A ABHIRAM SINGH

v.

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

(Civil Appeal No. 37 of 1992)

B JANUARY 02, 2017

[T. S. THAKUR, C.J.I., MADAN B. LOKUR, S. A. BOBDE, ADARSH KUMAR GOEL, UDAY UMESH LALIT, DR. D.Y. CHANDRACHUD AND L. NAGESWARA RAO, JJ.]

C ***Representation of the People Act, 1951:***

s. 123 (3) (as amended in 1961) – Interpretation of – Held: **Majority View:** *The Act being a statute that enables to cherish and strengthen democratic ideals should be interpreted in a manner that assists the elector or the electorate and not that assists the candidates – Keeping in view the social context in which sub-section* D *(3) of s.123 was enacted and today's social and technological context, it is absolutely necessary to give a broad and purposive interpretation rather than a literal or strict interpretation – The provisions under sub-section (3) are required to be read and appreciated in the context of simultaneous and contemporaneous* E *amendments inserting sub-section (3A) in s. 123 and inserting s. 153A in IPC – Therefore sub-section (3) of s. 123 is to be interpreted in such a way so as to bring within sweep of 'corrupt practice', any appeal on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent, or (iii)* F *any other person making appeal with the consent of the candidate, or (iv) the elector – The bar u/s. 123 (3) to making an appeal on the ground of religion must not be confined to the religion of the candidate or that of his rival candidates – The word 'his' occurring in the Section refers not only to the candidate or his agent, but is also intended to refer to the voter or elector – Determination of the* G *facts whether an appeal, at all, has been made to the elector and whether appeal made, is in violation of s.123(3), would be a matter of evidence –* **Minority view:** *Election petitions alleging corrupt practices have a quasi-criminal character wherein standard of proof is close to that which guides a criminal trial – Therefore, s.123(3) must be interpreted in literal sense – The expression 'his' in s. 123(3)* H

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 caste a vote is made) or that of a rival candidate (when an appeal is made to refrain from voting for another) – Sub-section (3) cannot be construed as referring to the religion, race, caste, community or language of the voter, even if the provision is given a purposive interpretation – Discussion, debate or dialogue, of matters relating to religion, race, caste, community or language of the voters is not an appeal on those grounds, and the same is protected being an intrinsic part of freedom of speech.

s.123(3) – Long-standing interpretation of given by the courts – Unsettling of – Permissibility – Held: **Per Madan B. Lokur, J.:** *The interpretation given to s.123(3) was not well recognized and there was uncertainty about correct interpretation thereof, the court can unsettle the long-standing interpretation –* **Per: Dr. D.Y. Chandrachud, J.:** *A change in the legal position, which has held the field through judicial precedent over a length of time can be considered only in exceptional and compelling circumstances – In the present cases no case has been made out to take a view at variance with the settled legal position that the expression 'his' in s. 123 (3) must mean the religion, race, community or language of the candidate – Precedent.*

Interpretation of Statutes:

Literal interpretation vis-a-vis *purposive interpretation –* **Per Madan B. Lokur, J.:** *While interpreting a statute or a provision in a statute, not only the text of the law, but also the context in which it was enacted and the social context, should be considered – However, in statutes having penal consequence, affecting liberty of an individual or imposing financial burden on a person, the rule of literal interpretation would still hold good –* **Per T.S. Thakur, C.J.I.:** *While interpreting an enactment, the courts should remain cognizant of constitutional goals and the purpose of the Act and interpret the provisions accordingly –* **Per S.A. Bobde, J.:** *A literal interpretation does not exclude a purposive interpretation – While construing a statute both the rules of interpretation can be applied whether it be penal statute or taxing statute –* **Per Dr. D.Y. Chandrachud, J.:** *Where a statutory provision implicates penal*

A *consequences or consequences of a quasi-criminal character, a strict construction of the words used by the legislature must be adopted.*

Rule of Interpretation – **Per T. S. Thakur, C.J.I.:** *An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free* B *from religious considerations, must be avoided – The interpretations that are in tune with constitutional provisions and ethos ought to be preferred over others.*

Rule of interpretation – **Per S.A. Bobde, J.:** *While interpreting statutes, wherever the language is clear, the intention of the* C *legislature must be gathered from the language used, and the support from extraneous sources should be avoided.*

Statutory interpretation – Use of legislative history as an aid to statutory interpretation – Permissibility – Held: **Per Dr. D.Y. Chandrachud, J.:** *Legislative history is a significant element in the* D *formation of an informed interpretation.*

Answering the reference, the Court

HELD: MAJORITY VIEW: Per Madan B. Lokur, J. (For himself and for L. Nageswara Rao, J.):

E **1.1 The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the** F **law but the context in which the law was enacted and the social context in which the law should be interpreted. [Para 36] [197-D]**

R. v. Secretary of State for Health ex parte Quintavalle **[2003] UKHL 13 – referred to.**

G *Bennion on Statutory Interpretation* **Sixth Edition (Indian Reprint) page 847 – referred to.**

1.2 Ordinarily, if a statute is well-drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State, what is intended for the benefit of the people is not

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fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good. [Para 38] [200-B-D] A B

1.3 The Representation of the People Act, 1951 is a statute that enables to cherish and strengthen democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the electorate in a vast democracy like that of India would really be going against public interest. [Para 39] [200-D-E] C

1.4 The purpose of enacting sub-section (3) of Section 123 of the Act and amending it more than once during the course of the first 10 years of its enactment indicates the seriousness with which Parliament grappled with the necessity of curbing communalism, separatist and fissiparous tendencies during an election campaign (and even otherwise in view of the amendment of Section 153A of the IPC). It is during electioneering that a candidate goes virtually all out to seek votes from the electorate and Parliament felt it necessary to put some fetters on the language that might be used so that the democratic process is not derailed but strengthened. Taking all this into consideration, Parliament felt the need to place a strong check on corrupt practices based on an appeal on grounds of religion during election campaigns (and even otherwise). [Para 41] [200-H; 201-A-B] D E F

1.5 The concerns which formed the ground for amending Section 123(3) of the Act have increased with the tremendous reach already available to a candidate through the print and electronic media, and now with access to millions through the internet and social media as well as mobile phone technology, none of which were seriously contemplated till about fifteen years ago. Therefore now, more than ever it is necessary to ensure that the provisions of sub-section (3) of Section 123 of the Act are not exploited by a candidate or anyone on his or her behalf by making an appeal on the ground of religion with a possibility of disturbing the even tempo of life. [Para 42] [201-C-D] G H

A **1.6 Keeping in view the social context in which sub-section (3) of Section 123 of the Act was enacted and today's social and technological context, it is absolutely necessary to give a purposive interpretation to the provision rather than a literal or strict interpretation i.e. limited only to the candidate's religion or that of his rival candidates. [Para 46] [203-G-H]**

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Union of India v. Raghubir Singh (Dead) by Lrs. **[1989] 3 SCR 316 : (1989) 2 SCC 754;** *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay* **[1975] 1 SCR 1 : (1974) 2 SCC 402;** *Badshah v. Urmila Badshah Godse* **[2013] 10 SCR 259 : (2014) 1 SCC 188 – relied on.**

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1.7 The provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting sub-section (3A) in D **Section 123 of the Act and inserting Section 153A in the Penal Code. [Para 49] [205-C]**

1.8 So read together, and for maintaining the purity of the electoral process and not vitiating it, sub-section (3) of Section 123 of the Representation of the People Act, 1951 must be given E **a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for the furtherance of the prospects of the election of that** F **candidate or for prejudicially affecting the election of any candidate on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector. [Para 49] [205-D-F]**

G **1.9 It is a matter of evidence for determining whether an appeal has at all been made to an elector and whether the appeal if made is in violation of the provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951. [Para 49] [205-F-G]**

H **2. There was some uncertainty about the correct**

interpretation of sub-section (3) of Section 123 of the Act. It is not as if the interpretation was well-recognized and settled. That being the position, the court can unsettle the long-standing interpretation given to s. 123(3) of the Act. [Para 48] [205-A]

Kultar Singh v. Mukhtiar Singh AIR 1965 SC 141 : [1964] SCR 790 – followed.

Jagdev Singh Sidhanti v. Pratap Singh Daulta [1964] 6 SCR 750; _Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel_ [1969] 3 SCR 400 : (1969) 1 SCC 455; _Dr Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte_ [1995] 6 Suppl. SCR 371: (1996) 1 SCC 130 – held not correct law.

Abhiram Singh v. C.D. Commachen [1996] 1 Suppl. SCR 340 : (1996) 3 SCC 665; _Narayan Singh v. Sunderlal Patwa_ (2003) 9 SCC 300; _Mohd. Aslam v. Union of India_ [1996] 3 SCR 782 : (1996) 2 SCC 749; _S. R. Bommai v. Union of India_ [1994] 2 SCR 644 : (1994) 3 SCC 1; _Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra_ [1975] Suppl. SCR 281 : (1976) 2 SCC 17; _S. Hareharan Singh v. S. Sajjan Singh_ [1985] 2 SCR 159 : (1985) 1 SCC 370; _Jamuna Prasad Mukhariya v. Lachhi Ram_ [1955] 1 SCR 608 – referred to.

