh Parivar to attain its goals. That requires strong and emotive symbols that go beyond local importance".

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“The Ganesh procession is a source of considerable tension in all towns with a concentration of Hindus and Muslims. Bhainsa which is nearly 40 percent Muslim, is one such place. The communalization on the Hindu side is matched in the town by the Majlis Ittehad-ul-Muslimeen (MIM) on the other side, a political formation as aggressively communal as the BJP. For these reasons, the police seem to have let the guard down after the Ganesh immersion of the year 2008 went off peacefully. They did not notice that the Durga mandaps had gone up this year.

”

- (iii) Evil stalks the Land: Fact finding report Into the riots of Muzaffarnagar, ANHAD, New Delhi ¹³

“About eight months back BJP organised a rally, which was led by Umesh Mallik (Candidate MLA, BJP) and Sanjeev Balyan (a builder), where after delivering hate speeches, Trishuls were distributed. In March 2012, RSS praised Modi and criticized UP BJP for having "the lack of inspirational leadership" in Uttar Pradesh. This followed by visit of Vinod Jain, a self proclaimed member of "Modi Army" who interacted with more than 2 lakh people in UP.

The local leaders of BJP lead by Hukum Singh, Suresh Rana and Bhartendu, started attacking Muslim, men women in markets, on roads and bus stops. At many places Muslims were dragged out of buses and trains and beaten up. Mosques

¹³ Available at http://www.anhadin.net/IMG/pdf/evil_stalks_the_land_final.pdf

were attacked. The area of operation/violence was enlarged to Muzaffarnagar and Saharan Pur. July 2, 2013 was the time when BJP was ready for a bigger mobilisation. A Mahapanchayat was held at RKPG Inter College, Shamli. Four thousand Hindus participated and demanded that all the cases against Hukum Singh, Suresh Rana and Bhartendu should be withdrawn unconditionally

The rumour churning RSS-BJP combine came into action and prepared for a large-scale violence. On 3rd and 4th of September, 2013, people fearing organise riot, witnessed distribution of provisions among Hindu localities of Dayanand Nagar and other colonies in Shamli. This was in preparation for the likely curfew that follow a riot. It was reported to CO of Shamli.

The Maha Panchayat of 5th September 2013 was organised by RSS-BJP combine. Vinod Pramukh conducted the proceedings. Baba Harkishan and Baba Sitaram of VHP and Vijendra – a Sangh worker and relative of Sachin and Gaurav were also present there. This panchayat gave a call to attend a panchayat which to be organised on 7th September 2013. People were openly instructed to come armed.”

h. There are numerous other reports, academic resources including books and papers that have provided reasonable evidence to show that BJP is a political organ of Rashtriya Swayamsewak Sangh (RSS). The RSS is routinely involved in selecting the highest functionaries of the BJP and taking a final decision on matters of policy and programmes of the BJP. The RSS is not a secular organization. It is based upon and designed to promote the

superiority of the Hindu community over the rest of Indian population, mainly the religious minorities. It is therefore a communal organization. A political party that is dictated by such an organization is also a communal party.

- 11.** Therefore, the undersigned, given years of experience as a social activist and also on account of BJP's own declarations, actions and statements, coupled with overwhelming evidence from numerous reports and academic works in quite sure of the assertion that BJP is a communal party. This assertion, given the material adduced before, is within the parameters of sub para 2 of Para I of the Model Code of Conduct which states that:

(2) Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work.

- 12.** Therefore it was fair and truthful comment made by the undersigned based on a multiplicity of facts, many of which are referred to above and thus there has been no violation of the Model Code of Conduct.

It is, therefore, respectfully prayed that in the light of the averments made above, the show cause notice may kindly be withdrawn in the interest of justice.

New Delhi

Dated: 27.11.2013

(PANKAJ KUMAR GUPTA)