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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **MISUSE OF RELIGION AND CASTE FOR ELECTORAL GAINS: A LEGAL PERSPECTIVE**

AUTHORED BY - KATYANI MALHOTRA

## **ABSTRACT**

Through this paper, the author aims to discuss how politicians have misused religion for electoral gains. This paper will discuss the statutory restrictions that have been implemented by the legislature to prevent the use of religion by political parties to manipulate the voters to gain votes. The author aims to analyse different case laws that have contributed to the legislative course of religion and elections. The research question that this paper will delve into is 'whether the use of religion for electoral gains is a legal practice?' The methodology adopted in this paper is to analyse the case laws, legislations, and code of conduct to answer the research question.

**Keywords:** *Misuse, Religion, Unfair, Manipulate, Voters, And Electoral Gain*

## **INTRODUCTION**

India is a country of different religions and castes. The Constitution of India has given the citizen to practice any religion they want under Article 25. In addition to Article 25, the *Preamble of the constitution gives the citizen the 'Liberty of thought, expression, belief, faith and worship.'*<sup>1</sup> This shows that the foundation of the legal system in India has always promoted citizens to have their own faith and believes and it given them the right the practice any religion they want. Using this legal right, people have always protected and promoted their religion. It is easy for people with power to manipulate people with their religion. It has been evident that through the time political parties and candidates have always exploited religion and caste of electors to gain unfair advantage like electoral support.

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<sup>1</sup>

(Constitution

of

India)

<<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf>> accessed on 20 November 2023

Political parties and candidates argue that they have the fundamental right of freedom to speech given to them by Article 19 (1) (a) of the Constitution. Article 19 (1) (a) of the Constitution states that Indian citizens have the right to express their views and opinions freely. Political parties and candidates believe that they can use this fundamental right to express their views on religion and caste in a way that will ensure their electoral gains. However, the Constitution limits the right to free speech. One of the limitations of freedom of speech and expression is the protection of public order. *Protection of public order is to make sure that there is no disturbance in the public serenity or harmony*<sup>2</sup>. This would mean that the disturbance caused to the public serenity or harmony by political parties and candidates by the use of religion during the pre-election period shall not be included in the ambit of Article 19 (1) (a) of the Constitution.

## **REPRESENTATION OF PEOPLE'S ACT, 1951**

The Representation of People's Act (RoPA) and the Constitution of India are the two main governing bodies that administer the election process. One aspect that both legislations try to prevent is the use of religion and caste for electoral gains. Section 123 of the Representation of People's Act (RoPA) lays down different situations that will amount to corrupt practices for electoral gain. These corrupt practices will eventually lead to the disqualification of the candidate under section 8A of RoPA.

Section 123 (3) of RoPA states that an appeal made by a candidate or his agent or any person with his consent using religion, religious symbol, race, caste, community, or language for electoral gain will amount to corrupt practice. This section clearly prohibits the use of religion, caste, or any item that may touch a person's religious sentiment for the candidate's electoral gain and reduce the votes of the competitor in order to increase their own votes. The literal interpretation of this section would be that when a candidate or his associates use religion as a primary point during their election campaign in order to gain more votes or to reduce the votes of the opposition by bringing differences between religions shall be prohibited by the RoPA. The purpose behind this section can be understood to be that the legislation wanted to reduce the differences between religions and the unfair advantage that people get from those differences. Due to this, the purposive interpretation of this section will again be the use of religion for electoral gain or reduction of votes shall be a corrupt practice and will

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<sup>2</sup> Om Prakash v. Emperor 1949 CriLJ 34



be barred by the RoPA.

The Model Code of Conduct for the Guidance of Political Parties and Candidates (Code of Conduct)<sup>3</sup> is the body that works in addition to the RoPA providing guidance to the political parties and candidates as to how they are to conduct themselves. As per this Code, political parties and candidates should not make any appeal focusing on the caste or communal feelings of the voters. In addition to this, they shall not create or increase existing differences between castes and religions. These general conduct guidelines clearly show that the legislation clearly discourages the use of religion or caste by political parties or candidates to gain electoral benefit or reduce the votes of the other parties. However, after years of implementation of the RoPA and the Model Code of Conduct for the Guidance of Political Parties and Candidates, there have been cases where political parties or candidates have used religion and caste for their electoral gain.

## **CASE PRECEDENTS SHOWING USE OF RELIGION FOR ELECTORAL GAINS**

Even though the basic understand of the RoPA shows that the use of religion or caste is prohibit for the candidates for their electoral gains, there are cases that shows the use of religion as a primary pointer to gain or restrict voters of opposition.

