Supreme Court of India
Rahim Khan vs Khurshid Ahmed & Ors on 8 August, 1974
Equivalent citations: 1975 AIR 290, 1975 SCR (1) 643
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
RAHIM KHAN

Vs.

RESPONDENT:
KHURSHID AHMED & ORS.

DATE OF JUDGMENT08/08/1974

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
PALEKAR, D.G.
BHAGWATI, P.N.

CITATION:
1975 AIR 290 1975 SCR (1) 643
1974 SCC (2) 660
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RF	1975 SC2299	(480)
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RF	1976 SC1599	(6,44)
R	1976 SC1866	(4)
RF	1976 SC1886	(23)
RF	1977 SC 587	(2)
R	1977 SC 813	(13)
R	1978 SC 351	(5,7,15)
R	1978 SC1162	(8)
R	1984 SC1516	(3)
R	1985 SC 236	(62)
C	1991 SC2001	(5,24)

ACT:
The Representation of the People Act (43 of 1951) ss. 83 , 84, 99(a) (ii), 116A and 123(1) to (4)--Scope of Court's power to set aside election--Appellate Court's power to upset findings of trial Court--Bribery, ingredients--Divine displeasure and undue influence--Court's attitude to--Names of witnesses if should be mentioned in sources of information or as part of particulars. Appeal to religion what is--Duty of trial Court to name those found to have

indulged in corrupt practices--Reform of election law to check contemporaneous corrupt practices suggested.

HEADNOTE:

In the General Election to a State Assembly held from a constituency where the voting strength of Muslims was preponderant, the appellant was declared elected. The first respondent, who was a sitting minister before his defeat, challenged the election on various grounds of corrupt practices. The High Court set aside the appellant's election holding that he committed corrupt practices under s. 123(1) to (4) of the Representation of the People Act , 1951. The High Court found (i) that the appellant placed at the disposal of another contesting candidate a car 'with a promise that the expenses incur-red in hiring and running it in connection with his election campaign would be met by the appellant, so that, he may continue to contest the election and wean away the Harijan votes from the first respondent; and (ii) that the appellant, and his supporters with his consent, delivered speeches appealing to the Muslim voters to vote for the appellant because he was a true Muslim while the first respondent *as a Kafir ; that they distributed handbills containing the allegations that (a) the first respondent, though a Muslim got the grave of another Muslim dug up on account of personal enmity; (b) as health minister he violated the modesty of lady doctors and nurses; (q) he got certain Muslims arrested on allegations of cow slaughter and forced them to eat pork; and (d) if the voters voted for the first respondent they would become subject to divine displeasure.

HELD :-(1) An appeal is a re-hearing but the trial Court's finding will be upset only when it is found that it is wrong. [647 D]

Laxminarayan v. Returning Officer, A.I.R. 1974 S.C. 66, 78, Karemore's Case, A.I.R. 1974 S.C. 405, 413, 420 followed.

(2) After an election had been held defeated candidates or disgruntled electors should not be allowed to treat it in a light-hearted manner by filing election petitions on unsubstantial grounds and irresponsible evidence. Courts must respect the verdict rendered by the electorate and show extreme reluctance to set it aside or declare it void unless clear and cogent testimony, compelling the court to uphold the corrupt practice alleged against the returned candidate, is adduced. Further, where corrupt practices are imputed the proceedings are of a quasi-criminal nature where strict proof is necessary and the burden is heavy on him who assails the election. in agents cases where the witnesses are partisans, being the polling agents or counting or workers of the candidates ; or of the turn coat type, who claimed to be the polling agents, counting agents or workers of the returned candidate till the election over, but, in

the post-election period, when the defeated candidate's party had formed a government, shifted their loyalty and gave evidence in proof of the averments in the petition ; or officials working under sitting Ministries who are candidates for election, the Court must scan the evidence of the corrupt practices alleged with scrupulous care and severity. [650 E-H, 655 F-H]

(3) The corrupt practice of bribery under s.. 123(1) by placing a car at the disposal of another candidate, is not proved. Assuming that such candidate got the use of a car at the expense of the appellant such financial aid would not amount to corrupt practice unless it was to induce that candidate not to withdraw from the election.

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In the present case, there is no proof on this aspect and there is no finding to that effect by the High Court. [652 H, 654 B-C]

(4) Divine displeasure on account of prandial impropriety and undue influence for fear of forced pork eating, cannot be inferred from the allegations in the handbill. No one in India to-day will shiver with fear that a candidate, when he wins an election, will force down his throat distasteful pork. Such chimerical apprehensions are unreal and cannot receive judicial approval. Therefore, the corrupt practice alleged under s. 123(2) is not proved. [669 F-H]

(5) But the hand bills exhort Muslims to support the appellant in the name of religion and contain allegations amounting to character assassination and so, the appellant is guilty of the corrupt practices under s. 123 (3) and (4). [670 A-B]

(a) There is no credible proof that speeches had been made by the appellant or his supporters at meetings. [655-C-F]

(b) But on the distribution of the damaging handbills there is acceptable, direct and circumstantial testimony. The appellant had a motive for publishing the handbills and there is evidence to show that the handbills existed at the relevant time. The circumstances of the case and the evidence of disinterested witnesses show that hand bills were distributed with the knowledge and consent of the appellant. [668F-H]

(c) Neither s. 87 nor s.83 nor r. 94(a) and Form 25 require that the names of the witnesses should be mentioned as sources of information or as part of particulars. Rule 12 framed by the High Court for the trial of election petitions requires the source of information to be mentioned at the earlier stage in order to prevent afterthoughts. But, every witness need not be mentioned as a source and every source informant need not be examined necessarily. Whether the omission to do so in a given case reflects on the credibility of the evidence depends on the facts and circumstances of the case. While the court must be careful to insist that the means of knowledge are mentioned right in the beginning to avoid convenient embellishments and

irresponsible charges, it should not stifle good and reliable testimony or thwart proof of corrupt practices by technicalities of procedure, especially when no prejudice, on account of deficiency in particulars, is made out. [664 C-E, F-G]

(d) What is appeal to religion depends on time and circumstances, the ethos of a community, the bearing of the deviation on the cardinal tenets of the eligion and other variables. Law being a secular social process, the Court must avoid over solicitude for ultra-orthodoxies. [660 A-B. D-E]

(e) Since the first respondent has called the various allegations relating to womanizing as false and the appellant has agreed that he does not believe them to be true, the corrupt practice under s. 123(4) must be held to have been made out.

Ambika Saran Singh v. Mahant Mahader Nand Giri 41 E.L.R. 183. Kultar Singh v.Mukhtiar Singh, [1964] 7 S.C.R. 790, Balwan Singh v. Lakshmi Narain, 22. E.L.R. 273. B. Rejagopala Rao v. N. G. Ranga, A.I.R. 1971 S.C. 267, 275 referred to.

(6) If a blatant corrupt practice is committed during an election there is now no clear statutory mechanism which can contemporaneously be set in motion by the affected party, so that, when it is raw, a record and an instant summary probe is possible through an independent semi-.judicial instrumentality. Violations thrive where prompt check is unavailable. Effective contemporaneous machinery providing for such chocks would greatly curtail subsequent election disputes and even act as a deterrent to the commission of corrupt practices. Elections are the cornerstone of the parliamentary system and electoral purity can be maintained only when the virus of corrupt practices is controlled by comprehensive systematic changes in law with emphasis on a fearless enforcement instrumentality and a national politi-cal consensus to abide by norms. [670 D-F, 672 A-B]

In the present case, the handbill does not contain the name of the printer and publisher although the election law so required. There is no agency to take prompt action after due investigation, and a propagandist is able successfully to spread

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scandal without a trace of the source, knowing that nothing will happen until long after the election the question is raised in an election petition. [665 F-G]

(7) The High Court having found the commission of corrupt practices by the appellant and one of his supporters, who is a sitting member of Parliament, and a large number of other persons, was under the statutory duty to name all those who have been proved at the trial to have been guilty of corrupt practices, under s. 99(a) (ii) after following the prescribed procedure. If only courts would name all those involved in the pollution of the electoral process, there

would be some hesitation on their part to indulge in such improper practices. No such action is however necessary by this Court in the present case, because this Court found only the appellant guilty of corrupt practice. [670 F-671 H] D. P. Mishra v. K. N. Sharma [1971] S.C.R. 8 ; R. M. Seshadri v. G. Vasantha Pai. [1969],2 S.C.R. 1019, and Janak Sritar v. Mahant R. K. Dos, A.I.R. 1972 S.C. 359, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 816 of 1973. (Appeal under Section 116-A of the Representation of People Act, 1951 from the Judgment and Order dated the 12th March, 1973 of the Punjab and Haryana High Court at Chandigarh in Election Petition No. 7 of 1972.) N. S. Bindra, R. H. Dhebar, B. S. Malik, P. R. Ramasesh and R. C. Bhatia, for the Appellant.

