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

J U D G M E N T

Dr D Y CHANDRACHUD, J

A The reference

This reference to a Bench of seven Judges turns upon the meaning of a simple pronoun : “his” in Section 123(3) of the Representation of the People Act, 1951. A word, it is said, defines a universe. Words symbolise the human effort to contain the infinity which dwells in human relationships into finite boundaries which distinguish the known from the unknown, the familiar from

the unfamiliar and the certain from the uncertain. That so much should turn upon the meaning which we assign to a single word is reason enough to guard against an assumption that the issue which we confront is a matter entirely of grammar or of statutory interpretation. Underlying the surface of this case, are profound questions about the course of democracy in our country and the role of religion, race, caste, community and language in political discourse. Each of these traits or characteristics defines identity within the conception of nationhood and citizenship. Quibbles over the meaning of a word apart**,** the interpretation that will be adopted by the court will define the boundaries between electoral politics on the one hand and individual or collective features grounded in religion, race, caste, community and language on the other.

2 The reference before this Bench of seven Judges arises in this way :

(i) In **Narayan Singh** v. **Sunderlal Patwa**[37], a Constitution Bench of this Court observed in its order dated 28 August 2002 that the High Court in that case had construed Section 123(3) “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

37 (2003) 9 SCC 300

construction was supported by three Judge Bench decisions of this Court in **Kanti Prasad Yagnik** v. **Purshottamdas Patel**[38] and **Dr Ramesh Yashwant Prabhoo** v. **Prabhakar Kashinath Kunte**[39]. There were observations of the Constitution Bench in **Kultar Singh** v. **Mukhtar Singh**[40] bearing on the interpretation of Section 123(3). In the referring order in **Naryan Singh** (supra), this Court observed that in the nine Judge Bench decision in **S R Bommai** v. **Union of India**[41], there were certain observations which were contrary to the decisions of the three Judge Benches noted above. The order of reference was founded on the following reasons :

> "2…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….
>
> 3. 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

38(1969) 1 SCC 455
39(1996) 1 SCC 130
40(1964) 7 SCR 790
41(1994) 3 SCC 1

> 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."

3 The present civil appeal was initially referred by a Bench of three judges to a Constitution Bench on 16 April 1996[42]. When the civil appeal came up before a Constitution Bench[43], one of the questions which fell for consideration was the interpretation of Section 123(3). Following the reference to seven Judges made in **Narayan Singh**, the present civil appeal was also referred on the question of the interpretation of Section 123(3). The order of reference dated 30 January 2014 explains the limited nature of the reference, thus :

> "4. Be that as it may, since one of the questions involved in the present appeal is already referred to a larger Bench of seven Judges, 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."

The reference to seven Judges is limited to the interpretation of Section 123(3).

B Representation of the People Act, 1951

4 Part VII of the Representation of the People Act, 1951 deals with corrupt practices and electoral offences. Chapter 1 of Part VII contains a provision, Section 123, which defines corrupt practices for the purposes of the Act. Since

42(1996) 3 SCC 665
43(2014) 14 SCC 382

its amendment in 1961, Section 123(3)[44], to the extent that is relevant to the present case, provides as follows :

> "123(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."

Together with the substitution of sub-section (3), the amending enactment introduced sub-section 3A, in the following terms :

> "123(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 the election of that candidate or for prejudicially affecting the election of any candidate."

5 Electoral offences are provided in Chapter 3. Among them, in Section 125, is promoting or attempting to promote feelings of enmity or hatred between different classes of the citizens, in connection with an election under the Act, on grounds of religion, race, caste, community and language.

6 At the conclusion of the trial of an election petition, the High Court may under Section 98(b)[45] declare the election of any or all of the returned

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44 Section 123(3) was substituted by amending Act 40 of 1961, w.e.f. 20.9.1961.

45 Section 98 : Decision of the High Court – At the conclusion of the trial of an election petition [the High Court] shall make an order –

candidates to be void. One of the grounds on which an election can be declared void in Section 100(1)(b) is :

> "that any corrupt practice has been committed by a returned candidate or by his election agent or by any other person with the consent of a returned candidate or his election agent."

7 At the time when the High Court makes an order under Section 98, it has to also make an order under Section 99 stating whether a charge made in the election petition, of a corrupt practice having been committed at the election has been proved, the nature of the corrupt practice and the names of all persons who have been proved to have committed any corrupt practice. The consequence of a finding by the High Court of the commission of a corrupt practice in Section 99, is a disqualification under Section 8(A) for a period of upto six years. Section 8(A) is in the following terms :

> "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;
>
> (2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such

> disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period;
>
> (3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion."

8 Section 11(A)(2) stipulates that any person who is disqualified by a decision of the President under sub-section (1) of Section 8(A) for any period shall be disqualified for the same period from voting at any election.

9 Section 16 of the Representation of the People Act, 1951 provides that where a person is disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections, that person shall be disqualified for registration in an electoral roll. Moreover, if a person has been disqualified after registration in an electoral roll, the name of that person is to be immediately struck off the electoral roll in which it was included. These provisions in the matter of disqualification emanate from Article 102(1)(e) of the Constitution under which a person shall be disqualified for being chosen as and for being a Member of either House of Parliament "if he is so disqualified by or under any law made by Parliament". A similar provision in relation to the state legislatures is contained in Article 191(1)(e) of the Constitution.

10 The consequence of a finding of the High Court at the conclusion of the trial of an election petition that a person is guilty of a corrupt practice under Section 123 is serious. A disqualification can ensue for a period of upto six years. A person who has been disqualified stands debarred from voting at any election for the same period. The ban upon the entry of the name of such a person in an electoral roll (or the striking off of the name when it was included in the electoral roll) disenfranchises such a person. The person ceases to be an elector and is not qualified to fill a seat in Parliament or the state legislatures for the period during which the disqualification operates.

C. Strict construction

11 Election petitions alleging corrupt practices have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal character, a strict construction of the words used by the legislature must be adopted. The rule of strict interpretation in regard to penal statutes was enunciated in a judgment of a Constitution Bench of this Court in **Tolaram Relumal** v. **State of Bombay**[46] where it was held as follows :

> "...It may be here observed that the provisions of section 18(1) are penal in nature and it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an

46 (1951) 1 SCR 158

> expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in *London and North Eastern Railway Co. V. Berriman,* "where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficient its intention, beyond the fair and ordinary meaning of its language." (Id at p. 164)

This principle has been consistently applied by this Court while construing the ambit of the expression 'corrupt practices'. The rule of strict interpretation has been adopted in **Amolakchand Chhazed** v. **Bhagwandas**[47]. A Bench of three Judges of this Court held thus :

> "12....Election petitions alleging corrupt practices are proceedings of a quasi-criminal nature and the onus is on the person who challenges the election to prove the allegations beyond reasonable doubt." (Id at p. 572)

12 The standard of proof is hence much higher than a preponderance of probabilities which operates in civil trials. The standard of proof in an election trial veers close to that which guides a criminal trial. This principle was applied in another decision of three Judges of this Court in **Baldev Singh Mann** v. **Gurcharan Singh (MLA)**[48] in the following observations:

> "8. It is well-settled that an allegation of corrupt practice within the meaning of sub-sections (1) to (8) of Section 123 of the Act, made in the election petition are regarded quasi-criminal in nature requiring a strict proof of the same because the consequences are not only very serious but also penal in nature. It may be pointed out that on the proof of any of the corrupt practices as

