

**BE ALERT – RELIGION AND POLITICS DO NOT MIX!**

**WATCH OUT FOR CANDIDATES MISUSING RELIGION FOR  
POLITICAL ENDS**

**ACT AGAINST the MISUSE of RELIGION in POLITICS**

- It is feared that the 2007 Gujarat state Elections may involve much campaigning contrary to the provisions of Indian Election and criminal law which, broadly speaking, prohibit an election being influenced by appeals on the ground of religion or caste or community. To be prepared for this very likely possibility we must be alert and prepared *and to collect evidence* so that election petitions can be successfully filed against candidates who, or whose party, has resorted to such appeals.
- We would like to enable the populace of Gujarat, alert citizens committed to peace and democracy, to involve themselves in collection of adequate evidence for the purpose.
- It is therefore proposed, therefore, to explain the legal provisions relating to these objectionable practices and how they are to be proved.

**CORRUPT PRACTICES**

- The phrase “corrupt practices” covers a number of electoral illegalities, including misuse of funds, inducement etc. However we are here concentrating on one particular kind of corrupt practice, the misuse of religion for political ends and to seek votes. From the point of view of this note that the following activities are corrupt practices under the Representation of People Act, 1951.
- (1) **Undue Influence : Sec. 123 (2)**
  - (2) Appeal on grounds of religion, caste or community : Sec. 123 (3).
  - (3) Promoting enmity or hatred between different classes of citizens on the ground of religion, race or community : Sec. 123 (3A)
  - (4) Character Assassination : Sec. 123 (4).
- **Undue Influence** : If a candidate, or his agent, or any other person with the consent either of the candidate or his election agent directly or indirectly interferes with the free exercise of any electoral right.

- This would be so if voters are physically prevented from voting or compelled to vote in any particular way. It would also be so if religion is invoked so that voters are told that to vote for a particular candidate would invoke divine displeasure.
- **Examples of this are :**
  - (1) a *firman* issued by the head of a Sikh sect that their *dharma* required them to vote for X or against Y as the clear effect was that failing to do so would invoke divine pleasure or the wrath of the *gurus*; or spiritual censure : Ram Dial, A.I.R. 1959 S.C. 855. (It is not necessary to show that it actually had this effect in the minds of the voters; the charge is established if the acts are calculated to have this effect).
  - (2) Where, in an *Adivasi* area, an appeal was made in the name of the cock (a religious symbol) suggesting displeasure of the cock if the vote was cast in a particular way : Shubnath, A.I.R. 1960 S.C. 148.
  - (3) Speeches that voting for a (Congress) candidate would bring on the voter the sin of *go-hatya* : Narmada Prasad, A.I.R. 1969 S.C. 395; Manubhai, A.I.R. 1969 S.C. 734. In Manubhai it was stressed that the speaker was a known religions leader.
  - (4) Qua Subhash Desai (per Suresh, J.) speeches to workers to disrobe Muslim women in *burkhas* to ascertain whether they were women. These were clear threats so that the women would not vote at all.
- **Note to be Understood:** The distinction drawn in Ram Dial is important not only regarding undue influence but also regarding appeals in the name of religion. The distinction is that a religious leader can speak in an election and can even express a preference for a particular candidate. What is not permissible is to issue a command or direction leaving the voter *no free choice* and implying that not following the command or direction would invite divine displeasure or spiritual censure.
- **Appeal in the name of religion.** If a candidate, or his agent, or any other person with the consent either of the candidate or his election agent either
  - (1) appeals to vote in a particular way in the name of religion or caste or community, or
  - (2) uses a religious symbol either to further the prospects of a candidate or prejudice the election of another candidate.
- Though the charge involves two distinct concepts they overlap.
- **Examples of this are :**
  - (1) An appeal in the name of the cock ( a religious symbol being offered as a sacrifice in *adivasi* areas) purportedly signed by the cock to vote for X : Shubnath, A. I. R. 1960 S. C. 148.