K. C. Sharma, K. C. Agarwal, M.M.L. Srivastava, E. C. Agarwala and Prem Malhotra, for Respondent No. 1. K. L. Hathi, and P.C. Kapur, for Respondent No. 2. A.T.M. Sangpath for Respondent No. 3.

S. K. Bagga and S. Bagga, for Respondent No. 4. The Judgment of the Court was delivered by-KRISHNA IYER, J.-By a plurality of less than 2,000 votes the appellant was declared elected from the Nuh constituency to the Haryana Assembly in the general election held on March 11, 1972. lie was an Independent candidate while his main rival, the first respondent, represented the Indian National Congress. There were three others in the field two of whom were independents and the third a Jan Sangh nominee-all of them polled poorly. In the electoral history of the constituency fickle fortune has been smiling now on the appellant, now on the first respondent. It also happens that while the appellant had been a Deputy Minister when he was elected to the Haryana Legislative Assembly last from the same constituency in 1967, at the following general election in May 1968 to the same Assembly (before its term the Assembly was dissolved and the non-Congress Government went out of office) the first respondent was elected and he became a Member of the Cabinet formed by the Congress party. The next election fell in 1972 where both figured as combatants from Nuh and we are concerned with the validity of the result declared in favour of the appel-

-185 SCI/75 lant by the returning officer in the present appeal, the High Court having set aside the election.

It is apparent that the competitive politics of the Nuh constituency has expressed itself through the appellant and the first respondent for quite a long time now and as the voting figures of the latest poll shows, the context has been contentious and close. In such battles of the ballot where personal feuds foul the air, the decencies and norms set by the law may often be the first casualty. Anyway, the disappointed first respondent hastened to challenge the appellant's election on various grounds of "currupt practices". The High Court has upheld a few of them and voided the appellant's election, a miss being as good as a mile. The campaign pollutants must be kept down at the polls if electoral disenchantment is not to grip the general community. The Court, in this regard, is the sentinel on

the qui vive.

Shri Bindra, learned counsel for the appellant, has argued the case in minute detail, countered by Shri Sharma for the first respondent ; but since at the appellate level jejune infirmities and probative trivialities may not tilt the scales even on the principle of juncta juvant, we will focus largely on the major circumstances.- The-correct appellate perspective in an election case has been indicated by this Court and we are bound to set our sights on those lines. In Laxminarayan V. Returning Officer(1) the implied limitations on the appellate power under S.116A were stated thus :

> "It can re-appraise the evidence and reverse the trial court's findings of fact. But like any other power it is not unconfined; it is subject to certain inherent limitations in relation to a conclusion of fact. While the trial court has not only read the evidence of witnesses on record but has also read their evidence in their faces, looks and demeanour, the appellate Court is confined to their evidence on record * * * * * * * In an appeal the burden is on the appellant to prove how the judgment under appeal is wrong. To establish this he must do something more than merely ask for a reassessment of the evidence. He must show wherein the assessment has gone wrong".
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> In Karemore's Case(2) this position was re- stated thus:
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> "Before a finding of fact by a Trial Court can be set aside it must be established that the Trial Judge's findings were clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. This is not to say that a Trial Judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations ....
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> * * * * * * * While, as we have said earlier, it is open to this Court to reappraise the evidence and consider the propriety, correctness (1) A.I.R. 1974 S.C. 66, 78.

(2) A.I.R. 1974 S.C. 405, 413, 420.

or legality of the findings recorded by the Trial Court ordinarily it will be slow to disturb the findings of fact recorded by the High Court unless there are cogent reasons to do so."

An appeal is a re-hearing but the trial Court's finding will be upturned not when it is short of right but only when it is wrong. We wilt view the case from this angle. In a loose sense, Nuh is a Muslim constituency by which we mean that the voting strength of the Muslims is preponderant. Both the candidates are Muslims and, indeed, to some extent the Islamic "dosage" of each candidate has itself been highlighted in the Election Petition as a bone of contention in the poll confrontation, as will be presently discussed. Had parties professing secular politics and revolutionary ideologies never "stooped to conquer" by sub rosa appeal to the religion and caste of blocks of voters by exciting their sympathy for the candidate via this sense of "tribal" identity, our elections would long ago have lived down this injurious political irrelevance. On the contrary, the unerring instinct with which political

parties frequently choose candidates whose religion or caste tallies with that of the bulk of the constituents appetises, if not excites, covertly, if not overtly, the caste consciousness and religious separatism otherwise asleep in the bosoms of the common people. In the name of pragmatism many parties offer allegiance to the super-party---Caste and the law (Sees. 123 & 125) fails operationally because the societal mores are not being seriously secularised by big Parties. What is surprising is that the die-hard sense of caste has affected not merely the Hindu heirarhcy but also the Muslim Brotherhood and the evidence in the present case reveal that Gote (gothra or clan) is a binding force socially and electorally among Muslims here. Exploitation of this susceptibility is suggested against the appellant.

The first respondent, in his petition, has imputed many types of corrupt practices to the returned candidate. Paragraph 8 of the petition sets out the facts about bribery. The next paragraph furnishes the particulars of appeal by the returned candidate and/or his election agent and by others with their consent, to vote for the appellant on grounds of religion and caste and to refrain from voting for the first respondent on the score that he violated Islamic tenets and was in fact a kafir. The gravamen of the vices flung at the appellant is that he and others with his consent did broadcast to their constituents orally and in writing personal aspersions about the first respondent, cal- culated to darken his poll prospects. Undue influence by invocation of divine displeasure by dietary deviation is also alleged, based on the potential threat, if respondent were returned of the pious Muslims being forced to eat pork- a prandial anathema for true Muslims.

Not all of these grounds have been held proved and the appellate I subject-matter is confined to that part of the canvas where findings of corrupt practice have been recorded. We will switch the forensic spotlight only on them. The High Court has wound up thus:

> "My conclusions from the evidence discussed under this issue may be summed up as follows:
>
> (a) Handbill Exhibit P. W.4/3 was in existence before the 12th of March, 1972.
>
> (b) The returned candidate supplied copies of the handbill to his agents and workers for distribution amongst Muslim voters.
>
> (c) The returned candidate and his supporters with his consent, made an appeal to Muslim voters to vote for the returned candidate because he was a true Muslim whereas the peti- tioner was a kafir. This appeal was made on the 9th and 10 th of March, 1972, through speeches delivered by the returned candidate and his supporters and by distribution of handbill Exhibit P. W. 4/3, in the following villages of the Nuh Assembly constituency: Notki Gohana, Khedli Nuh, Mewli, Malab, Nagina, Karherrha, Pinangwan, Bhadas and Gliagas.
>
> It is conceded before me that the appeal just above found by me to have been made by the returned candidate was an appeal to vote for the returned candidate and to refrain from voting for the petitioner on the ground of their religion, for the

furtherance of the prospects of the election of the returned candidate and for prejudicially affecting the election of the petitioner so that it falls within the ambit of the corrupt practice detailed in section 123 (3) of the Act, which corrupt practice the returned candidate must be held to have committed. The issue is accordingly found in favour of the petitioner."

* * * * * "From the evidence accepted by me as trustworthy under that issue it is further made out that practically all those statements with slight variations were made the-subject- matter of speeches by the returned candidate and, with his consent, by Shri Tayyab Hussain, which speeches were delivered to gatherings in the said ten villages. The publication of those statements by the returned candidate and by Shri Tayyab Hussain, with his consent thus stands fully proved. The petitioner has sworn as P. W. 76 that all the statements contained in the handbill are false. Thus assertion stands wholly unrebutted. Appearing as R.I.W. 37 the returned candidate averred that according to his belief the statements made in the handbill were incorrect. This being so, all the ingredients of the corrupt practice under examination must be held to have been fully brought home to the returned candidate".

* * * * * * * I have already held under issue No. 4 that as claimed by petitioner handbill Exhibit P. W. 4/3 was distributed amongst voters by the returned candidate and his supporters with his consent. So the only question which remains to be answered is whether the publication of the statements above extracted amounted to any direct or indirect interference or attempt to interfere with the free exercise of any electoral right. in opinion, this question must be answered in the affirmative. According to the Muslim faith, eating of pork is considered sinful. The impugned statements declared in no uncertain terms that if the petitioner was elected, he would force all Muslims to eat pork. The effect of those statements on the mind of an average Muslim voter would be so powerful as to leave no free will to him in the exercise of his choice of the candidate for whom he was to vote. The inducement would result in a mental compulsion for the voter to vote for the petitioner and would, therefore, fall within the ambit of any attempt to interfere with the free exercise of an electoral right."

* * * * * * ".....the publication that the returned candidate and others in handbill Exhibit P. W. 4/3 amounted to the commission of the corrupt practice of undue influence as defined in section 123(2) of the Act."

* * * * * * "Having found that the returned candidate and others with his consent committed the corrupt practice- defined in clauses (1), (2), (3) and (4) of section 123 of the Act, I accept the petition and declare the election of the returned candidate to the Haryana Legislative Assembly from the. Nub Assembly constituency to be void."