47 (1977) 3 SCC 566

48 (1996) 2 SCC 743

> alleged in the election petition it is not only the election of the returned candidate which is declared void and set aside but besides the disqualification of the returned candidate, the candidate himself or his agent or any other person as the case may be, if found to have committed corrupt practice may be punished with imprisonment under Section 135-A of the Act. It is for these reasons that the Court insists upon a strict proof of such allegation of corrupt practice and not to decide the case on preponderance or probabilities. The evidence has, therefore, to be judged having regard to these well-settled principles." (Id at p.746)

In **Thampanoor Ravi** v. **Charupara Ravi**[49], in the context of a disqualification under Article 191 of the Constitution, on the ground of being declared an insolvent, this Court observed as follows :

> "19. The learned Judge noticed that if a person is not to be held an insolvent as in ordinary parlance it would result in non-application of disqualification even if the court is satisfied that the returned candidate is not in a position to repay debts and could be adjudged to be an insolvent. Article 191(1)(c) does not contemplate mere impecuniosity or incapacity of a person to repay one's debts but he should not only be adjudged an insolvent but also remain undischarged. Such a contingency could only arise under the insolvency law. **Article 191(1)(c) refers to disqualifications of a person from getting elected to the State Legislature. The conditions for disqualification cannot be enlarged by importing to it any meaning other than permissible on a strict interpretation of expressions used therein for what we are dealing with is a case of disqualification. Whenever any disqualification is imposed naturally the right of a citizen is cut down and in that event a narrow interpretation is required. Therefore, the liberal view taken by the learned Judge to the contrary does not appear to be correct."** (Id at p.87)

49 (1999) 8 SCC 74

In **Bipinchandra Parshottamdas Patel (Vakil)** v. **State of Gujarat**[50], a Bench of three Judges of this Court restated the principle in the following observations :

> "31. It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation must be made for construction thereof. In his classic work *The Interpretation and Application of Statutes* Read Dickerson states:
>
> > "(1) The court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here 'strict' means merely that *the court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute.* Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law-making by analogy with it;
> >
> > (2) The court will resolve an evenly balanced uncertainty of meaning in favour of a criminal defendant, the common law, the 'common right', a taxpayer, or sovereignty;
> >
> > (3) The court will so resolve a significant uncertainty of meaning even against the weight of probability;
> >
> > (4) The court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach;
> >
> > (5) Where the manifest purpose of the statute, as collaterally revealed, is narrower than its express meaning, the court will restrict application of the statute to its narrower purpose. This differs from the Riggs situation in that the narrow purpose is revealed by sources outside the statute and its proper context." (Id at p. 653)

50 (2003) 4 SCC 642

Construing the provisions of Section 123, a Bench of two Judges of this Court in **S Subramaniam Balaji** v. **State of Tamil Nadu**[51], observed thus :

> "61.2….Section 123 and other relevant provisions, upon their true construction, contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt is directly linked to his own election irrespective of the question whether his party forms a Government or not. The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on
>
> the power of the political parties to make promises in the election manifesto." (Id at p. 694)

This reflects the settled legal position.

D. Construing Section 123(3)

13 Essentially, Section 123(3) can be understood by dividing its provisions into three parts. The first part describes the person making the appeal, the second part describes what the appeal seeks to achieve while the third part relates to the ground or basis reflected in the second. The first part of the provision postulates an appeal. The appeal could be :

(i) by a candidate; or
(ii) by the agent of a candidate; or
(iii) by another person with the consent of a candidate; or
(iv) by another person with the consent of the election agent of the candidate.

51 (2013) 9 SCC 659

Where the person making the appeal is not the candidate or his agent, consent of the candidate or his agent is mandated.

14 The appeal is to vote or refrain from voting for any person. The expression 'any person' is evidently a reference to a candidate contesting the election. The third part speaks of the basis of the appeal. The appeal is to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language. In the latter part of Section 123(3), the corrupt practices consist in the use of or appeal to religious symbols or national symbols such as the national flag or emblem for (i) the furtherance of the prospects of the election of that candidate or (ii) prejudicially affecting the election of any candidate.

15 Section 123(3) evinces a Parliamentary intent to bring within the corrupt practice an appeal by a candidate or his agent (or by any person with the consent of the candidate or his election agent) to either vote or refrain from voting for any person. The positive element is embodied in the expression "to vote". What it means is that there is an appeal to vote in favour of a particular candidate. Negatively, an appeal not to vote for a rival candidate is also within the text of the provision. An appeal to vote for a candidate is made to enhance the prospects of the candidate at the election. An appeal to refrain from voting for a candidate has a detrimental effect on the election prospects of a rival candidate. Hence, in the first instance, there is an appeal by a candidate (or

his agent or by another person with the consent of the election agent). The appeal is for soliciting votes in favour of the candidate or to refrain from voting for a rival candidate. The expression ‘his’ means belonging to or associated with a person previously mentioned. The expression “his” used in conjunction with religion, race, caste, community or language is in reference to the religion, race, caste, community or language of the candidate (in whose favour the appeal to cast a vote is made) or that of a rival candidate (when an appeal is made to refrain from voting for another). It is impossible to construe sub-section (3) as referring to the religion, race, caste, community or language of the voter. The provision, it is significant, adverts to “a candidate” or “his agent”, or “by any other person with the consent of a candidate or his election

agent”. This is a reference to the person making the appeal. The next part of the provision contains a reference to the appeal being made “to vote or refrain from voting for any person”. The vote is solicited for a candidate or there is an appeal not to vote for a candidate. Each of these expressions is in the singular. They are followed by expression “on the ground of his religion…”. The expression “his religion…” must necessarily qualify what precedes; namely, the religion of the candidate in whose favour a vote is sought or that of another candidate against whom there is an appeal to refrain from voting. ‘His’ religion (and the same principle would apply to ‘his’ race, ‘his’ caste, ‘his’ community, or ‘his’ language) must hence refer to the religion of the person in

whose favour votes are solicited or the person against whom there is an appeal for refraining from casting a ballot.

16 Section 123(3) uses the expression “on the ground of his religion…”. There are two significant expressions here (besides ‘his’ which has been considered above). The first is ‘the’ and the second, “ground”. The expression ‘the’ is a definite article used especially before a noun with a specifying or particularizing effect. ‘The’ is used as opposed to the indefinite or generalizing forces of the indefinite article ‘a’ or ‘an’. The expression ‘ground’ was substituted in Section 123(3) in place of ‘grounds’, following the amendment of 1961. Read together, the words “the ground of his religion…” indicate that what the legislature has proscribed is an appeal to vote for a candidate or to refrain from voting for another candidate exclusively on the basis of the religion (or race, caste, community or language) of the candidate or a rival candidate.

‘The ground’ means solely or exclusively on the basis of the identified feature or circumstance.

