ITEM NO.1A COURT NO.1 SECTION XVI
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
Civil Appeal No(s). 37/1992

ABHIRAM SINGH **Appellant(s)**

VERSUS

C.D. COMMACHEN (DEAD) BY LRS.& ORS. **Respondent(s)**

WITH

C.A.No.8339/1995

Date : 02/01/2017 These appeals were called on for pronouncement of Judgment today.

For Appellant(s)
Ms. Neela Gokhale, Adv.
Mr. Devanshu Sharma, Adv.
Ms. K.S. Mehlwal, Adv.

Ms. Bina Gupta, Adv.

Mrs. Shiraz Contractor Patodia, Adv.

For Respondent(s)
Mr. Shuvodeep Roy, Adv.
Mr. Tushar Mehta, ASG
Mr. Arjun Garg, aDv.
Mr. Manish Yadav, Adv.
Mr. Purushaindra Kaurav, Adv.
Mr. Ishan Nagar, Adv.

Mr. Atul Jha, Adv.
Mr. Sandeep Jha, Adv.
Mr. Dharmendra Kumar Sinha, Adv.

Mr. A.M.S. Nadkarni, ASG
Mr. N.R.Katneshwarkar, Adv.
Ms. Arpit Rai, Adv.
Mr. Santosh Rebello, Adv.

Ms.Hemantika Wahi, Adv.
Ms. Puja Singh, Adv.

Ms. Swarupama Chaturvedi, Adv.
Mr. B.N. Dubey, Adv.

Mr. Vijay Kumar, Adv.
Mr. Vishwajit Singh, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Chirag M. Shroff, Adv.

Mr. Shuvodeep Roy, Adv.

Mr. Merusagar Samantaray, Adv.

Ms. Aparna Bhat, Adv.

Ms. Archana Pathak Dave, Adv.

Mr. Prakash Kumar Singh, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. P. V. Dinesh, Adv.

Mr. Nachiketa Joshi, Adv.

Hon'ble Mr. Justice Madan B. Lokur pronounced a separate judgment comprising of His Lordship and Hon'ble Mr. Justice L.Nageswara Rao.

Hon'ble the Chief Justice of India and Hon'ble Mr. Justice S.A. Bobde also pronounced their separate individual judgments.

Hon'ble Dr.Justice D.Y.Chandrachud also pronounced separate judgment comprising of Hon'ble Mr. Justice Adarsh Kumar Goel, Hon'ble Mr. Justice Uday Umesh Lalit and His Lordship.

The reference was answered in light of majority of the judgment. The appeals shall now be listed for hearing before a regular Bench to be constituted by Hon'ble the Chief Justice of India.

The Registry is directed to place the papers before Hon'ble the Chief Justice of India for approrpriate orders.

(ASHOK RAJ SINGH)
Court Master

(SUMAN JAIN)
Court Master

(Signed reportable judgments are placed in the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 37 OF 1992

ABHIRAM SINGH ….APPELLANT

VERSUS

C.D. COMMACHEN (DEAD) BY LRS. & ORS. ….RESPONDENTS

WITH

CIVIL APPEAL NO. 8339 OF 1995

NARAYAN SINGH ….APPELLANT

VERSUS

SUNDERLAL PATWA & ORS. ….RESPONDENTS

J U D G M E N T

Madan B. Lokur, J.

1. The foundation for this reference relating to the interpretation of Section 123(3) of the Representation of the People Act, 1951 to a Bench of seven judges has its origins in three decisions of this Court.

2. In ***Abhiram Singh v. C.D. Commachen***[1] the election in 1990 of Abhiram Singh to the No. 40, Santa Cruz Legislative Assembly Constituency for the Maharashtra State Assembly was successfully challenged by Commachen in the Bombay High Court. While hearing the appeal against the decision of the Bombay High Court, a Bench of three learned Judges expressed the view that the content, scope and what constitutes a corrupt practice under sub-sections (3) or (3A) of Section 123 of the Representation of the People Act, 1951 (for short, 'the Act') needs to be clearly and authoritatively laid down to avoid a miscarriage of justice in interpreting 'corrupt practice'. The Bench was of opinion that the appeal requires to be heard and decided by a larger Bench of five Judges of this Court on three specific questions of law.

3. In ***Narayan Singh v. Sunderlal Patwa***[2] the election of Sunderlal Patwa from the Bhojpur Constituency No. 245 in Madhya Pradesh to the Legislative Assembly in 1993 was under challenge on the ground of a corrupt practice in that the returned candidate had allegedly made a systematic appeal on the ground of religion in violation of Section 123(3) of the Act. The election petition was dismissed. In appeal before this Court, the Constitution Bench noticed an anomalous situation arising out of an amendment to Section 123(3) of the Act in 1961 inasmuch as it appeared that a corrupt practice for the

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1

(1996) 3 SCC 665

2(2003) 9 SCC 300

purposes of the Act prior to the amendment could cease to be a corrupt practice after the amendment. On the one hand the deletion of certain words[3] from the sub-section widened the scope of the sub-section while the addition of a word[4] seemingly had the opposite effect. Since there are certain other significant observations made in the order passed by the Constitution Bench, it would be more appropriate to quote the relevant text of the Order. This is what the Constitution Bench had to say:

> "In this appeal the interpretation of sub-section (3) of Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") as amended by Act 40 of 1961, has come up for consideration. This case had been tagged on to another case in the case of *Abhiram Singh* v. *C.D. Commachen*[5]. *Abhiram Singh case* has been disposed of as being infructuous.[6] The High Court in the present case has construed the provision of sub-section (3) of Section 123 of the Act to mean that it will not be a corrupt practice when the voters belonging to some other religion are appealed, other than the religion of the candidate. This construction gains support from a three-Judge Bench decision of this Court in *Kanti Prasad Jayshanker Yagnik* v. *Purshottamdas Ranchhoddas Patel*[7] as well as the subsequent decision of this Court in *Ramesh Yeshwant Prabhoo (Dr)* v. *Prabhakar Kashinath Kunte*[8]. In the later decision the speech of the Law Minister has been copiously referred to for giving the provision a restrictive construction in the sense that the word "his" has been purposely used and, therefore, so long as the candidate's religion is not taken recourse to, it would not be a "corrupt practice" within the meaning of Section 123(3). There are certain observations in the Constitution Bench decision of this Court in the case of *Kultar Singh* v. *Mukhtiar Singh*[9] while noticing the provisions of Section 123(3) of the Act. There are certain observations in *Bommai case*[10], where this provision did not directly came up for

3"systematic appeal"
4"his"
5(1996) 3 SCC 665
6This was an erroneous recording
7(1969) 1 SCC 455
8(1996) 1 SCC 130
9AIR 1965 SC 141 : (1964) 7 SCR 790
10S.R. Bommai v. Union of India, (1994) 3 SCC 1

> consideration, which run contrary to the aforesaid three-Judge Bench decisions of this Court. The very object of amendment in introducing Act 40 of 1961 was for curbing the communal and separatist tendency in the country and to widen the scope of corrupt practice mentioned in sub-section (3) of Section 123 of the Act.
>
> As it appears, under the amended provision, the words "systematic appeal" in the pre-amended provision were given a go-by and necessarily therefore the scope has been widened but by introducing the word "his" and the interpretation given to the aforesaid provision in the judgments referred earlier, would give it a restrictive meaning. In other words, while under the pre-amended provision it would be a corrupt practice, if appealed by the candidate, or his agent or any other person to vote or refrain from voting on the grounds of caste, race, community or religion, it would not be so under the amended provision so long as the candidate does not appeal to the voters on the ground of *his* religion even though he appealed to the voters on the ground of religion of voters. In view of certain observations made in the Constitution Bench decision of this Court in *Kultar Singh case* we think it appropriate to refer the matter to a larger Bench of seven Judges to consider the matter. The matter be placed before Hon'ble the Chief Justice for constitution of the Bench."

4. Thereafter, when ***Abhiram Singh*** was taken up for consideration by the Constitution Bench, an order was made[11] that "since one of the questions involved in the present appeal is already referred to a larger Bench of seven Judges,[12] we think it appropriate to refer this appeal to a limited extent regarding interpretation of sub-section (3) of Section 123 of the 1951 Act to a larger Bench of seven Judges." It is under these circumstances that these appeals are before us on a limited question of the interpretation of sub-section (3) of Section 123 of the Act.

5. Before getting into the meat of the matter, it might be worthwhile to

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11Abhiram Singh v. C.D. Commachen (Dead), (2014) 14 SCC 382
12Narayan Singh v. Sunderlal Patwa, (2003) 9 SCC 300

appreciate the apparent cause of conflict in views.

Apparent cause of conflict

6. Among the first few cases decided by this Court on Section 123(3) of the Act was that of ***Jagdev Singh Sidhanti v. Pratap Singh Daulta***[13]. In this case, the Constitution Bench held that an appeal to the electorate on a ground personal to the candidate relating to his language attracts the prohibition of a corrupt practice under Section 100 read with Section 123(3) of the Act. It was also held that espousing the cause of conservation of a language was not prohibited by Section 123(3) of the Act. In that context, it was held:

> "The corrupt practice defined by clause (3) of Section 123 is committed when an appeal is made either to vote or refrain from voting on the ground of a candidate's language. **It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of Section 100 read with Section l23(3). Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed**. Where, however for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice."[Emphasis supplied by us].

7. In ***Kultar Singh*** the Constitution Bench made a reference to sub-section (3) of Section 123 of the Act in rather broad terms. The Constitution Bench read into Section 123(3) of the Act the concept of a secular democracy and the purity of elections which must be free of unhealthy practices. It was said:

13(1964) 6 SCR 750

> "The corrupt practice as prescribed by Section 123(3) 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 to Parliament and the different legislative bodies must be free from the unhealthy influence of appeals to religion, race, caste, community, or language.** If these considerations are allowed any way in election campaigns, they would vitiate the secular atmosphere of democratic life, and so, Section 123(3) wisely provides a check on this undesirable development by providing that an **appeal to any of these factors made in furtherance of the candidature of any candidate** as therein prescribed would constitute a corrupt practice and would render the election of the said candidate void." [Emphasis supplied by us].