The cornerstone of the election petition is the destribution of libellous handbills and making of slanderous speeches by the candidate and his companions which overflowed mere personal

invective into many areas of corrupt practice. The Court was also satisfied with part of the charge of bribery which it expressed thus :

> "As a result of the above discussion I find it proved that on the 14th of February 1972, the returned candidate placed at the disposal of respondent No. 3 Car No. DLF 675 with a promise that these expense incurred in hiring the car and running it in connection with the election campaign of respondent No. 3 would be met by the returned candidate."

Thus it is seen that while the embittered petitioner has black-brushed his rival with many brands of corrupt practices, he has failed to convince the Court on several of them. His counsel gave up many of the charges after evidence had been led. Even the residue has not fully found favour with the High Court and the only substantial grounds which have survived the screening process are two, viz : (a) the 'automobile' bribe; and (b) the dissemination of prejudicial and prohibited appeals. The limited controversy before us centres round the certitude of this fatal modicum. The election law invalidates a poll verdict if a single illegal adulterant has been admixed in the campaign. The law is jealously qualitative, not clumsily quantitative, in its nullification test and two vices or twenty are the same in the ultimate result.

A few prefatory observations are necessary before we discuss the evidence, apply the law and reach our conclusions. It is of the first importance that elections must be free and fair if the democratic system is not to founder. Not long ago a Chief Justice of this Court, delivering the Lajpatrai Memorial Lecture, observed:

> "Untruths before elections, during elections and after elections seem to be too prevalent for a healthy political society." He also tartly remarked in that speech: "There is always a danger of the failure of democracy. 'Remember', said John Adams, 'remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide. We must realise that this is entirely true."

The Court is the conscience-keeper of the constituency, as it were, in the maintenance of the purity of elections to the extent they are litigated in Court. Shah, J., in Harcharan Singh's Case (1) observed "The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation."

We have therefore to insist that corrupt practices, such as are alleged in this case, are examined in the light of the evidence with scrupulous care and merciless severity. However, we have to remember another factor. An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency.

Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi- criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

There are many who are cynical about the enforcement of the election law, which is too moral for the pragmatic skills of the politicians when locked in pitched battles. They regard these vices as (1) [1969] 1 SCA 138, 145.

inevitable and therefore remain indifferent to their prevalence. Sydney Harris' statement in this context is apposite :

> "Once we assuage our conscience by calling something a necessary evil', it begins to look more and more necessary and less and less evil."

For this very reason the Court has to be stern so as to induce in the candidates, the parties and workers that temper and truthfulness so appropriate to the process and not bewail, as the Report of the Fifth General Election in India (1971-72, issued by the Election Commission) does (at p. 198 thereof) :

> "But how can we expect that elections will be absolutely and totally corruption-free when the whole country in every sphere and department of life and activity is plunged in the ocean of corruption ? It is everybody's complaint that there is no business, trade or industry where black-marketing or bribery is not pracctised.... Remove corruption in general and corruption in election will be a thing of the past."

The charge of bribery has been made in this case in a peculiar setting and has been held proved in part by the learned Judge. Before going into the principal skein of corrupt practices wound round the alleged propaganda, oral and documentary, we may dispose of the lesser but equally lethal episode of bribe-giving. A glance at the communal composition of the constituency and its behavioral pattern is necessary to appreciate this ground covered by issue 1. No part of Indian geography is a religious monolith and Nuh is no exception to this social diversity and communal mix. The majority are Meo-muslims (converts from Rajputs carrying their caste and gothra memory into their Islamic genetic code and observing in life the clan habit) but there are also Hindus including Harijans. The Harijans, according to the petitioner, traditionally vote for the Congress except when lured away by a fellow Harijan figuring as candidate. To wean away Harijans from the Congress ballots was very much to the appellant's interest and so the petition alleged, he exploited their communal pathology by setting up Sohanlal, Respondent 3, as a ghost candidate not to win but to defeat.

Human homogenisation in elections, breaking down religious barriers, is social heroism unaccomplished even in the communal pluralism of the U.S.A. and the U. K. although it is

exaggerated by tradition in. India and hurts it more, being a developing country. The political pity is that the secular and social objectives of our Constitutional order are obfuscated by a system of mass electoral participation where separate electorates, written with the invisible ink of life, are partially perpetuated by political leaderships bent on shortcuts to power. The law should so develop as to dis-induce communal-reli-gious appeal by the crypto-casteism of the candidature itself We say this not as a strange evil of our society but as an inadequacy of our election life and law. Newton D. Baker observes about the U. S.

situation while considering the harm of a switch-over to proportional representation :

> "We have groups of all sorts and kinds formed around religious, racial, language, social and other contentious distinctions. Proportional representation invites these groups to seek to harden and intensify their differences by bringing them into political action where they are irrelevant, if not disturbing. A wise election system would invite them to forget these distracting prejudices."

The 1st respondent's case is that the appellant persuaded a financially incompetent Sohanlal-respondent No. 3-to stand as candidate over-ruling his reluctance by offer of Rs. 125 and promise of footing his campaign bill, in a bid to skin away the Harijan pro-Congress votes. This was on February 9, 1972. Since the lower Court has rejected this episode, we too ignore it. But the official date for withdrawal, February 14, found the hesitant Sohanlal hovering around retirement from an expensive context. The 1st respondent's story is that the appellant gave a shot in the arm by proffer of Rs. 1,000 and a car for use till the election was over. This stroke of bribery continued the Harijan candidate in the arena. The finale of this shady chapter, disbelieved by the Court, is that a couple of days before the actual poll the appellant purchased Sohanlal's retirement and exhortation to his followers to support the appellant at a price of Rs. 2,000 paid on March 10, 1972. This facet of the case has been eliminated at the High Court level and need not detain us. The narrow point that survives for our scrutiny as to whether the appellant did commit the corrupt practice under s. 123(1) of the Representation of People Act, 1951 (the Act , for short), by placing at the disposal of candidate Respondent 3, car D.L.F. 675 and promising him the hire charges and running expenses thereof with a view to his continuance as candidate, the ultimate gain being the seduction of the Harijan electors away from the Congress candidate It is not necessary to examine whether the evidence justifies the finding that Sohanlal got the use of a car at the expense of the appellant. We will assume that is so. But it is not every help by a candidate to a fellow candidate that constitutes corrupt practice. Stich finan- cial aid must be to induce the latter not to withdraw from the section. May be, a candidate may wish to fight but do it so bloodlessly that he may not reach his potential supporters and if his effective canvassing is in the interests of another candidate (the electoral chemistry has many actions and reactions) then the latter may invigorate his campaigning with funds or aid in kind, not for non- withdrawal but for full-blooded electioneering. To jack tip is different from preventing a jump down. This is not a corrupt practice under the law and so the key question is not whether a car was provided but whether the provision of the car was to prod the candidate not to withdraw. A close- up of the evidence on this significant facet leaves us in serious doubt about the sufficiency and reliability of the proof.

From the evidence in this case it looks as if Sohanlal, the third respondent, is an indigent person and handicapped by social backwardness. Nevertheless he is needed as a magnet to polarise all Harijan votes away from the cow and calf symbol. It is a worthwhile reflection on the Sohanlal drama that in order to invest elections with equality of opportunity in a country of poverty, inexpensiveness must be stamped on the campaigning process. This may be attempted in many ways by adapting to Indian conditions experiences elsewhere,. But the present methodology of fixing up candidates at the last minute as a product of many pressures makes for more inputs than consultation with the community in the concerned area, a sort of informal "primary" and announcement of the choice will ahead for the constituency to know and understand the candidate likewise if Party cadres work constructively and continuously for solution of peoples' grievances instead of going into election-eve campaigning with all the sound and fury of hectic pre-poll duel to win votes, the project will cost less and vote- catching stratagems will yield poor pay off. Large pecuniary lay-out in the business of power politics must be arrested if the system is not to sink. Today, the average Harijan, like Sohanlal, has as much chance of winning an election as a camel has of passing through the eye of a needle. Naturally he looks around for help. Money is of key importance if enormous sums must be spent to reach the vast electorate to break down public inertia and secure substantial polling. In such a background Rahim Khan (RI) is alleged to have prayed upon Sohanlal's inability to finance his election by offering the sinews of war thereby indirectly deriving good negative return for his money. Sohan lal himself has backed a good part of this case,so far as the giving of a car is concerned. Straight from the horse's mouth, as it were, we have this :

> "On the 14th of February 1972, Rahim Khan, Tayyab Hussain, Faquira, Chet Ram and Yamin Khan came to me, and offered me money and a car. Rahim Khan paid Rs. 1,000 to Faquira for expenses on the car. I was carrying on propaganda for my election."