17 Is there a valid rationale for Parliament, in adopting Section 123(3), to focus on an appeal to the religion of the candidate or of a rival candidate? There is a clear rationale and logic underlying the provision. A person who contests an election for being elected as a representative of the people either to Parliament or the state legislatures seeks to represent the entire

constituency. A person who is elected represents the whole of the constituency. Our Constitution has rejected and consciously did not adopt separate electorates. Even where a constituency is reserved for a particular category, the elected candidate represents the constituency as a whole and not merely persons who belong to the class or category for whom the seat is reserved. A representative of the people represents people at large and not a particular religion, caste or community. Consequently, as a matter of legislative policy Parliament has mandated that the religion of a candidate cannot be utilized to solicit votes at the election[52].Similarly, the religion of a rival candidate cannot form the basis of an appeal to refrain from voting for that candidate. The corrupt practice under Section 123(3) consists of an appeal to cast votes for a candidate or to refrain from casting votes for a rival candidate on the basis of the religion, race, caste community or language of the candidate himself or, as the case may be, that of the rival candidate.

18 What then, is the rationale for Section 123(3) not to advert to the religion, caste, community or language of the voter as a corrupt practice? Our Constitution recognizes the broad diversity of India and, as a political document, seeks to foster a sense of inclusion. It seeks to wield a nation where its citizens practice different religions, speak varieties of languages, belong to various castes and are of different communities into the concept of one nationhood. Yet, the Constitution, in doing so, recognizes the position of

52 The same holds in the case of race, caste, community or language of a candidate.

religion, caste, language and gender in the social life of the nation. Individual histories both of citizens and collective groups in our society are associated through the ages with histories of discrimination and injustice on the basis of these defining characteristics. In numerous provisions, the Constitution has sought to preserve a delicate balance between individual liberty and the need to remedy these histories of injustice founded upon immutable characteristics such as of religion, race, caste and language. The integrity of the nation is based on a sense of common citizenship. While establishing that notion, the Constitution is not oblivious of history or to the real injustices which have been perpetrated against large segments of the population on grounds of religion, race, caste and language. The Indian state has no religion nor does the Constitution recognize any religion as a religion of the state. India is not a theocratic state but a secular nation in which there is a respect for and acceptance of the equality between religions. Yet, the Constitution does not display an indifference to issues of religion, caste or language. On the contrary, they are crucial to maintaining a stable balance in the governance of the nation.

19 Article 15(1) contains a prohibition against discrimination by the state against any citizen only on grounds of religion, race, caste, sex, place of birth or any of them. Yet, clause (4) makes it clear that this shall not prevent the state from making special provisions for the advancement of socially or educationally backward classes of the citizens or for the scheduled castes and

scheduled tribes. Article 16(1) guarantees equality of opportunity for all citizens in matters relating to public employment while clause (2) contains a guarantee against discrimination only on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. Yet, clause (4) of Article 16 empowers the state to make provisions for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the state. Article17 abolishes untouchability, which is a pernicious and baneful practice of caste. Article 25 guarantees to all persons an equal entitlement to the freedom of conscience and the right to freely practice, profess and propagate religion. Yet, Article 25(2)(b) enables the state to make any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Article 25(2)(b) is a recognition of the social history of discrimination which perpetrated centuries of exclusion from worship on the ground of religion. Article 26 guarantees certain rights to religious denominations. Article 29 guarantees to every section of the citizens with a distinct language, scriptor culture of its own the right to conserve the same. Article 30 protects the rights of religious and linguistic minorities to establish and administer educational institutions of their choice. Article 41 which is a part of the Directive Principles requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of

unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 46 mandates that the state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 330 and Article 332 provide for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the Lok Sabha and in the legislative assemblies of the states. The Presidential power to designate Scheduled Castes has a constitutional origin traceable to Article 341 and in regard to Scheduled Tribes, to Article 342. Part XVII of the Constitution contains provisions for the official language of the Union and for regional languages. The eighth schedule of the Constitution contains a recognition of the diversity of India in terms of its spoken and written languages.

20 These, among other, provisions of the Constitution demonstrate that there is no wall of separation between the state on the one hand and religion, caste, language, race or community on the other. The Constitution is not oblivious to the history of discrimination against and the deprivation inflicted upon large segments of the population based on religion, caste and language. Religion, caste and language are as much a symbol of social discrimination imposed on large segments of our society on the basis of immutable characteristics as they are of a social mobilisation to answer centuries of injustice. They are part of the central theme of the Constitution to produce a

just social order. Electoral politics in a democratic polity is about mobilisation. Social mobilisation is an integral element of the search for authority and legitimacy. Hence, it would be far-fetched to assume that in legislating to adopt Section 123(3), Parliament intended to obliterate or outlaw references to religion, caste, race, community or language in the hurly burly of the great festival of democracy. The corrupt practice lies in an appeal being made to vote for a candidate on the ground of his religion, race, caste, community or language. The corrupt practice also lies in an appeal to refrain from voting for any candidate on the basis of the above characteristics of the candidate. Electors however, may have and in fact do have a legitimate expectation that the discrimination and deprivation which they may have suffered in the past (and which many continue to suffer) on the basis of their religion, caste, or language should be remedied. Access to governance is a means of addressing social disparities. Social mobilisation is a powerful instrument of bringing marginalised groups into the mainstream. To hold that a person who seeks to contest an election is prohibited from speaking of the legitimate concerns of citizens that the injustices faced by them on the basis of traits having an origin in religion, race, caste, community or language would be remedied is to reduce democracy to an abstraction. Coupled with this fact is the constitutional protection of free speech and expression in Article 19(1)(a) of the Constitution. This fundamental right is subject to reasonable restrictions as provided in the Constitution. Section 123(3) was not meant to and does not

refer to the religion (or race, community, language or caste) of the voter. If Parliament intended to do so, it was for the legislature to so provide in clear and unmistakable terms. There is no warrant for making an assumption that Parliament while enacting Section 123(3) intended to sanitize the electoral process from the real histories of our people grounded in injustice, discrimination and suffering. The purity of the electoral process is one thing. The purity of the process is sought to be maintained by proscribing an appeal to the religion of a candidate (or to his or her caste, race, community or language) or in a negative sense to these characteristics of a rival candidate. The "his" in Section 123(3) cannot validly refer to the religion, race, caste, community or language of the voter.

21 An appeal by a candidate on the ground of 'his' religion, race, caste, community or language is a solicitation of votes on that foundation. Similarly, an appeal by a candidate to the voters not to vote for a rival candidate on the ground of his religion, race, caste, community or language is also an appeal on the ground of religion. If a candidate solicits votes on the ground that he is a Buddhist that would constitute an appeal on the ground of his religion. Similarly, if a candidate calls upon the voters not to vote for a rival candidate because he is a Christian, that constitutes an appeal on the ground of religion. However, the statute does not prohibit discussion, debate or dialogue during the course of an election campaign on issues pertaining to religion or on issues of caste, community, race or language. Discussion of matters relating

to religion, caste, race, community or language which are of concern to the voters is not an appeal on those grounds. Caste, race, religion and language are matters of constitutional importance. The Constitution deals with them and contains provisions for the amelioration of disabilities and discrimination which was practiced on the basis of those features. These are matters of concern to voters especially where large segments of the population were deprived of basic human rights as a result of prejudice and discrimination which they have suffered on the basis of caste and race. The Constitution does not deny religion, caste, race, community or language a position in the public space. Discussion about these matters - within and outside the electoral context – is a constitutionally protected value and is an intrinsic part of the freedom of speech and expression. The spirit of discussion, debate and dialogue sustains constitutional democracy. A sense of inclusion can only be fostered by protecting the right of citizens freely to engage in a dialogue in public spaces. Dialogue and criticism lie at the heart of mobilising opinion. Electoral change is all about mobilising opinion and motivating others to stand up against patterns of prejudice and disabilities of discrimination. Section 123(3) does not prohibit electoral discourse being founded on issues pertaining to caste, race, community, religion or language.