Per T.S. Thakur, C.J.I. (Concurring)

1. It cannot be said that the amendment in 1961, in one sense served to widen the scope of corrupt practice u/s. 123(3) of Representation of People Act, 1951, but in another sense restrict the scope of corrupt practice. The unamended provision made any appeal in the name of religion, race, caste, community or language a corrupt practice, regardless of whose religion, race, caste, community or language was involved for such an appeal. The only other requirement was that such an appeal was made in a systematic manner for the furtherance of the prospects of a candidate. If that was the legal position before the amendment and if the Parliament intended to enlarge the scope of the corrupt practice, the question of the scope being widened and restricted at the same time did not arise. There is nothing to suggest either in the statement of objects and reasons or contemporaneous record of proceedings, including notes accompanying the bill to

A show that the amendment was contrary to the earlier position intended to permit appeals in the name of religion, race, caste, community or language to be made except those made in the name of the religion, race, caste, community or language of the candidate for the furtherance of whose prospects such appeals were made. Any such interpretation will not only do violence to
B the provisions of Section 123(3) but also go against the avowed purpose of the amendment. Any such interpretation will artificially restrict the scope of corrupt practice for it will make permissible what was clearly impermissible under the unamended provision. The correct approach, is to ask whether appeals in the name of
C religion, race, caste, community or language which were forbidden under the unamended law were actually meant to be made permissible subject only to the condition that any such appeal was not founded on the religion, race, caste, community or language of the candidate for whose benefit the same was made. The answer to that question has to be in the negative. The law
D as it stood before the amendment did not permit an appeal in the name of religion, race, caste community or language, no matter whose religion, race, community or language was invoked. The amendment did not intend to relax or remove that restriction. On the contrary it intended to widen the scope of the corrupt
E practice by making even a 'single such appeal' a corrupt practice which was not so under the unamended provision. Seen both textually and contextually the argument that the term *"his religion"* appearing in the amended provision must be interpreted so as to confine the same to appeals in the name of "religion of the
F candidate" concerned alone does not stand closer scrutiny and must be rejected. [Paras 8 and 9] [209-C-H; 210-A-C]

2.1 Under the constitutional scheme mixing religion with State power is not permissible while freedom to practice, profess and propagate religion of one's choice is guaranteed. The State being secular in character will not identify itself with any one of
G the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature. The elections to the State legislature or to the Parliament or for that matter or any other body in the State is a secular exercise just as the functions
H of the elected representatives must be secular in both outlook

and practice. The Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State. This necessarily implies that interpretation of any statute must not offend the fundamental mandate under the Constitution. An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. While interpreting an enactment, the Courts should remain cognizant of the Constitutional goals and the purpose of the Act and interpret the provisions accordingly. [Para 23] [215-D-G]

2.2 While interpreting a legislative provision, the Courts must remain alive to the constitutional provisions and ethos and that interpretations that are in tune with such provisions and ethos ought to be preferred over others. Applying that principle to the present case, an interpretation that will have the effect of removing the religion or religious considerations from the secular character of the State or state activity ought to be preferred over an interpretation which may allow such considerations to enter, effect or influence such activities. Electoral processes are doubtless secular activities of the State. Religion can have no place in such activities for religion is a matter personal to the individual with which neither the State nor any other individual has anything to do. The State is under an obligation to allow complete freedom for practicing, professing and propagating religious faith to which a citizen belongs in terms of Article 25 of the Constitution of India but the freedom so guaranteed has nothing to do with secular activities which the State undertakes. The State can and indeed has in terms of Section 123(3) forbidden interference of religions and religious beliefs with secular activity of elections to legislative bodies. [Para 28] [217-C-G]

Saifuddin Saheb v. State of Bombay **AIR 1962 SC 853: [1962] Suppl. SCR 496;** *Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.* **[1975] 1 SCR 173 : (1974) 1 SCC 717;** *Indira Nehru Gandhi v. Shri Raj Narain* **[1976] SCR 347 : (1975) Suppl. SCC 1;** *S.R. Bommai v. Union of India* **[1994] 2 SCR 644 : 1994 (3) SCC 1;** *M.P. Gopalakrishnan Nair and Anr. v. State of Kerala and Ors.* **[2005] 3 SCR 712: (2005) 11 SCC 45;** *Dr. Vimal (Mrs.) v. Bhaguji & Ors.*

A [1995] 1 Suppl. SCR 392 : (1996) 9 SCC 351; *Ambika Sharan Singh v. Mahant Mahadeva and Giri and Others* (1969) 3 SCC 492; *Kedar Nath v. State of Bihar* (AIR 1962 SC 955) : [1962] Suppl. SCR 769; *State of Karnataka v. Appa Balu Ingale and Others* [1992] 3 Suppl. SCR 284 : (1995) Supp.4 SCC 469; *Vipulbhai* B *M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Ltd. and Ors.* [2015] 3 SCR 997 : (2015) 8 SCC 1 – relied on.

3. An appeal in the name of religion, race, caste, community or language is impermissible under the Representation of the C **People Act, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate's religion or the religion of the election agent or that of the opponent or that of the voter's. The sum total of Section 123 (3) even after** D **amendment is that an appeal in the name of religion, race, caste, community or language is forbidden even when the appeal may not be in the name of the religion, race, caste, community or language of the candidate for whom it has been made. So interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should** E **an appeal be made on any of those considerations, the same would constitute a corrupt practice. [Para 29] [217-G-H; 218-A-B]**

Per S. A. Bobde, J. (Concurring):

1. The bar under Section 123(3) of the Representation of F **People Act, 1951 to making an appeal on the ground of religion must not be confined to the religion of the candidate because of the word 'his' in that provision. The purposive interpretation in the social context adjudication as a facet of purposive interpretation warrants a broad interpretation of that section. That the section is intended to serve the broad purpose of checking** G **appeals to religion, race, caste, community or language by any candidate. That to maintain the sanctity of the democratic process and to avoid the vitiating of secular atmosphere of democratic life, an appeal to any of the factors should avoid the election of the candidate making such an appeal. [Para 1] [218-C-E]**

H **2. Such a construction is not only warranted upon the**

application of the purposive test of interpretation but also on textual interpretation. A literal interpretation does not exclude a purposive interpretation of the provisions whether in relation to a taxing statute or a penal statute. There seems no valid reason while construing a statute (be it a taxing or penal statute) why both rules of interpretation cannot be applied. [Para 2] [218-E-H; 219-A] A B

IRC v. Trustees of Sir John Aird's Settlement 1984 CH 382 : (1983) 3 All ER 481 (CA) – referred to.

3. Section 123 (3) prohibits an "appeal by a candidate", etc. "to vote or refrain from voting for any person on the ground of his religion", etc. The word "his" occurring in the section refers not only to the candidate or his agent but is also intended to refer to the voter i.e. the elector. What is prohibited by a candidate is an appeal to vote on certain grounds. The word "his" therefore must necessarily be taken to embrace the entire transaction of the appeal to vote made to voters and must be held referable to all the actors involved i.e. the candidate, his election agent etc. and the voter. Thus, the pronoun in the singular "his" refers to a candidate or his agent or any other person with the consent of a candidate or his election agent and to the voter. In other words, what is prohibited is an appeal by a candidate etc. to a voter for voting on the ground of his religion i.e. those categories preceding "his". This construction is fortified by the purposive test. [Para 3] [219-D-F] C D E

4. While interpreting statutes, wherever the language is clear, the intention of the legislature must be gathered from the language used and support from extraneous sources should be avoided. The language that is used in Section 123 (3) of the Act intends to include the voter and the pronoun "his" refers to the voter in addition to the candidate, his election agent etc. Also because the intendment and the purpose of the statute is to prevent an appeal to votes on the ground of religion. It is an unreasonable shrinkage to hold that only an appeal referring to the religion of the candidate who made the appeal is prohibited and not an appeal which refers to religion of the voter. It is quite conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers F G H

A to religion of the voter. This interpretation is wholesome and leaves no scope for any sectarian caste or language based appeal and is best suited to bring out the intendment of the provision. There is no doubt that the section on textual and contextual interpretation proscribes a reference to either. [Para 4] [219-G-H; 220-A-D]

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Grasim Industries v. Collector of Customs, Bombay [2002] 2 SCR 945 : 2002 (4) SCC 297 – relied on.

5. It is an overriding duty of the Court while interpreting the provision of a statute that the intention of the legislature is not frustrated and any doubt or ambiguity must be resolved by recourse to the rules of purposive construction. It seems clear that the *mens* or *sententia legis* of the Parliament in using the pronoun "his" was to prohibit an appeal made on the ground of the voter's religion. Parliamentary intent therefore, was to clearly proscribe appeals based on sectarian, linguistic or caste considerations; to infuse a modicum of oneness, transcending such barriers and to borrow Tagore's phrase transcend the fragmented "*narrow domestic walls*" and send out the message that regardless of these distinctions voters were free to choose the candidate best suited to represent them. Applying the above principles, there is no doubt that Parliament intended an appeal for votes on the ground of religion is not permissible whether the appeal is made on the ground of the religion of the candidate etc. or of the voter. Accordingly, the words "his religion" must be construed as referring to all the categories of persons preceding these words. [Paras 5, 7 and 8] [221-C-E; 222-B-C, G-H]

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Balram Kumawat v. Union of India [2003] 3 Suppl. SCR 24 : 2003 (7) SCC 628 – relied on.

Craies on Statute Law 7th Edn. Page 531 – referred to.

