People''s Union for civil Liberties (PUCL) and Others Vs Union of India (UOI) and Another

Writ Petition (Civil) No''s. 490, 509 and 515 of 2002

Court: Supreme Court of India

Date of Decision: March 13, 2003

Acts Referred:
Constitution of India, 1950 â€" Article 13, 14, 171, 19, 19(1)(a), 19(2), 21, 32, 145(3), 171, 324, 326, 371D#Evidence Act, 1872 â€" Section 123, 123(1)(a)#Inter-State Water Disputes Act, 1956 â€" Section 5(2), 6#Representation of the People Act, 1951 â€" Section 2(1)(a), 6, 33A, 33B, 123(5), 124(5)

Citation: AIR 2003 SC 2363 : (2003) 2 JT 528 : (2003) 6 SCALE 692 : (2003) 3 SCALE 263 : (2003) 4 SCC 399 : (2003) 6 SCR 860 Supp : (2003) 2 SCR 1136

Hon'ble Judges: P. Venkatarama Reddi, J; M. B. Shah, J; D. M. Dharmadhikari, J

Bench: Full Bench

Advocate: K.N. Rawal, Additional Solicitor General, Rajinder Sachar, P.P. Rao and Ranjit Kumar, Sanjay Parikh, A. N. Singh, R. Chandrachud, Vandana Sudan, Abinash K. Misra, Prashant Bhushan, Sanjeev K. Kapoor, T.K. Naveen, Vishal Gupta, Anil Kumar Mittal, G. Balaji, Kamini Jaiswal, Bina Gupta, Divya Roy, Prateek Jalan, Preetesh Kapur, S.N. Terdol and S. Muralidhar, for appearing partie, for the Appellant;

Final Decision: Disposed Of

Judgement

Shah, J.
These writ petitions under Article 32 of the Constitution of India have been filed challenging the validity of the Representation of

the People (Amendment) Ordinance, 2002 (No. 4 of 2002) (""Ordinance"" for short) promulgated by the President of India on 24th August, 2002.

2. There was an era when a powerful or a rich or a strong or a dacoit aged more than 60 years married a beautiful young girl despite her

resistance. Except to weep, she had no choice of selecting her male. To a large extent, such situation does not prevail today. Now, young persons

are selecting mates of their choice after verifying full details thereof. Should we not have such a situation in selecting a candidate contesting

elections? In a vibrant democracy--is it not required that a little voter should know bio-data of his/her would be Rulers, Law-makers of Destiny-

maker of the Nation?

3. Is there any necessity of keeping in dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape Or has

acquired the wealth by unjustified means? May be that he is acquitted because Investigating Officer failed to unearth the truth or because the

witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what has seen by them.

4. Is there any necessity of permitting candidates or his supporters to use unaccounted money during elections? If assets are declared, would it not

amount to having some control on unaccounted election expenditure?

5. It is equally true that right step in that direction is taken by amending the Representation of the People Act, 1951 (hereinafter referred to as ''the

Act'') on the basis of judgment rendered by this Court in 272687 . Still however, question to be decided is--whether it is in accordance with what

has been declared in the said judgment?

6. After concluding hearing of the arguments on 23rd October, 2002, the matter was reserved for pronouncement of judgment. Before the

judgment could be pronounced, the Ordinance was repealed and on 28th December 2002, the Representation of the People (3rd Amendment)

Act, 2002 (""Amended Act"" for short) was notified to come into force with retrospective effect. Thereafter, an amendment application was moved

before us challenging the validity of Section 33B of the Amendment Act which was granted because there is no change in the cause of action nor in

the wording of Section 33B of the Amended Act, validity of which is under challenge. At the request of learned counsel for the respondent-Union

of India, time to file additional counter was granted and the matter was further heard on 31st January, 2003.

