

Religious Appeal in Election : Legislative And Judicial Control

Abstract

Religion plays a major role in Indian social sphere. National movement paved the way for attempts at eradicating this social evil. The Constitution of India also proclaims the concept of egalitarian society and enjoins efforts for establishing a society with equal status and opportunity for the development of all sections of society. However, the sad fact remains that the society is not yet free and religious factor plays a major role in the election process. Attempt are made to solicit votes by arousing religious feelings. Section 123(3) of the Representation of People Act, 1951 is intended to prevent the election propoganda by appeal to religious or communal feelings of the electors. Judiciary has also played a vital role to curb this evil.

Keywords: Corrupt practices, Election, Religion, Religious appeal, Representation of People Act.

Introduction

Election constitutes the bedrock and plays a very significant role in a democratic system. It is important not only for reflecting hopes and aspirations of the people, but also for bringing about the exquisite changes. Thus, the essential requirement is that, the elections should be free and fair. Unless and until there are free and fair elections, there will be no sense of involvement and participation among its citizens in public affairs. The basic problem is how to conduct the elections in an impartial manner. To influence electors, attempts usually made by use of money such as bribery, excessive expenditure and conveyance of voters etc. These kinds of corrupt practices and other vices of electoral system viz., religion and communalism cause damage to very foundation of democracy.

Objective of the Study

The object of the study is to examine whether the existing provisions of law are sufficient to achieve the objective of free and fair elections. The question whether the judiciary has assimilated the true spirit of the provisions is crucially relevant in this context and forms the core of the study.

Review of the Literature

A book under the title, "Corrupt Practices in Election Law", 1996 edition has been written by K. C. Sunny and published by Eastern Book Company, Lucknow. This book is divided into twelve chapters. The author, under Chapter IV, has discussed the effects of religious and communal appeals in the election and tried to give legal solution to this issue with the help of decided cases.

Recently in the year 2017 a book authored by Dr. R. K. Upadhyay and Dr. (Mrs.) Sangita Upadhyay entitled "Corrupt Practices In Indian Electoral System: A Socio-Legal Analysis" published by Mohit Publications, New Delhi. In this book the authors have tried to make an analysis of the legal provisions and judicial behavior on the issues of corrupt and ill-practices prevailing in elections. The authors have given various suggestions for the eradication of ill-practices in elections. They have discussed under Chapter 6 at pages 147 to 157 of their book that religious appeal in election is a corrupt practice and hence is a threat to democratic country like India. The need of the hour is to have value based politics. This book is helpful to create a legal awareness among the common man, academicians, and lawyers on the corrupt practices in election including criminalization of politics and to give solution to these ill-practices.

Method of the Study

To accomplish the present study analytical method has been used with the help of relevant case laws and literature available in the form of report, journals, commentaries, and cases against the abuse of religion in election so that a free and fair elections may be conducted in India.



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Section 123(3) of the Representation of People Act, 1951 positively forbids any appeal to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language, by making it a corrupt practice. The rationale of the provision has been spelt out by the Supreme Court in its various pronouncements. In the words of the former Chief Justice, P. B. Gajendragadkar, "The corrupt practice as prescribed by Section 123 (3) of the R. P. Act, 1951 undoubtedly constitutes a very healthy and salutary provision which is intended to serve the cause of secular democracy in this country. In order that the democratic process should thrive and succeed, it is of utmost importance that our elections must be free from the unhealthy influence of appeals to religion, race, caste, community or language. If these considerations are allowed in any way in election campaigns, they would vitiate the secular atmosphere of democratic life".¹

What is Religion?