It is quite clear from a reading of the above passages that the concern of Parliament in enacting Section 123(3) of the Act was to provide a check on the "undesirable development" of appeals to religion, race, caste, community or language of any candidate. Therefore, to maintain the sanctity of the democratic process and to avoid vitiating the secular atmosphere of democratic life, an appeal to any of the factors would void the election of the candidate committing the corrupt practice. However, it must be noted that ***Kultar Singh*** made no reference to the decision in ***Jagdev Singh Sidhanti***.

8. A few years later, Section 123(3) of the Act again came up for consideration – this time in ***Kanti Prasad Jayshanker Yagnik***. This provision was given a narrow and restricted interpretation and its sweep was limited to an appeal on the ground of the religion of the candidate. It was held that:

> "One other ground given by the High Court is that "there can be no doubt that in this passage (passage 3) Shambhu Maharaj had put forward

> an appeal to the electors not to vote for the Congress Party in the name of the religion." In our opinion, there is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion. **What Section 123(3) bars is that an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion i.e. the religion of the candidate**." [Emphasis supplied by us].

9. Significantly, this decision did not make any reference to the narrow interpretation given to Section 123(3) of the Act in ***Jagdev Singh Sidhanti*** or to broad interpretation given to the same provision in ***Kultar Singh*** a few years earlier.

10. As mentioned in the reference order, the issue of the interpretation of Section 123(3) of the Act came up for indirect consideration in ***Bommai*** but we need not refer to that decision since apart from the view expressed in the reference order, this Court had taken the view in ***Mohd. Aslam v. Union of India***[14] that "…… the decision of this Court in ***S.R. Bommai*** **v.** ***Union of India***, did not relate to the construction of, and determination of the scope of sub-sections (3) and (3-A) of Section 123 of the Representation of the People Act, 1951 and, therefore, nothing in the decision in ***Bommai*** is of assistance for construing the meaning and scope of sub-sections (3) and (3-A) of Section 123 of the Representation of the People Act. Reference to the decision in ***Bommai*** is, therefore, inapposite in this context." However, it must be noted that ***Bommai*** made it clear that secularism mentioned in the Preamble to our

14(1996) 2 SCC 749

Constitution is a part of the basic structure of our Constitution.

11. Finally, in ***Ramesh Yeshwant Prabhoo*** this Court held that the use of the word "his" in sub-section (3) of Section 123 of the Act must have significance and it cannot be ignored or equated with the word "any" to bring within the net of sub-section (3) any appeal in which there is a reference to religion. It was further held that if religion is the basis on which an appeal to vote or refrain from voting for any person is prohibited by Section 123 (3) of the Act it must be that of the candidate for whom the appeal to vote is made or against a rival candidate to refrain from voting. This Court observed as follows:

> "There can be no doubt that the word 'his' used in sub-section (3) must have significance and it cannot be ignored or equated with the word 'any' to bring within the net of sub-section (3) any appeal in which there is any reference to religion. The religion forming the basis of the appeal to vote or refrain from voting for any person, must be of that candidate for whom the appeal to vote or refrain from voting is made. This is clear from the plain language of sub-section (3) and this is the only manner in which the word 'his' used therein can be construed. The expressions "the appeal … to vote or refrain from voting for any person on the ground of *his* religion, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate" lead clearly to this conclusion. When the appeal is to vote on the ground of 'his' religion for the furtherance of the prospects of the election of that candidate, that appeal is made on the basis of the religion of the candidate for whom votes are solicited. On the other hand when the appeal is to refrain from voting for any person on the ground of 'his' religion for prejudicially affecting the election of any candidate, that appeal is based on the religion of the candidate whose election is sought to be prejudicially affected. **It is thus clear that for soliciting votes for a candidate, the appeal prohibited is that which is made on the ground of religion of the candidate for whom the votes are sought; and when the appeal is to refrain from voting for any candidate, the prohibition is against an appeal on the ground of the religion of that other candidate.** The first is a positive appeal and the second a negative appeal. There is no ambiguity in sub-section (3) and it clearly indicates

> the particular religion on the basis of which an appeal to vote or refrain from voting for any person is prohibited under sub-section (3)." [Emphasis supplied by us].

12. In ***Ramesh Yeshwant Prabhoo*** the decision in ***Kultar Singh*** was distinguished, *inter alia*, on the ground that the text of sub-section (3) of Section 123 of the Act under consideration was prior to its amendment in 1961. It is not all clear how this conclusion was arrived at since the paraphrasing of the language of the provision in ***Kultar Singh*** suggests that the text under consideration was post-1961. Further, a search in the archives of this Court reveals that the election petition out of the which the decision arose was the General Election of 1962 in which Kultar Singh had contested the elections for the Punjab Legislative Assembly from Dharamkot constituency No. 85. Quite clearly, the law applicable was Section 123(3) of the Act after the amendment of the Act in 1961.

13. Be that as it may, the fact is that sub-section (3) of Section 123 of the Act was interpreted in a narrow manner in ***Jagdev Singh Sidhanti*** but in a broad manner in ***Kultar Singh*** without reference to ***Jagdev Singh Sidhanti***. A narrow and restricted interpretation was given to Section 123(3) of the Act in ***Kanti Prasad Jayshanker Yagnik*** without reference to ***Jagdev Singh Sidhanti*** or ***Kultar Singh***. ***Ramesh Yeshwant Prabhoo*** decided about four decades later gave a narrow and restricted meaning to the provision by an apparent

misreading of Section 123(3) of the Act. Hence the apparent conflict pointed out in ***Narayan Singh***. In any event today (and under the circumstance mentioned above) this provision falls for our consideration and interpretation.

