

BJP states to Supreme Court: Religion part of society, can't spell out dos and don'ts of poll manifestos

The CPI(M) also intervened in the matter. The state governments said the courts cannot pre-empt, define or spell out what can be permitted in an election manifesto.

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Written by **Utkarsh Anand** | New Delhi | Updated: October 28, 2016 5:42 am

Supreme Court. (File Photo)

THREE BJP-ruled states told the Supreme Court on Thursday that “religion is not an anathema to the Constitution” but “a part of society”, so the courts should refrain from laying down any “straitjacket standard” on what an election manifesto can or cannot contain. Additional Solicitor General Tushar Mehta, arguing for the state governments of Gujarat, Madhya Pradesh and Rajasthan, submitted before a seven-judge bench led by Chief Justice of India T S Thakur that it was not possible to separate religion from society, and hence it was “impossible” for the courts to define

yardsticks in this regard.

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“In a multi-religious country like India, due to its very uniqueness and diversity of religion, caste, community etc, ‘religion’ is not an anathema to the Constitution... Religion is a part of the society and can always be used in any sphere of society in the country, except to the extent prohibited under the Constitution or by any statutory provision,” he submitted.

The state governments said the courts cannot pre-empt, define or spell out what can be permitted in an election manifesto, adding that the Election Commission and the high courts are the competent authorities to look into the issue after the election is held. “It is, therefore, impossible to lay down any straitjacket standard as to what an election manifesto should contain or should not contain,” said Mehta. He said every case would have to be judged on its own merit, to see whether it was tantamount to “corrupt practice” as stipulated under the Representation of the People Act.

Contending that there was no occasion for the Constitution Bench to seek a re-interpretation of the terms “Hindutva” and “Hinduism”, Mehta said although the court was dwelling on an interpretation of the term

Religion part of society, courts can’t spell out dos & don’ts of poll manifestos: BJP states to SC “religion” under Section 123 of the Representation of the People Act, the same provision also stipulates that candidates should not appeal for votes on the grounds of community and language.

According to Mehta, since the provision uses the composite phrase “religion, caste, community, language” while defining “corrupt practice”, there can be no justification for treating one corrupt practice as more severe than the other, only because the expression “religion” comes into play.

He argued that the concept of “separation between the Church and the State” is not used to promote any particular religion, and hence, “there is no need to enlarge its scope”. The bench asked Mehta why the state governments were bothered about the use of religion and content of political speeches. Mehta said if NGOs and activists were being allowed to intervene in the matter, state governments definitely had a stake too.

Meanwhile, the Bench, which is hearing a clutch of petitions relating to use of religion in political speeches and manifestos, observed that it was perhaps not possible to chart out “dos and don’ts” of political speeches.

“We are not going into the permissibility of religion in political speeches. We cannot give an exhaustive listing of ‘you can say this and you cannot say that’ in political speeches,” said the bench, when senior advocate Indira Jaising, appearing for activist Teesta Setalvad, argued that a line must be drawn and religion should be kept out of politics.

The CPI(M) also intervened in the matter. Representing the party, senior advocate Sanjay Hegde submitted that the party believed in secularism and quoted its programme saying it was committed to waging an uncompromising struggle for the consistent implementation of the principles of secularism.

The bench, which heard various parties represented by senior lawyers including K K Venugopal, Arvind Datar, Shyam Divan, Kapil Sibal, Salman Khurshid and Indira Jaising for six days, reserved its verdict on conclusion of the arguments.

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