There is no precise and coherent definition of religion. The term 'religion' has been given different interpretations by different writers. Ronald Roberston states that 'Religion refers to the existence of supernatural beings which have a governing effect on life'.² For Emile Durkheim, 'Religion is a unified system of beliefs and practices related to sacred things, that is to say things set apart and forbidden'.³ And in Marx's words, 'Religion is the sign of the oppressed creature, the sentiment of a heartless world and the soul of soulless conditions. It is the opium of the people'.⁴ However, in the words of Harry M. Jonson, 'Religions vary so widely in doctrine, practice, and organization and religious feelings are so personal and difficult to describe objectively that any definition of religion will necessarily seem inadequate'.⁵

Clause (1) of Article 25 of the Indian Constitution guarantees to every person the freedom of conscience and the right freely to profess, practice and propagate religion. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well-being.⁶ A person has freedom to believe in religious tenets of any sector community. However, the right is subject to public order, health and morality, etc. It has been rightly remarked that "Even the freedom of religion was guaranteed in this secular State not out of concern for religions, generally, much less for any particular religion, but solely and unmistakably out of concern for the individual, as an aspect of the general schemes of his liberty, and as incidental to his well being".⁷

Religious appeal and Judicial Approach

In *Kultar Singh v. Mukhtiar Singh*⁸ the question was what the word "panth" meant in the context of the pamphlet whose distribution was alleged to constitute a corrupt practice. According to the respondent, the appeal in the poster plainly and unambiguously invited voters to vote for the appellant in order to preserve the honour and prestige of the panth and it was urged that in the context, panth meant the Sikh religion.

The Supreme Court held that as the Akali Dal, the appellant's party, was seeking the creation of the Punjabi Suba, the crux of the appeal made by the impugned poster was that if the voters returned the Akali Dal candidate, the honour and prestige of the Akali Dal would be maintained, and the ideal of the Punjabi Suba attained. The Supreme Court added that it was not concerned to consider the propriety, the reasonableness or the desirability of the claim for Punjabi Suba and explained thus:

That is a political issue and it is perfectly competent to political parties to hold bona fide divergent and conflicting views on such a political issue. The significance of the reference to the Punjabi Suba in the impugned poster arises from the fact that it gives a clue to the meaning which the poster intended to assign to the word "panth". Therefore, we are satisfied that the word "panth" in this poster does not mean Sikh religion, and so, it would not be possible to accept the view that by distributing this poster, the appellant appealed to his voters to vote for him because of his religion.

The Supreme Court in a leading judgment on the Point in *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*⁹ has held that 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 the Democratic State".¹⁰ The facts were that in the election petition by a voter it was alleged that the appellant Bukhari, a successful Muslim League candidate, had made speeches in the course of his election campaign calculated to induce a belief in the voters that they would be objects of divine displeasure or spiritual censure if they voted for Shaukat Currimbhoy Chagla a Congress Party candidate, who according to Z. B. Bukhari, represented all that was opposed to Muslim religion and belief while he alone stood for all that was Muslim.

The appellant had further attacked Chagla's religion by stating that everyone had to observe his religion wholeheartedly and not like one who was "neither fish nor fowl". He, therefore, called upon the voters to vote for him. It was alleged that the appeal was to further the chances of Z. B. Bukhari and to prejudicially affect the prospects of the election of Shaukat C. Chagla. The Supreme Court affirmed the findings of the Bombay High Court and held that Bukhari's statements hit the provisions of Section 123(3) of the R. P. Act. Beg, J., who delivered the judgment of the Court on behalf of himself, Alagiriswami and Untwalia, JJ., observed:

[W]hat is relevant in such a case is what is professed or put forward by

a candidate as a ground for preferring him over another and not the motive or the reality behind the profession which may or may not be very secular or mundane. It is the professed or ostensible ground that matters. If that ground is religion, which is put on the same footing as race, caste or language as an objectionable ground for seeking votes, it is not permissible.¹¹

Thus the appellant wanted votes for himself mainly on the ground that he staunchly adhered to what he believed to be Muslim religion as contrasted with Chagla who did not. It was a speech by the appellant which had made a direct attack of personal character upon the competence of Chagla to represent the Muslims as "Chagla was not a Muslim of the kind who could represent Muslims" and thereby his speech contravened the provisions of Section 123(3) of the R. P. Act relating religion.¹²

On similar-fact situation is the decision of the Supreme Court in *Rahim Khan v. Khurshid Ahmad*.¹³ The offending handbill issued at the time of the election which was challenged as contravening Section 123(3) of the R. P. Act on the ground of appeal for vote on the basis of religion. The Supreme Court held that the copies of the offending hand-bill which the appellant (an elected Muslim candidate) got printed and distributed among his constituencies exhorting the Muslim voters to support his candidature for his Islamic way of life and to repel the first respondent for his heathen habits amounted to the corrupt practice of appeal in the name of religion. It also amounted to 'character assassination' falling under Section 123(4) because the hand-bills contained statements of personal vilification of respondent like womanizing which were untrue and which the appellant did not believe to be true and knew to be false.

