

Abhiram Singh vs. Cd Comanche: A Constitutional Restrictions on Vote Bank Politics

Pareesh Virmani*

As parties brace for assembly elections in seven states including Uttar Pradesh, Punjab and Gujarat in 2017, the Hon'ble Supreme Court of India in one of its latest judgments Abhiram Singh vs. CD Comanche (delivered on 2nd Jan 2017) ruled that "religion, race, caste, community or language would not be allowed to play any role in the electoral process" and that election of a candidate would be declared null and void if an appeal is made to seek votes on these considerations. By a 4:3 majority ruling, a seven-judge Constitution Bench held that an election will be annulled not only if votes are sought in the name of the religion of the candidate but also when such an appeal hinges on religion of voters or candidate's election agents or by anybody else with the consent of the candidate.

Former chief Justice of India TS Thakur, has once again strengthened the Indian Constitution's mandate of a secular state. The bench was dealing with the appeal filed in 1992 by BJP leader Abhiram Singh, whose election to 1990 Maharashtra Assembly was set aside in 1991 by the Bombay High Court on the ground that he had appealed for votes on the basis of Hindu religion.

The apex court had earlier observed that the essence and ethos of our (India's) constitutional system is secularism and said that religion and politics should not mix. The court further remarked that elections are a secular activity and asked whether in a secular state, religion can be brought into secular activities.

On their part the dissenting judges said such an interference by the court almost amounted to judicial redrafting of law. They said prohibiting candidates from articulating issues effecting voters reduced democracy to an abstraction. They added that such decision should be best left to legislature. "No government is perfect. Law does not prohibit dialogue or a discussion of a matter which concerns voters" they said.

Secularism is a belief system that rejects religion, or the belief that religion should not be part of the affairs of the state or part of public education. "Election is a secular exercise and therefore a process should be followed the relationship between man and god is an individual choice and state should keep this in mind".

INTERPRETATION OF SECTION 123(3) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Be it noticed, the Apex Court was deciphering the pronoun "his" utilized as a part of Section 123(3) of the Representation of the People Act. The arrangement commands that it would add up to a 'corrupt practice' if a candidate or his operator or some other individual, with his assent, claims for votes on religious or such grounds. It is an easy decision that degenerate practice can by no means be legitimized and the applicants who challenge races should dependably remember what the Supreme Court which is the most astounding court of the land has expressed so unequivocally. In this most recent historic landmark judgment, the Supreme Court has just translated Section 123(3) of the Representation of the People Act of 1951 which explicitly punishes as a degenerate practice in a race "the interest to vote or cease from voting in favor of any individual on the ground of his religion, race, station, group or dialect".

To place things in context, the question alluded to the Constitution Bench drove by former Chief Justice of India TS Thakur on a bunch of decision petitions was whether "his" utilized as a part of

* 2nd Year student from GGSIP University

Section 123(3) of the Representation of the People Act just implied a bar on offers made for the sake of the applicant or his opponent or his operator or others in his prompt camp. Then again, does "his" likewise reach out to requesting votes on the premise of the religion, race, caste, community or language of the electorate all in all? It is very apparent that the last would mean a sweeping prohibition on any interest, reference, battle, talk, discourse or civil argument on the premise of religion, race, standing, group or dialect, regardless of the possibility that such a level headed discussion was on the hardships endured by the voters because of these contemplations.

As it turned out, the larger part on the Bench – the former Chief Justice TS Thakur and Justices Madan B Lokur, Sharad A Bobde and L Nageshwara Rao interpreted that Parliament implied by "his" an entire prohibition on any reference or request to religion, race, group, position and dialect amid races. This implied the pronoun reached out to the social, etymological and religious personality of the voter moreover. The then former Chief Justice of India – TS Thakur said "mixing religion with State power."

