

# Abhiram Singh v C.D. Commachen

CITATIONS: (1996) 3 SCC 665,  
(2014) 14 SCC 382

By Saloni Sharma  
Amity Law School, Delhi

# THE CASE

ABHIRAM SINGH

....APPELLANT

Vs

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

....RESPONDENT

Date : 02/01/2017

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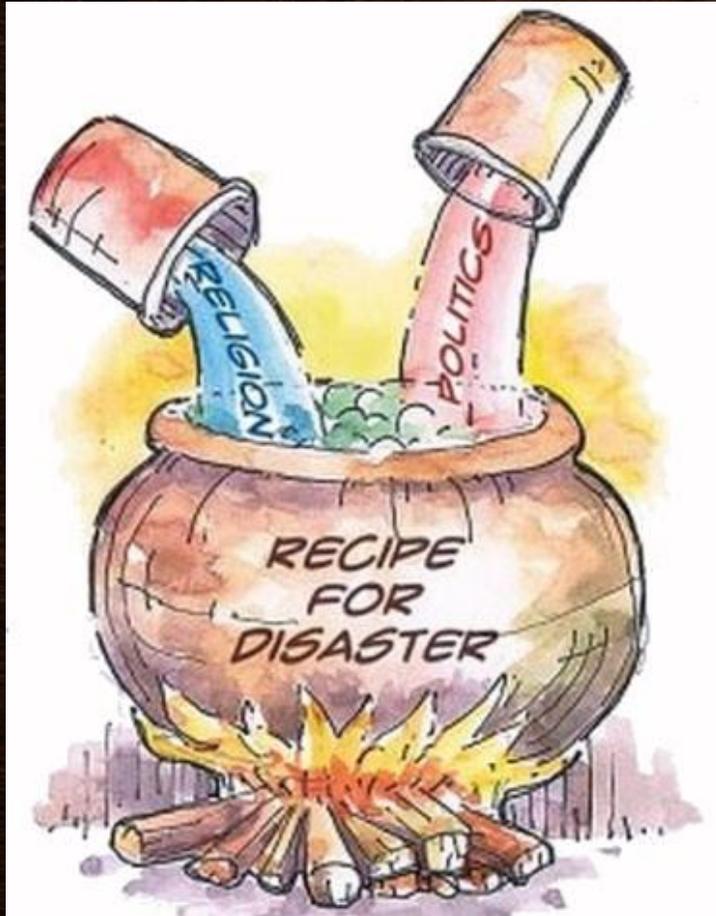
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# BACKGROUND

- The Representation of the People Act, 1951, aims to maintain the purity of the electoral process and provide for the conduct of elections by enlisting the “corrupt practices” and other offences which, if proved, may lead to disqualification of a candidate under Section 100 of the Representation of the People Act, 1951.

# INTRODUCTION



Abhiram Singh, a BJP candidate contesting from Santacruz constituency in Mumbai in 1990, was accused of having indulged in corrupt practices by appealing to the voters on the ground of religion. The matter came up before the Supreme Court which then had to ascertain the scope of Section 123 of the Representation of the People Act, 1951.

## FACTS IN BRIEF

- Abhiram Singh was elected to the No. 40, Santa Cruz Legislative Assembly Constituency in 1990 for the Maharashtra State Assembly and his election was challenged by Commachen in the Bombay High Court.
- While hearing the appeal, a Bench of three learned Judges, on April 16, 1992, 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** needs to be laid down clearly to avoid miscarriage of justice in interpreting 'corrupt practice'.
- The Bench was of the opinion that the appeal requires to be heard and decided by a larger Bench of five Judges of the Court.