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MINORITY VIEW:

Per Dr. D. Y. Chandrachud, J. (for himself and for Adarsh Kumar Goel and Uday Umesh Lalit, JJ.) :

1. Election petitions alleging corrupt practices have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal

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character, a strict construction of the words used by the legislature must be adopted. 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. 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. [Paras 11, 12 and 44] [227-F; 228-D-E; 256-C]

Tolaram Relumal v. State of Bombay **[1951] 1 SCR 158 – followed.**

Amolakchand Chhazed v. Bhagwandas **(1977) 3 SCC 566;** *Baldev Singh Mann v. Gurcharan Singh (MLA)* **[1996] 2 SCR 99 : (1996) 2 SCC 743;** *Thampanoor Ravi v. Charupara Ravi* **[1999] 2 Suppl. SCR 419 : (1999) 8 SCC 74;** *Bipinchandra Parshottamdas Patel (Vakil) v. State of Gujarat* **[2003] 3 SCR 533 : (2003) 4 SCC 642;** *S Subramaniam Balaji v. State of Tamil Nadu* **(2013) 9 SCC 659 – relied on.**

2.1 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. Where the person making the appeal is not the candidate or his agent, consent of the candidate or his agent is mandated. 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. [Paras 13 and 14] [231-A-E]

A 2.2 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. C 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 D 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) E as referring to the religion, race, caste, community or language of the voter. The provision, 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 F 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 G 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 H

casting a ballot. [Para 15] [231-F-H; 232-A-D] A

2.3 Section 123(3) uses the expression "on the ground of his religion...". 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. [Para 16] [232-E-G] B C

2.4 There is a clear rationale and logic underlying the provision u/s. 123(3). 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. The Constitution of India 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. Similarly, the religion of a rival candidate cannot form the basis of an appeal to refrain from voting for that candidate. [Para 17] [232-H; 233-A-C] D E F

2.5 There is also rationale for Section 123(3) not to advert to the religion, caste, community or language of the voter as a corrupt practice. The 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 G H

A concept of one nationhood. Yet, the Constitution, in doing so, recognizes the position of religion, caste, language and gender in the social life of the nation. Individual histories both of citizens and collective groups in the society are associated through the ages with histories of discrimination and injustice on the basis of these defining characteristics. In numerous provisions, the B 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. There is no wall of separation between the State on the one hand and religion, caste, language, C race or community on the other. [Paras 18, 20] [233-D-F; 235-C]

2.6 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 D 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 E 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 F 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, G 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 Section123(3) intended to sanitize the electoral process from the real histories H of the people grounded in injustice, discrimination and suffering.

The purity of electoral 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. [Para 20] [235-E-H; 236-A-C] A

B

2.7 s. 123(3) 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 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. 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. [Para 21] [236-E-H; 237-A-B] C D

2.8 Thus, 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. [Para 22] [237-D-F] E F

2.9 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. 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 G H

A **constitutional provision. The modern trend is to permit the utilization of parliamentary material, particularly a speech by the Minister moving a Bill in construing the words of a statute. The use of parliamentary debates as an aid to statutory interpretation has been noticed in several decisions of this Court. There is 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. 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. [Paras 31, 32, 33 and 35] [243-B-C; 244-D-G; 246-C-D]**

Chiranjit Lal Chowdhuri v. Union of India **AIR 1951 SC 41: [1950] SCR 869;** *Dr Ramesh Yeshwant Prabhoo v. PK Kunte* **[1995] 6 Suppl. SCR 371 : 1995 (7) SCALE 1 – relied on.**

State of Travancore Co. v. Bombay Co. Ltd. **AIR 1952 SC 366 : [1952] SCR 1112;** *State of West Bengal v. Union of India* **[1964] 1 SCR 371;** *Indra Sawhney v. Union of India* **AIR 1993 SC 477 : [1992] 2 Suppl. SCR 454;** *Novartis AG v. Union of India* **(2013) 6 SCC 1 : [2013] 13 SCR 148;** *State of Madhya Pradesh v.Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd.* **(1972) 1 SCC 298 : [1972] 2 SCR 609;** *Union of India v. Legal Stock Holders Syndicate* **AIR 1976 SC 879 : [1976] 3 SCR 504;** *K.P. Vergese v. Income Tax Officer* **AIR 1981 SC 1922 : [1982] 1 SCR 629 ;** *Surana Steels Pvt. Ltd. v. Dy Commissioner of Income Tax* **[1999] 2 SCR 589 : (1999) 4 SCC 306 – referred to.**

'Principles of Statutory Interpretation' by G.P. Singh **XIVth Edn.P-253;** *Bennion on Statutory Interpretation,* Indian Reprint **Sixth Edition page 561 – referred to.**

2.10 The legislative history of s. 123(3) 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, 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, 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

A B C D E F G H

A **that purpose. [Para 36] [246-D-H; 247-A-D]**

Jagdev Singh Sidhanti v. Pratap Singh Daulta **[1964] 6 SCR 750;** *Kultar Singh v. Mukhtiar Singh* **AIR 1965 SC 141 : [1964] SCR 790 – followed.**

Kanti Prasad Jayshanker Yagnik v. Purshottam Das
B *Ranchhoddas Patel* **[1969] 3 SCR 400 : (1969) 1 SCC 455 – relied on.**

2.11 Secularism is a basic feature of the Constitution of India. It postulates the equality amongst and equal respect for religions in the polity. Parliament, when it legislates as a
C **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**
D **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 calculus. Parliament has made**
E **that determination and the duty of the court is to give effect to it. The reference to 'his' religion in Section 123(3) has 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. A change in a legal position which has held the field through judicial precedent over**
F **a length of time can be considered only in exceptional and compelling circumstances. In the present case, 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**
G **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. [Paras 42, 43, 46 and 50] [255-E-H; 257-B-C; 259-H; 260-A-B]**

Supreme Court Advocates on Record Association v.
H *Union of India* **(2016) 5 SCC 1;** *Keshav Mills Company*

Ltd. v. Commissioner of Income Tax, Bombay North, Ahmedabad **[1965] 2 SCR 908 – followed.**

Ambika Sharan Singh v. Mahant Mahadeva and Giri **(1969) 3 SCC 492;** *Ziyauddin Bukhari v. Brijmohan Ramdas* **[1975] Suppl. SCR 281 : (1976) 2 SCC 17;** *Dr Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte* **[1995] 6 Suppl. SCR 371 : (1996) 1 SCC 130;** *Manohar Joshi v. Nitin Bhaurao Patil* **[1995] 6 Suppl. SCR 421 : (1996) 1 SCC 169;** *Harmohinder Singh Pradhan v. Ranjit Singh Talwandi* **[2005] 3 SCR 952 : (2005) 5 SCC 46;** *Mohd. Aslam v. Union of India* **[1996] 3 SCR 782 :(1996) 2 SCC 749 – relied on.**

S R Bommai v. Union of India **[1994] 2 SCR 644 : (1994) 3 SCC 1 – referred to.**

Case Law Reference

In the Judgment of Madan B. Lokur, J.

[1996] 1 Suppl. SCR 340	**referred to**	**Para 2**
(2003) 9 SCC 300	**referred to**	**Para 2**
[1964] 6 SCR 750	**held not correct law**	**Para 6**
[1964] 7 SCR 790	**relied on**	**Para 7**
[1969] 3 SCR 400	**held not correct law**	**Para 8**
[1996] 3 SCR 782	**referred to**	**Para 10**
[1994] 2 SCR 644	**referred to**	**Para 10**
[1995] 6 Suppl. SCR 371	**held not correct law**	**Para 11**
[1975] Suppl. SCR 281	**referred to**	**Para 35**
[1985] 2 SCR 159	**referred to**	**Para 35**
[2003] UKHL 13	**referred to**	**Para 36**
[1989] 3 SCR 316	**relied on**	**Pare 43**
[1975] 1 SCR 1	**relied on**	**Pare 44**
[2013] 10 SCR 259	**relied on**	**Pare 45**
[1955] 1 SCR 608	**referred to**	**Page 47**

In the Judgment of T.S. Thakur, C.J.I.

[1962] Suppl. SCR 496	**relied on**	**Para 13**

[1975] 1 SCR 173	relied on	Para 14
[1976] SCR 347	relied on	Para 15
[1994] 2 SCR 644	relied on	Para 16
[2005] 3 SCR 712	relied on	Para 20
[1995] 1 Suppl. SCR 392	relied on	Para 21
(1969) 3 SCC 492	relied on	Para 22
[1962] Suppl. SCR 769	relied on	Para 24
[1992] 3 Suppl. SCR 284	relied on	Para 26
[2015] 3 SCR 997	relied on	Para 27

In the Judgment of S.A. Bobde, J.

1984 CH 382 = (1983) 3 All ER 481 (CA)	referred to	Para 2
[2002] 2 SCR 945	relied on	Para 5
[2003] 3 Suppl. SCR 24	relied on	Para 7

In the Judgment of Dr. D. Y. Chandrachud, J.

[1951] 1 SCR 158	followed	Para 1
(1977) 3 SCC 566	relied on	Para 11
[1996] 2 SCR 99	relied on	Para 12
[1999] 2 Suppl. SCR 419	relied on	Para 12
[2003] 3 SCR 533	relied on	Para 12
(2013) 9 SCC 659	relied on	Para 12
[1952] SCR 1112	referred to	Para 32
[1964] 1 SCR 371	referred to	Para 32
[1950] SCR 869	relied on	Para 32
[1992] 2 Suppl. SCR 454	referred to	Para 32
[2013] 13 SCR 148	referred to	Para 32
[1972] 2 SCR 609	referred to	Para 32
[1976] 3 SCR 504	referred to	Para 32
[1982] 1 SCR 629	referred to	Para 32
[1999] 2 SCR 589	referred to	Para 32

[1995] 6 Suppl. SCR 371	relied on	Para 34	A
[1964] 6 SCR 750	relied on	Para 37	
[1964] SCR 790	relied on	Para 38	
[1969] 3 SCR 400	relied on	Para 38	
(1969) 3 SCC 492	relied on	Para 39	B
[1975] Suppl. SCR 281	relied on	Para 40	
[1995] 6 Suppl. SCR 371	relied on	Para 41	
[1995] 6 Suppl. SCR 421	relied on	Para 41	
[2005] 3 SCR 952	relied on	Para 41	
[1994] 2 SCR 644	referred to	Para 43	C
[1996] 3 SCR 782	referred to	Para 43	
[1965] 2 SCR 908	relied on	Para 46	
(2016) 5 SCC 1	followed	Para 47	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 37 of 1992. D

From the Judgment and Order dated 24.12.1991 of the High Court of Bombay in Election Petition No. 11 of 1991.