On the crucial point whether the car (and all found) was given to make him continue the contest there is silence in chief-examination and denial in cross-examination although his ambiguous sympathies seem, if at all, to be with the Congress candidate in the election case. The testimony of P. W. 22 (Ram Kishan), P. W. 23 (Habib), P. W. 24 (Jaswant Singh) and R 3. W. 1 (Faquira) has been pressed into service in this connection. The evidence of P. W. 22, 23 and 24 doe,,,, not bear on the condition of non-withdrawal as the basis for the supply of free transport R3 W. 1 swears :

> "During the last general election I was supporting Rahim Khan respondent. 20 or 25 days before polling I went to Sohan Lal respondent in the company of Rahim Khan, Badri Parshad respondent, Tayyab Hussain and Mauj Khan. Sohan Lal respondent said that although he had stood for the election, lie was feeling handicapped on account of lack of financial resources. Rahim Khan told him not to worry inasmuch as he (Rahim Khan) would provide him necessary :finance. In my presence no money was paid, but Rahim Khan placed a car at the disposal of Sohan Lal respondent. Rahim Khan told me that I should support Sohan Lal and that Rahim Khan would reimburse me for all expenses in connection with the car."

Here also the vital element of inducement not to withdraw is absent. Of course even regarding giving the car there is some evidence contra of the appellant and of Tayyab Hussain (R3 W. 9). But the crux of the matter is the pecuniary pressure put on a candidate to persist in the candidature ; this latter limb is unproven and not even formally found by the lower Court. The serious scrutiny of law and facts expected of election tribunals before unseating a returned candidate is wanting in the High Court's finding and we hold that, suspicions apart, the charge of bribing Sohanlal into fighting a futile battle has not been brought home as required by s. 123(1) of the Act.. At the last stages of the argument before us Shri Sharma made a virtue of necessity and did not press the case of bribery.

The decisive and deadly chapter of the petition relates to the multipointed propaganda violating the canons of election law set out in s. 123(2), (3) and (4). Question of law about the correct construction of the relevant provisions arise but the primary issue is one of fact. Were public meetings held on 9th and 10th of March maligning orally and through handbills the Congress candidate for lack of personal morals, for heathen and bohemian ways and for being a potential danger to good mussalmans ? Were pamphlets like Ex. P-3 made and distributed on or about March 9 and 10 by the returned candidate and his agents, describing his Congress rival as a pork-eater and taker of virginities, as a coercive agent getting muslim graves dug up and forcing true muslims eat roast pig ?

A few phenomena appear in this case which deserve judicial notice for the purpose of appreciating the evidence on this branch of the story of corrupt practices. Both the contesting parties, the appellant and the 1st respondent, are strong men with considerable hold on large numbers of people in the constituency, as the polling result reveals. Both of them have been in and out of office and naturally the bid for power would whet their appetite. The wild allegations in the petition, if true, would suggest that the appellant tried many methods of assuring victory for himself, such as setting up a Hindu candidate who would carry away the Hindu votes, a Harijan candidate who would wean away Harijan votes and the Muslim votes being attracted into his count by painting his Congress rival a kafir and himself a Muslim good and true. At this stage it is clear that the theory of ex-communication set up in the petition has been abandoned. Likewise, bribery based on the Jan Sangh candidate has also been dropped. The supply of a car as an inducement not to withdraw from the election to Sohanlal has been upheld by the trial Court, but we have already expressed our view to the contrary. We are left ultimately with the story of the public meetings where slanderous speeches were made and of libellous leaflets having been distributed. There is no doubt that tension had mounted and the candidates were frantic. An order under s. 144 Cr. P.C. had been clamped down on the whole constituency and a large police force was moving around to maintain law and order in the whole area. The argument of appellant's counsel is that since meetings of five or more persons in public places had been prohibited, it was unlikely that there would have been open violation in many villages by the appellant himself, a former Deputy Minister and Tayyab Hussain, a sitting Member of Parliament. Nor could the police have been so insouciant as to ignore numerous breaches of the ban on public meetings. Equally strong is the circumstance that had there been meetings in contraven- tion of prohibitory orders, the Congress candidate, a Cabinet Minister at the time of the election, would not have kept quiet at all. It is also note-worthy that s. 126 of the Act prohibits holding of public meetings within 48 hours of the close of the poll. We are impressed with these circumstances and would have unhesitatingly held as unsafe the oral testimony in proof of

public meetings. However we are not prepared to discredit outright all the evidence about gatherings in the villages, where the appellant spoke to people, solely on the ground of the order under s. 144 Cr. P. C. What we see from the evidence is that there were no regular meetings prearranged and public. It was more a case of the appellant running around from place to place, meeting persons who gathered when he went to a place, his sitting on a cot and talking impromptu to the men who turned up within a short time and leaving the place after a little while. It is difficult to describe these tiny groups spontaneously assembling and melting away after quarter of an hour or so, as public meetings. Technically they may or may not be breaches of the ban order but such minor liberties are not infrequently taken by both sides and winked at by the police, lest genuine house-to-house propaganda by the candidates and their supporters on the very last day should be interfered with and tension mount up on the ground that the authorities thwarted a non-Congress candidate's canvassing. Certainly we have to bear in mind the circumstances mentioned earlier in evaluating the evidence of witnesses, giving the benefit of reasonable doubt to the appellant.

Many witnesses examined in support of the 1st respondent's case are partisans, being the polling agents, counting agents of workers of the Congress candidate. Their evidence has naturally to be viewed with circumspection, but not dismissed outright [See Ambika Saran Singh v. Mahant Mahadev Nand Giri(1)]. But more curious is the turn-coat type of witnesses who claimed to be and often were the polling agents, counting agents or workers of the appellant till the election was over, but, in the post-election period when the 1st respondent's party had formed a Government, quietly shifted their loyalty and gave evidence in proof of the averments in the petition. It is conceivable that these persons who had collaborated with the appellant in the mal- practices alleged were possessed of the urge to unburden their bosoms of the truth of their own evil-doing and hurried into the witness to swear veraciously to what took place actually. But the more probable (1) 41 E.L.R.183 explanation would be that these swivel-chair witnesses with India rubber consciences came under the influence of the 1st respondent for invisible consideration and spoke dubiously in support of their present patron. Of course, if their evidence is intrinsically sound, if their demeanour is impressive otherwise, if the incontrovertible facts and broad probabilities fit in with their version and other disinterested testimony on the same point is forthcoming, we should not disbelieve the case merely because some tainted evidence is also placed on the record. In this view, we have to scan the oral evidence rather carefully, lest the verdict of the people at the polls should be nullified on uncertain and dubious evidence.

Counsel for the appellant and, to some extent, the 1st respondent's advocate also, read before us rulings galore as to when witnesses should be believed and when not. Precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be identical with those in another and judgement of Courts on when and why a certain witness has been accepted or rejected can hardly serve as binding decisions, Little assistance can therefore be derived from case law on credibility. There are no legal litmus tests to discover the honest conscience of a human being and the canons of truthfulness of oral evidence sans commonsense, are but misleading dogmas. The golden rule is, as George Bernard Shaw tells us, that there are no golden rules. For this reason we are not referring to the many rulings cited before us. But we certainly inform ourselves with the general touchstones of reliability. The fact that we are not ready to act on the testimony of a person does not mean that he is a perjurer. It merely means that

on such testimony it is not safe to conclude in a quasi-criminal proceeding that the 'corrupt pratice' has been proved beyond reasonable doubt. The whole constituency is silently present before us it must be remembered (See observations of Dua I, J. in I.L.R. 1969 I Punj 625.) We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a dozen witnesses apparently respectable and disinterested, to speak to short of simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no x-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkennycat election competitions and partisan witnesses wearing robes of veracity to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, untying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

With these background observations we shall analyse the evidence adduced on both sides. We are not deterred by the negative evidence on the side of the appellant to the effect that within the ken of the witnesses concerned no meeting took place or no distribution of pamphlets had been made. Not only can such evidence be procured but it is hopelessly inconclusive in the face of definite and positive and probable testimony, if any to the contrary. Therefore, we have to search for the evidence in support of the petition, its reliability arid sufficiency.

Shri Bindra, for the appellant, made a blistering attack on the learned Judge's wrong approach to testimonial renegades. For, strategic documents like Ex P2/P3 and P5/P6 and lethal circumstances like addressing slandering speeches, are sought to be proved by the 1st respondent through the polling agents and other erstwhile activists of the appel- lant during the election. The Court somehow thought that a trace of treachery was the signature of truth and that the post election support to the defeated candidate in the witness box, speaking to collaboration with there turned candidate in pre-election corrupt practices, makes assurance doubly sure. We cannot understand how tergiversation can become a virtue. Defection in politics is becoming a per- vasive vice and its projection into election cases must be frowned upon by Courts. It scandalises us that a person should be the campaign agent of one candidate during elections and should shift loyalties during the election case to undo the victory he contributed to attain. The price of post-election swivelling must slump. It is naivete to pin faith on such probative circus and it is necessary to discourage such defection in the interests of the purity of the Court process. Except in special circumstances which are not present in the present case we decline to dismantle an electoral result by the technique of turn coat testimony. Here we may clear the ground by removing Sohanlal's near- confessional evidence from the area of reliable testimony. 'Whatever his role before the election, his written statement and evidence smack of the 1st respondent's vocabulary and either he is a fool or a knave or too truthful to be credible. For he admits receiving a car and expenses from the appellant, pleads to a mood of withdrawal and in evidence lends lip service to distribution of the objectionable handbills and to a last minute withdrawal from the election at the instance of the appellant. All that

we need say is that his word does not have the ring of reliability and we leave it at that.