Legislative history

14. Corrupt practices during the election process were explained in the Act (as it was originally enacted in 1951) in Chapter I of Part VII thereof. Section 123 dealt with major corrupt practices while Section 124 dealt with minor corrupt practices. Chapter II dealt with illegal practices for the purposes of the Act. As far as we are concerned, Section 124(5) of the Act (dealing with minor corrupt practices) as originally framed is relevant and this reads as follows:

> (5) The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election.

15. It will be apparent that Section 124(5) of the Act made a 'systematic appeal' (quite obviously to an elector) **by anybody** 'to vote or refrain from voting' on certain specified grounds 'for the furtherance of the prospects of a candidate's election', a deemed minor corrupt practice. For the present we are not concerned with the consequence of anyone being found guilty of a minor corrupt practice.

16. In 1956 the Act was amended by Act No. 27 and the distinction between major corrupt practices and minor corrupt practices was removed. Therefore, for

Chapters I and II of Part VII of the Act only Chapter I providing for corrupt practices was substituted. Section 123(3) of the Act (as amended in 1956) reads as follows:

> (3) The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

17. The significant change made by the amendment carried out in 1956 was that now the 'systematic appeal' by 'a candidate or his agent or by any other person' was a deemed corrupt practice. However, it was not clear whether that 'any other person' could be a person not authorized by the candidate to make a 'systematic appeal' for or on his or her behalf or make the 'systematic appeal' without the consent of the candidate. For this and other reasons as well, it became necessary to further amend the Act.

18. Accordingly, by an amendment carried out in 1958, the Act was again amended and the words "with the consent of a candidate or his election agent" were added after the words "any other person' occurring in Section 123(3) of the Act. Consequently, Section 123(3) of the Act after its amendment in 1958 read as follows:

> (3) The systematic 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 on the grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to,

> national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

19. Progressively therefore Section 123(3) of the Act and the corrupt practice that it recognized became candidate-centric in that a 'systematic appeal' would have to be made (to an elector) by a candidate, his agent or any other person with the candidate's consent or the consent of the candidate's election agent 'to vote or refrain from voting' on certain specified grounds 'for the furtherance of the prospects of a candidate's election'.

20. Apparently to make the corrupt practice more broad-based, the Act was sought to be amended in 1961. A Bill to this effect was introduced in the Lok Sabha on 10th August, 1961. The Notes on Clauses accompanying the Bill (the relevant clause being Clause 25) stated as follows:

> Clauses 25, 26, 29 and 30. - For curbing communal and separatist tendencies in the country it is proposed to widen the scope of the corrupt practice mentioned in clause (3) of section 123 of the 1951 Act (as in sub-clause (a) of clause 25), and to provide for a new corrupt practice (as in sub-clause (b) of clause 25) and a new electoral offence (as in clause (26) for the promotion of feelings of hatred and enmity on grounds of religion, race, caste, community or language. It is also proposed that conviction for this new offence will entail disqualification for membership of Parliament and of State Legislatures and also for voting at any election. This is proposed to be done by suitable amendments in section 139 and section 141 of the 1951 Act as in clauses 29 and 30 respectively.

21. Three objectives of the Bill stand out from the Notes on Clauses and they indicate that the amendment was necessary to: (1) Curb communal and separatist tendencies in the country; (2) Widen the scope of the corrupt practice

mentioned in sub-section (3) of Section 123 of the Act; (3) Provide for a new corrupt practice (as in sub-clause (b) of clause 25). The proposed amendment reads as follows:

> 25. In section 123 of the 1951-Act, —
>
> (a) in clause (3) —
>
> (i) the word "systematic" shall be omitted,
>
> (ii) for the words "caste, race, community or religion", the words "religion, race, caste, community or language" shall be substituted;
>
> (b) after clause (3), the following clause shall be inserted, namely: —
>
> "(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of that candidate's election.".

22. The Bill was referred to the Select Committee on 14th August, 1961 which was required to submit its Report by 19th August, 1961. The Select Committee held four meetings and adopted a Report on the scheduled date. It was observed in the Report that the proposed amendment to Section 123(3) of the Act "does not clearly bring out its intention." Accordingly, the Select Committee re-drafted this provision to read as follows:

> (3) 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 or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Similarly, an amendment was proposed in the new clause (3A) of

Section 123 of the Act and this reads as follows:

> (3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

23. Minutes of Dissent were recorded by two Hon'ble Members of Parliament in the Report of the Select Committee. Ms. Renu Chakravartty made some observations with regard to the proposed insertion of clause (3A) in Section 123 of the Act and then noted with reference to clause (3) thereof that:

> "Even the declared object of this Bill of curbing communalism seems to me not to be seriously meant. I suggest an amendment to clause 23 to the effect that places of religious worship or religious congregation should not be used for election propaganda and the practice of priests and dignitaries appealing to religious symbols and sentiments should be regarded as corrupt practices. In Chapter III, I had proposed to make these as electoral offences and anyone indulging in them punishable. I am surprised to see that even these amendments or part of it could not be passed knowing what happens in elections, how pulpits in churches have been used for election propaganda by Catholic priests, how gurdwaras and mosques have been used, how people gathering at religious assemblies are influenced through religious leaders or bishops or parish priests wielding immense spiritual influence on their followers using their religious position to exert undue influence in favour of certain parties. It is but natural that anyone sincerely desirous of stamping out communalism from elections would readily agree to this. But its rejection adds to the suspicion that eradication of communalism is only a cloak to curb in elections the democratic and secular forces in practice."