22 What is proscribed by Section 123(3) is a candidate soliciting votes for himself or making a request for votes not to be cast for a rival candidate on the basis of his own (or of the rival candidate's) religion etc. Where an election

agent has made an appeal on the proscribed ground, that implicates the candidate because the election agent is a person who acts on behalf of a candidate. Similarly, any other person making an appeal with the consent of the candidate would also implicate the candidate since the consent gives rise to an inference of agency. Another person making an appeal on behalf of a candidate with the consent of the candidate represents the candidate. The view which we have adopted is that first and foremost, Section 123(3) must be interpreted in a literal sense. However, even if the provision were to be given a purposive interpretation, that does not necessarily lead to the interpretation that Section 123(3) must refer to the caste, religion, race, community or language of the voter. On the contrary, there are sound constitutional reasons, which militate against Section 123(3) being read to include a reference to the religion (etc) of the voter. Hence, it is not proper for the court to choose a particular theory based on purposive interpretation, when that principle of interpretation does not necessarily lead to one inference or result alone. It must be left to the legislature to amend or re-draft the legislative provision, if it considers it necessary to do so.

23 The next aspect which needs to be carefully analysed is whether this interpretation is belied by the legislative history of the statutory provision.

E. <u>Legislative history</u>

24 Originally, the Representation of the People Act, 1951 distinguished between major corrupt practices (which were defined in Section 123) and minor corrupt practices (in Section 124). Among the minor corrupt practices, sub-section (5) of Section 124 contained the following :

> "**124. Minor Corrupt practices**.-
>
> (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."

The appeal to vote or to refrain from voting on grounds of caste, race community or religion was required to be "systematic", if an act were to constitute a corrupt practice. Systematic meant something more than a singular act. It required acts which were regular or repetitive.

25 In 1956, Parliament enacted an amending law[53] by which Chapter I was substituted in the principal Act for erstwhile Chapters I and II of Part VII by introducing a comprehensive definition of corrupt practices in Section 123. Section 123(3) as enacted by the amending Act was in the following terms :

> "**123. Corrupt practices**.-
>
> (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

53 Act 27 of 1926

> the national emblem, for the furtherance of the prospects of that candidate's election."

26 The 1956 Amendment continued the requirement of a "systemic appeal" to vote or refrain from voting on grounds of caste, race, community or religion but brought in words indicating that the appeal may be by a candidate or his agent or by any other person. In 1958, an amending Act[54] was enacted by which the expression "with the consent of a candidate or his election agent" were added. If a candidate were to be held liable for a statement of any other person, the consent of the candidate or his election agent was necessary. This amendment was brought about following the report of a Select Committee dated 15 December 1958 which felt that any of the objectionable actions mentioned in Section 123 should be deemed to be a corrupt practice when committed by a person other than a candidate or his agent, only if the person engaging in the action had acted with the consent of the candidate or his election agent.

27 In 1961, sub-section (3) of Section 123 was substituted and a new provision, sub-section (3A) was introduced. The background to the amendment was that the Select Committee in a report dated 19 August 1961 recommended the substitution of clause (3) on the ground that it did not clearly bring about its intention. Among the major changes brought about by the substituted sub-section (3) were the following:

54 [Act 58 of 1958]

(i) The expression “systematic appeal” was altered to simply an “appeal”;

(ii) After the expression “to vote or refrain from voting” the words “for any person on the ground of his” were introduced before the expression ‘religion, race, caste, community’;

(iii) In addition to religion, race, caste and community, a reference to ‘language’ was introduced;

(iv) The word ‘grounds’ was substituted by the word ‘ground’; and

(v) At the end of sub-section (3), after the words “for the furtherance of the prospects of the election of that candidate” the words “or for prejudicially affecting the election of any candidate” were introduced. As substituted after the amendment of 1961, sub- section (3) of Section 123 stood 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.

Simultaneously, with the substitution of Section 3, sub-Section (3A) was introduced into Section 123 to incorporate another corrupt practice in the following terms :

> "(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 the election of that candidate or for prejudicially affecting the election of any candidate."

28 The substitution of Section 123(3) by the Amending Act of 1961 was preceded by a report of the Select Committee. During the course of the discussions in the Select Committee two notes of dissent were appended by Smt. Renu Chakravartty and by Shri Balraj Madhok. Recording her dissent Smt. Chakravartty stated that :

> "The major amendment in the Bill is clause 23 seeking to amend section 123 of the principal Act (1951). The ostensible reason given is that communal and caste propaganda and the enmity arising there from, must be checked for the purposes of strengthening national integration. No secular democratic party can object to such a laudable proposition, although according to me, there are sufficient powers in the ordinary law to check these practices if those in power desire to do so. Therefore, I am of the opinion that no useful purpose will be served by this amendment. **Rather I am afraid that it would be used against anyone seeking to criticize unjust practices based on caste or community, resulting in social oppression, or those,**

> **who give expression to grievances under which any caste, community or minority group may suffer, would be charged of corrupt practice**." (emphasis supplied)

The learned member found it "even more disconcerting" that an attempt had been made to place "the language question on a par with communalism as a corrupt practice in elections". In a strongly worded note, she stated that the demand, with the formation of linguistic states, for a rightful place for minority languages was a democratic demand and should legitimately be permitted to be raised as a political issue. Shri Balraj Madhok opposed the deletion of the expression "systematic" on the ground that any stray remark of a speaker could be taken advantage of in an election petition, whereas only a systematic and planned propaganda of a communal nature should be made objectionable.

29 When the Bill to amend the provision was introduced in Parliament the Notes on Clauses indicated that the ambit of the corrupt practice in Section 123(3) was sought to be widened for curbing communal and separatists tendencies. The Notes on Clauses read thus :

> "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 no 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."

30 The object of widening the ambit of sub-section (3) was achieved by the deletion of the expression "systematic". A systematic appeal would evidently have required proof at the trial of an election petition of the appeal on the grounds of religion being repetitive over a stretch of time. By deleting the expression "systematic", Parliament indicated that an appeal by itself would be sufficient if the provisions were otherwise fulfilled. Moreover, language was an additional ground which was introduced in addition to religion, race, caste and community. Sub-section 3A was simultaneously introduced so as to provide that the promotion of or an 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 would constitute a corrupt practice where it was indulged in by a candidate, his agent or by any other person with the consent of the candidate or his election agent for furthering the election prospects of the candidate or for prejudicially affecting the election of any candidate. While widening the ambit of the corrupt practice as provided in sub-section (3), a significant change was brought about by the inclusion of the words "for any person on the ground of his". Shri A.K. Sen, who was then the Law Minister

explained the reason for the introduction of the word 'his' in a speech in the Lok Sabha :