Yet another aspect of the case may be dealt with here, to clear the deck for a consideration of the serious issues that survive. Running right through the war and woof of the petitioner's averments and evidence and haunting the political life of the petitioner for long years is a sitting Member of Parliament on the Congress benches, R3 W9, Tayyab Hussain. He is charged with visiting village after village with the appellant an ex- Congress man and now the bitter opponent of the Congress candidate to deliver vicious personal attacks on the petitioner, a Minister belonging to his own Party. The Mec-Muslims had the father of Tayyab Hussain as their leader and after him, Tayyab Hussain himself apparently a political family claiming virtually hereditary hegemony over a small community. The arrival of an educated Meo like the petitioner, a law graduate, on the political scene was a potential threat to a vested interest. We find from the evidence personal rivalry between the two writ large, Tayyab Hussain being ready to change Party and ally with enemies for personal ends and getting suspended from the Congress in the bargain. He has been a Deputy Minister once and has tasted power. May be the petitioner's political presence is a spectre for him and so he may be prone to run that rival down. Even so, there are boundaries to his hostile operations. Let us look at him as in 1972. He knows that anti-Party activities will imperil his Congress future. He has vital stakes in that party, being a sitting member of Parliament with four years to go. He was Chairman of the Wakf Board for which his party position must have partly accounted. The Party High Command was so near Nuh that had he acted publicly he would have been pulled up instantly. It is difficult to believe, even if the man was an adventurist master in the art of the possible, that this M. P. would have openly and stridently campaigned in the company of the anti-Congress candidate With vituperative vigour. His heart may have been with, the appellant Rahim Khan but he could not have so lost his head as to strike publicly at Khurshid Ahmed. The heap of oral evidence adduced in the case does not persuade us to hold with the 1st respondent on the public doings of R3 W9 hostile to his candidature.

Now let us get to the meat of the matter. For by all accounts the piece de resistance is the pamphlet part of the case. A manouvre to malign was resorted to at critical stage of the poll battle, according to the 1st respondent. Although there is a volume of oral testimony regarding small but numerous whistle-stop meetings held in street corners, common on election eve everywhere, we feel it unsafe to stake a verdict of corrupt practice on such dubious material. By passing these oral adventures in vilification, we proceed to turn the spotlight on the handbills, their authorship, existence, implications and circulation. We may straightway state that once we grant this pamphlet publicity, it will depress the victim's chances and may amount to an appeal to religion. Both the candidates are Muslims but one is less muslim than the other almost a kafir because he eats pork. The other imputations in the handbill relate to character assassination and undue influence which we will refer to presently.

We may as well set out here Ex. P. W. 413, the offending handbill "INTRODUCTION OF CH.KHURSHID AHMED AND SOME QUESTIONS TO HIM.

1. You being a Muslim got dug a grave of a Mohammadan and got the dead body out due to your personal enmity, which is against Islam and its Shariat. Do you still claim yourself to be a Muslim ?

2. Since you have become a Minister you have taken bribery from the public for each work of the public. Do you call this public service ?

3. You being Health Minister violated the modesty of numerous lady doctors and nurses and till they did not surrender their body to your lust you did not do any of their works.

Do you want to be elected again so that you can continue your debauchery

4. You while being a Minister got some Muslims of village Utawad arrested on allegations of cow slaughter and made them to eat meat of the pig.Do you want to be elected again so that you may be able to make all Muslims eat the meat of the pig ?

Khurshid Sahib public wants to tell you that you yourself have become a 'Kafir' by eating the meat of the pig. but the remaining muslims do not want to become 'Kafirs' at your hands. Public should pay attention and should give crushing defeat to such a 'Kafir'. I am rightly entitled to your vote.

Rahim Khan."

Appeal to religion, in this context, is influencing Muslim voters to prefer the appellant for his authentic Islamic way of life and to repel the 1st respondent for his heathen habits. A plate for pork is the main un-Islamic conduct imputed to the 1st respondent. Is it appeal to religion if voters are told that a candidate consumes unorthodox food ? That a brahmin eats beef, that a muslim eats pork, that a Jain eats at night ? Should the law lend itself, in a secular State, to the little susceptibilities of orthodox tenets ? If we push it for, particularly in religions like Hinduism and Islam which contain prescriptions regarding dress, bath, shave, ablutions and diet, many difficulties will arise. Eating garlic, radish and uncooked onions and even the flesh of cattle killed without invocation of Allah is un-Islamic (See "Who is a Muslim" by G. Ghous Ansari, pp. 39-42). Can you set aside an election because the losing candidate was described as eating raw onion ? This situation becomes worse in the Hindu fold. It is strange law that does not quarrel with an appeal not to vote for a man because he does not eat vitamins but nullifies the election for appeal based on radish or pig's flesh. True, the vice is injection of religion into politics and playing up fanaticism to distract franchise. But the back lash of this provision is a legal enquiry into what is the basic faith, not its frills and filigrees. it has been held by the Madras and the Kerala High Courts (71 I.C. 65 and 1971 K.L.T. 68- Imbichi Koya Thangal v. Ahamed Koya) that the credal core to identify a Muslim as Muslim is not food and dress but the triune items of One God, Universal Brotherhood and the Great Prophet Mahomet, being the last of the Prophets (although on this last limb there is some dispute). No charge on these three aspects has been made in the handbills. Thus apostasy has not been alleged. Nevertheless, having regard to the ruling in Kultar Singh v. Mukhtiar Singh(1) and the popular sentiment tied up rightly or wrongly with Muslim religion, we do not disagree with the view of the High Court and the stand of both counsel. The secular texture of the law is primarily the legislator's responsibility although Caesar and God should (1) [1964] 7 S.C.R. 790.

not get mixed up in areas of food, clothing and housing and other temporal matters not inherently interlinked with man's communion with the Supreme. What is appeal to religion depends on time

and circumstance, the ethos of a community, the bearing of the deviation on the cardinal tenets and other variables. To confound communal passion and crude bigotry with religion is to sanctify in law what is irreligion in fact. It is good to remind ourselves of Roman Rolland on Ramakrishna, quoted in Nehru's Autobiography "..many souls who are or who believe they are free from all religious belief, but who in reality live immersed in a state of super consciousness, which they term Socialism, Communism, Humanitarianism, Nationalism and even Rationalism. It is the quality of thought and not its object which determines its source and allows us to decide whether or not it emanates from religion. If it turns fearlessly towards the search for truth at all costs with single-minded sincerity prepared for any sacrifice, I should call it religious ; for it presupposes faith in an end to human effort higher than the life of existing society, and even higher than the life of humanity as a whole. Scepticism itself, when it proceeds from vigorous natures true to the core, when it is an expression of strength and not of weakness, joins in the march of the Grand Army of the religious Soul."

The Court must avoid over-solicitude for ultra-orthodoxies, law, being a secular social process. It is curious that the Election Commission, in its Report on the Fifth General Election in India (1971-72) refers to objections regarding the symbol 'Cow and Calf' on the score of religious associations from eminent persons and in overruling them cites George Barnard Shaw (Everybody's Political What What's? who said "The apparent multiplication of Gods is bewildering at the first glance ; but you soon discover that they are all the same God in different aspects and functions and even sexes. There is always one uttermost God who defies personification. This makes Hinduism the most tolerant religion in the world, because its one transcendent God includes all possible Gods, from elephant Gods, bird Gods and snake Gods right upto the great Trinity of Brahma, Vishnu and Shiva, which makes room for the Virgin Mary and modern feminism by making Shiva a woman as well as a man. Christ is there as Krishna, who might also be Dionysos. In fact Hinduism is so elastic and so subtle that the profoundest Methodist and the crudest idolator are equally at home in it."

And yet the electoral law construes religion based on apparel, approved food and other externals. How about appeal to anti-religion ? That one is a Royist or rationalist and the rival a religious soul and too other- wordly ? Rabid Communalism is the real enemy. Let that be identified by law. A second look at this labyrinth of law is in keeping with changing times. The 'voice in the wilderness' words of this Court in Ambika Saran Singh's Case(Supra) at p. 181 bear repetition "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 s. 123(3) of the Act. In spite 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."

Every Party silently says "He who has not sinned, let him cast the first stone " For the purpose of this case, suffice it to say both sides, agree that Ex. P. W. 4/3 appeals to religion.