- In *Narayan Singh v. Sunderlal Patwa*, the election of Sunderlal Patwa from the Bhojpur Constituency No. 245 in Madhya Pradesh to the Legislative Assembly in 1993, was under challenge on the ground of a corrupt practice, in that the returned candidate had allegedly made a systematic appeal on the ground of religion in violation of Section 123(3) of the Representation of the People Act.
- “The High Court in the case construed the provision of sub-section (3) of Section 123 of the Representation of People’s 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* as well as the subsequent decision of this Court in *Ramesh Yeshwant Prabhoo (Dr) v. Prabhakar Kashinath Kunte*.

- While the five-Judge Bench was hearing the Abhiram Singh Case on January 30, it was informed that an identical issue was raised in the election petition filed by one Narayan Singh against BJP leader Sunderlal Patwa and another Constitution Bench of five Judges of the Apex Court has referred to a larger Bench of seven Judges. Thereafter, an Order was made that “since one of the questions involved in the present appeal is already referred to a larger Bench of seven Judges, we think it appropriate to refer this appeal to a limited extent regarding interpretation of sub-section (3) of Section 123 of the 1951 Act to a larger Bench of seven Judges.”

# LAWS RELATED TO THE CASE

- **Section 123 (3) of The Representation of the People Act, 1951**

123. Corrupt practices: The following shall be deemed to be corrupt practices for the purposes of this Act:

(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: [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.]

(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.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the 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. Explanation: For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).

- **Right to Freedom**

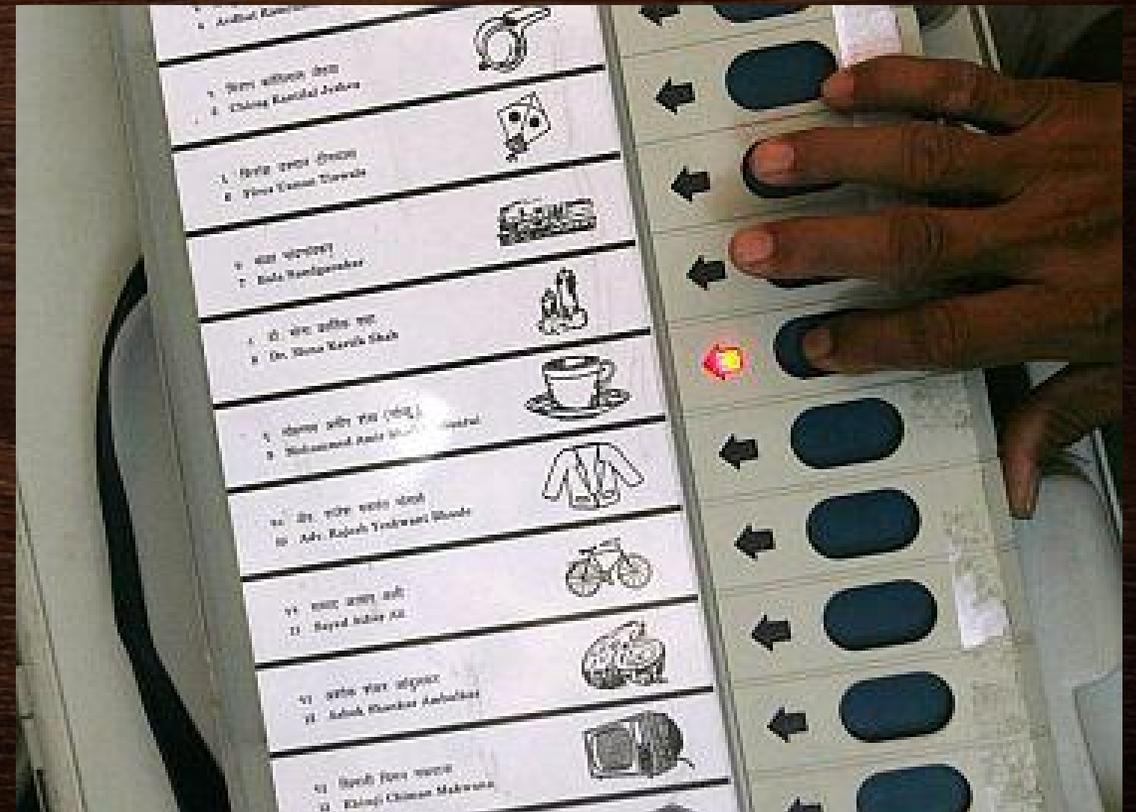
19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;