> "Shri A.K. Sen : I added the word 'his' in the Select Committee in order to make quite clear as to what was the mischief which was sought to be prevented under this provision.
>
> The apprehension was expressed if one's right was going to be curbed by this section. If such a right was going to be curbed by the section. I would have been against such an amendment, because after all, it is the right of a person to propagate his own language, his own particular culture and various other matters. But that does not mean vilifying another language or creating enmity between communities.
>
> **You cannot make it an election issue if you say, 'Do not vote for him. He is a Bengali' or 'Do not vote for him. He is a Khasi.' I made it unequivocally clear that it is the purpose and design of this House and of the country to ensure that. No man shall appeal only because he speaks a particular language and should get voted for that reason; or no man shall appeal against a particular person to the electorate solely because that opponent of his speaks a particular language.**
>
> But we are on a very narrow point, whether we shall extend the right to a person, to a voter, to say: vote for me because I speak Hindi, I speak Garhwali, or I speak Nepali or I speak Khasi; or in the alternative, do not vote for my opponent because he is a man who speaks this particular language, his own language. It is on that sole narrow point that the prohibition is sought to be made.
>
> **…But the problem is, are we going to allow a man to go to the electorate and ask for votes because he happens to speak a particular language or ask the electorate to refrain from voting for a particular person merely on the ground of his speaking a particular language or following a particular religion and so on? If not, we have to support this.**
>
> **…But if you say that Bengali language in this area is being suppressed or the schools are being closed**, as Shri Hynniewta was saying, **because they**

> **bore a particular name, then, you are speaking not only to fight in an election but you are also really seeking to protect your fundamental rights, to preserve your own language and culture. That is a different matter.**
>
> **But, if you say, 'I am a Bengali, you are all Bengalis, vote for me', or 'I am an Assamese and so vote for me because you are Assamese-speaking men', I think, the entire House will deplore that a hopeless form of election propaganda.** And, no progressive party will run an election on that line. Similarly, on the ground of religion." (emphasis supplied)

The speech of the Law Minister, who moved the Bill leaves no manner of doubt that the expression 'his' referred to the religion of the candidate (or his caste, community, race or language) for whom votes were sought or of the candidate whose election was sought to be prejudicially affected by an appeal to refrain from voting.

31 The traditional view of courts both in India and the UK was a rule of exclusion by which parliamentary history was not readily utilized in interpreting a law. But as Justice GP Singh points out in his 'Principles of Statutory Interpretation[55], the Supreme Court of India utilized parliamentary history on many an occasion as an aid to resolving questions of construction. The learned author states that :

> "The Supreme Court, speaking generally, to begin with, enunciated the rule of exclusion of Parliamentary history in the way it was traditionally enunciated by the English Courts, but on many an occasion, the court used this aid in resolving questions of construction. The court has now veered to the view that legislative

55 XIVth Edn. P-253

> history within circumspect limits may be consulted by courts in resolving ambiguities. But the court still sometimes, like the English courts, makes a distinction between use of a material for finding the mischief dealt with by the Act and its use for finding the meaning of the Act. As submitted earlier this distinction is unrealistic and has now been abandoned by the House of Lords".[56]

The evolution of the law has been succinctly summarized in the above extract.

32 In an early decision of 1952 in **State of Travancore Co**. v. **Bombay Co. Ltd**.[57], Justice Patanjali Sastri while adopting the traditional view observed that :

> "A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all those legislators were in accord". "A statute", said Sinha, C.J.I., "is the expression of the collective intention of the Legislature as a whole and any statement made by an individual, albeit a minister, of the intention and object of the Act, cannot be used to cut down the generality of the words used in the statute."

56 72.State of Mysore v. R.V. Bidop, AIR 1973 SC 2555 : (1973) 2 SCC 547; Fagu Shaw v. State of W.B., AIR 1974 SC 613, p.628, 629 : (1974) 4 SCC (Cri.) 316: 1974 SCC 152; Union of India v. Sankalchand, AIR 1977 SC 2328, p. 2373 : (1977) 4 SCC 193 : 1977 SCC (Lab) 435; R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183, pp. 214, 215 : AIR 1984 SC 684; B. Prabhakar Rao v. State of Andhra Pradesh, AIR 1986 SC 210, p. 215 : 1985 Supp SCC 432; Sub-Committee of Judicial Accountability v. Union of India, AIR 1992 SC 320, p. 366 : (1991) 4 SCC 699.

57 AIR 1952 SC 366

In **State of West Bengal** v. **Union of India**[58], Justice Sinha stated that a statute is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute. However, in **Chiranjit Lal Chowdhuri** v. **Union of India**[59], Justice Fazl Ali adverted to the parliamentary history including the statement of the Minister introducing a Bill as evidencing the circumstances which necessitated the passing of the legislation. Over a period of time, the narrow view favouring the exclusion of legislative history has given way to a broader perspective. Debates in the Constituent Assembly have been utilized as an aid to the interpretation of a constitutional provision (**Indra Sawhney** v. **Union of India**[60]). Parliamentary debates have been relied upon in the context of a dispute relating to the construction of the Patents Act, 1970, (**Novartis AG** v. **Union of India**[61]**)**; while construing the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, (**State of Madhya Pradesh** v. **Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd.)**[62][See also in this context **Union of India** v. **Legal Stock Holders Syndicate**[63], **K.P.**

58 (1964) 1 SCR 371

59 AIR 1951 SC 41

60 AIR 1993 SC 477

61 (2013) 6 SCC 1)

62 (1972) 1 SCC 298

63 AIR 1976 SC 879

Vergese v. **Income Tax Officer**[64], **Surana Steels Pvt. Ltd.** v. **Dy Commissioner of Income Tax**[65]].

33 The modern trend as Justice GP Singh notes (supra) is to permit the utilization of parliamentary material, particularly a speech by the Minister moving a Bill in construing the words of a statute :

> "…(iii) *Modern trend.*—The school of thought that limited but open use should be made of parliamentary history in construing statutes has been gaining ground. Direct judicial approval of this trend by the House of Lords came in *Pepper v. Hart.* In that case LORD BROWNE WILKINSON who delivered the leading speech which was agreed to by five other law Lords (LORD KEETH, LORD BRIDGE, LORD GRIFFITHS, LORD ACKNER AND LORD OLIVER), laid down: "Reference to parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to absurdity. Even in such cases references in court to parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised, I cannot foresee that any statement other than the statement of the minister or other promoter of the Bill is likely to meet these criteria." In reaching this conclusion LORD BROWNE WILKINSON reasoned that "the Court cannot attach a meaning to words which they cannot bear, but if the words are capable of bearing more than one meaning why should not Parliament's true intention be enforced."

64 AIR 1981 SC 1922

65 (199) 4 SCC 306

The use of parliamentary debates as an aid to statutory interpretation has been noticed in several decisions of this Court[66].

34 The speech made by the Law Minister when the Bill for the amendment of Section 123(3) was moved in Parliament was expressly noted in the judgment of Justice J.S. Verma (as the learned Chief Justice then was) in **Dr RY Prabhoo** v. **PK Kunte**[67].

35 In **Bennion on Statutory Interpretation**[68], the need for a balance between the traditional view supporting the exclusion of the enacting history of a statute and the more realistic contemporary doctrine allowing its use as an aid to statutory interpretation has been brought out succinctly. This is evident from the following extract :

> "It is worth repeating that on a strict view the enacting history should be irrelevant, since the object of Parliament is to express its will entirely within the definitive text of the Act itself. This eminently convenient doctrine has unfortunately proved too idealistic and theoretical in practice. The essence of statutory interpretation lies in resolving the dichotomy between the 'pure' doctrine that the law is to be found in the Act and nowhere else, and the 'realist' doctrine that legislation is an imperfect technique requiring, for the social good, an importation of surrounding information. In the upshot, this information is generally regarded as admissible (according to the weight it deserves to carry) unless there is some substantial reason requiring it to be kept out."