May it be included here that the historic landmark judgment likewise brought up that, "Individual inclinations and decisions ensured under Article 25 have nothing to do with mainstream exercises, for example, races. The relationship amongst man and God and the methods which people receive to interface with the all-powerful are matters of individual inclinations and decisions." The Apex Court was returning to the 20-year-old judgment conveyed by a Bench drove by the then CJI JS Verma that called Hinduism a "way of life". Without uncertainty, it is an exceptionally milestone judgment that investigates every possibility to send a noisy and clear message that abuse of religion, caste, community, race, language of the electorate in general won't be permitted and endured under any conditions.

It is basic to say here that the then TS Thakur saw in his different judgment while putting his support behind Justices Lokur, Nageswara Rao and SA Bobde while returning to the 20-year-old judgment that, "Elections to the State legislature or to the Parliament or for that matter anybody in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice." This clarifies why Supreme Court has so emphatically turn out vocally in announcing the looking for of votes on grounds of religion, position, race, group or dialect as a degenerate demonstration.

RE-COUNTING "CORRUPT PRACTICE"

As a repercussion, the minority judgment increased current standards for what constitutes a degenerate practice under Section 123(3). "Examination of matters identifying with religion, caste, race, community or language which are of worry to the voters is not an interest on those grounds," it stated, including, "What is banished by Section 123(3) is a competitor requesting votes in favor of himself or making a demand for votes not to be thrown for an adversary applicant on the premise of his own (or of the opponent candidate's) religion and so on."

The Indian Constitution contains arrangements for the improvement of inabilities and segregation honed on the premise of different personalities, Chandrachud stated, "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."

Yet, imagine a scenario in which a candidate, without straightforwardly requesting votes in favor of him, infers constituent mileage by inducing disdain between various gatherings of voters. There is an alternate arrangement for it, Section 123(3A), which manages the advancement of hatred between various classes of subjects on the premise of any of the five personalities by the hopeful or anybody approved by him.

Also, as the minority judgment put it, "Segment 123(3A) can't be extended into Section 123(3). The lawmaking body has painstakingly drafted Section 123(3) to contact a specific degenerate practice, which is considerably more apparent when the ambit of Section 123(3A) is appeared differently in relation to Section 123(3). One can't be perused into the other nor can the content of Section 123(3) be augmented on the premise of a purposive elucidation."

THE MAJORITY JUDGEMENT

The devout suppositions communicated by the four judges are unexceptionable. Yet, the possibility that votes could be peddled without alluding to any of the five personalities of the balloters appears to be extremely cut off from the complexities of India's plural society. This is precisely why three judges disagreed: Justices D Y Chandrachud, A K Goel and U Lalit.

The minority judgment, composed by Chandrachud for all the three, brought up that voters "may have and in reality do have a honest to goodness desire that the separation and hardship which they may have endured in the past – and which many keep on suffering – on the premise of their religion, caste, or language ought to be helped". Since access to administration is a method for tending to social inconsistencies, Chandrachud observed: "Social mobilization is a powerful instrument of bringing marginalized groups into the mainstream."

Along these lines, the majority share choice to deny a candidate from passing on to voters "that the injustices faced by them on the basis of traits having an origin in religion, race, caste, community or language would be remedied," he stated, "is to diminish majority rule government to a reflection".

FREEDOM OF SPEECH AND EXPRESSION VS SECTION 123(3) OF REPRESENTATION OF THE PEOPLE ACT, 1951

Free speech which is guaranteed by article 19((1)(a) and made subject to certain limitations in article 19(2) is essential to democracy, for democracy is fundamentally based on free debate and open discussion, and the citizen has the right to exercise his right of free speech in democracy by discerning the information and making a choice and if it is curtailed by taking recourse to colonial laws of violation of Section 123(3), the cherished value under the constitution would be in peril and therefore, the provision pertaining to the action which creates a dent in free speech are unconstitutional.