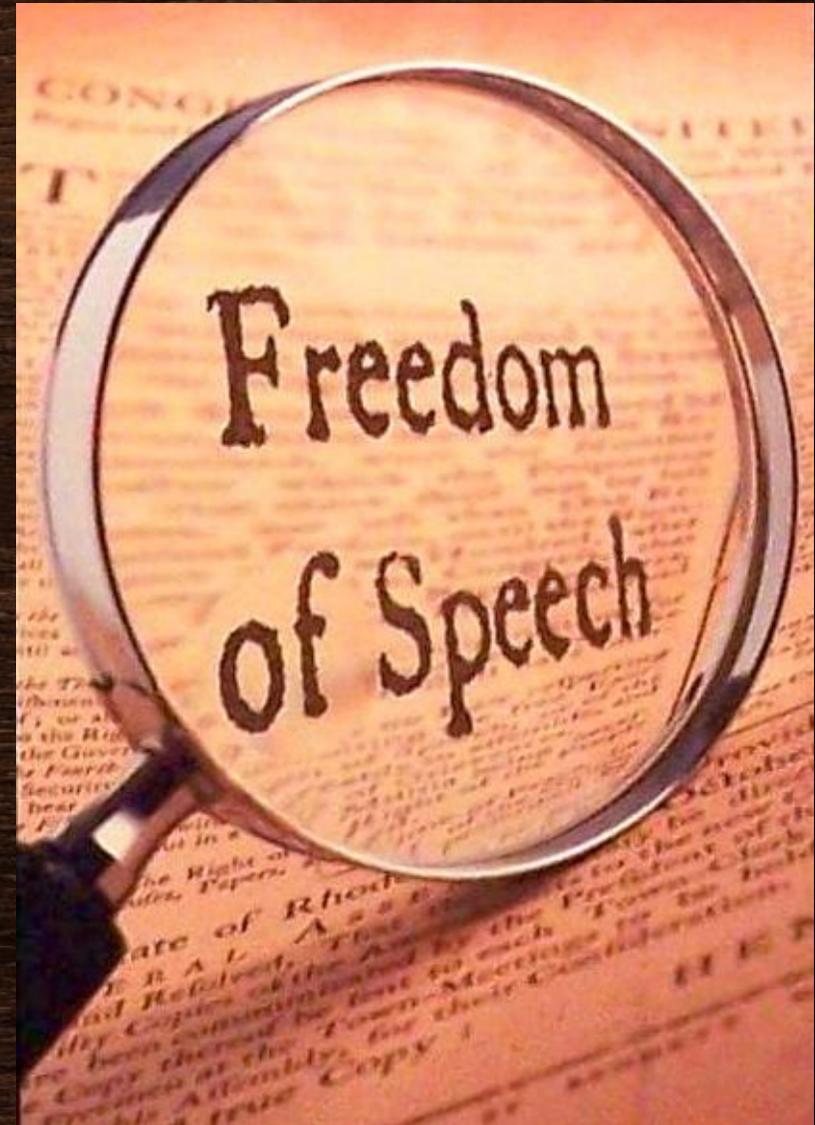


# ISSUES INVOLVED

- Whether the words “his religion” in Section 123(3) of the Representation of the People Act, 1951, have restricted the scope to only include religion of the candidate, or his agent, or any other person with the consent of the candidate or have widened to include the religion of the voters as well.



- Whether the Article 123(3) of the Representation of the People Act, 1951, violated Article 19(1)A of the Indian Constitution which guarantees the right to freedom of speech and expression, as it restricts the candidate's political speech to some measure.