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66 "Theyssen Stahlunia GMBH v. Steel Authority of India, JT 1999(8) SC 66, P.105: (1999) 9 SCC 334: and Haldiram Bhujiawala v. Anand Kumar Deepak Kumar, AIR 2000 SC 1287, P.1291: (2000) 3 SCC 250, Mahalaxmi Sugar Mills Ltd. v. Union of India, AIR 2009 SC 792 paras 67 to 73 : (2008 6 SCALE 275

67 (1995) 7 SCALE 1

68 Indian Reprint Sixth Edition page 561

The modern trend is to enable the court to look at the enacting history of a legislation to foster a full understanding of the meaning behind words used by the legislature, the mischief which the law seeks to deal and in the process, to formulate an informed interpretation of the law. Enacting history is a significant element in the formation of an informed interpretation.

36 The legislative history indicates that Parliament, while omitting the requirement of a “systematic” appeal intended to widen the ambit of the provision. An ‘appeal’ is not hedged in by the restrictive requirements, evidentiary and substantive, associated with the expression “systematic appeal”. ‘Language’ was introduced as an additional ground as well. However, it would not be correct as a principle of interpretation to hold that if the expression “his” religion is used to refer to the religion of a candidate, the legislature would be constraining the width of the provision even beyond its pre-amended avatar. It is true that the expression “his” was not a part of Section 123(3) as it stood prior to the amendment of 1961. Conceivably the appeal to religion was not required to relate to an appeal to the religion of the candidate. But by imposing the requirement of a systematic appeal, Parliament had constrained the application of Section 123(3) only to cases where as the word systematic indicates the conduct was planned and repetitive. Moreover, it needs to be noted that sub-section 3A was not introduced earlier into Section 123. A new corrupt practice of that nature was

introduced in 1961. The position can be looked at from more than one perspective. When Parliament expanded the ambit of Section 123(3) in 1961,

it was entitled to determine the extent to which the provision should be widened. Parliament would be mindful of the consequence of an unrestrained expansion of the ambit of Section 123(3). Parliament is entitled to perceive, in the best interest of democratic political discourse and bearing in mind the fundamental right to free speech and expression that what should be proscribed should only be an appeal to the religion, race, caste, community or language of the candidate or of a rival candidate. For, as we have seen earlier, if the provision is construed to apply to the religion of the voter, this would result in a situation where persons contesting an election would run the risk of engaging in a corrupt practice if the discourse during the course of a campaign dwells on injustices suffered by a segment of the population on the basis of caste, race, community or language. Parliament did not intend its amendment to lead to such a drastic consequence. In making that legislative judgment, Parliament cannot be faulted. The extent to which a legislative provision, particularly one of a quasi-criminal character, should be widened lies in the legislative wisdom of the enacting body. While expanding the width of the erstwhile provision, Parliament was legitimately entitled to define its boundaries. The incorporation of the word “his” achieves just that purpose

F. Precedent

37 Several decisions of this Court have construed the provisions of Section 123(3). While adverting to those decisions, it would be necessary to note that each of the decisions was rendered in the context of the provision as it then stood. As noted earlier Section 123(3) has undergone statutory changes over the years. In **Jagdev Singh Sidhanti** v. **Pratap Singh Daulta**[69]**,** a Constitution Bench held that the provisions of Section 123(3) must be read in the light of the fundamental right guaranteed by Article 29(1) of the Constitution which protects the right of any section of the citizens with a distinct language, script or culture of its own to conserve the same. Holding that a political agitation for the conservation of the language of a section of citizens is not a corrupt practice under Section 123(3), this Court observed :

> "..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 the 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".

In that case, it was alleged by the election petitioner that the returned candidate had exhorted the electorate to vote for the Hariana Lok Samiti if it wished to protect its own language. These exhortations to the electorate were

69 (1964) 6 SCR 750 [judgment delivered on 12 February 1964]

held to have been made to induce the government to change its language policy or to indicate that a political party would agitate for the protection of a language spoken by the residents of the Haryana area. This, it was held, did not fall within the corrupt practice of appealing for votes on the ground of the language of the candidate or to refrain from voting on the ground of the language of the contesting candidate.

38 In **Kultar Singh** v. **Mukhtiar Singh**[70], a Constitution Bench of this Court emphasized the salutary purpose underlying Section123(3) in the following observations :

> "7. 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."

The appellant was elected to the Punjab Legislative Assembly. According to the respondent, the Appellant had made speeches calling upon voters to vote for him as a representative of the Sikh Panth. The issue before the Constitution Bench was whether these speeches amounted to an appeal to

70 AIR 1965 SC 141 [Judgment delivered on 17 April 1964]

the voters to vote for the appellant on the ground of his religion and whether the distribution of certain posters constituted an appeal to the voters on the ground of the appellant's religion. The context indicates that the words of Section 123(3) were applied to determine whether there was an appeal on the ground of the religion of the candidate who had contested the election and was elected. The observations of a more general nature in paragraph 7 (extracted above) must be read and understood in the context of what actually fell for decision and what was decided. The Constitution Bench held that the reference to the Panth did not possibly mean the Sikh religion but only to a political party :

> "14….After all, the impugned poster was issued in furtherance of the appellant's candidature at an election, and the plain object which it has placed before the voters is that the Punjabi Suba can be achieved if the appellant is elected; and that necessarily means that the appellant belongs to the Akali Dal Party and the Akali Dal Party is the strong supporter of the Punjabi Suba. In these proceedings, we are not concerned to consider the propriety, the reasonableness or the desirability of the claim for Punjabi Suba. That is a political issue and it is perfectly competent to political parties to hold bona fide divergent and conflicting views on such a political issue. The significance of the reference to the Punjabi Suba in the impugned poster arises from the fact that it gives a clue to the meaning which the poster intended to assign to the word "Panth". Therefore, **we are satisfied that the word "Panth" in this poster does not mean Sikh religion, and so, it would not be possible to accept the view that by distributing this poster, the appellant appealed to his voters to vote for him because of his religion**." (emphasis supplied)

In **Kanti Prasad Jayshanker Yagnik** v. **Purshottam Das Ranchhoddas Patel**[71], a Bench of three learned judges of this Court while construing Section 123(3), held thus :

> "25. 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)

The expression "his religion" was hence specifically construed to mean the religion of a candidate.

39 A decision of two learned judges of this Court in **Ambika Sharan Singh** v. **Mahant Mahadeva and Giri**[72], involved a case where it was alleged that the appellant and his agents had campaigned on the basis that the appellant was a Rajput and the Rajput voters in certain villages should therefore vote for him. This Court, while affirming the judgment of the High Court holding that the appellant had committed a corrupt practice under Section 123(3) held that the evidence indicated that the campaign on the basis of caste was carried out by the appellant himself at some places, and at other places by others

71 (1969) 1 SCC 455

72 (1969) 3 SCC 492

including his election agent. **Ambika Sharan** was therefore a case where an appeal was made on the ground of the religion of the candidate.