- (2) An appeal note to vote for X, a Jain, as the *sanatan dharma* was in danger in the hands of *Jains* who had removed the linga : Bhagirath, A.I.R. 1964 M.P. 1.
- (3) An appeal not to vote for the Congress, but to vote for the Jan Sangh as the Congress would send bullocks to the slaughter house : Basantilal, A.I.R. 1965 M.P. 94.
- (4) An appeal to Rajputs ( a caste ) to vote for X because he was of the same caste : Ambika Sharan, (1969) 3 S.C.C. 492.
- (5) An appeal not to vote for M, a Brahmin, because he was in a Brahmin, and to vote for X, because he was a Kurmi : Ram Swaroop. (1970) 3 S.C.C. 783.
- (6) An appeal to vote for X, a Rajput, because he was a Rajput, i.e. because of his caste : Janak Sinha, A.I.R. 1972 S. C. 359.
- (7) Rahim Khan, A.I.R. 1975 S. C. 290.
- (8) A *hukamnama* of the Akal Takht to vote in a particular way : Harcharan Singh, A.I.R. 1985 S.C. 236.
- (9) To publicise, qua candidates of a particular party that “*say with pride that we are Hindus*” :  
Bharucha, J. qua Ramdas Prabhoo, followed by Suresh, J. qua Subhash Desai.
- (10) Speeches, etc. that the saffron flag would fly over Kashmir or Islamabad. This was a case of the use of a religious symbol : Halbe, J. qua Vimal Mundada.
- (11) Speeches that the flame of Hindutva would be lit (if one voted for the B.J.P. / Shiva Sena candidate) : Halbe, J. qua Vimal Mundada.
- (12) The Congress was responsible for the desecration of temples and molestation of Hindu women : Halbe, J. qua Vimal Mundada.
- (Note: The judgements of Bharucha, J., Suresh, J. and Halbe, J. are either pending in appeal or likely to be appealed against. Moreover in the latter two cases what I have said is based on newspaper summaries of the judgements.)

➤ **Note To be Understood:**

As in the case of undue influence (see paras above) there is a distinction. It is permissible to ask voters to vote for X because he is a good Hindu (or Muslim, etc.) but not to ask persons not to vote for Y because doing so would be contrary to Hinduism, Islam, etc : Harcharan Singh, A.I.R. 1985 S.C. 236. Though this judgement does not say so it would also not be permissible to say that you must vote for X because he is a Hindu. The line, though thin, exists.

- **Promoting Enmity.** If a candidate, or his agent, or any other person with the consent of either the candidate or his election agent promotes or attempts to promote feelings of enmity or hatred on the ground of religion,

caste or community either to further the prospects of one candidates or to prejudicially affect the election of another.

➤ **Examples of this are :**

(1) Speeches by a Muslim candidate against another Muslim candidate that the latter was not a true Muslim and had indulged in acts no good Muslim should indulge in : Z. B. Bukhari, A.I.R. 1975 S. C. 1788. Attacks against Pakistan, Kashmiris, etc.(which would have the effect of promoting hatred or enmity against Muslims ) : Halbe, J. qua Vimal Mundada.)

(3) It is important to note that the truth of what is said is no defence to this charge. Even if what is said of a class (whether Hindus, Muslims etc.) is true, it may still constitute either promoting hatred or enmity or attempting to do so : Ebrahim Sulaiman, A.I.R. 1980 S. C. 354. But a speech with a communal over tone may not constitute the basis of this charge ; it has to go further, and promote enmity hatred etc.

➤ **Character Assassination** : If a candidate, or his agent, or any other person with the consent of either the candidate or his election agent makes a statement regarding the personal character or conduct of another candidate which is (1) false and (2) either believed to be false or not believed to be true.

➤ This covers numerous kinds of allegations against a candidate. An allegation relating to a candidate from the point of view of religion such as an allegation that the candidate was a socialist, socialists having demolished a prayer hall put up by Hindu women would be a corrupt practice under this head : Suresh, J. qua Subhash Desai. (Note, however, the reservation expressed in para 2.3.4).

➤ **NOTE:** It will be noted that these different corrupt practices often overlap. An appeal to vote on the ground of religion may constitute undue influence ; it may also constitute an attempt to promote enmity ; it may also amount to character assassination.

### **WHO ARE THE GUILTY?**

➤ To constitute a corrupt practice within the Act these acts must be committed –

(1) by the candidate, or

(2) his agent, or

(3) by any other person with the consent of the candidate or his election agent.

- If it is committed by the candidate himself no explanation is called for.
- The word “agent” in this context covers
  - (1) an election agent; one person so appointed by the candidate under section 40.
  - (2) a polling agent; one or more person so appointed by the candidate under sec. 46;
  - (3) any other person who has acted as an agent in connection with the election with the consent of the candidate.
- There is no difficulty in ascertaining who the election agent or polling agents of a particular candidate are as they are duly appointed. To establish the third category of agents it would be necessary to show that the candidate or some one with his consent had asked the person to do something in connection with the election for or on behalf of the candidate. This could include activities such as hiring halls, arranging for meetings, processions, etc.
- Even such acts by non-agents would be covered if it can be shown that such non-agent acted with the consent either of the candidate himself or his election agent.
- Such consent can be established by a reasonable inference from circumstantial evidence : Samant, A.I.R. 1969 S. C. 1201; as when a person spoke at a meeting convened by the election agent : Manubhai, A.I.R. 1969 S. c. 734, or if the candidate (or election agent) were present and did not object or disassociate themselves : Janak Sinha, A.I.R. 1972 S. c. 359. Mere knowledge of the activity does not constitute consent : Mohammad Koya, A.I.R. 1979 S. C. 154; nor a mere close association between the person and the candidate : Harasingh, A.I.R. 1974 S. C. 47.
- The charge will fail however grave the act if consent is not established. See Mohammad Koya A.I.R. 1979 S. C. 154.

