

General Studies – 2; Topic: Salient features of the Representation of People's Act

Section 123(3) of the Representation of the People Act

1) Introduction

- The Supreme Court ruled that politicians cannot seek votes on the grounds of caste, creed or religion.
- The Court verdict dealt with the question whether a religious leader's appeal to his followers to vote for a particular political party would amount to electoral malpractice under Section 123 of the Representation of People Act.
- Section 123(3) of the Representation of the People Act, defines a corrupt electoral practice as follows:
- "The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community...."
- The section does not specify whether "his" refers to the speaker seeking votes, or the audience from whom votes are being sought.

2) The question before the Supreme Court

- Did the underlined word "his" qualify only the electoral candidate (and his agent, or persons speaking with his consent)?
- Or did it also qualify the person to whom the appeal was addressed (the elector)?

3) The majority view

- Four out of seven judges held that the law was trying to achieve the purity of elections
- The purity of elections required that appeals to caste, religion, language, and community be kept out of the electoral process.
- In the view of the majority, an election that was fought and decided on the ground of religion, race, caste, community was a distortion of democracy.
- Democracy depended on voters exercising their franchise on the basis of rational thought and action; appeals to religion, language, and caste were inherently emotive and irrational in nature.
- The basic purpose was to curb communal and separatist tendencies
- secularism required the complete exclusion of religion from public life
- Religion can have no place in such [secular] activities for religion is a matter personal to the individual
- The word "his" in Section 123(3) was to be understood broadly, referring to both the speaker as well as the audience.
- In the public sphere, we must participate as rational individuals and not on the basis of religion, caste, language, or community.
- Such a law was permissible, because a candidate was supposed to represent her entire constituency, and not just a subset of it.

4) Dissenting Opinion

- The Constitution recognises the position of religion, caste, language and gender in the social life of the nation.
- Social mobilisation is a powerful instrument of bringing marginalised groups into the mainstream.

- After centuries of structural and institutional discrimination, these markers of identity had acquired a certain social significance.
- It was that which allowed B.R. Ambedkar to form the All India Scheduled Castes Federation, a political party exclusively devoted to Dalit emancipation.
- Candidates might have to speak about genuine, legitimate concerns of citizens on the basis of religion, caste language etc and holding them guilty of electoral malpractice for the same will hit at the idea of democracy.
- An increasingly activist Supreme Court has allegedly blurred the separation of powers between itself and the other organs of the government

5) Impact of the judgement:

- **For Citizens**
 - a) It will prune many of the divisive arguments made by candidates during electoral campaigns.
 - b) Concerns of historic prejudices and social discrimination would take a back seat.
 - c) violative of Article 19 and the right to free speech and expression
 - d) Inculcating the idea of Brotherhood and broader outlook in the society
- **For Democracy**
 - a) Increased focus on developmental works done by candidates and focus on merit rather than caste based politics
 - b) Promotes secularism in India through 'Universal Citizenship'.
 - c) Judicial activism, as this judgement is conceived as amendment of RPA, 1951.
 - d) The verdict will prevent political parties from disturbing communal harmony through their speeches
 - e) Since appeals based on religion, caste etc are ruled out, young politicians with fresh ideas may benefit in elections. This could improve the productivity of the legislature.
- The judgement may also hinder empowerment of socially oppressed castes through social mobilisation which defeats the purpose of secularism.
- Mobilisation of marginalized groups like Dalits will be affected.