40 The decision of the Constitution Bench was followed by a Bench of three Judges of this Court in **Ziyauddin Bukhari** v. **Brijmohan Ramdas**[73]. In that case, the appellant was contesting an election to the legislative assembly. In the course of his speeches he made a direct attack against a rival candidate who, like him, was also Muslim on the ground that he was not true to his religion whereas the appellant was. The High Court held this to be a corrupt practice under Section 123(3) following the decision in **Kultar Singh.** This was affirmed by this Court with the following observations :

> "30. The High Court had referred to *Kultar Singh* v. *Mukhtiar Singh* and said that a candidate appealing to voters in the name of his religion could be guilty of a corrupt practice struck by Section 123(3) of the Act if he accused a rival candidate, though of the same religious denomination, to be a renegade or a heretic. The appellant had made a direct attack of a personal character upon the competence of Chagla to represent Muslims because Chagla was not, according to Bukhari, a Muslim of the kind who could represent Muslims. Nothing could be a clearer denunciation of a rival on the ground of religion. In our opinion, the High Court had rightly held such accusations to be contraventions of Section 123(3) of the Act."

41 In **Dr Ramesh Yeshwant Prabhoo** v. **Prabhakar Kashinath Kunte**[74], the provisions of Section 123(3) were construed and it was held that an

73 (1976) 2 SCC 17

74 (1996) 1 SCC 130

appeal was made to the voters to vote in favour of the appellant on the ground of his religion :

> "11. There can be no doubt that the word 'his' used in subs-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)."

The same view was adopted in **Manohar Joshi** v. **Nitin Bhaurao Patil**[75]. This Court held that :

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75 (1996) 1 SCC 169

> "62. We would now consider the only surviving question based on the pleading in para 30 of the election petition. The specific allegation in para 30 against the appellant is that in the meeting held on 24-2-1990 at Shivaji Park, Dadar, he had stated that "the first Hindu State will be established in Maharashtra". It is further pleaded therein that such meetings were held at Khaddke Building, Dadar on 21-2-1990, Prabhadevi on 16-2-1990, at Kumbharwada on 18-2-1990 and Khed Galli on 19-2-1990. These further facts are unnecessary in the context because the maximum impact thereof is to plead that the same statement was made by the appellant in the other meetings as well, even though such an inference does not arise by necessary implication. In our opinion, a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope. However despicable be such a statement, it cannot be said to amount to an appeal for votes on the ground of his religion. Assuming that the making of such a statement in the speech of the appellant at that meeting is proved, we cannot hold that it constitutes the corrupt practice either under sub-section (3) or sub-section (3-A) of Section 123, even though we would express our disdain at the entertaining of such a thought or such a stance in a political leader of any shade in the country. The question is whether the corrupt practice as defined in the Act to permit negation of the electoral verdict has been made out. To this our answer is clearly in the negative."

In **Harmohinder Singh Pradhan** v. **Ranjit Singh Talwandi**[76] a Bench of three learned judges followed the decision in **Ramesh Y. Prabhoo** (supra) while construing the provisions of Section 123(3) :

> "(3). 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

76 (2005) 5 SCC 46

> 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. 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. Thus, **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.** Sub-section (3) 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)

42 The reference to 'his' religion in Section 123(3) has hence been construed to mean the religion of the candidate in whose favour votes are sought or the religion of a rival candidate where an appeal is made to refrain from voting for him.

43 In the decision of nine judges in **S R Bommai v. Union of India**[77]**,** the judgments of Justice P.B. Sawant (speaking for himself and Justice Kuldip Singh), Justice Ramaswamy and Justice BP Jeevan Reddy (speaking for himself and Justice Agarwal) have adverted to the provisions of Section 123(3). Secularism was held to be a part of the basic features of the

77 (1994) 3 SCC 1

Constitution in **Bommai**. The meaning of Section 123(3) was not directly in issue in the case, nor have all the judges who delivered separate judgments commented on the provision. Justice P.B. Sawant rejected the submission that an appeal only to the religion of the candidate is prohibited :

> "149. Mr Ram Jethmalani contended that what was prohibited by Section 123(3) was not an appeal to religion as such but an appeal to religion of the candidate and seeking vote in the name of the said religion. According to him, it did not prohibit the candidate from seeking vote in the name of a religion to which the candidate did not belong. With respect, we are unable to accept this contention. **Reading sub-sections (3) and (3-A) of Section 123 together, it is clear that appealing to any religion or seeking votes in the name of any religion is prohibited by the two provisions.** To read otherwise is to subvert the intent and purpose of the said provisions. What is more, assuming that the interpretation placed by the learned counsel is correct, it cannot control the content of secularism which is accepted by and is implicit in our Constitution." (emphasis supplied)

Justice Ramaswamy adopted the view that in secular matters, religion and the affairs of the state cannot be intertwined. Elections in this view are a secular matter. Adverting to Section 123(3) and Section 123(3A) the learned judge held that :

> "196. The contention of Shri Ram Jethmalani that the interpretation and applicability of sub-sections (3) and (3-A) of Section 123 of R.P. Act would be confined to only cases in which individual candidate offends religion of rival candidate in the election contest and the ratio therein cannot be extended when a political party has espoused as part of its manifesto a religious cause, is totally untenable. This Court laid the law though in the context of the contesting candidates, that interpretation lends no licence to a political party to influence the electoral prospects on grounds of religion. **In a secular**

> **democracy, like ours, mingling of religion with politics is unconstitutional, in other words a flagrant breach of constitutional features of secular democracy. It is, therefore, imperative that the religion and caste should not be introduced into politics by any political party, association or an individual and it is imperative to prevent religious and caste pollution of politics.** Every political party, association of persons or individuals contesting election should abide by the constitutional ideals, the Constitution and the laws thereof. I also agree with my learned Brethren Sawant and Jeevan Reddy, JJ. in this behalf." (emphasis supplied)

Justice B P Jeevan Reddy held that the reference in Section 123(3) must be construed to mean the religion of the candidate :

> "311. **Consistent with the constitutional philosophy, sub-section (3) of Section 123 of the Representation of the People Act, 1951 treats an appeal to the electorate to vote on the basis of religion, race, caste or community of the candidate or the use of religious symbols as a corrupt practice. Even a single instance of such a nature is enough to vitiate the election of the candidate.** Similarly, sub-section (3-A) of Section 123 provides that "promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language" by a candidate or his agent, etc. for the furtherance of the prospects of the election of that candidate is equally a corrupt practice. Section 29-A provides for registration of associations and bodies as political parties with the Election Commission. Every party contesting elections and seeking to have a uniform symbol for all its candidates has to apply for registration. While making such application, the association or body has to affirm its faith and allegiance to "the principles of socialism, secularism and democracy" among others. Since the Election Commission appears to have made some other orders in this behalf after the conclusion of arguments and because those orders have not been place before us or debated, we do not

> wish to say anything more on this subject". (emphasis supplied)

In **Mohd. Aslam** v. **Union of India**[78], a writ petition was filed under Article 32 of the Constitution for reconsideration of the judgment in **Manohar Joshi** (supra) on the ground of the decision of nine judges in **Bommai.** The Bench of three judges however, held that the decision in **Bommai** did not relate to the construction of the provisions of sub-sections (3) and (3A) of Section 123 and hence nothing in it would be of assistance in construing those provisions. **Bommai** does not provide a conclusive interpretation of Section 123(3). Secularism is a basic feature of our Constitution. It postulates the equality amongst and equal respect for religions in the polity. Parliament, when it legislates as a representative body of the people, can legitimately formulate its policy of what would best subserve the needs of secular India. It has in Section 123(3) laid down its normative vision. An appeal to vote on the ground of the religion (or caste, community, race or language) of a candidate or to refrain from voting for a candidate on the basis of these features is proscribed. Certain conduct is in addition prohibited by sub-section 3A, which is also a corrupt practice. Legislation involved drawing balances between different, and often conflicting values. Even when the values do not conflict, the legislating body has to determine what weight should be assigned to each value in its

78 (1996) 2 SCC 749

calculus. Parliament has made that determination and the duty of the court is to give effect to it.