Of course, if Ex. P. W. 4/3 had been circulated it did contain personal vilification like "womanizing" which in most countries and among the current generation is a vicious personal imputation under s. 123(4) of the Act. So we will ascertain whether on March 9 and 10, handbills like Ex. P. W. 4/3 had

been published by Rahim Khan and his agents. The rival version is that the appellant was innocent of these leaflets which must have been concocted after defeat by the 1st respondent for demolishing the election through Court. Many materials have been marshalled to make out factum of pamphlet publicity. The granite foundation for it is laid by Ex. P. 18, an application to the Deputy Commissioner of the District to which were annexed Ex. P. W. 4/3-4-5 (copies of handbills) and Ex. P. 19 a similar petition despatched by post to the Chief Electoral Officer along with Ex. P. 20 and 21 handbills. P. W. 54 Usman has sworn that he had got a few handbills (the offending ones) on March 10 from one Nihal Khan and made them over to the 1st respondent P. W. 76. Maybe, this careerist who has been changing parties, has been a dismissed sarpanch and is otherwise a partisan and may not by myself embolden us to believe the leaflet story. But Ex.P.18 was undoubtedly presented to the Deputy Commissioner on March 10, 1972 in his office at Gurgaon. His endorsement and that of his General Assistant P. W. 4 of even date lend strength to the case. The petition has had a natural journey into the Election Office under the Deputy Commissioner. Thus quite a few officers and official entries support the presence of Ex. P. 18 and the accompanying handbills on March 10. The smoke of suspicion about the records and the obliging unveracity of the high officials, glibly alleged, have no substance. We have care- fully examined the criticism levelled by Shri Bindra and considered the possibility of antedating but are satisfied that the hypothesis of conspiracy for fabrication is too fantastic to merit acceptance and the nonexamination of the Deputy Commissioner, in addition to his General Assistant P. W. 4, does not militate against the acceptability of the case. The endorsement on Ex. P. 18, relevant under s. 35 of the Evidence Act, clinches the issue, read in the light of P. W. 4's evidence. Ex. P. 19, a similar application was also presumably posted on the 10th March. It was received on 13th March, which is probable since 12th was a Sunday. The suggested interpolation in the register kept in 20-185 Sup. CI/75 the office of the Chief Electoral Officer is a mirage. it has no meaning in the absence of cross-examination. A close took at Ex. P. 19 and Ex. P. W. 2/2 dispels doubts and the entries corroborate P. W. 2's testimony as well as the fact of the leaflets having been in existence on the 10th of March. Let us probe the likelihood of a later fake. The petitioner had no reason to be desperate about a defeat. In fact the lead of the appellant was narrow. Only after the result was declared on 12th could he have thought of creating evidence to undo the election. Both Ex. P. 18 and Ex. P. 19 became inexplicable on that basis unless many public documents and public servants have tampered with truth in a chain conspiracy too nefarious to be credible. Some officers may oblige but it is unfair to impute such gross misconduct to responsible men and flimsy fancies. Other minor attempts to cavil at the evidence on this part of the case merit little serious study. We broadly agree with the High Court that the arguments of the appellant for rejection of Ex. P. 18 and P. 19 and connected documents cannot be contemplated without importing criminal conspiracy for which there is no foundation and they must be repelled. However we will advert to them briefly.

We have earlier indicated our dissent from the High Court when it trusts P. W.'s 12, 13 , 20 and 23 as reliable on leaflet distribution because they were pre-election agents of the opposite party. Tile Court observes "The evidence above set out under this head is fully acceptable to me. I am specially impressed by the depositions of Din Mohd. (P. W. 12), Roshan (P. W. 13), Mohd. Khan (P.

W. 20) and Habib (P. W. 23). All of them worked for the returned candidate during the election and there is no reason why they would make false depositions against the interest of the returned

candidate."

Our credibility sense is sceptical of this evaluation. We disapprove of this method and approach in assessment of evidence. Even so, let us go into the major criticisms of the 1st respondent's case. We are not blind to the possibility of executive officers designing to oblige Ministers in elections as happened in Ambika Saran Singh's Case(Supra). Maybe, there is some embarrassment for weak officials when sitting Ministers are candidates but what can be done about it ? We have appreciated the evidence with this factor also in mind. However, the many may be's suggested by Shri Bindra to disbelieve the official documents are ingenious but the cross-examination of the witnesses is innocent of them.

The appellant had applied, under Exhibit R. 1 W. 21/1 to the Deputy Commissioner for a copy of the entry in the register of Miscellaneous Branch with regard to election posters, i.e. handbills made mention of in the election petition. He received a reply (Exhibit R.1/A) that no such posters had been received in the Miscellaneous Branch of the Deputy Commissioner's office and therefore the question of their entry in the register did not arise at all and in fact no such register had been maintained in the Miscellaneous Branch. Actually the more important document for which a copy should have been applied for was the letter Exhibit P. 18 which was mentioned in the List of Reliance filed along with the petition. Nor is it correct to say that the returned candidate's application was comprehensive one. He confined himself to the Miscellaneous Branch Register in the Deputy Commissioner's office. What is more prevaricatory, counsel for the appellant showed us a certified copy of Exhibit P. 18 which his client had got from the Deputy Commissioner's office long before the written statement was filed and yet he pleaded there in ignorance of its existence. We have examined this case from every angle possible and are satisfied that Exhibits R1/A is of little service in debunking Exhibit P. 18 and the leaflets accompanying it. Repeated criticism was made by Shri Bindra that the Deputy Commissioner was the Deputy Secretary in the Department of which the 1st respondent was the Minister and that therefore he was prone to help the latter. Counsel contended vehemently that officers are liable to be pressurised and when a whole election turns on documents in the custody or writing of officials, free and fair elections and their survival through election petitions become precarious. He drew our attention to the observations of Grover, J. in P. R. Belagali v. B. D. Jatti(1) which make a vain echo in the present case. The learned Judge there observed :

> Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done but must also seem to be done, similarly elections should not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in the minds of the electors that everything has been above board and has been done to ensure free elections. It will be a sad day in the history of our country when the police and the government officers create even :an impression that they are interfering for the benefit of one or the other candidate. This is particularly so if a candidate is holding an important position or assignment like respondent No.1, who at the material time was a Minister in the State."

However, these observations, pertinent as they are in the circumstances of that case-and guidelines as they should be for Government to follow-do not detract from the reliability of the official records relating to Exhibits P. 18 and P. 19 or the acceptability of the General Assistant's evidence. It is true that the Deputy Commissioner could well have been examined by the Court, particularly when his plea was only for a postponement by two days on account of high blood pressure and his evidence would have been of considerable assistance to the Court in arriving at the truth. But this omission on the party of the Court, avoidable though it was, has not affected materially the evidentiary value of the documents and we are prepared to repose confidence in them.

Considerable criticism about P. W. 54 Usman was levelled, on a,. general ground based on non-mention of him either as a source of information or as part of particulars. Of course, his name was mentioned in the list of witnesses but that was in September, 1972. We are not inclined to the view that the name of every witness should be mentioned in the particulars except where his name becomes a necessary item of particulars. Shri Bindra analysed the various witnesses including P..W. 54, Usman under a microscope, dissected their evidence in the crucible of pleading-particulars-information source with reference to villages, public meetings, pamphlet distribution and the like. We are satisfied that the High Court's approach is right and the hyper-technical analysis resorted to by counsel should not be pushed to the point of defeating justice. No corrupt practice can be established if processual impediments are heaped up against the credibility of witnesses. Nor can any petitioner go into such minutiae as the names of all witnesses even at the time of election petition is prepared. Neither S. 87 nor even S. 83 nor even rule 94A and Form 25 require this drastic attitude. Rule 12, framed by the High Court for the trial of election petitions, it is true, does require the source of information to be mentioned at the earliest stage and it is a wholesome rule, to prevent after- thoughts. But every witness need not be mentioned as a source and every source inform and need not be examined necessarily. Whether the omission to do so in a given case reflects on the credibility of the evidence depends on the facts and circumstances of the case. It depends on the overall circumstances and the fairness of the trial. The observations in Ambika Saran Singh's Case(Supra) at P. 190 are apposite :

> "The question as to the extent of particulars which the Court would demand depends on the circumstances of each case, the nature of the charge alleged and the quality and reliability of evidence before it."

While the Court must be careful to insist that the means of knowledge are mentioned right in the beginning to avoid convenient embellishments and irresponsible charges, it should not stifle good and reliable testimony or thwart proof of corrupt practices by the technicalities Of procedure. We agree with the observations made in Balwant Singh v. Lakshmi Narain(1) and are not deterred from considering the evidence of P. W. 54 and others similarly circumstanced. No prejudice on account of deficiency in particulars is made out. We have already. indicated that we would not be prepared to base our conclusion solely on the testimony of such a witness as P. W. 54, but that does not mean that we should blackout all evidence where the witnesses are liable to some criticism and not consider such evidence even though there are other reliable or incontrovertible materials which lend assurance to its credibility.

The other point made is that there is no entry in the register maintained in the office of the Deputy Commissioner about Exhibit P.-18 (1) 22 E.L.R. 273.