Ms. Renu Chakravartty felt that the object of the Bill was to curb communalism but the Bill had not gone far enough in that direction.

24. Shri Balraj Madhok also dissented. His dissent was, however, limited to the deletion of the word "systematic" in clause (3) of Section 123 of the Act. He also did not dissent on the issue of curbing communal tendencies. The relevant extract of the dissent of Shri Balraj Madhok reads as follows:

> "I disagree with clause 23 of the Bill which aims at omitting the word "systematic" in clause (3) of section 123 of the 1951 Act. By omitting these words any stray remarks of any speaker might be taken advantage of by the opponents for the purpose of an election petition. Only a systematic and planned propaganda of communal nature should be made reprehensible."

25. Eventually the enactment by Parliament after a detailed debate was the re-drafted version contained in the Report of the Select Committee. This reads as follows:

> "(3) 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 or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
>
> (3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of that candidate or for prejudicially affecting the election of any candidate."

26. Significantly, the word "systematic" was deleted despite the dissent of Shri Balraj Madhok. The effect of this is that even a single 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 or language for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate would be deemed to be a corrupt practice for the purposes of the Act.

27. The sweep of sub-section (3) of Section 123 of the Act was considerably enlarged in 1961 by deleting the word "systematic" before the word appeal and according to learned counsel for the appellants the sweep was apparently restricted by inserting the word "his" before religion.

28. Interestingly, simultaneous with the introduction of the Bill to amend the Act, a Bill to amend Section 153A of the Indian Penal Code (the IPC) was moved by Shri Lal Bahadur Shastri. The Statement of Objects and Reasons for introducing the amendment notes that it was, *inter alia*, to check fissiparous, communal and separatist tendencies whether based on grounds of religion, caste, language or community or any other ground. The Statement of Objects and Reasons reads as follows:

> STATEMENT OF OBJECTS AND REASONS
>
> In order effectively to check fissiparous communal and separatist tendencies whether based on grounds of religion, caste, language or community or any other ground, it is proposed to amend section 153A of the Indian Penal Code so as to make it a specific offence for any one to promote or attempt to promote feelings of enmity or hatred between different religious, racial or language groups or castes or communities. The Bill also seeks to make it an offence for any one to do any act which is prejudicial to the maintenance of harmony between different religious,

racial or language groups or castes or communities and which is likely to disturb public tranquillity. Section 295A of the Indian Penal Code is being slightly widened and the punishment for the offence under that section and under section 505 of the Code is being increased from two to three years.

NEW DELHI; LAL BAHADUR
The 5th August, 1961.

29. The Bill to amend the IPC was passed by Parliament and Section 153A of the IPC was substituted by the following:

"153A. Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, feelings of enmity or hatred between different religious, racial or language groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and which disturbs or is likely to disturb the public tranquillity,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Piloting the Bill

30. While piloting the Bill relating to the amendment to sub-section (3) of Section 123 of the Act the Law Minister Shri A.K. Sen adverted to the amendment to the IPC and indeed viewed the amendment to the Act as consequential and an attempt to grapple "with a very difficult disease." It is worth quoting what Shri A.K. Sen had to say for this limited purpose:

> "Now, I come to the main question with regard to clauses 23 and 24, that is, the new provision in clause 23 seeking to prohibit the appeal to communal or linguistic sentiments, and also clause 24 which penalizes the creation of enmity between different classes. Those hon. Members who feel that we should have kept the word 'systematic' have really failed to appreciate the very purpose of this amendment. There would have been no necessity of this amendment if the old section with the word 'systematic' had served its purpose. It is well known that the old section was as good as dead. There could have been no possibility of preventing an appeal to communal, religious or other sectarian interests, with the word 'systematic' in the section, because it is impossible to prove that a person or a candidate or his agent was doing it systematically; and one or two cases would not be regarded as systematic. **We feel, and I think it has been the sense of this House without any exception, that even a stray appeal to success at the polls on the ground of one's religion or narrow communal affiliation or linguistic affiliation would be viewed with disfavor by us here and by the law. Therefore, I think that when we are grappling with a very difficult disease, we should be quite frank with our remedy and not tinker with the problem, and we should show our disfavor openly and publicly even of stray cases of attempts to influence the electorate by appealing to their sectarian interests or passions. I think that this amendment follows as a consequence of the amendment which we have already made in the Indian Penal Code.** Some hon. Members have said that it is unnecessary. In my submission, it follows automatically that we extend it to the sphere of elections and say categorically that whoever in connection with an election creates enmity between different classes of citizens shall be punishable. The other thing is a general thing. If our whole purpose is to penalize all attempts at influencing elections by creating enmity between different classes and communities then we must say that in connection with the election, no person shall excepting at the peril of violating our penal law, shall attempt to influence the electorate by creating such enmity or hatred between communities**. I think that these two provisions, if followed faithfully, would go a long way in eradicating or at least in checking the evil which has raised its ugly head in so many forms all over the country in recent years.**" [Emphasis supplied].