WITH

Civil Appeal No. 8339 of 1995. E

A.N.S. Nadkarni, Tushar Mehta, ASGs, Purushaindra Kaurav, AAG, Arvind P. Datar, Anoop G. Choudhari, B.A. Desai, Kapil Sibal, Salman Khurshid, Ms. Indira Jaising, C.S. Vaidyanathan, K.K. Venugopal, M. N. Krishnamani, Sanjay R. Hegde, Soli J. Sorabjee, Shyam Divan, Prof. Bhim Singh, Sr. Advs., Abhay Anand Jena, Ms. Bina Gupta, Ranjit F
B. Raut, Ms. Surbhi Kapoor, Sarthak Mehrotra, Mohit Sharma, Ms. Sumeeta Chaudhari, Mrs. Shiraz Contractor Patodia Chirag M. Shroff, Imtiaz Ahmed, Antony R. Julian, Ms. Gitanjali Kapur, Aadil Singh Boparai, Arpit Shukla, Koshy John, Nizam Pasha, Ms. Anusha Nagarajan, Adit Pujari, Raghav Tankha, Ms. Neha Sangwan, Ms. Kumud Lata Das, Ravi Aggarwal, Mohd. Shahid Hussain, Ejaz Maqbool, Nishant R. G
Katneshwarkar, Salvador Santosh Rebello, Arpit Rai, Ms. Aparna Bhat, Ms. Payal Bahl, Ms. Rajshree Bhatnagar, Pukhrambam Ramesh Kumar, Mayank Sapra, Ms. Mehek Dev, Rohit Ghosh, Ms. Josita Rai, Shuvodeep Roy, Merusagar Samantary, Ms. Viddusshi, Pushpender Singh, Sayooj Mohandas, Santosh Kumar, Pranav Kumar, Bharat Shood, Vikramjit H

A Banerji, Bhaskar Goutam, Bhaktivardan, Ms. Archana Pathak Dave, Ms. Ankita Chaudhary, Santosh Kumar, Ms. Swarupama Chaturvedi, B.N. Dubey, Kumar Gaurav, R.K. Singh, Prakash Kumar Singh, Ms. Aishwarya Bhatia, Ms. Hemantika Wahi, R.P. Goyal, P.V. Dinesh, Ms. Sindhu T.P., Bineesh K., S. Nithin, Pranjal Kishore, Atul Vinod Shankar, R. Beniwal, Dr. Manish Singhvi, Atul Jha, Sandeep Jha, Dharmendra B Kumar Sinha, Mr. Udayaditya Banerjee,Adv. Mrs. Samiksha Godiyal, Akshay Puranik, Vikramjit Banerjee, Nachiketa Joshi, Ms. Sucheta Joshi, Ritwiz Rishabh, Vadrevu Pattabhi Ram, Anuradha Mishra, Arjun Garg, Rajat Nair, Manish Yadav, Ishan Nagar, C.D. Singh, Ms. Sylona Mohapatra, Ajay Kumar Singh, Durg Vijay Singh, Balwant Singh, Ram C Shiromani Yadav, Prakash Gautam, Sheenu Chauhan, Sujeet Kumar Singh, Pankaj Pandey, Advs.for the appearing parties.

The following Judgments and Order of the Court were delivered:

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

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

3. In ***Narayan Singh v. Sunderlal Patwa***[2] the election of G Sunderlal Patwa from the Bhojpur Constituency No. 245 in Madhya Pradesh to the Legislative Assembly in 1993 was under challenge on the ground of a corrupt practice in that the returned candidate had allegedly made a systematic appeal on the ground of religion in violation of Section

[1] (1996) 3 SCC 665

H [2] (2003) 9 SCC 300

123(3) of the Act. The election petition was dismissed. In appeal before this Court, the Constitution Bench noticed an anomalous situation arising out of an amendment to Section 123(3) of the Act in 1961 inasmuch as it appeared that a corrupt practice for the purposes of the Act prior to the amendment could cease to be a corrupt practice after the amendment. On the one hand the deletion of certain words[3] from the sub-section widened the scope of the sub-section while the addition of a word[4] seemingly had the opposite effect. Since there are certain other significant observations made in the order passed by the Constitution Bench, it would be more appropriate to quote the relevant text of the Order. This is what the Constitution Bench had to say:

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

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

A which run contrary to the aforesaid three-Judge Bench decisions of this Court. The very object of amendment in introducing Act 40 of 1961 was for curbing the communal and separatist tendency in the country and to widen the scope of corrupt practice mentioned in sub-section (3) of Section 123 of the Act.

B 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 C 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 D even though he appealed to the voters on the ground of religion of voters. In view of certain observations made in the Constitution Bench decision of this Court in *Kultar Singh case* we think it appropriate to refer the matter to a larger Bench of seven Judges to consider the matter. The matter be placed before Hon'ble the Chief Justice for constitution of the Bench."

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

5. Before getting into the meat of the matter, it might be worthwhile to appreciate the apparent cause of conflict in views.

G **Apparent cause of conflict**

6. Among the first few cases decided by this Court on Section 123(3) of the Act was that of ***Jagdev Singh Sidhanti v. Pratap Singh Daulta***[13]. In this case, the Constitution Bench held that an appeal to the

[11] Abhiram Singh v. C.D. Commachen (Dead), (2014) 14 SCC 382

[12] Narayan Singh v. Sunderlal Patwa, (2003) 9 SCC 300

H [13] (1964) 6 SCR 750

electorate on a ground personal to the candidate relating to his language attracts the prohibition of a corrupt practice under Section 100 read with Section 123(3) of the Act. It was also held that espousing the cause of conservation of a language was not prohibited by Section 123(3) of the Act. In that context, it was held:

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

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

> "The corrupt practice as prescribed by Section 123(3) undoubtedly constitutes a very healthy and salutary provision which is intended to serve the cause of **secular democracy** in this country. **In order that the democratic process should thrive and succeed, it is of utmost importance that our elections to Parliament and the different legislative bodies must be free from the unhealthy influence of appeals to religion, race, caste, community, or language.** If these considerations are allowed any way in election campaigns, they would vitiate the secular atmosphere of democratic life, and so, Section 123(3) wisely provides a check on this undesirable development by providing that an **appeal to any of these factors made in furtherance of the candidature of any candidate** as therein prescribed would constitute a corrupt practice and would render the election of the said candidate void." [Emphasis supplied by us].

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

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

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

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

10. As mentioned in the reference order, the issue of the interpretation of Section 123(3) of the Act came up for indirect consideration in ***Bommai*** but we need not refer to that decision since apart from the view expressed in the reference order, this Court had taken the view in ***Mohd. Aslam v. Union of India***[14] that "..... the decision of this Court in ***S.R. Bommai*** v. ***Union of India***, did not relate to the construction of, and determination of the scope of sub-sections (3) and (3-A) of Section 123 of the Representation of the People Act,

[14] (1996) 2 SCC 749

1951 and, therefore, nothing in the decision in ***Bommai*** is of assistance for construing the meaning and scope of sub-sections (3) and (3-A) of Section 123 of the Representation of the People Act. Reference to the decision in ***Bommai*** is, therefore, inapposite in this context." However, it must be noted that ***Bommai*** made it clear that secularism mentioned in the Preamble to our Constitution is a part of the basic structure of our Constitution.

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

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

A **on the ground of religion of the candidate for whom the votes are sought; and when the appeal is to refrain from voting for any candidate, the prohibition is against an appeal on the ground of the religion of that other candidate.** The first is a positive appeal and the second a negative appeal. There is no ambiguity in sub-section (3) and it clearly indicates the particular religion on the basis of which an appeal to vote or refrain from voting for any person is prohibited under sub-section (3)." [Emphasis supplied by us].

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

13. Be that as it may, the fact is that sub-section (3) of Section 123 of the Act was interpreted in a narrow manner in ***Jagdev Singh Sidhanti*** but in a broad manner in ***Kultar Singh*** without reference to ***Jagdev Singh Sidhanti***. A narrow and restricted interpretation was given to Section 123(3) of the Act in ***Kanti Prasad Jayshanker Yagnik*** without reference to ***Jagdev Singh Sidhanti*** or ***Kultar Singh***. ***Ramesh Yeshwant Prabhoo*** decided about four decades later gave a narrow and restricted meaning to the provision by an apparent misreading of Section 123(3) of the Act. Hence the apparent conflict pointed out in ***Narayan Singh***. In any event today (and under the circumstance mentioned above) this provision falls for our consideration and interpretation.

Legislative history

14. Corrupt practices during the election process were explained in the Act (as it was originally enacted in 1951) in Chapter I of Part VII thereof. Section 123 dealt with major corrupt practices while Section 124 dealt with minor corrupt practices. Chapter II dealt with illegal

practices for the purposes of the Act. As far as we are concerned, Section 124(5) of the Act (dealing with minor corrupt practices) as originally framed is relevant and this reads as follows:

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

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

16. In 1956 the Act was amended by Act No. 27 and the distinction between major corrupt practices and minor corrupt practices was removed. Therefore, for Chapters I and II of Part VII of the Act only Chapter I providing for corrupt practices was substituted. Section 123(3) of the Act (as amended in 1956) reads as follows:

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

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

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

A the Act after its amendment in 1958 read as follows:

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

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

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

> E 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
> F of hatred and enmity on grounds of religion, race, caste, community or language. It is also proposed that conviction for this new offence will entail disqualification for membership of Parliament and of State Legislatures and also for voting at any election. This is proposed to be done by suitable amendments in section 139 and section 141 of the 1951 Act as in clauses 29 and 30 respectively.

G 21. Three objectives of the Bill stand out from the Notes on Clauses and they indicate that the amendment was necessary to: (1) Curb communal and separatist tendencies in the country; (2) Widen the scope of the corrupt practice mentioned in sub-section (3) of Section 123 of the Act; (3) Provide for a new corrupt practice (as in sub-clause (b) of
H clause 25). The proposed amendment reads as follows:

25. In section 123 of the 1951-Act, —

(a) in clause (3) —

(i) the word "systematic" shall be omitted,

(ii) for the words "caste, race, community or religion", the words "religion, race, caste, community or language" shall be substituted;

(b) after clause (3), the following clause shall be inserted, namely: —

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

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

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Similarly, an amendment was proposed in the new clause (3A) of Section 123 of the Act and this reads as follows:

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

A of the election of that candidate or for prejudicially affecting the election of any candidate.