This is not correct because, in a sense, the Election Branch is also part of the Deputy Commissioner's Office and there is an entry in the register there. The suggestion that the Deputy Commissioner succumbed to the petitioner's pressure and antedated Ex. P. 18 is difficult to digest. Similarly the suspicion sought to be raised about Register P. W. 2/2 kept in the Chief Electoral Officer's office on the basis that there are two entries bearing serial number 5072 is unsound. The entry with which we are concerned is 5072A and this is not unusual when by mistake a clerk has written identical figures for two entries. Moreover there is no cross-examination on this point and in the absence of cross- examination giving an opportunity to the witness to explain the circumstances from which an inference is sought to be drawn, no such inference-.particularly of forgery and publication of documents can be permitted to be raised. A rather trivial argument has been made that if a letter had been sent to Chandigarh on March, 10, the postal expenses of a few paise should have been entered in the return of the election expenses. Admittedly such an entry does not find a place in the return. For one thing, the amount is so negligible that its non-mention means nothing. For another, it is difficult to accept the plea that this candidate who was a Cabinet Minister and was locked in bitter battle with a strong opponent in a do-or-die Struggle would have spent only a mail sum of over Rs. 4,000. It is a notorious fact that huge sums of money are lavished by candidates on election, thus closing the door for ordinary people to contest democratic elections. The point is that when suspiciously small sums are returned as election expenses, no machinery to investigate and take action is found with the result that return of election expenses becomes an idle ritual and not an effective check. If parties pour funds for campaigning the law is silent and helpless. This is certainly a matter for the Election Law to consider. It must make provision deterrent enough-so as to enable the small man to negotiate with elective opportunities. Even at this stage we may notice that the handbill in question does not contain the name of the printer and publisher although the election law so requires. Unfortunately when such printed material is circulated there is no agency of the law which takes prompt action after due investigation, with the result that no printer or candidate or other propagandist daring elections bothers about the law and he is able successfully to spread scandal without a trace of the source, knowing that nothing will happen until long after the election, when in a burdensome litigation this question is raised. Timely enforcement is as important to the rule of the law as the making of legislation. We may conclude by holding that we accept Exhibits P. 18 and P. 19 as genuine and concomitantly find that the handbills containing injurious statements were in existence on or before the 10th of March. The only question that remains is whether a nexus is established between these handbills and the appellant and the factum of their prepoll circulation by him or his agents is proved. Without this latter requirement being made out, mere leaflets do not spell invalidation.

Once we find that Exbits P.18 and P.19 are not fabrications.ante-dated or planted in the offices of the Deputy Commissioner and the Chief Electoral Officer bearing endorsements and entries, involving in the process a chain of officials willing to tamper with public records, we have to seek their probable author. The appellant's cross- examination of the witnesses who proved the handbills merely coquetted with speculative possibilities and shifting suggestions without putting forward a credible alternative, explaining their presence around March 10. The handbills, purport to be issued

by Rahim Khan and the motive for him to do so is strong. After all, the evidence discloses that there were allegations in the Haryana Assembly against the first respondent as a womanizer and in fact there was a cow- slaughter case and dis-interring of a muslim grave and allegations of the hand of the first respondent behind these doings. Quite possibly capitalising on these straws in the wind, the appellant who was fitting his opponent hard made an attack involving personal imputations circulated by a leaflet engagingly presented as a string of questions with answers self-evident and involving appeal to 'religion' not even thinly concealed. Since a number of handbills had come into the possession of the first respondent on the 10th which lie forwarded to the two officials along with Exhibits P. 18 and P. 19, the circumstances be speak. prior circulation. The question is whether Rahim Khan, the appellant, has been directly shown to be linked with it. One cannot presume such an important ingredient against a returned candidate unless the sure facts compel. In the present case some clever manouvres have been made by the 1st respondent to connect the appellant with the handbills. Courts must be astute enough to discourage over-cleverness of parties and decline to rely on materials which perhaps may be true but bear the stamp of shadiness on their face. For instance, we have Exhibit P. 5 a note written by P. W. 21 Din Mohammad on the reverse of Exhibit P. 6, a copy of the offending handbill, Exhibit P.W. 4/3. P.W. 21 is a polling agent of the returned candidate but swears in support of the defeated candidate in a plausible way. He states on oath that Exhibit P. 6 reached his hands on March 11, when it was being distributed in his village. While in the polling station he made a note on the reverse of Exhibit P. 6 Which runs :

"Shri Samad Khanji, Very few voters are coming from your village. The time left is short. Have the voters sent quickly.

Nangal Shahpur. Din Mohd.
Dated, the 11-3-1972"

He wants us to believe that finding that the voters of Nangal Shahpur had not turned out he sent this note to Samad Khan, a.-worker of the returned candidate. But how did this P. 5 get back,into the hands of Din. Mohd, while it should normally have been with Samad Khan ? To fill up this gap P.W. 75, Sharif Khan is pressed into service. He has a story that one Subhan Khan delivered it to him and lie, in turn, gave it to the advocate of the petitioner in the course of the trial of the case. How can Exhibit P.6with the valuable endorsement Exhibit P. 5, move to and from Subhan Khan (not examined) to Sharif Khan, P.W. 75 ? The obliging Din Mohammad, who had come under the spell of the 1st respondent must have made this telltale endorsement during the pendency of the case and the document itself is kept back till a surprise is sprung when P.W. 21 is in the witness box-for too unfair for its to place reliance. One lie leads to another till a blind alley of improbability is reached. Another Din Mohammad, P.W. 12, who also was a polling agent of the returned candidate has turned turtle to support the petitioner during the case by producing a copy of the handbill and a letter Exhibit P. 11/1, addressed to one Roshan of Mewli village. This letter, Exhibit P.W. 11/1 purports to be a confidential circular by the appellant, Rahim Khan, requesting that the handbills be distributed discreetly among 'Muslim brethren' eschewing 'the workers of the opposite party'. This letter, it is said, was addressed to Roshan but was not delivered to him directly by P.W. 12 since the former was not in his house. The tale told by P.W. 12 further is that he made an endorsement on this letter (separately marked as P.W. 11/2) requesting Roshan, P.W. 13, to act on the letter. What follows is still more strange. Roshan, P.W. 13, claims to have received P.W. 11/ 1 with the note

Exhibit P.W. 11/2 and fifty handbills. He delivered them to P.W. 11 Ibrahim, some days after the polling, although this Ibrahim, P.W. 11, is a worker in the opposite camp. The whole story sounds absurd and overworked, difficult to be accepted.

Another adventurist piece of documentary evidence is Exhibit P. 3 with the endorsement Exhibit P. 2 on its reverse. Mohammad Khan, P. W. 20, was a polling agent of the returned candidate and now with easy conscience goes over to testify in support of the 1st respondent. He alleges that Exhibit P. 3 which is a copy of the circular letter Exhibit P. W. 11/ 1, together with some of the offending handbills, was received through one Raj Khan and that he distributed them in the village. For this reason he must be guilty of abetting corrupt practice, apart from being a turn-coat. But what startles us is that P. W. 20 returns the letter Exhibit P. 3 to Raj Khan after making Exhibit P. 2 note thereon, addressed to the appellant. it reads "Ch. Rahim Khanji, I have received the handbills through Raj Khan. I shall distribute them properly. You have not sent me the polling agent forms although you had told me you would. Arrange to have them sent at once.

Mohd. Khan 9-3-1972"

Surprisingly enough Raj Khan does not deliver the letter to the addressee Rahim Khan but shows it to Sharif Khan P. W.

75. The letter asks for it but Raj Khan seemingly faithful refuses to give it. Nevertheless this Raj Khan leaves it outside and goes inside to get a cup of tea for P. W. 75. When his back is turned, the man with little scruples, P. W. 75, abstracts this letter and Raj Khan never bothers about the loss. The tortuous course of Exhibit P. 3 is too true to be credible. There is some more oral evidence of this devalued class. We do not think we can base our conclusions safely on salvaged bits of testimony of this contaminated sort.