G. Conclusion

44 The view which has been adopted by this Court on the interpretation of Section 123(3) in the cases noted earlier, commends itself for acceptance and there is no reason to deviate from it. The expression 'his' is used in the context of an appeal to vote for a candidate on the ground of the religion, race, caste, community or language of the candidate. Similarly, in the context of an appeal to refrain from voting on the ground of the religion, race, caste, community or language of a rival candidate, the expression 'his' refers to the rival candidate. The view is consistent with the plain and natural meaning of the statutory provision. While a strict construction of a quasi-criminal provision in the nature of an electoral practice is mandated, the legislative history also supports that view.

45 Section 123(3A) has a different ambit. It refers to the promotion of or attempt to promote hatred between different classes of citizens on the proscribed grounds. This has to be by a candidate or by any person with the consent of the candidate. The purpose is to further the election of the candidate or to prejudicially affect the election of a candidate. Section 123(3A) does not refer to the religion, race, caste, community or language of a candidate or of a rival candidate (unlike Section 123(3) which uses the

expression “his”). Section 123(3A) refers to the promotion of or attempts to promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language. Section 123(3A) cannot be telescoped into Section 123(3). The legislature has carefully drafted Section 123(3) to reach out to a particular corrupt practice, which is even more evident when the ambit of Section 123(3A) is contrasted with Section 123(3). One cannot be read into the other nor can the text of Section 123(3) be widened on the basis of a purposive interpretation. To widen Section 123(3) would be to do violence to its provisions and to re-write the text. Moreover, it would be to ignore the context both in terms of our constitutional history and constitutional philosophy. The provisions of an election statute involving a statutory provision of a criminal or quasi criminal nature must be construed strictly. However, having due regard to the rationale and content of the provision itself, as indicated earlier, there is no reason or justification to depart from a plain and natural construction in aid of a purposive construction. The legislature introduced the expression “his” with a purpose. A change in the law would have to be brought about by a parliamentary amendment stating in clear terms that ‘his’ religion would also include the religion of a voter. In the absence of such an amendment, the expression ‘his’ in Section 123(3) cannot refer to the religion, race, caste, community or language of the voter.

46 Finally, it would be necessary to refer to the principle enunciated in the judgment of a Constitution Bench of this Court in **Keshav Mills Company Ltd.** v. **Commissioner of Income Tax, Bombay North, Ahmedabad**[79]. A change in a legal position which has held the field through judicial precedent over a length of time can be considered only in exceptional and compelling circumstances. This Court observed thus :

> "When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations :- What is the nature of the

79 (1965) 2 SCR 908

> infirmity or error on which a plea for review and revision of the earlier view is based ? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court."

47 In a recent judgment of a Constitution Bench of this Court in **Supreme Court Advocates on Record Association v. Union of India**[80]**,** this Court has considered the circumstances in which a reconsideration of an earlier decision can be sought.

Justice Jagdish Singh Khehar while declining the prayer for revisiting or reviewing the judgment rendered by the Supreme Court in the Second and the Third Judges cases ruled that :

> "91. ….This Court having already devoted so much time to the same issue, should ordinarily not agree to re-examine the matter yet again, and spend more time for an issue, already well thrashed out…."

80 (2016) 5 SCC 1

48 Justice Madan B Lokur while dealing with the circumstances under which the reconsideration of an earlier judgment can be sought, articulated certain broad principles: (i) if the decision concerns an interpretation of the constitution, the bar for reconsideration might be lowered a bit; (ii) if the decision concerns the imposition of a tax, the bar may be lowered since the tax burden would affect a large section of the public; (iii) if the decision concerns the fundamental rights guaranteed by the constitution, then too the bar might be lowered; (iv) the court must be convinced that the decision is plainly erroneous and has a baneful effect on the public; (v) if the decision is with regard to a lis between two contending private parties it would not be advisable to revisit the judgment; (vi) power to reconsider is not unrestricted or unlimited, but is confined within narrow limits and must be exercised sparingly and judiciously; (vii) an earlier decision may be reconsidered if a material provision is overlooked or a fundamental assumption is found to be erroneous or if the issue is of fundamental importance to national life; (viii) it is not of much consequence if a decision has held the field for a long time or not; (ix) the court shall remain cognizant of the changing times that may require re-interpretation keeping in mind the “infinite and variable human desires” and changed conditions due to “development with progress of years”.

49 Justice Kurian Joseph while agreeing with the discussion and summarization of the principles on reconsideration of judgments made by Jusitce Lokur, at paragraph 673, enunciated another principle :

> "976…. I would like to add one more, as the tenth. Once this Court has addressed an issue on a substantial question of law as to the structure of the Constitution and has laid down the law, a request for revisit shall not be welcomed unless it is shown that the structural interpretation is palpably erroneous….".

Justice A K Goel formulated the principle in the following terms:

> "1051. Parameters for determining as to when earlier binding decisions ought to be reopened have been repeatedly laid down by this Court. The settled principle is that court should not, except when it is demonstrated beyond all reasonable doubts that its previous ruling given after due deliberation and full hearing was erroneous, revisit earlier decisions so that the law remains certain. [Gannon Dunkerley and Co. v. State of Rajasthan, (1963) 1 SCC 364, paras 28 to 31]In exceptional circumstances or under new set of conditions in the light of new ideas, earlier view, if considered mistaken, can be reversed. While march of law continues and new systems can be developed whenever needed, it can be done only if earlier systems are considered unworkable."

50 Applying these parameters no case has been made out to take a view at variance with the settled legal position that the expression "his" in Section 123(3) must mean the religion, race, community or language of the candidate in whose favour an appeal to cast a vote is made or that of another candidate against whom there is an appeal to refrain from voting on the ground of the religion, race, caste, community or language of that candidate.

51 The Representation of the People Act, 1951 has undergone several parliamentary amendments. Parliament would be aware of the interpretation which has been placed by this Court on the provisions of Section 123(3).

Despite this, the provision has remained untouched though several others have undergone a change. In the meantime, elections have been held successfully, governments have changed and majorities have been altered in the house of Indian democracy. There is merit in ensuring a continuity of judicial precedent. The interpretation which has earlier been placed on Section 123(3) is correct and certainly does not suffer from manifest error. Nor has it been productive of public mischief. No form of government is perfect. The actual unfolding of democracy and the working of a democratic constitution may suffer from imperfections. But these imperfections cannot be attended to by an exercise of judicial redrafting of a legislative provision. Hence, we hold that there is no necessity for this Court to take a view at variance with what has been laid down. The 'his' in Section 123(3) does not refer to the religion, race, caste, community or language of the voter. 'His' is to be read as referring to the religion, race, caste, community or language of the candidate in whose favour a vote is sought or that of another candidate against whom there is an appeal to refrain from voting.

..... J
[ADARSH KUMAR GOEL]

..... J
[UDAY UMESH LALIT]

..... J
[DR D Y CHANDRACHUD]

New Delhi
January 02, 2017