In the case of *Narayan Singh v. Sunderlal Patwa*<sup>4</sup> the court has to decide whether a systematic appeal on the grounds of religion would amount to a violation of section 123 (3) of RoPA. To decide this case, the court stated that as per section 123 (3) of RoPA, the use of religion shall not be considered a corrupt practice when the appeal is made to a voter of a different religion than to the religion that is been used in the appeal. The implication of this analysis would be that if the candidate is using his religion in his electoral speech which is being given to voters of different religions, it will not amount to corrupt practice under this section. This analysis allows the candidates to use their religion openly in front of voters of different religions without it being considered a corrupt practice. The outcome of this can be that the voters of different may be influenced by the candidate who is using his own

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<sup>3</sup> (*Model code of Conduct - Election Commission of India*) <<https://eci.gov.in/mcc/>> accessed 20 November 2023

<sup>4</sup> *Narayan Singh v. Sunderlal Patwa* (2003) 9 SCC 300

religion during the pre-election stage to give votes to him. In such circumstances, the candidate will have the defense that the speech was given to voters of different religions, and his speech with his religion will not have any element for the speech to be counted as a corrupt practice.

One of the landmark cases that shows one view of such as case is the case of *R. Y. Prabhoo v. Parbhakar K. Kunte*<sup>5</sup>. In this case, the Supreme Court of India had to decide whether making references to Hinduism or Hindutva during political campaigning would amount to a violation of section 123 (3) of the Representation of People's Act. To decide this case, the court stated that *care has to be taken while making speeches during an electoral campaign that is addressed to the voters, and the interpretation of the voters to the speech has to be kept in mind*. If this ratio is read with section 123 (3) of the RoPA, the view that can be adopted would clearly be that the terms Hinduism or Hindutva used during the electoral campaign would be interpreted as a point towards the Hindu religion by the voters or the general public and this would be violative of section 123 (3) of RoPA. However, the court took an opposite view of what can be interpreted from the provision of RoPA. The court here interpreted the terms Hinduism or Hindutva as a way of life of Indian people and stated that these terms have no connection to religion. Due to this, they do not come under the ambit of section 123 (3) of RoPA. Here, the court also stated that the term 'his' used in the 123 (3) of RoPA shall be limited to the religion of the candidate for whom the appeal of the vote is being used or of the candidate for whom the refrain of the vote is being made.

This position of law was changed in the case of *Abhiram Singh v. C.D. Commachen*<sup>6</sup>. This case again became a landmark judgment as this case changed the position that was laid down by the R.Y Prabhoo case. In this case, the Supreme Court of India had to decide whether the term religion, race, caste, community, or language mentioned in section 123 (3) of the RoPA would be of the voter the candidate or both. To decide this case, the court gave a majority view by stating that *making an appeal to the religious identity of any candidate or any voter will be a corrupt practice under section 123 (3) of RoPA*. The interpretation of the term 'his' in the section shall be inclusive of the candidates as well as the voters. This judgment increases the ambit of section 123 (3) of RoPA. It means that any appeal made by a candidate that has a mention of their own religion, the religion of the opposition, or the

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<sup>5</sup> R. Y. Prabhoo v. Parbhakar K. Kunte 1996 SCC (1) 130

<sup>6</sup> Abhiram Singh v. C.D. Commachen (1996) 3 SCC 665, (2014) 14 SCC 382

religion of the voters would be a violation of section 123 (3) of RoPA. Due to this interpretation of the law, the candidates will be prevented from using the religion of any interested party as a point in their election campaign.

## **CONCLUSION**

To conclude, the legal position of using religion for electoral gain is that under section 123 (3) of the Representation of People's Act, any appeal that is made by a candidate or his agent or any person with his consent uses religion, religious symbol, race, caste, community, or language for the candidate's electoral gain will amount to corrupt practice and shall be prohibited by RoPA. In addition to this the Model Code of Conduct for the Guidance of Political Parties and Candidates prohibits the use of caste by candidates or political parties to get electoral gain or as a tool to reduce the votes of the opposition party. These principles are given as general guidelines that are mandatory to be followed by political parties or candidates during their election campaign.

However, even after the law has been laid down clearly, political parties and candidates use religion and caste as their primary points during their election campaign. Cases like the Abhiram Singh case or R. Y. Prabhoo case are an example where the candidates used religion. The legal system governing the elections has evolved with different case laws. The Supreme Court has interpreted the section differently resulting in different conclusions for different cases. Earlier, the application was limited to the religion of the candidate. However, now the positions have changed to be inclusive of the religion of the candidate, the opposition, and the voters. The current position still stands with the literal interpretation of the section that using the religion of the candidate, opposition, and the voters for electoral gain or to reduce votes will be a corrupt practice and shall be barred by the RoPA.

However, this is only the statutory position of the law. In practicality, many political parties have violated the provision many times. Parties have used religion as a primary factor in their election campaign and has seen a high growth in the number of seats won by them in every election that took place after they adopted this campaign. The point of consideration here becomes that even after violation of the provision, these political parties or candidates have never faced any penalty or disqualification.