There is also oral evidence identifying the signature of the returned candidate on Exhibits P. 3 and P. W. 11/1, particularly in the deposition of Habib, P. W. 23. He has not spoken to his familiarity with the handwriting of the appellant. Opinion evidence is hearsay and becomes relevant only if the condition laid down in s. 47 of the Evidence Act is first proved. There is some conflict of judicial opinion on this matter, but we need not resolve it here, because, although there is close resemblance between the signature of Rahim Khan on admitted documents and that in Exhibits P. 3 and P. W. 11 / 1, we do not wish to hazard a conclusion based on dubious evidence or lay comparison of signatures by Courts. In these circumstances, we have to search for other evidence, if any, in proof of circulation of the printed handbills by the returned candidate or with his consent. Many villages have been mentioned, where meetings were held and handbills released, but the trial Court has played safe, if we may say so, rightly and refused to act on evidence unclear and uncertain and has upheld the case for only ten villages out of a larger area. We have pointed out how the learned Judge has failed to show discernment in relying on defectionist witnesses (and in two instances, by over sight. treated 1st respondent's polling agents as independent witnesses). So that we are not inclined to go the length the lower Court has gone regarding these villages. But non- acceptance of the case of public meetings addressed by the appellant together with Tayyab Hussain, R3W9, does not necessarily mean handbills were not handed over to people. Even where good evidence, not

parrot-like repetition, is forthcoming, as an appellate Court we hesitate to interfere, on questions of fact where the trial Court has discarded the evidence. In our view even the ten villages where speeches were proved to have been made, according to the High Court, do not sound strong enough, for reasons already given. But on the distribution of the damaging handbills, we feel confident that there is acceptable, direct and circumstantial testimony, to accept the 1st respondent's version. For one thing, we have found that these printed appeals did exist on March 10-not for secreting but circulating. For another, the motive for publishing these statements is for the appellant. Again, the circumstance that the 1st respondent came by many copies thereof on March 10 probabilises prior distribution, certainly with the knowledge and consent of the appellant. Finally, there is disinterested evidence on this fact. For instance, take village Akerrha. P.Ws. 45, 46, 47 and 48 have concurrently testified that the returned candidate and R3W9 had visited the villages, talked, to voters and circulated handbills. The learned Judge discredits P. W. 46 because he was an agent of the 1st respondent. Quite right. But the other witnesses are not discussed at all. So we have read them to ascertain their credibility, particularly since the contrary witnesses of the appellant have been disbelieved. Negative evidence is ordinarily no good to disprove the factum of meetings. But to disbelieve a witness because he came without summons, as the trial Court has done, is altogether wrong. Evenso,the evidence of R1 W13, R1 W14 and R1W15 was rightly rejected by the trial Judge as useless. However, we are satisfied that no ground exists to disbelieve P. W. 45, an apparently disinterested person. The non-mention of every name in the affidavit in support of Election Petition is no ground to reject witnesses. P.Ws. 45 and 47 sound natural and disinterested and no reason exists to discard their evidence regarding the nocturnal circulation of printed handbills like, P. W. 4/3. No formal meeting was held, no chair, no mike, no announcement nor even petromax light. Not the speeches, but the distribution of pamphlets is the credible part of the case. The former depends only on the oral testimony of witnesses, the latter is reinforced by actual handbills. The same thing holds good regarding the villages where positive findings have been recorded by the trial Court. We think that irrespective of the election speeches by the appellant and R3W9, which may or may not be true the last minute circulation of handbills, must be accepted. We are aware, as noticed in B. Rajagopala Rao v. N. G. Ranga(1) that the enemies of a winning candidate may get such notices printed and distributed as part of the strategy of subverting an unfavourable election result. We also remember the words of caution in other dicta already referred to and do not rule out the possibility of officers not being above-board where Ministers are engaged in hot and rearlosing battles. It is after anxious consideration that we have come to the ultimate inference already expressed on Ex. P. 18, P. 19 and P. W. 4/3 and the publicity given to the handbills.

On this finding that the appellant did distribute Ex. P. W. 4/3 type handbills, what corrupt practices are constituted thereby?

'Character assassination'-to use a cliche-comes within s. 123 of the Act, since the 1st respondent has called them false and the appellant has agreed he does not believe them to be true. On the present view of the law, the handbills, in their climatic part, exhort Muslims to support the appellant in. the name of 'religion'. But divine displeasure' on account of prandial impropriety and 'undue influence' for fear of forced pork eating, cannot be distilled from these handbills without doing violence to the prevailing protection of the rule of law in the country. Half serious apprehensions are not 'undue influence' by any standards. No one in India in the '70s will shiver with fear that a candidate, when

he wins an election, will force down his throat distasteful pork. Such chimerical apprehensions are unreal and cannot receive judicial appro- val. Equally untenable is the trepidation in the hearts of the voters that if they cast their ballots in favour of one who eats pig's meat, the wrath of God would annihilate them. Realism is a component of judicial determination. Neither undue influence nor divine displeasure looms large in this case.

(1) A.I.R. 1971 S.C. 267, 275.

In the ultimate analysis we hold that the appellant did get the handbills, Exhibits P. W. 4/3 printed and distributed among his constituents. Thereby he made statements which were untrue and which he did not believe to be true and knew to be false, about the rival candidate with a view to diminish the latter's prospects in the election. We further hold that Exhibit P. W. 4/3 constitutes an appeal to religion for the purpose of voting for and against. Thus, under these two heads, a contravention under s. 123 of the Act has been committed and for these two corrupt practices the unseating of the appellant becomes inevitable We may mention here that while meticulous criticism has been made by both sides of the numerous witnesses examined in the case, not the many ripples but the major waves shape the course of the stream in our view, so that we have paid more attention to the broad sweep of the evidence rather that. the little details picked up here and there and magnified before us. Therefore, while not endorsing the entire findings of the High Court, we uphold two of its major findings-of corrupt practices-sufficient to undo the election of the appellant. Further in this case the first respondent cannot claim to have been clean in alleging untenable corrupt practices and adducing shoddy evidence. Where both sides have soiled their hands in the legal process, both must bear their individual burden of costs. One last disquieting reflection is prompted in this case. If a blatant corrupt practice is committed during an election, there is now no clear statutory mechanism which can contemporaneously be set in motion by the affected party so that when it is raw, a record and an instant summary probe is possible through an independent semi-judicial in- strumentality. Violations thrive where prompt check is unavailable. On the other hand, effective contemporaneous machinery providing for such checks would greatly curtail subsequent election disputes and even act as a deterrent to the commission of corrupt practices. Elections are the cornerstone of the parliamentary system and the arm of the law should not hang limp in the face of open contravention. We cannot also close this judgment without exposing what is really a patent flaw in the judgment of the High Court. Having found the commission of corrupt practices by the appellant, Tayyab Hussain (a sitting Member of Parliament) and a large number of other persons, it was the statutory duty of the Judge to name all those who have been proved at the trial to have been guilty of any corrupt practice [s. 99

(a) (ii).] The serious disqualification which would be visited upon a person who is thus named has compelled the legislature to introduce the canons of natural justice before taking this punitive step. The proviso to s. 99(a) inhibits the naming of a person who is not a party to the petition without giving him notice to appear and show cause and a further opportunity of cross-exam-dining any witness who has already been examined in the case and has given evidence against him of calling evidence in his defence and of being heard. This Court has emphasized the obligation of the Election Tribunal in this behalf and indicated the procedure that may be adopted in Such Situation in B. P. Mishra v. K. N. Sharma(1) R. M. Seshadri v. G. Vasantha Pai (2); and Janak Sritar v. Mahalit R.K.

Das (3). Indeed before delivering judgment in the election, case the Court has to inform and extend an opportunity to the collaborators in corrupt practice and in the light of the totality of evidence on record decide the election petition and the issue of naming those guilty of corrupt practices.This is not a facultative power of the Court but a bounden duty cast on it. The high purpose of ensuring purity of elections is the paramount policy inspiring this provision. The Court must strongly deter those who seek to achieve election ends by corrupt means. It is unfortunate that Courts and counsel are somewhat indifferent to this requirement of the statute. If only at the end of an election case where verdicts on corrupt practices are rendered, Courts would name all those involved in the pollution of the electoral process, there would be some hesitation on the part of citizens in executing these improper projects.

Counsel for the 1st respondent in this case suggested to us that the distributors of pamphlets or, for that matter, even the authors thereof may easily escape punishment of 'naming' by proving that since responsible candidates had made such speeches,they did not believe the statements to be false or even believed them to be true. We are clearly of the view that belief in this context means reasonable belief and not easy fancy or foolish credence. Unless the distributor of mala fide statements establishes that he had reasonable grounds in support of his belief, tile Court will not accept his plea and will name him. It is therefore plain that s. 123 (4) read with s. 99 cannot stultify the provision for naming of men who deserve to be named, However, in the present case, we have held that neither R3W9 (Tayyab Hussain) nor the third respondent (Sohanlal) has been proved to be guilty of corrupt practice. Similarly, we have not accepted the case that many polling agents of the appellant had circulated the handbills. In this view, the need to name anyone does not arise. Of course, the appellant being a party and guilty has to suffer the penalty. We are holding against him that he got the handbills printed and distribute but on other grounds we have exonerated him for want of compelling,,, probative material.

(1) (1971) 1 S.C.R. 8. (2) (1969) 2 S.C.R. 1019. (3) AIR 1972 SC/359.

The appellant, in this case, is less guilty than the 1st respondent depicts him but is less innocent than he professes. Electoral purity must claim its victim and we set aside the appellant's election, nothing that :the virus of corrupt practices cannot be controlled save by comprehensive systemic changes with emphasis on a fearless enforcement instrumentality and a national political consensus to abide by norms-a consummation devoutly to be wished. Today the yawning gap between law in the books and unlaw in action has made inhibition of corrupt practices a once-in-a-blue-moon-tribunal phenomenon. For the reasons set out above, we dismiss the appeal with the direction that parties will bear their respective costs throughout.

V.P.S. Appeal dismissed.