### **WHAT PROOF DO YOU NEED?**

- It is settled in a number of decisions that the charge of a corrupt practice is a grave charge and must be proved beyond reasonable doubt : Surya Kant, A.I.R. 1975 S. C. 1053; a mere preponderance of possibilities is not enough : N.C. zeliang, A.I.R. 1981 S. C. 8; Manmohan, A.I.R. 1984 S. C. 1161. This principle must not, however, be carried to extremes : Harcharan Singh, A.I.R. 1985 S. C. 236.

- These technicalities really come to this : the evidence must be such that there is no doubt in the mind of the Judge.

### **WHAT KIND OF EVIDENCE DO YOU NEED?**

- Some broad principles of the Indian Evidence Act, 1872, are relevant in deciding what is permissible evidence. Broadly, the principles are :
  - (1) the evidence, if oral, must be direct, that is of the person who was himself present and saw something or heard something;
  - (2) the evidence, if documentary, must be primary, not secondary. So, if a pamphlet is the evidence, it must be the pamphlet itself and not a copy of it or an extract or a summary of it;
  - (3) the evidence should be credible, meaning that it must not be suspect because the witness is motivated;
  - (4) bearing in mind that the evidence is likely to relate to events during a hectic political campaign and is being given many months later it is very important to support it by contemporaneous notes, etc. which can also be proved to be contemporaneous. This means by notes or complaints of FIRs or press clippings *made at the time that the offences took place.*
- If the speech of a candidate or his/her agent is in question, there can be cassettes, contemporaneous transcripts of the cassettes, short-hand notes, reports submitted to the newspaper. All these would materially strengthen the effect of oral evidence by the person (s) present. If it is a recording made by the witness care must be taken to be able to identify the voice and establish that it was genuine and not tampered. This can, for instance, be done by sealing it and depositing it on or about that day with an independent party.
- If the posters or hoardings of a candidate or his/her agent is in question, the best evidence would be a photograph. The photographer himself should give evidence. The photograph should be endorsed that day or the next showing the time and place.
- If the material of a candidate or his/her agent is in question, distributed by or on behalf of the candidate such as pamphlets, cassettes, ideally the evidence should consist of the pamphlet or a copy of the cassette. It must, however, be proved not only that they were distributed or shown but that this was done by the candidate or with his consent. If a campaign advertisement in the press is relied upon the newspaper would have to be produced as also evidence that the advertisement was inserted by the

- candidate or his agent. A newspaper report can only be proved by calling the correspondent who wrote it; an interview by calling the interviewer.
- Ideally the witnesses should not be persons identifiable with a political party which has lost the election.

### **ELECTION PETITION**

- An election petition has to be filed very soon after the results are declared.
- The petition must contain full particulars of the corrupt practice alleged. It would be necessary to specify what was said or done or displayed, when and where, and by whom. If the person is not the candidate it would be necessary to specify who said it, whether it was an agent and if a third person that it was with the consent of the candidate or his election agent.
- A petition containing full particulars in time can only be filed if the evidence is properly collated immediately after the elections.

### **TAKE ACTION**

It is crucial that information of the use of **UNDUE INFLUENCE, APPEAL IN THE NAME OF RELIGION, PROMOTING ENMITY OR HATRED BETWEEN COMMUNITIES** and **CHARACTER ASSASSINATION** are shared immediately with authorities and the media so that **PUBLIC OPINION** on the same be **GENERATED**.

- Record through video and otherwise collect evidence through press clippings evidence on the offences explained to you above. Remember audio visual evidence is harder to oppose and today it is easy to record the same without being intimidated.
- Share the details with the local and national media
- Draft an FIR and get it registered or send a copy of your complaint by registered post to both the local police station and the Director General of Police, State of Gujarat, Police Bhuvan, Gandhinagar.
- All details in both must be accurate
- Send a copy to the Chief Justice, Gujarat High Court, Sola, Ahmedabad – 380 060. Gandhinagar. Fax: 079-27432033. Email: rg-hc-guj@nic.in. with a covering letter be treated as a Petition in the Public and National Interest
- Send a copy to the Chief Justice of India, Supreme Court of India, Tilak Marg, New Delhi – 110 001. Email: supremecourt@nic.in with a covering letter also stating that the letter with the complaints and FIR be treated as a Petition in the Public and National Interest

- Send written copies of the same to the National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi 110001. Ph: 011-23384012; Fax: 011 23384863; Email: [covdnhrc@nic.in](mailto:covdnhrc@nic.in); [ionhrc@nic.in](mailto:ionhrc@nic.in); Telegraphic Address: HUMANRIGHTS
- Send copies also to the National Commission for Minorities, 5<sup>th</sup> floor, Lok Nayak Bhawan, Khan Market New Delhi 110003. telephone: 011-24618349 fax 011 24693302, 01124642645, 24698410, Email: [ncm-mma@nic.in](mailto:ncm-mma@nic.in)

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