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

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

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

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

> "I disagree with clause 23 of the Bill which aims at omitting the word "systematic" in clause (3) of section 123 of the 1951 Act. By omitting these words any stray remarks of any speaker might

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be taken advantage of by the opponents for the purpose of an election petition. Only a systematic and planned propaganda of communal nature should be made reprehensible." A

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

"(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. C

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

E

26. Significantly, the word "systematic" was deleted despite the dissent of Shri Balraj Madhok. The effect of this is that even a single appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language for the furtherance of the prospects of the election of that candidate or F for prejudicially affecting the election of any candidate would be deemed to be a corrupt practice for the purposes of the Act.

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

28. Interestingly, simultaneous with the introduction of the Bill to amend the Act, a Bill to amend Section 153A of the Indian Penal Code (the IPC) was moved by Shri Lal Bahadur Shastri. The Statement of H

Objects and Reasons for introducing the amendment notes that it was, *inter alia*, to check fissiparous, communal and separatist tendencies whether based on grounds of religion, caste, language or community or any other ground. The Statement of Objects and Reasons reads as follows:

STATEMENT OF OBJECTS AND REASONS

In order effectively to check fissiparous communal and separatist tendencies whether based on grounds of religion, caste, language or community or any other ground, it is proposed to amend section 153A of the Indian Penal Code so as to make it a specific offence for any one to promote or attempt to promote feelings of enmity or hatred between different religious, racial or language groups or castes or communities. The Bill also seeks to make it an offence for any one to do any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and which is likely to disturb public tranquillity. Section 295A of the Indian Penal Code is being slightly widened and the punishment for the offence under that section and under section 505 of the Code is being increased from two to three years.

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

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

"153A. Whoever—

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

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

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

Piloting the Bill

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

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

A at influencing elections by creating enmity between different classes and communities then we must say that in connection with the election, no person shall excepting at the peril of violating our penal law, shall attempt to influence the electorate by creating such enmity or hatred between communities. **I think that these two provisions, if followed faithfully, would go a long way in eradicating or at least in checking the evil which has raised its ugly head in so many forms all over the country in recent years.**" [Emphasis supplied].

31. The significance of this speech by the Law Minister is that Parliament was invited to unequivocally launch a two-pronged attack on C communal, separatist and fissiparous tendencies that seemed to be on the rise in the country. An amendment to the IPC had already been made and now it was necessary to pass the amendment to the Act. A sort of 'package deal' was presented to Parliament making any appeal to communal, fissiparous and separatist tendencies an electoral offence D leading to voiding an election and a possible disqualification of the candidate from contesting an election or voting in an election for a period. An aggravated form of any such tendency could invite action under the criminal law of the land.

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

Submissions and discussion

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

34. Basically, four principal submissions were made by learned counsel for the appellants: Firstly, that sub-section (3) of Section 123 of the Act must be given a literal interpretation. It was submitted that the

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

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

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

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

(*a*) xxx xxx xxx

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

(*c*) xxx xxx xxx

(*d*) xxx xxx xxx

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

[18] **8-A. Disqualification on ground of corrupt practices.**-(1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

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

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

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

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

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

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

> "Our Constitution-makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order, in which the conditions of E freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed and language. **Our political history made it particularly necessary that these differences, which** F **can generate powerful emotions, depriving people of their powers of rational thought and action, should not be permitted to be exploited lest the imperative conditions for the preservation of democratic freedoms are disturbed.**
>
> It seems to us that **Section 123, sub-sections (2), (3) and (3-** G **A) were enacted so as to eliminate, from the electoral process, appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution,** and, indeed, of any civilised political and social order. Due respect for the religious beliefs and practices, race,

H [19] (1976) 2 SCC 17 decided by a Bench of three learned judges.

creed, culture and language of other citizens is one of the basic postulates of our democratic system. Under the guise of protecting your own religion, culture, or creed you cannot embark on personal attacks on those of others or whip up low herd instincts and animosities or irrational fears between groups to secure electoral victories. **The line has to be drawn by the courts, between what is permissible and what is prohibited, after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of were made.**" [Emphasis supplied by us].

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

Literal versus Purposive Interpretation

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

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

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

[21] [2003] UKHL 13

A improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

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9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to

C apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of "cruel and unusual punishments" has not changed over the years since 1689, but many punishments which were not then thought to fall within that category would now be held to do so. The courts have

D frequently had to grapple with the question whether a modern invention or activity falls within old statutory language: see Bennion, *Statutory Interpretation*, 4th ed (2002) Part XVIII, Section 288. A revealing example is found in *Grant v Southwestern and County Properties Ltd* [1975] Ch 185, where Walton J had to decide whether a tape recording fell within the

E expression "document" in the Rules of the Supreme Court. Pointing out (page 190) that the furnishing of information had been treated as one of the main functions of a document, the judge concluded that the tape recording was a document."

37. In the same decision, Lord Steyn suggested that the pendulum

F has swung towards giving a purposive interpretation to statutes and the shift towards purposive construction is today not in doubt, influenced in part by European ideas, European Community jurisprudence and European legal culture. It was said:

"..... the adoption of a purposive approach to construction of

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

"Of course it is true that the words used, even in their literal

H [22](1945) 148 F 2d 737

sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a classic early statement of the purposive approach by Lord Blackburn in *River Wear Commissioners v Adamson*[23]. In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is that the degree of liberality permitted is influenced by the context, eg social welfare legislation and tax statutes may have to be approached somewhat differently." [Emphasis supplied by us].

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

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

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

[23] (1877) 2 App Cas 743, 763

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

[25] Sixth Edition (Indian Reprint) page 847

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

[27] (1584) 3 Co Rep 7a

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

B

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

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

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

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41. The purpose of enacting sub-section (3) of Section 123 of the Act and amending it more than once during the course of the first 10

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years of its enactment indicates the seriousness with which Parliament grappled with the necessity of curbing communalism, separatist and fissiparous tendencies during an election campaign (and even otherwise in view of the amendment of Section 153A of the IPC). It is during electioneering that a candidate goes virtually all out to seek votes from the electorate and Parliament felt it necessary to put some fetters on the language that might be used so that the democratic process is not derailed but strengthened. Taking all this into consideration, Parliament felt the need to place a strong check on corrupt practices based on an appeal on grounds of religion during election campaigns (and even otherwise).

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

Social context adjudication

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

> "But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for **readjustment in a changing society, a readjustment of legal norms demanded by a changed social context**. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience",[29] and again

[28] (1989) 2 SCC 754

[29] Oliver Wendell Holmes: The Common Law page 5

A when he declared in another study[30] that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the **introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions**, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined."[31] [Emphasis supplied by us].

A little later in the decision it was said:

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

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

> "As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and

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

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

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

[33] Pp 25-26

[34] (1974) 2 SCC 402

developments in different fields of life. **Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations.** Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time **it has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself.....**" [Emphasis supplied by us].

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

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

46. There is no doubt in our mind that keeping in view the social context in which sub-section (3) of Section 123 of the Act was enacted and today's social and technological context, it is absolutely necessary to give a purposive interpretation to the provision rather than a literal or strict interpretation as suggested by learned counsel for the appellants, which, as he suggested, should be limited only to the candidate's religion or that of his rival candidates. To the extent that this Court has limited

[35] (2014) 1 SCC 188

A the scope of Section 123(3) of the Act in ***Jagdev Singh Sidhanti, Kanti Prasad Jayshanker Yagnik*** and ***Ramesh Yeshwant Prabhoo*** to an appeal based on the religion of the candidate or the rival candidate(s), we are not in agreement with the view expressed in these decisions. We have nothing to say with regard to an appeal concerning the conservation of language dealt with in ***Jagdev Singh Sidhanti.*** That issue does not arise for our consideration.

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Constitutional validity of Section 123(3) of the Act

47. Although it was submitted that a broad interpretation given to sub-section (3) of Section 123 of the Act might make it unconstitutional, no serious submission was made in this regard. A similar submission regarding the constitutional validity of Section 123(5) of the Act was dealt with rather dismissively by the Constitution Bench in ***Jamuna Prasad Mukhariya v. Lachhi Ram***[36] when the sweep of the corrupt practice on the ground of religion was rather broad. It was held:

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

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We need say nothing more on the subject.

Overturning the settled legal position

48. Several decisions were cited before us to contend that we should not unsettle the long-standing interpretation given to Section 123(3)

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[36] (1955) 1 SCR 608

of the Act. As we have indicated earlier, there was some uncertainty about the correct interpretation of sub-section (3) of Section 123 of the Act. It is not as if the interpretation was well-recognized and settled. That being the position, there is really nothing that survives in this submission.

Conclusion

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

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

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

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

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

T. S. THAKUR, C.J.I. 1. I have had the advantage of carefully reading the separate but conflicting opinions expressed by my esteemed brothers Madan B. Lokur and Dr. D.Y. Chandrachud, JJ. While both

A the views reflect in an abundant measure, the deep understanding and scholarship of my noble brothers, each treading a path that is well traversed and sanctified by judicial pronouncements, the view taken by Lokur, J. appears to me to be more in tune with the purpose and intention behind the enactment of Section 123(3) of the Representation of Peoples Act, 1951. I would, therefore, concur with the conclusions drawn by Lokur, J. and the order proposed by His Lordship with a few lines of my own in support of the same.