7. It is apparent that there is no change in the wording (even full stop or coma) of Sections 33A and 33B of the Ordinance and Sections 33A and

33B of the Amended Act. The said Sections read as under--

33A. Right to information.--(1) A candidate shall, apart from any information, which he is required to furnish, under this Act or the rules made

thereunder, in his nomination paper delivered under Sub-section (1) of Section 33, also furnish the information as to whether--

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the

court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in Sub-section (1) or Sub-section (2), or covered in Sub-section (3), of

Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under Sub-

section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in Sub-

section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under Sub-section (1), display the aforesaid information

by affixing a copy of the affidavit, delivered under Sub-section (2) at a conspicuous place at his office for the information of the electors relating to

a constituency for which the nomination paper is delivered.

33B. Candidate to furnish information only under the Act and the rules.- Notwithstanding anything contained in any judgment, decree or order of

any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any

such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.

8. For the directions, which were issued in Association for Democratic Reforms (supra), it is contended that some of them are incorporated by the

statutory provisions but with regard to remaining directions it has been provided therein that no candidate shall be liable to disclose or furnish any

such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder, despite

the directions issued by this Court. therefore, the aforesaid Section 33B is under challenge.

9. At the outset, we would state that such exercise of power by the Legislative giving similar directions undertaken in the past and this Court in

unequivocal words declared that the Legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the

decisions given by the Courts. For this, we would quote some observations on the settled legal position having direct bearing on the question

involved in these matters:--

A. Dealing with the validity of Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance 1969, this

Court in 267266 observed thus:--

7. This is a strange provisions. Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected

despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision

attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits,

powers to make laws prospectively as well as retrospectively. By exercise of those powers, the Legislature can remove the basis of a decision

rendered by a competent court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities

of the State to disobey or disregard the decisions given by courts...

Further, Khanna, J. In 285294 succinctly and without any ambiguity observed thus:--

190. A declaration that an order made by a court of law is void is normally part of the judicial function and is not a legislative function. Although

there is in the Constitution of India no rigid separation of powers, by and large the spheres of judicial function and legislative function have been

demarcated and it is not permissible for the Legislature to encroach upon the judicial sphere. It has accordingly been held that a Legislature while it

is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible to the Legislature to

declare the judgment of the court to be void or not binding.

It is also settled law that the Legislature may remove the defect which is the cause for invalidating the law by the Court by appropriate legislation if

it has power over the subject matter and competence to do so under the Constitution.

B. Secondly, we would reiterate that the primary duty of the Judiciary is to uphold the Constitution and the laws without fear or favour, without

being biased by political ideology or economic theory. Interpretation should be in consonance with the Constitutional provisions, which envisage a

republic democracy. Survival of democracy depends upon free and fair election. It is true that the elections are fought by political parties, yet

election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decisions to vote either in favour of ''A''

or ''B'' candidate would be without any basis. Such election would be neither free nor fair.

For this purpose, we would refer to the observations made by Khanna, J. in 289511 , which read thus--

That all constitutional interpretations have political consequences should not obliterate the fact that the decision has to be arrived at in the calm and

dispassionate atmosphere of the court room, that judges in order to give legitimacy to their decision have to keep aloof from the din and

controversy of politics and that the fluctuating fortunes of rival political parties can have for them only academic interest. Their primary duty is to

uphold the Constitution and the laws without fear or favour an in doing so, they cannot allow any political ideology or economic theory, which may

have caught their fancy, to colour the decision.

C. It is also equally settled law that the Court should not shirk its duty from performing its function merely because it has political thicket. Following

observations (of Bhagwati, J., as he then was) made in 291057 were referred to and relied upon by this Court in B.R. Kapur v. State of Tamil

Nadu:

53. But merely because the question has a political complexion, that by itself is no ground why the court should shrink from performing its duty

under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of

governmental power and no constitutional question can, therefore, fail to be political.... So long as a question arises whether an authority under the

Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional

obligation to do so. It is necessary to assert the clearest possible terms, particularly in the context of recent history, that the Constitution is suprema

lex, the paramount lw of the land, and there is no department or branch of Government above or beyond it.