31. The significance of this speech by the Law Minister is that Parliament was invited to unequivocally launch a two-pronged attack on communal, separatist and fissiparous tendencies that seemed to be on the rise in the country.

An amendment to the IPC had already been made and now it was necessary to pass the amendment to the Act. A sort of 'package deal' was presented to Parliament making any appeal to communal, fissiparous and separatist tendencies an electoral offence leading to voiding an election and a possible disqualification of the candidate from contesting an election or voting in an election for a period. An aggravated form of any such tendency could invite action under the criminal law of the land.

32. Although we are concerned with Section 123(3) of the Act as enacted in 1961[15] and in view of the limited reference made, to the interpretation of *his* religion, race, caste, community or language in the context in which the expression is used, we cannot completely ignore the contemporaneous introduction of sub-section (3A) in Section 123 of the Act nor the introduction of Section 153A of the IPC.

Submissions and discussion

33. At the outset we may state that we heard a large number of counsels, many of them on behalf of interveners which included (surprisingly) some States. However, the leading submissions on behalf of the appellants on the issue before us were addressed by Shri Shyam Divan, Senior Advocate. Some learned counsels supplemented him while others opposed his narrow interpretation of the provision under consideration.

15There has been no substantial change in the language of the statute since then.

34. Basically, four principal submissions were made by learned counsel for the appellants: Firstly, that sub-section (3) of Section 123 of the Act must be given a literal interpretation. It was submitted that the bar to making an appeal on the ground of religion[16] must be confined to the religion of the candidate – both for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. The text of sub-section (3) of Section 123 of the Act cannot be stretched to include the religion of the elector or that of the agent or that of the person making the appeal with the consent of the candidate. Secondly and this a facet of the first submission, it was submitted that sub-section (3) of Section 123 of the Act ought to be given a restricted application since the civil consequence that follows from a corrupt practice under this provision is quite severe. If a candidate is found guilty of a corrupt practice the election might be declared void[17] and that candidate might also suffer disqualification for a period of six years in accordance with Section 8-A read with Section 11-A of the Act.[18] Therefore, a broad interpretation of

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16The submission would equally apply to an appeal on the ground of caste, race, community or language.

17

100. Grounds for declaring election to be void. - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

(*a*) xxx xxx xxx

(*b*) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(*c*) xxx xxx xxx

(*d*) xxx xxx xxx

the High Court shall declare the election of the returned candidate to be void.

18

sub-section (3) of Section 123 of the Act must be eschewed and it should be given a restricted interpretation. Thirdly, it was submitted that if a broad or purposive interpretation is given to sub-section (3) of Section 123 of the Act then that sub-section might fall foul of Article 19(1)(a) of the Constitution. Fourthly and finally, it was submitted that departing from a literal or strict interpretation of sub-section (3) of Section 123 of the Act would mean unsettling the law accepted over several decades and we should not charter our course in that direction unless there was strong reason to do so, and that there was no such strong reason forthcoming.

8-A. Disqualification on ground of corrupt practices. - (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.

11-A. Disqualification arising out of conviction and corrupt practices. - (1) If any person, after the commencement of this Act, is convicted of an offence punishable under Section 171E or Section 171F of the Indian Penal Code (45 of 1860), or under Section 125 or Section 135 or clause (*a*) of sub-section (2) of Section 136 of this Act, he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

(2) Any person disqualified by a decision of the President under sub-section (1) of Section 8A for any period shall be disqualified for the same period for voting at any election.

(3) The decision of the President on a petition submitted by any person under sub-section (2) of Section 8A in respect of any disqualification for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be, apply in respect of the disqualification for voting at any election incurred by him under clause (b) of sub-section (1) of Section 11A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), as if such decision were a decision in respect of the said disqualification for voting also.

35. At the outset, we may mention that while considering the mischief sought to be suppressed by sub-sections (2), (3) and (3A) of Section 123 of the Act, this Court observed in ***Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra***[19] that the historical, political and constitutional background of our democratic set-up needed adverting to. In this context it was said that our Constitution makers intended a secular democratic republic where differences should not be permitted to be exploited. It was said:

> "Our Constitution-makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order, in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed and language. **Our political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational thought and action, should not be permitted to be exploited lest the imperative conditions for the preservation of democratic freedoms are disturbed.**
>
> It seems to us that **Section 123, sub-sections (2), (3) and (3-A) were enacted so as to eliminate, from the electoral process, appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution,** and, indeed, of any civilised political and social order. Due respect for the religious beliefs and practices, race, creed, culture and language of other citizens is one of the basic postulates of our democratic system. Under the guise of protecting your own religion, culture, or creed you cannot embark on personal attacks on those of others or whip up low herd instincts and animosities or irrational fears between groups to secure electoral victories. **The line has to be drawn by the courts, between what is permissible and what is prohibited, after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of were made**." [Emphasis

19(1976) 2 SCC 17 decided by a Bench of three learned judges

supplied by us].