2. The legislative history of Section 123(3) as it now forms part of the statute has been traced in the order proposed by brother Lokur, J. I can make no useful addition to that narrative which is both exhaustive and historically accurate. I may, perhaps pick up the threads post 1958 by which time amendments to the Representation of People Act, 1951 had brought Section 123(3) to read as under:-

> *"Section 123*
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> *(1) xxxxxx*
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> *(2) xxxxxx*
>
> *(3) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting on the grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or national emblem, for the furtherance of the prospects of that candidate's election."*

3. A close and careful reading of the above would show that for an appeal to constitute a corrupt practice it had to satisfy the following ingredients:

> *(i) the appeal was made by the candidate, or his agent, or by any other person with the consent of the candidate or his election agent;*
>
> *(ii) the appeal was systematic;*
>
> *(iii) the appeal so made was to vote or refrain from voting at an election on the ground 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 national flag or the national emblem; and*

(iv) the appeal was for the furtherance of the prospects of the candidate's election, by whom or whose behalf the appeal was made.

4. What is noteworthy is that Section 123(3) as it read before the amendment of 1961, did not make any reference to the "candidate's religion" or the "religion of his election agent" or the "person who was making the appeal with the consent of the candidate or his agent" or even of the 'voters' leave alone the "religion of the opponent" of any such candidate. All that was necessary to establish the commission of a corrupt practice was a systematic appeal by a candidate, his election agent or any other person with the consent of any one of the two, thereby implying that an appeal in the name of religion, race, caste, community or language or the use of symbols referred to in Section 123(3) was forbidden regardless of whose religion, race, caste, community or language was invoked by the person making the appeal. All that was necessary to prove was that the appeal was systematic and the same was made for the furtherance of the prospects of a candidate's election.

5. Then came the Bill for amendment of Section 123 of the Act introduced in the Lok Sabha on 10th August, 1961 which was aimed at widening the scope of corrupt practice and to provide for a new corrupt practice and a new electoral offence. The notes on clauses attached to the Bill indicated that the object behind the proposed amendment was (a) to curb communal and separatist tendencies in the country (b) to widen the scope of the corrupt practice mentioned in sub-section (3) of Section 123 of the Act and (c) to provide for a new corrupt practice as in sub-clause (b) of clause 25. The proposed amendment was in the following words:

"25. In Section123 of the 1951 Act, -

(a) in clause (3) –

(i) the word "systematic" shall be omitted,

(ii) for the words "caste, race, community or religion", the words "religion, race, caste, community or language" shall be substituted;

(iii) (b) after clause (3), the following clause shall be inserted, namely: -

"(3A) The promotion of, or attempt to promote, feelings of

A *enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of that candidate's election."*-

B 6. The bill proposing the above amendment was referred to a Select Committee who re-drafted the same for it was of the view that the amendment as proposed did not clearly bring out its intention. The redrafted provision was with the minutes of dissent recorded by Ms. Renu Chakravartty and Mr. Balraj Madhok debated by the Parliament and enacted to read as under:

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"(1) xxxxxxxxx

(2) xxxxxxxxxx

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

D *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*

E *of that candidate or for prejudicially affecting the election of any candidate.*

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race caste, community, or

F *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 election of that candidate or for prejudicially affecting the election of any candidate.*

7. The single noteworthy change that was by the above amendment

G brought about in the law was the deletion of the word *"systematic"* as it appeared in Section 123 (3) before the amendment of 1961. The purpose underlying the proposed deletion obviously was to provide that an appeal in the name of religion after the amendment would constitute a corrupt practice even when the same was not systematic. In other words, a single appeal on the ground of religion, race, caste, community or language

H would in terms of the amended provision be sufficient to annul an election.

The other notable change which the amendment brought about was the addition of the words *"or for prejudicially affecting the election of any candidate"* in Section 123 (3) which words were not there in the earlier provision. A

8. That the purpose underlying the amendment was to enlarge the scope of corrupt practice was not disputed by learned counsel for the parties before us. That the removal of the word *"systematic"* and the addition of the words *"prejudicially affecting the election of any candidate"* achieved that purpose was also not disputed. What was all the same strenuously argued by Mr. Shyam Diwan was that even when the purpose of the amendment was to widen the scope of the corrupt practice under Section 123 (3) it had also restricted the same by using the word *"his"* before the word *"religion"* in the amended provision. According to Mr. Diwan the amendment in one sense served to widen but in another sense restrict the scope of corrupt practice. B C

9. I have found it difficult to accept that submission. In my view the unamended provision extracted earlier made any appeal in the name of religion, race, caste, community or language a corrupt practice regardless of whose religion, race, caste, community or language was involved for such an appeal. The only other requirement was that such an appeal was made in a systematic manner for the furtherance of the prospects of a candidate. Now, if that was the legal position before the amendment and if the Parliament intended to enlarge the scope of the corrupt practice as indeed it did, the question of the scope being widened and restricted at the same time did not arise. There is nothing to suggest either in the statement of objects and reasons or contemporaneous record of proceedings including notes accompanying the bill to show that the amendment was contrary to the earlier position intended to permit appeals in the name of religion, race, caste, community or language to be made except those made in the name of the religion, race, caste, community or language of the candidate for the furtherance of whose prospects such appeals were made. Any such interpretation will not only do violence to the provisions of Section 123(3) but also go against the avowed purpose of the amendment. Any such interpretation will artificially restrict the scope of corrupt practice for it will make permissible what was clearly impermissible under the unamended provision. The correct approach, in my opinion, is to ask whether appeals in the name of religion, race, caste, community or language which were forbidden under the unamended D E F G H

A law were actually meant to be made permissible subject only to the condition that any such appeal was not founded on the religion, race, caste, community or language of the candidate for whose benefit the same was made. The answer to that question has to be in the negative. The law as it stood before the amendment did not permit an appeal in the name of religion, race, caste community or language, no matter whose religion, race, community or language was invoked. The amendment did not intend to relax or remove that restriction. On the contrary it intended to widen the scope of the corrupt practice by making even a 'single such appeal' a corrupt practice which was not so under the unamended provision. Seen both textually and contextually the argument that the term *"his religion"* appearing in the amended provision must be interpreted so as to confine the same to appeals in the name of "religion of the candidate" concerned alone does not stand closer scrutiny and must be rejected.

10. There is another angle from which the question of interpretation of Section 123(3) can be approached. Assuming that Section 123(3), as it appears, in the Statute Book is capable of two possible interpretations one suggesting that a corrupt practice will be committed only if the appeal is in the name of the candidate's religion, race, community or language and the other suggesting that regardless of whose religion, race, community or language is invoked an appeal in the name of any one of those would vitiate the election. The question is which one of the two interpretations ought to be preferred by the Court keeping in view the constitutional ethos and the secular character of our polity.

11. That India is a secular state is no longer res integra. Secularism has been declared by this Court to be one of the basic features of the Constitution. A long line of decisions delivered by this Court on the subject have explained the meaning of the term 'secular' and 'secularism', but before we refer to the judicial pronouncements on the subject we may gainfully refer to what Dr. Radhakrishnan the noted statesman/philosopher had to say about India being a secular State in the following passage:

> *"When India is said to be a secular State, it does not mean that we reject reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that Secularism itself becomes a positive religion or that the*

State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition, the Indian State will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government. ***This view of religious impartiality, of comprehension and forbearance****, has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges, which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all like should be free to share to the fullest degree in the common life.* ***This is the basic principle involved in the separation of Church and State."***

[emphasis supplied]

12. Dr. B.R. Ambedkar also explained the significance of 'secular state' in the Parliamentary debate in the following words:

"A secular state does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this ***parliament shall not be competent to impose any particular religion upon the rest of the people"***

13. In ***Saifuddin Saheb v. State of Bombay*** **AIR 1962 SC 853** a Constitution bench of this Court described secularism thus :-

"50. *These Articles embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history, the instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered should be the very basis of the Constitution."*

14. Again in ***the Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.*** **(1974)1 SCC 717** a Nine-Judge bench explained the secular character of the Indian Constitution and said:

A "75. ..... *There is no mysticism in the secular character of the State. Secularism is neither anti-God nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion.*"

B 15. So also in ***Indira Nehru Gandhi v. Shri Raj Narain*** **(1975) Suppl. SCC 1** it was observed::

"664.. ..... *The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice and propagate* C *religion.*"

16. In ***S.R. Bommai v. Union of India*** **1994 (3) SCC 1**, Sawant J. speaking for himself and Kuldeep Singh J. in para 145 of the judgment elaborately referred to several provisions of the Constitution including Articles 25, 26, 29, 30, 44 and 51A and declared that these provisions prohibit the State from identifying with any particular religion, sect or D denomination. Drawing support from what jurists have said about the concept of secularism in the Indian Constitution, the Court explained the legal position thus:

"**148.***One thing which prominently emerges from the above discussion on secularism under our Constitution is that* E *whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we* F *have made reference above. The State's tolerance of religion or religions does not make it either a religious or a theocratic State. When the State allows citizens to practise and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion* G *is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.* ***This is also clear from Sub-section (3) of Section 123 of the Representation of the Peoples Act, 1951 which prohibits an appeal by a candidate or his***

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agent or by 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, race, caste, community or language or the use of or appeal to religious symbols. Sub-section [3A] of the same section prohibits the promotion or attempt to promote feelings of enmity and hatred between different classes of the citizens of India on the 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. A breach of the provisions of the said Sub-sections [3] and [3A] are deemed to be corrupt practices within the meaning ofthe said section."

(Emphasis supplied)

17. The Court declared that whatever be the States attitude towards religious sects and denominations, a religious activity cannot be allowed to mix with the secular activities of the State. The Court held that encroachment of religious activities in the secular activities of the State was prohibited as is evident from the provisions of the Constitution themselves. The Court observed:

"148.One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we have made reference above."

(Emphasis Supplied)

18. The Court drew a distinction between freedom and tolerance of religion on the one hand and the secular life of the State on the other and declared that the later falls in the exclusive domain of the State.