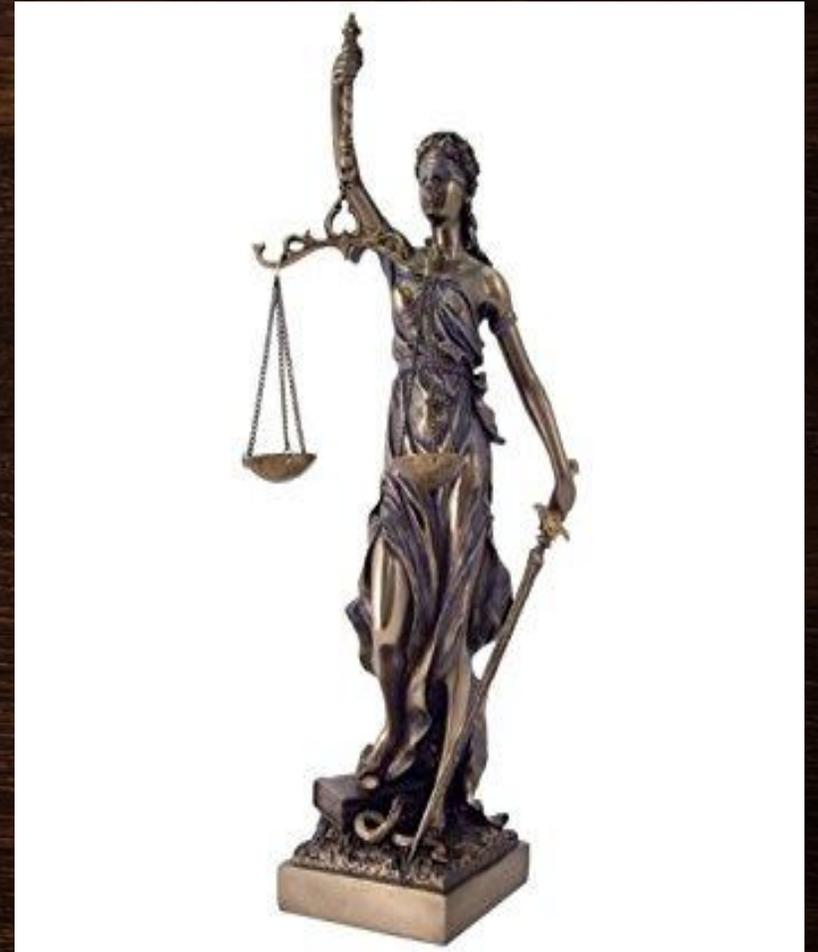


# JUDGMENT

- The 7-Judge Bench delivered a landmark verdict, where by a majority of 4:3, the majority Judgment delivered by Justice Lokur with concurring Judgments by Chief Justice T.S. Thakur and Justice Bobde, decided that an appeal on the grounds of religion – be it the candidate, the agent of the candidate, any person with the consent of the candidate, or even the religion of the voters would amount to a corrupt practice. The majority in its Judgment gave a broad construction to the words of Section 123 of the Representation of the People Act, 1951 and has expanded its boundaries to take in any appeal on the grounds of religion, caste, language or race.

- 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 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.
- 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.

- The five Judge Bench of the Supreme Court in 1954 while dealing with the Case, held that the regulation of election speech did not violate Article 19(1)(a) of the Indian Constitution because it was not a restriction upon speech, but only placed certain conditions upon persons who wanted to stand for elections. The main idea being, that a citizen was free not to stand for elections, and engage in uninhibited free speech.



## OTHER RELATED CASES

- Singh Sidhanti v. Pratap Singh Daulta

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) of the Representation of the People Act, 1951. 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.”

- **Kultar Singh v. Mukhtiar Singh**

Held: “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.”

- **Kanti Prasad Jayshanker Yagnik**

Held: “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.”

- Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte & Others

Held: “There can be no doubt that the word ‘his’ used in sub-section (3) of the Representation of the People Act, 1951 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.”