The above expression of views was cited with approval in ***S. Hareharan Singh v. S. Sajjan Singh***.[20]

Literal versus Purposive Interpretation

36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in ***R. v. Secretary of State for Health ex parte Quintavalle***[21] when it was said:

> "8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some

20(1985) 1 SCC 370 decided by a Bench of three learned judges
21[2003] UKHL 13

> improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.
>
> 9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of "cruel and unusual punishments" has not changed over the years since 1689, but many punishments which were not then thought to fall within that category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within old statutory language: see Bennion, *Statutory Interpretation,* 4th ed (2002) Part XVIII, Section 288. A revealing example is found in *Grant v Southwestern and County Properties Ltd* [1975] Ch 185, where Walton J had to decide whether a tape recording fell within the expression "document" in the Rules of the Supreme Court. Pointing out (page 190) that the furnishing of information had been treated as one of the main functions of a document, the judge concluded that the tape recording was a document."

37. In the same decision, Lord Steyn suggested that the pendulum has swung towards giving a purposive interpretation to statutes and the shift towards purposive construction is today not in doubt, influenced in part by European ideas, European Community jurisprudence and European legal culture. It was said:

> "……. the adoption of a purposive approach to construction of statutes generally, and the 1990 Act [Human Fertilisation and Embryology Act 1990] in particular, is amply justified on wider grounds. In *Cabell v Markham*[22] Justice Learned Hand explained the merits of purposive interpretation, at p 739:

22(1945) 148 F 2d 737

> "Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."
>
> **The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas**: see, however, a classic early statement of the purposive approach by Lord Blackburn in *River Wear Commissioners v Adamson*[23]. In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is that the degree of liberality permitted is influenced by the context, eg social welfare legislation and tax statutes may have to be approached somewhat differently." [Emphasis supplied by us].

To put it in the words of Lord Millett: "We are all purposive constructionists now."[24]

In **Bennion on Statutory Interpretation**[25] it is said that:

> "General judicial adoption of the term 'purposive construction' is recent, but the concept is not new. Viscount Dilhorne, citing Coke, said that while **it is now fashionable to talk of a purposive construction of a statute the need for such a construction has been recognized since the seventeenth century**.[26] In fact the recognition goes considerable further back than that. The difficulties over statutory interpretation belong to the language, and there is unlikely to be anything very novel or recent about their solution…….. Little has changed over problems of verbal meaning since the Barons of the Exchequer arrived at their famous resolution in *Heydon's Case.*[27] Legislation is still about

23(1877) 2 App Cas 743, 763

24'Construing Statutes', (1999) 2 Statute Law Review 107, p.108 quoted in 'Principles of Statutory Interpretation' by Justice G.P. Singh 14th Edition revised by Justice A.K. Patnaik at page 34

25Sixth Edition (Indian Reprint) page 847

26 Stock v. Frank Jones (Tipton) Ltd., [1978] 1 WLR 231 at 234

27(1584) 3 Co Rep 7a

> remedying what is thought to be a defect in the law. Even the most 'progressive' legislator, concerned to implement some wholly normal concept of social justice, would be constrained to admit that if the existing law accommodated the notion there would be no need to change it. No *legal* need that is …." [Emphasis supplied by us].

38. We see no reason to take a different view. Ordinarily, if a statute is well-drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good.

39. The Representation of the People Act, 1951 is a statute that enables us to cherish and strengthen our democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the electorate in a vast democracy like ours would really be going against public interest. As it was famously said by Churchill: "At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper…" if the electoral law needs to be understood,

interpreted and implemented in a manner that benefits the "little man" then it must be so. For the Representation of the People Act, 1951 this would be the essence of purposive interpretation.

40. To fortify his submission that sub-section (3) of Section 123 of the Act should be given a narrow interpretation, learned counsel for the appellants referred to the debates on the subject in Parliament extracted in ***Ramesh Yeshwant Prabhoo***. It is not necessary to delve into the debates in view of the clear expression of opinion that the purpose of the amendment was to widen the scope of corrupt practices to curb communal, fissiparous and separatist tendencies and that was also 'the sense of the House'. How and in what manner should the result be achieved was debatable, but that it must be achieved was not in doubt.

41. The purpose of enacting sub-section (3) of Section 123 of the Act and amending it more than once during the course of the first 10 years of its enactment indicates the seriousness with which Parliament grappled with the necessity of curbing communalism, separatist and fissiparous tendencies during an election campaign (and even otherwise in view of the amendment of Section 153A of the IPC). It is during electioneering that a candidate goes virtually all out to seek votes from the electorate and Parliament felt it necessary to put some fetters on the language that might be used so that the democratic process is not

derailed but strengthened. Taking all this into consideration, Parliament felt the need to place a strong check on corrupt practices based on an appeal on grounds of religion during election campaigns (and even otherwise).

42. The concerns which formed the ground for amending Section 123(3) of the Act have increased with the tremendous reach already available to a candidate through the print and electronic media, and now with access to millions through the internet and social media as well as mobile phone technology, none of which were seriously contemplated till about fifteen years ago. Therefore now, more than ever it is necessary to ensure that the provisions of sub-section (3) of Section 123 of the Act are not exploited by a candidate or anyone on his or her behalf by making an appeal on the ground of religion with a possibility of disturbing the even tempo of life.