19. Speaking for himself and Agarwal J., Jeevan Reddy J., held that the Constitution does not recognize or permit mixing religion and State power and that the two must be kept apart. The Court said:

A "310.....*If the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well. The Constitution does not recognise, it does not permit, mixing religion and State power. Both must be kept apart. That is the constitutional injunction. None can say otherwise so long as this Constitution governs this country. Introducing religion into politics is to introduce an impermissible element into body politic and an imbalance in our constitutional system. If a political party espousing a particular religion comes to power, that religion tends to become, in practice, the official religion. All other religions come to acquire a secondary status, at any rate, a less favourable position. This would be plainly antithetical to Articles 14 to 16, 25 and the entire constitutional scheme adumbrated hereinabove. Under our Constitution, no party or Organisation can simultaneously be a political and a religious party.*"

20. Relying upon the pronouncement of *SR Bommai* (supra) this Court in ***M.P. Gopalakrishnan Nair and Anr. v. State of Kerala and Ors.*** **(2005) 11 SCC 45** declared that the judicial process must promote citizen's participation in the electoral process free from -----any corrupt practice in the exercise of their adult franchise. The Court held that rise of fundamentalism and communalism of politics encouraged the separatist and divisive forces and become breeding grounds for national disintegration and failure of the parliamentary democratic system.

21. In ***Dr. Vimal (Mrs.) v. Bhaguji & Ors.*** **(1996) 9 SCC 351** this Court emphasized the need for interpreting Section 123(3) and 123(3A) of the Representation of Peoples Act, 1951 to maintain national integrity and unity amongst the citizens of the country and maintaining the secular character of the society to which we belong. The Court said:

"**20.***We may also indicate here that in order to maintain national integrity and amity amongst the citizens of the country and to maintain the secular character of the pluralistic society to which we belong section 123 and 123 (3A) of the Representation Act have been incorporated. For maintaining purity in the election process and for maintaining peace and harmony in the social fabric, it becomes essentially necessary*

not only to indict the party to an election guilty of corrupt practice but to name the collaborators of such corrupt practice if there be any".

22. In ***Ambika Sharan Singh Vs. Mahant Mahadeva and Giri and Others*** **(1969) 3 SCC 492,** the Court held:

"12. Indian leadership has long condemned electoral campaigns on the lines of caste and community as being destructive of the country's integration and the concept of secular democracy which is the basis of our Constitution. It is this condemnation which is reflected in Section 123 (3) of the Act. Inspite of the repeated condemnation, experience has shown that where there is such a constituency it has been unfortunately too tempting for a candidate to resist appealing to sectional elements to cast their votes on caste basis."

23. The upshot of the above discussion clearly is that under the constitutional scheme mixing religion with State power is not permissible while freedom to practice profess and propagate religion of one's choice is guaranteed. The State being secular in character will not identify itself with any one of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature. The elections to the State legislature or to the Parliament or for that matter or any other body in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice. Suffice it to say that the Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State. This necessarily implies that interpretation of any statute must not offend the fundamental mandate under the Constitution. An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. This Court has in several pronouncements ruled that while interpreting an enactment, the Courts should remain cognizant of the Constitutional goals and the purpose of the Act and interpret the provisions accordingly.

24. In ***Kedar Nath Vs. State of Bihar*** **(AIR 1962 SC 955),** a Constitution bench of this Court declared that while interpreting an enactment, the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history

A of the legislation, its purpose and the mischief it seeks to address. More importantly, the Court observed:

> *"26. It is well-settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them*
B *unconstitutional, the Court would lean in favour of the former construction"*

25. Extending the above principle further one can say that if two constructions of a statute were possible, one that promotes the constitutional objective ought to be preferred over the other that does
C not do so.

26. To somewhat similar effect is the decision of this Court in ***State of Karnataka Vs. Appa Balu Ingale and Others*** **[1995] Supp.4 SCC 469** where this Court held that as the vehicle of transforming the nation's life, the Court should respond to the nation's need and interpret
D the law with pragmatism to further public welfare and to make the constitutional animations a reality. The Court held that Judge's should be cognizant of the constitutional goals and remind themselves of the purpose of the Act while interpreting any legislation, the Court said:

> *"35. The judges, therefore, should respond to the human*
E *situations to meet the felt necessities of the time and social needs; make meaningful the right to life and give effect to the Constitution and the will of the legislature. This Court as the vehicle of transforming the nation's life should respond to the nation's needs and interpret the law with pragmatism to further public welfare to make the constitutional animations*
F *a reality. Common sense has always served in the court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which is sine qua non for stability in the process of change in a parliamentary democracy. In interpreting the Act, the judge should be*
G *cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality; give social integration a fruition and make fraternity a reality."*

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27. In ***Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Ltd. and Ors.*** **(2015) 8 SCC 1,** this Court held that in cases where the legislation or bye-laws are silent in a given aspect, the Court will have to read the constitutional requirements into the enactment. The Court said:

> *"46. In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts."*

28. There is thus ample authority for the proposition that while interpreting a legislative provision, the Courts must remain alive to the constitutional provisions and ethos and that interpretations that are in tune with such provisions and ethos ought to be preferred over others. Applying that principle to the case at hand, an interpretation that will have the effect of removing the religion or religious considerations from the secular character of the State or state activity ought to be preferred over an interpretation which may allow such considerations to enter, effect or influence such activities. Electoral processes are doubtless secular activities of the State. Religion can have no place in such activities for religion is a matter personal to the individual with which neither the State nor any other individual has anything to do. The relationship between man and God and the means which humans adopt to connect with the almighty are matters of individual preferences and choices. The State is under an obligation to allow complete freedom for practicing, professing and propagating religious faith to which a citizen belongs in terms of Article 25 of the Constitution of India but the freedom so guaranteed has nothing to do with secular activities which the State undertakes. The State can and indeed has in terms of Section 123(3) forbidden interference of religions and religious beliefs with secular activity of elections to legislative bodies. To sum up:

29. An appeal in the name of religion, race, caste, community or language is impermissible under the Representation of the People Act, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate's religion or the religion of the election agent or that of the opponent or that of the voter's. The sum total of

A Section 123 (3) even after amendment is that an appeal in the name of religion, race, caste, community or language is forbidden even when the appeal may not be in the name of the religion, race, caste, community or language of the candidate for whom it has been made. So interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice. With these few lines I answer the reference in terms of the order proposed by Lokur, J.

S. A. BOBDE, J. 1. I agree with the conclusion drawn by my learned brother Lokur, J. that the bar under Section 123 (3) of the Representation of People Act, 1951 (hereinafter referred to as "the Act") to making an appeal on the ground of religion must not be confined to the religion of the candidate because of the word 'his' in that provision. I also agree that the purposive interpretation in the social context adjudication as a facet of purposive interpretation warrants a broad interpretation of that section. That the section is intended to serve the broad purpose of checking appeals to religion, race, caste, community or language by any candidate. That to maintain the sanctity of the democratic process and to avoid the vitiating of secular atmosphere of democratic life an appeal to any of the factors should avoid the election of the candidate making such an appeal.

2. I would, however, add that such a construction is not only warranted upon the application of the purposive test of interpretation but also on textual interpretation. A literal interpretation does not exclude a purposive interpretation of the provisions whether in relation to a taxing statute or a penal statute. In **IRC** v. **Trustees of Sir John Aird's Settlement** [1984 CH 382 : (1983) 3 All ER 481 (CA)], the Court observed as follows:

> *"... Two methods of statutory interpretation have at times been adopted by the court. One, sometimes called literalist, is to make a meticulous examination of the precise words used. The other sometimes called purposive, is to consider the object of the relevant provision in the light of the other provisions of the Act — the general intendment of the provisions. They are not mutually exclusive and both have their part to play even in the interpretation of a taxing statute."*

There seems no valid reason while construing a statute (be it a taxing or penal statute) why both rules of interpretation cannot be applied. A

3. Sub-section (3) of Section 123 of the Act reads 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: B C

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause".

The provision prohibits an "appeal by a candidate", etc. "to vote or refrain from voting for any person on the ground of his religion", etc. The word "his" occurring in the section refers not only to the candidate or his agent but is also intended to refer to the voter i.e. the elector. What is prohibited by a candidate is an appeal to vote on certain grounds. The word "his" therefore must necessarily be taken to embrace the entire transaction of the appeal to vote made to voters and must be held referable to all the actors involved i.e. the candidate, his election agent etc. and the voter. Thus, the pronoun in the singular "his" refers to a candidate or his agent or any other person with the consent of a candidate or his election agent and to the voter. In other words, what is prohibited is an appeal by a candidate etc. to a voter for voting on the ground of his religion i.e. those categories preceding "his". This construction is fortified by the purposive test. D E F

4. It is settled law that while interpreting statutes, wherever the language is clear, the intention of the legislature must be gathered from the language used and support from extraneous sources should be avoided. I am of the view that the language that is used in Section 123 (3) of the Act intends to include the voter and the pronoun "his" refers to the voter in addition to the candidate, his election agent etc. Also because the intendment and the purpose of the statute is to prevent an appeal to votes on the ground of religion. I consider it an unreasonable shrinkage G H

A to hold that only an appeal referring to the religion of the candidate who made the appeal is prohibited and not an appeal which refers to religion of the voter. It is quite conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers to religion of the voter. For example, where a candidate or his election agent, appeals to a voter highlighting that the opposing B candidate does not belong to a particular religion, or caste or does not speak a language, thus emphasizing the distinction between the audience's (intended voters) religion, caste or language, without referring to the candidate on whose behalf the appeal is made, and who may conform to the audience's religion, caste or speak their language, the provision is C attracted. The interpretation that I suggest therefore, is wholesome and leaves no scope for any sectarian caste or language based appeal and is best suited to bring out the intendment of the provision. There is no doubt that the section on textual and contextual interpretation proscribes a reference to either.