Thus the Supreme Court found that appeal to religion, in that context, was influencing Muslim voters to prefer the appellant for his authentic Islamic way of life and to repel the first respondent for his heathen habits. In the opinion of the Court it is not appeal to religion if voters are told that a candidate consumes unorthodox food. What is "vice is injection of religion into politics and playing up fanaticism to distract franchise".¹⁴ Krishna Iyer, J., who spoke for the Court on behalf of himself, Palekar and Bhagwati, JJ., observed that "what is appeal to religion depends on time and circumstances, the ethos of a community, the bearing of the deviation on the cardinal tenets and other variables. To confound communal passion and crude bigotry with religion is to sanctify in law what is irreligion in fact."¹⁵

Once again Krishna Iyer, J., speaking for the Supreme Court on behalf of himself and Sarkaria, J., discussed the scope of sub-section (3) in *Abdul Hussain Mir v. Shamsul Huda*¹⁶ and observed that mere reference to one's tribe ancestry or genetic commingling might not be tainted with the legal vice of religious or communal appeal exceptional situations

apart. In the instant case one of the allegations was that the returned candidate sought support from tribals on account of his ethnic origins; he claimed to be a half-tribal, as his mother was a Kachari, one of the tribes of Assam. However, she had embraced Islam before she married the appellant's father. The learned judge observed that there was no religious exploitation by the candidate of his religion or community, legally or factually. "Tribalism may perhaps be stretched to embrace communalism but the accent in the evidence was on half -Hindu bias, not tribal identity".¹⁷ It was further observed that an appeal by a candidate that he personified Hindu-Muslim interplay did not cross the line of corrupt practice. "To declare oneself an offspring of a religious renegade is not to appeal to religion".¹⁸ Thus, in the opinion of the learned judge, the said statement lacked the "sharp edge of the appeal".

In *Harcharan Singh v. S. Sajjan Singh*¹⁹ it was alleged that *Hukamnamas* were issued urging the voters to vote for respondent No.3 and not to vote for the appellant. It was also alleged that in the meetings speeches were made by eminent public persons appealing to the voters that as respondent No.3 was the candidate of the Akal Takht and his nomination was supported by the *Hukamnamas* of Akal Takht the people should vote for him and not to vote for him would be against the tenets of the Sikh religion and would be a blasphemous act against the Sikh religion. In publications like the Akali Times the same view was propounded and it was indicated that Indira Congress was always against Sikh people and Sikh religion and as such to vote for Congress (I) would be to vote against Sikh religion, were pointed out at the meetings. Thus, the allegations against respondent No.3 were that he, his election agent and other persons with his consent appealed to the voters in the name of religion, namely Sikh religion.

The Punjab and Haryana High Court held that the appellant had failed to prove the corrupt practice alleged against respondent No.3. The Court emphasised that allegations of corrupt practices in an election petition are in the nature of quasi-criminal charges and must be proved beyond reasonable doubt as such. In the opinion of the High Court the appellant had not succeeded in proving the said charges beyond reasonable doubt and hence the said election petition was dismissed. The Supreme Court, in appeal, observed that "in our opinion it is not a technical question whether exhibit P-4 was a *Hukamnama* or not".²⁰ Sabyasachi Mukharji, J., who wrote the judgment on behalf of himself, Murtaza F. Ali and Vadrajan, JJ., followed the principle of interpretation laid down by the Supreme Court in *Ziyauddin Burhanuddin*²¹ that the "Court has to examine the effect of the statements made by the candidate or on his behalf upon the minds and the feelings of the ordinary average voters of this country", and observed:

It is undisputed that Shri Akal Takht enjoys a unique position amongst the Sikhs. It is indubitable that any communication from Shri Akal Takht which is represented by eminent

members of the Sikh community as *Hukamnama* would have great religious persuasive value even though strictly speaking it might or might not be a *Hukamnama*.²²

The Court did not consider it necessary to decide whether in strict textual sense and strict rules of the Sikh community, the said *Hukamnama* was a *Hukamnama* or not and observed, "Having regard to the background, it cannot be said that it did not have the effect of a *Hukamnama* on the community at large of inducing them to believe that ignoring the claim of the candidate nominated by Shri Akal Takht and represented to be supported by *Hukamnama* would be an act of sacrilege on the part of a good Sikh".²³ Thus, under the circumstances, according to the Court, the *Hukamnama* fell within the ambit of Section 123 (3) of the R. P. Act, 1951. The Court at the same time reiterated its stand that religious leaders have every right to freely express their opinions on the comparative merits of the contesting candidates and also to canvass for such of them as they considered worthy of the confidence of the electorate. It further clarified the issue in the following words:

It would not be an appeal to religion if a candidate is put up by saying 'Vote for him' because he is a good Sikh or he is a good Muslim, but it would be an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. In each case, therefore, substance of the matter has to be Judged.²⁴

In the light of the above observation the Supreme Court examined the evidence and came to the conclusion that appeal in the name of religion was made on behalf of respondent No.3. Above case may be contrasted the decision of the Delhi High Court in *Pritpal Singh v. Ranjit Rai*.²⁵ The allegation was that Sant Harcharan Singh Longowal, President of the Shiromani Akali Dal, issued two appeals in the name of the Panth to all the Sikh voters to boycott elections and respondent No.1 widely circulated the printed appeals issued by the Sant and thereby asked the Sikh voters to refrain from voting for the petitioner. Thus respondent No.1 and his agents exploited the religious feelings of the Sikhs and thereby committed the corrupt practice as defined in Section 123(3) of the Act. The contention of the petitioner was that respondent No.1 exploited the religious sentiments and feelings of the Sikhs and promoted the feelings of enmity and hatred between the Congress (I) Government and Sikhs and this prejudicially affected his election prospect because the Sikh voters did not vote for him. The petitioner mainly relied on Section 123(3) and (3-A) of the R. P. Act.

The Delhi High Court held that the appeal issued by the Akali leader could not be said to be a religious appeal. The appeal was issued by a leader of Akali Dal, a recognised political party by the Election Commission, to the members of the party that they should not participate in the election for achieving their rights and more unity. The appeal was, in the opinion of the Court, not born out of the Sikh religion but out of dissatisfaction with the party in power, though religion was relied in its support. The appeal was a "protest against the apartheid and genocide policy of the Congress towards the Sikhs". The Akali Dal President made an appeal to the members of the party to boycott election, not because their religion forbade them to vote but because the Congress Government did not keep its promises. Thus, in the opinion of the Court, it was essentially a protest against the ruling party from a political platform for total abstinence from elections which was an apparatus devised for participation by all parties in the democratic process. It was an appeal for non-intercourse for political reasons.

The Court further observed that the critical words in sub-Section (3) are "on the ground of his religion" meaning the religion of the candidate. Hence that was not an appeal by the respondent, Ranjit Sharma, the returned candidate, "on the ground of his religion". He was a Brahmin and not a Sikh. Thus the appeal of the Akali leader, in the opinion of the Court, did not fall within the ambit of Section 123(3) of the R. P. Act.

Sometimes the question is whether a line is to be drawn between an appeal on the ground of religion, etc., which will hit Section 123(3) and a simple criticism of political parties which will be beyond the purview of corrupt practice. The Allahabad High Court answered this question in *Ghayur Ali Khan v. Keshav Gupta*.²⁶ It held that even if the appeal is to the members of a particular community, it does not necessarily fall within the mischief of sub-section 3 of Section 123 of the Act, unless the appeal was made on the ground of religion or community. Suppose, the High Court observed, the action of the political party in power is criticised on the ground that it has passed improper legislation interfering with the Hindu usages and customs in the matter of marriage and divorce and that the persons professing Hindu faith should, therefore, vote against the candidate set up by such a party. This would be an appeal to the members professing a particular religion, but it is not an appeal on the ground of religion. It is an appeal to vote against a candidate set up by a party, because the policy of the party is not liked by the maker of the appeal. It is a criticism of that party. What he does, the Court further observed, is to criticise the measure of social reform, which the party in power has brought about, though the appeal is an appeal to the members belonging to a particular religion. Such an appeal is, in the opinion of the Court, not on the ground of religion but on the allegation that an improper act has been done by the party in power, and the persons affected by that improper act should not vote for the candidate of that party.