Social context adjudication

43. Another facet of purposive interpretation of a statute is that of social context adjudication. This has been the subject matter of consideration and encouragement by the Constitution Bench of this Court in ***Union of India v. Raghubir Singh (Dead) by Lrs***.[28] In that decision, this Court noted with approval the view propounded by Justice Holmes, Julius Stone and Dean Roscoe Pound to the effect that law must not remain static but move ahead with the times keeping in mind the social context. It was said:

28(1989) 2 SCC 754

"But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for **readjustment in a changing society, a readjustment of legal norms demanded by a changed social context**. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience",[29] and again when he declared in another study[30] that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the **introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions**, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined."[31] [Emphasis supplied by us].

A little later in the decision it was said:

"Not infrequently, in the nature of things there is a gravity-heavy inclination to follow the groove set by precedential law. **Yet a sensitive judicial conscience often persuades the mind to search for a different set of norms more responsive to the changed social context.** The dilemma before the Judge poses the task of finding a new equilibrium prompted not seldom by the desire to reconcile opposing mobilities. The competing goals, according to Dean Roscoe Pound, invest the Judge with the responsibility "of proving to mankind that the law was something fixed and settled, whose authority was beyond question, while at the same time enabling it to make constant readjustments and occasional radical changes under the pressure of infinite and variable human desires".[32] The reconciliation suggested by Lord Reid in *The Judge as Law Maker*[33] lies in keeping both objectives in view, "that the law shall be certain, and that it shall be just and shall move with the times". [Emphasis supplied by us].

29Oliver Wendell Holmes: The Common Law page 5

30Oliver Wendell Holmes : *Common Carriers and the Common Law*, (1943) 9 Curr LT 387, 388

31Julius Stone : *Legal Systems & Lawyers Reasoning*, pp. 58-59

32Roscoe Pound : *An Introduction to the Philosophy of Law*, p. 19

33Pp 25-26

44. Similarly, in ***Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay***[34] Justice H.R. Khanna rather pragmatically put it that:

> "As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. **Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations.** Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time **it has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself…**….." [Emphasis supplied by us].

45. Finally, in ***Badshah v. Urmila Badshah Godse***[35] this Court reaffirmed the need to shape law as per the changing needs of the times and circumstances. It was observed:

> "The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, **responsiveness to change in social reality is the life of the law.** It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law." [Emphasis supplied by us].

34(1974) 2 SCC 402
35(2014) 1 SCC 188

46. There is no doubt in our mind that keeping in view the social context in which sub-section (3) of Section 123 of the Act was enacted and today's social and technological context, it is absolutely necessary to give a purposive interpretation to the provision rather than a literal or strict interpretation as suggested by learned counsel for the appellants, which, as he suggested, should be limited only to the candidate's religion or that of his rival candidates. To the extent that this Court has limited the scope of Section 123(3) of the Act in ***Jagdev Singh Sidhanti***, ***Kanti Prasad Jayshanker Yagnik*** and ***Ramesh Yeshwant Prabhoo*** to an appeal based on the religion of the candidate or the rival candidate(s), we are not in agreement with the view expressed in these decisions. We have nothing to say with regard to an appeal concerning the conservation of language dealt with in ***Jagdev Singh Sidhanti***. That issue does not arise for our consideration.

Constitutional validity of Section 123(3) of the Act

47. Although it was submitted that a broad interpretation given to sub-section (3) of Section 123 of the Act might make it unconstitutional, no serious submission was made in this regard. A similar submission regarding the constitutional validity of Section 123(5) of the Act was dealt with rather dismissively by the Constitution Bench in ***Jamuna Prasad Mukhariya v.***

Lachhi Ram[36] when the sweep of the corrupt practice on the ground of religion was rather broad. It was held:

> "Both these provisions, namely sections 123(5) and 124(5), were challenged as *ultra vires* Article 19(1)(a) of the Constitution. It was contended that Article 245(1) prohibits the making of laws which violate
>
> the Constitution and that the impugned sections interfere with a citizen's fundamental right to freedom of speech. There is nothing in this contention. These laws do not stop a man from speaking. They merely prescribe conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are *intra vires*."

We need say nothing more on the subject.

Overturning the settled legal position

48. Several decisions were cited before us to contend that we should not unsettle the long-standing interpretation given to Section 123(3) of the Act. As we have indicated earlier, there was some uncertainty about the correct interpretation of sub-section (3) of Section 123 of the Act. It is not as if the interpretation was well-recognized and settled. That being the position, there is really nothing that survives in this submission.

36(1955) 1 SCR 608

Conclusion

49. On a consideration of the entire material placed before us by learned counsels, we record our conclusions as follows:

1. The provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting sub-section (3A) in Section 123 of the Act and inserting Section 153A in the Indian Penal Code.

2. So read together, and for maintaining the purity of the electoral process and not vitiating it, sub-section (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector 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 the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector.

3. It is a matter of evidence for determining whether an appeal has at all been made to an elector and whether the appeal if made is in violation of the provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951.

50. The reference is answered as above and the matter may be placed before Hon'ble the Chief Justice for necessary orders.

.....J
(MADAN B. LOKUR)

NewDelhi; **.....J**
January 2, 2017 **(L. NAGESWARA RAO)**