Free speech encapsulates the right to circulate one's independent view not to join in a chorus or sign the same song. It includes the right of propagation of ideas; and the freedom of speech and expression cannot brook restriction and definitely not criminal prosecution which is an anathema to free speech. Free speech has priority over other rights and whenever and wherever conflict emerges between the freedom of speech and other interest, the right to freedom of expression can neither be suppressed nor curtailed unless such freedom endangers community interest and apart from the said danger should have immediate and proximate nexus with expression.

Another convincing reason referred to by Chandrachud for contradicting the muffle arrangement proposed by the majority share assessment is that it would abuse the sacred security of free speech and expression delighted in by hopefuls and political candidates.

Given that this principal right is subject just to "reasonable restrictions" established by Parliament, Chandrachud stated, "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."

In this manner, regardless of the possibility that Section 123(3) is expected to have been drafted to banish hopefuls from examining any character based issues confronted by segments of voters, such a confinement would have fizzled the trial of sensibility and would hence have been helpless against being pronounced unconstitutional.

IMPLEMENTING WITH THE RULING

As things stand, the Election Commission of India on January 4 said that it will execute the Supreme Court decision deciding that looking for votes for the sake of caste, creed, religion, community and language is illicit. No stone would be left unturned in such manner. Chief Election Commissioner Nasim Zaidi said while noting inquiries on the January 2 decision that, "EC is committed to abide by the Apex Court order. The order of the Supreme Court will be implemented effectively."

Not to be beaten, even the religious associations cutting over the ideological separation have respected the point of interest judgment conveyed by the Supreme Court. VHP and Jamaat-e-Islami

Hind have called for strict authorization of the point of interest judgment. This point of interest judgment has struck the correct harmony even with the general populations who are extremely content with this most recent milestone and need it to be entirely executed without inclination in all states consistently. It will positively check the abuse of religion, race, and caste and so forth all things considered.

There can be no disclaiming that the then former CJI TS Thakur who agreed with larger part decision composed by Justice Madan B Lokur held that, "An appeal in the name of religion, race, caste, community or language is impermissible under the RP 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." There can be no denying this.

The Supreme Court properly called attention to that, "State is obliged to allow practicing and professing of religious faith a citizen follows, but can forbid interference of religions and religious beliefs with secular activity such as elections." It said races can't be battled by making a pitch to applicants, adversaries or voters' religion, standing, race, group or dialect. The judgment extends the extent of the election law that does not illuminate as to whose religion, caste, race, group or dialect one can't refer to amid a race discourse.

Previous TS Thakur alongside 3 different Judges conveying the larger part sentiment held that, "While interpreting a legislative provision, the Courts must remain alive to the Constitutional provisions and ethos and those 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, affect 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 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."

CONCLUSION

Unmistakably, the exacting translation of Section 123(3) made by the minority judgment is more thoroughly considered, while the purposive elucidation by the greater part judgements offers a cure more terrible than the infection. As the dominant part judgements with every one of their imperfections are the tradition that must be adhered to, Indian vote based system has been rendered more illiberal by its Supreme Court. Consider the inconsistencies that may emerge in the forthcoming race in Uttar Pradesh, if the majority judgements are truly executed.

However much they are of worry to the general population of the express, no candidate can talk about personality based issues, for example, Muzaffarnagar, Kairana, Dadri, Ayodhya, beef, adore jihad, reservations and caste outrages without falling foul of the augmented meaning of degenerate practice. The circumstance might be much more ludicrous in the other decision bound state, Punjab, where the very name of the decision party, Shiromani Akali Dal, might be interpreted as an interest that is prohibited.

In spite of the fact that it had raised desires of fixing the harm done by its 1995 Hindutva judgment, the Supreme Court wound up irritating the issue, regardless of all its talk about the immaculateness of the constituent procedure. In the event that anything, with its clearing assault on personality based concerns, the Supreme Court has put forth a profoundly political expression by privileging issues like improvement and patriotism over social equity.