The High Court also admitted that

sometimes there may be cases where, in the garb of criticism of the Act or supposed acts of a political party, an attempt will be made to make an appeal on the ground of religion. In such a situation, the appeal would be covered by Section 123(3) of the Act. And hence, the High Court observed, the contents of a particular document have to be taken as a whole and; after a consideration of the entire document, a decision has to be arrived at whether the document contains merely a criticism of the actions of a political party or it is really an appeal on the ground of religion. The Court gave an example: If a political party is criticised on the ground that it has a communal outlook and that its policy is to suppress the members of another community, such as, the Jan Sangh or the Muslim League, and it is stated that people should not vote for any of these communal organizations because the essential policy of these organizations is to further the ends of the Hindus or the Muslims, at the cost of the members of the other community, the appeal in such cases also would be to the members of the Hindu or the Muslim community, but it would not be on the ground of religion or community, but on the ground of the wrong policy of the particular organization. "This be criticism of the policy of the organization and not an appeal to vote or to refrain from voting on the ground of religion or community. If the Legislature really meant to prohibit an appeal to a community, it could easily have said so, instead of saying "on the ground of".

Ghayur Ali Khan was followed by the Assam High Court in *Amjad Ali v. Nazmul Haque*.²⁷ In that case it was held that criticism of the Congress Government in public meetings for its administrative policy in the matter of its enforcing or passing legal measures or adopting methods prejudicial to Muslims (e.g. the passing of the Cattle Preservation Act which prohibits cow slaughter, singing of Ramdhun in schools, banning burial of dead bodies, etc.), did not by itself amount to an appeal to Muslims to vote or refrain from voting on the ground of caste, race, community or religion within the meaning of Section 123 (3).

The High Court further held that where both the rival candidates were Muslims and there was no evidence as to the actual statements that were made at such meetings and it was not possible to find definitely whether only the policy of the Congress Government in the matter of passing or enforcing legislation prejudicial to Muslims was criticised or an appeal was made to vote or refrain from voting on the ground of religion or community under the garb of discussing such measures, the respondent was not guilty of corrupt practice under Section 123(3) of R. P. Act.

The net result of both the cases discussed above decided by two different High Court is that as such an appeal is not hit by clause 3 of Section 123 simply because it touches the sentiments of some caste or community, but it will have to be proved that the appeal was made on the ground of religion, race, etc.; and for this the best course would be to read the document as a whole, for, sometimes it will be found that the so-called appeal was nothing more than a

severe criticism of the policy of a party.