D 5. This Court in **Grasim Industries v. Collector of Customs, Bombay** [2002 (4) SCC 297] observed as follows:-

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay E *too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to* F *gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory* G *provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by*

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the Privy Council in Crawford v. Spooner "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Union of India v. Deoki Nandan Aggarwal, Institute of Chartered Accountants of India v. Price Waterhouse and Harbhajan Singh v. Press Council of India)"

It seems clear that the *mens* or *sententia legis* of the Parliament in using the pronoun "his" was to prohibit an appeal made on the ground of the voter's religion. It was argued before us that a penal statute must be strictly construed so as not to widen the scope and create offences which are not intended by the legislature. This submission is well-founded. However, it has no application where the action is clearly within the mischief of the provision. Parliamentary intent therefore, was to clearly proscribe appeals based on sectarian, linguistic or caste considerations; to infuse a modicum of oneness, transcending such barriers and to borrow Tagore's phrase transcend the fragmented *"narrow domestic walls"* and send out the message that regardless of these distinctions voters were free to choose the candidate best suited to represent them.

6. The correct question is not whether a construction which is strict or one which is more free should be adopted but – what is the true construction of the statute. A passage in Craies on Statute Law, 7th Edn. at Page No.531 reads as follows:-

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. "All modern Acts are framed with regard to equitable as well as legal principles" [Edwards vs. Edwards : (1876) 2 Ch. D. 291, 297, Mellish L. J., quoted with approval by Lord Cozens – Hardy M.R. in Re. Monolithic Building Co Ltd. (1915) 1 Ch. 643, 665]. "A hundred years ago", said the Court in Lyons case [(1958) Bell C.C. 38, 45], "statutes were required to be perfectly precise, and resort was

A *not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."*

B 7. It is an overriding duty of the Court while interpreting the provision of a statute that the intention of the legislature is not frustrated and any doubt or ambiguity must be resolved by recourse to the rules of purposive construction. **In Balram Kumawat** v. **Union of India** [2003 (7) SCC 628], this Court observed as follows:-

C *"26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See Salmon v. Duncombe (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to,*
D *the courts would accept the bolder construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is*
E *tolerably plain what it seeks to achieve. [See BBC Enterprises v. Hi-Tech Xtravision Ltd.(All ER at pp. 122-23).]"*

Further, this Court observed as follows:-

F *"36. These decisions are authorities for the proposition that the rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of Parliament to combat crimes of special nature would be defeated."*

8. Applying the above principles, there is no doubt that Parliament
G intended an appeal for votes on the ground of religion is not permissible whether the appeal is made on the ground of the religion of the candidate etc. or of the voter. Accordingly, the words "his religion" must be construed as referring to all the categories of persons preceding these words.

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Dr. D. Y. CHANDRACHUD, J. **A. The reference** 1. 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**[1], 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 construction was supported by three Judge Bench decisions of this Court in **Kanti Prasad Yagnik** v. **Purshottamdas Patel**[2] and **Dr Ramesh Yashwant Prabhoo** v. **Prabhakar Kashinath Kunte**[3]. There were observations of the Constitution Bench in **Kultar Singh** v. **Mukhtar Singh**[4] bearing on the interpretation of Section 123(3). In the referring order in **Narayan Singh** (supra), this Court observed that in the nine Judge Bench decision in **S R Bommai** v. **Union of India**[5], 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:

[1](2003) 9 SCC 300
[2](1969) 1 SCC 455
[3](1996) 1 SCC 130
[4](1964) 7 SCR 790
[5](1994) 3 SCC 1

A "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 B "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 C 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 D voters. In view of certain observations made in the Constitution Bench decision of this Court in **Kultar Singh** Case we think it appropriate to refer the matter to a larger Bench of seven Judges to consider the matter."

3. The present civil appeal was initially referred by a Bench of E three judges to a Constitution Bench on 16 April 1996[6]. When the civil appeal came up before a Constitution Bench[7], 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 F 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 G 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).

[6](1996) 3 SCC 665

H [7](2014) 14 SCC 382

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 its amendment in 1961, Section 123(3)[8], 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)[9] declare the election of any or all of the

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

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

(a) dismissing the election petition; or

(b) declaring the election of [all or any of the returned candidates] to be void; or

(c) declaring the election of [all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected.

A returned 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."

B 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 C 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 D 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 E 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 F 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;
>
> G (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 H 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. A

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 B 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 C 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 D 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 aperson 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 E 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 F 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**[10] where it was held as follows : G

> "...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

[10] (1951) 1 SCR 158 H

A 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 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 B 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 C interpretation has been adopted in **Amolakchand Chhazed** v. **Bhagwandas**[11]. 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 D 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 E this Court in **Baldev Singh Mann** v. **Gurcharan Singh (MLA)**[12] 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 F 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 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 G 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

[11] (1977) 3 SCC 566

H [12] (1996) 2 SCC 743

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) A

In **Thampanoor Ravi** v. **Charupara Ravi**[13], 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 : B

"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 C 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** D **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** E **required. Therefore, the liberal view taken by the learned Judge to the contrary does not appear to be correct."** (Id at p.87)

In **Bipinchandra Parshottamdas Patel (Vakil)** v. **State of Gujarat**[14], a Bench of three Judges of this Court restated the principle in the following F 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* G *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

[13] (1999) 8 SCC 74

[14] (2003) 4 SCC 642 H

A 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;

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(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;

C

(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)

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Construing the provisions of Section 123, a Bench of two Judges of this Court in **S Subramaniam Balaji** v. **State of Tamil Nadu**[15], observed thus:

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"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 onthe power of the political parties to make promises in the election manifesto." (Id at p. 694)

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This reflects the settled legal position.

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[15](2013) 9 SCC 659

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.

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

A "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[16].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 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

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

A 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.

B 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 C 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 D 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 E 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 F 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, G 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 H 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

A 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. Legislative history

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:

A **"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
B 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.

C 25. In 1956, Parliament enacted an amending law[17] 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 :

D **"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 the national emblem, for the furtherance of the
E 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
F amending Act[18] 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
G 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.

[17] Act 27 of 1926

H [18] [Act 58 of 1958]

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:

(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

A 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 B 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 C 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** D **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** E **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 F 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 G 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 H 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

A 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.

B **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**

C **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

D 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.

E **...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.**

F **...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**

G **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

H **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'[19], 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 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".[20]

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.**[21], Justice Patanjali Sastri while adopting the traditional view observed that :

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[19] XIVth Edn.P-253

[20] *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.*

[21] AIR 1952 SC 366

A "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 B 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."

In **State of West Bengal** v. **Union of India**[22], Justice Sinha stated that a statute is the expression of the collective intention of the legislature C 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**[23], Justice Fazl Ali adverted to the parliamentary history including the statement of the Minister introducing D 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**[24]). Parliamentary debates have been relied upon in the context of E a dispute relating to the construction of the Patents Act, 1970, (**Novartis AG** v. **Union of India**[25]); 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.**)[26] [See also in this context **Union of India** v. **Legal Stock Holders** F **Syndicate**[27], **K.P. Vergese** v. **Income Tax Officer**[28], **Surana Steels Pvt. Ltd.** v. **Dy Commissioner of Income Tax**[29]].

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 :

G [22] (1964) 1 SCR 371
[23] AIR 1951 SC 41
[24] AIR 1993 SC 477
[25] (2013) 6 SCC 1)
[26] (1972)1 SCC 298
[27] AIR 1976 SC 879
[28] AIR 1981 SC 1922
H [29] (1999) 4 SCC 306

"...(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."

The use of parliamentary debates as an aid to statutory interpretation has been noticed in several decisions of this Court[30].

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**[31].

35. In **Bennion on Statutory Interpretation**[32], 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 :

[30] "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

[31] (1995) 7 SCALE 1

[32] *Indian Reprint Sixth Edition page 561*

A "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' B 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 C there is some substantial reason requiring it to be kept out."

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 D 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, E 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" F 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 G 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 H

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**[33], 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 123(3). Therefore it is only when the electors are asked to vote or

[33] (1964) 6 SCR 750 [judgment delivered on 12 February 1964]

A 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".

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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 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.

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38. **In Kultar Singh** v. **Mukhtiar Singh**[34], a Constitution Bench of this Court emphasized the salutary purpose underlying Section 123(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."

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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

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

the Constitution Bench was whether these speeches amounted to an appeal to 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**[35], 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**

[35] (1969) 1 SCC 455

A **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** B **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**[36], involved a case where C 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 D himself at some places, and at other places by others 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** E **Ramdas**[37]. 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) F 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 G 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

[36] (1969) 3 SCC 492

H [37] (1976) 2 SCC 17

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**[38], the provisions of Section 123(3) were construed and it was held that an 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)."

[38](1996) 1 SCC 130

A The same view was adopted in **Manohar Joshi** v. **Nitin Bhaurao Patil**[39]. This Court held that :

> "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
B 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
C 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
D 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
E 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."

F In **Harmohinder Singh Pradhan** v. **Ranjit Singh Talwandi**[40] 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
G 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. When the appeal is to vote on the ground of "his" religion for the

[39] (1996) 1 SCC 169

H [40] (2005) 5 SCC 46

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**[41], 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 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**

[41] (1994) 3 SCC 1

A **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:

C "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 D 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** E **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 F 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) G 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** H **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**[42], 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 torefrain 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 calculus. Parliament has made that determination and the duty of the court is to give effect to it.

[42] (1996) 2 SCC 749

A **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 B 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 C 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 D 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 E 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). F 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 G 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

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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**[43]. 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

[43] (1965) 2 SCR 908

A is the nature of the 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**[44], 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...."

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

[44] (2016) 5 SCC 1

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". A B C

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: D

> "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....". E

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." F G

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" H

A 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.

B 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 C 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 D 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 E 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.

ORDER

F The reference is answered in light of the majority opinion. The appeals shall now be listed for hearing before the regular bench to be constituted by Hon'ble the Chief Justice of India.

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

G Kalpana K. Tripathy Referred question answered.