Distinguishing the facts of the two cases, Dek, J., who delivered the judgment of the Assam High Court held that in the Allahabad case, there was handbill and the nature of the statements could be definitely ascertained from the document itself, taking it as a whole, but in the case of *Amjad Ali*, the learned judges were not able to get an accurate version of what had happened and what were the actual words used by the speakers. Giving benefit of doubt under the circumstances to the person who was alleged to be guilty of corrupt practice it was held that the charge of communal propaganda covered by Section 123(3) was not made out. In *Shamim Alam v. Dinesh Aggarwal*²⁸ the Uttarakhand High Court has held that an allegation of corrupt practices under Section 123 of R. P. Act was leveled on the returned candidate that his agents and supporters with his consent, had put up hoarding with national flag showing Ashok Chakra with 24 spokes of wheel for furtherance of his election prospects. In support of allegation, photograph of banner was produced as evidence. There was no evidence as to who installed hoarding. Material witness, who developed photograph of alleged hoarding, did not come forward and thus, presumption under Section 114 of Evidence Act drawn in favour of returned candidate by the Court. Even name of developer of photograph was not known, negative of photograph not filed and hence Court no case of corrupt practice was made out by the Court. Another charge was also leveled that Fatwa issued by senior most religious leader of Northern India was distributed in all Masjids and Muslim Colonies of legislative assembly through agents of returned candidate to vote for him, to influence Muslim community on ground of race and caste. No talks had taken place between returned candidate and religious leader regarding issuance of Fatwa. Original copy of Fatwa was neither seen nor filed. Hence Court has not found any case of corrupt practice as no reliable evidence filed before it to establish that any Fatwa was actually distributed or issued at instance of returned candidate.²⁹ In *Tukaram S. Dighole v. Manikrao Shivaji Kokate*³⁰ a charge of appeal to public to vote on communal lines was leveled against respondent. Petitioner produced VHS cassette to prove charge but no cogent evidence regarding source and manner of its acquisition produced. Petitioner did not also lead evidence to prove that cassette was true reproduction of original speeches made by respondent or his agent. The Court, therefore, held that cassette cannot be read in evidence dispute being public document and thus respondent cannot be held to have committed corrupt practice.

The issue before the Supreme Court's seven judge Constitution Bench in *Abhiram Singh v. C.D. Commachen (Dead)*³¹ was that whether a candidate at an election could appeal for votes on the basis of the religion of the voter, and still not invite the disqualification clause of the R. P. Act, 1951? The Court in its judgment made it very clear that an appeal to voters on the basis of either the candidate's or the voter's religion, to vote in favour of the candidate's party or not to vote in favour of a

rival party, constitutes a corrupt practice under Section 123 (3) of the Representation of People Act, 1951.

Conclusion

Political issues which form the subject-matter of controversies at election meetings may indirectly and incidentally introduce considerations of language or religion. But in deciding whether a corrupt practice has been committed under Section 123(3) of the R. P. Act, 1951, the impugned speech or appeal must be considered carefully and always in the light of the relevant political controversy. The state being secular in character will not identify itself with any one of the religions or religious denominations. The relationship between man and God is an individual choice. It implies that religion will not play any role in the governance of the country and state must at all times be secular in nature. Election is a secular exercise, therefore this process should be followed and elected representatives must be secular in both outlook and practice to maintain this fabric. The word 'his' only in Section 123 (3) of R. P. Act means complete ban on any reference or appeal to religion, race, community, caste and language during elections. It extended to social, linguistic and religious identity of voter also.

References

- AIR 1975 SC 1612. The third Jude Alagiriswami, J., agreed with Krishnalyer's conclusion but preferred to say something on his own.*
- AIR 1965 SC 141.*
- AIR 1975 SC 1788.*
- AIR 1984 Delhi 198.*
- AIR 1985 SC 236.*
- AIR 2013 Utr 73. See also, M. Chandra v. Thangmuthu, AIR 2011 SC 146.*

AIR 1975 SC 290.

AIR 1985 SC 236.

AIR 1985 SC 236.

Harry M. Jonson, Sociology: A Systematic Introduction, 1966, p.392.

Harcharan Singh v. S. Sajjan Singh, AIR 1985 SC 236 at 247.

Id. at 455.

Id. at 460.

Id. at 1790.

Id. at 1801.

Id. at 300.

Id. at 301.

Ibid.

Ibid.

Ibid.

Ibid.

Id. at 246.

Id. at 83-84 (Paras. 62 & 63).

Kultar Singh v. Mukhtiar Singh, AIR 1965 SC 141 at 143 - 44.

Michael Haralambos, Sociology, Themes and Perspectives, 1987, p.453.

M. H. Beg, "Judicial Role and National Integration", (1984) 4 SCC 1 (Journal).

P.K. Tripathi, "Secularism: Constitutional Provisions and Judicial Review" in G. S. Sharma (ed) Secularism: Its Implications for Law and Life in India, 1966, p.170.

Rattilal v. State of Bombay, AIR 1954 SC 388.

Zainuddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra, AIR 1975 SC 1788.

16 E.L.R. 154.

21 E.L.R. 345.