SUBMISSION:--

10. It is contended by learned Senior Counsel Mr. Rajinder Sachar and Mr. P.P. Rao for the petitioners that the Section 33B is, on the face of it,

arbitrary and unjustifiable. It is their contention that the aforesaid section is on the face of it void as a law cannot be passed which violates/abridges

the fundamental rights of the citizens/voters, declared and recognised by this Court. It is submitted that without exercise of the right to know the

relevant antecedents of the candidate, it will not be possible to have free and fair elections. therefore, the impugned Section violates the very basic

features of the Constitution, namely, republic democracy. For having free and fair elections, anywhere in the territory of this country, it is necessary

to give effect to the voters'' fundamental right as declared by this Court in the above judgment.

11. It has been contended that, in our country, at present about 700 legislators and 25 to 30 Members of Parliament are having criminal record. It

is also contended that almost all political declare that persons having criminal record should not be given tickets, yet for one or other reason,

political parties under some compulsion give tickets to some persons having criminal records and some persons having no criminal records get

support from criminals. It is contended by learned senior counsel Mr. Sachar that by issuing the Ordinance, the Government has arrogated to itself

the power to decide unilaterally for nullifying the decision rendered by this Court without considering whether it can pass legislation which abridges

fundamental right guaranteed under Article 19(1)(a). It is his submission that the Ordinance is issued and thereafter the Act is amended because it

appears that the Government is interested in having uninformed ignorant voters.

12. Contra, learned Solicitor General Mr. Kirit N. Raval and learned senior counsel Mr. Arun Jaitely appearing on behalf of the intervenor, with

vehemence, submitted that the aforesaid Ordinance/Amended Act is in consonance with the judgment rendered by this Court and the vacuum

pointed out by the said judgment is filled in by the enactment. It is also contended by learned senior counsel Mr. Jaitley that voters'' right to know

the antecedents of the candidate is not part of the fundamental rights, but it is a derivative fundamental right on the basis of interpretation of Article

19(1)(a) given by this Court. It is submitted that the Ordinance/Amended Act is in public interest and, therefore, it cannot be held to be illegal or

void. In support of their contentions, learned counsel for the parties have referred to various decisions rendered by this Court.

WHETHER ORDINANCE/AMENDED ACT COVERS THE DIRECTIONS ISSUED BY THIS COURT:--

13. Before dealing with the rival submissions, we would refer to the following directions (para 48) given by this Court in Association for

Democratic Rights case (supra):

The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the

Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper,

furnishing therein, information on the following aspects in relation to his/her candidature:--

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past--if any, whether he is punished with imprisonment

or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment

for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof?

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependents.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate.

14. The learned counsel for the respondent submitted that the directions issued by this Court are, to a large extent, implemented by the aforesaid

Amended Act. It is true that some part of the directions issued by this Court are implemented. Comparative Chart on the basis of Judgment and

Ordinance would make the position clear:--

Subject Discussion In Judgment Provisions Under Impugned

dt.2.5.2002 Ordinance/Amended Act

Past criminal Para 48(1) S.33A(l)(ii)

Record. All past convictions/acquittals/ Conviction of any offence (except S.8

discharges, whether punished offence) and sentenced to

with imprisonment or fine. imprisonment of one year or more.

No such declaration in case of

acquittals or discharge.

(S.8 offences to be disclosed in

nomination paper itself)

Pending Para 48(2) S. 33A(1)(i)

criminal Prior to six months of filing of Any case in which die candidate has

cases. nomination, whether the been accused of any criminal offence

candidate has been accused of punishable with imprisonment of two

any criminal offence punishable years or more, and charge framed

with imprisonment of two years

a more, and charge framed or

cognizance taken.

Assets and Para 48(3) S. 75A

liabilities Assets of candidate (contesting No such declaration by a candidate

the elections) spouse and who is contesting election. After

dependants. election. elected candidate is required

to furnish information relating to him as

well as his spouse and dependent

children"s assets to the Speaker of the

House of People.

Para 48(4) No provision is made for the candidate

Liabilities, particularly to contesting election.However, after

Government And public election.

financial institutions. Section 75A(1)(ii) & (iii) provides for

elected candidate.

Educational Para 48(5) To be declared. No provision.

Qualifications

Breach of No direction regarding S.125A

Provisions consequences of non- Creates an offence punishable by

compliance. imprisonment for six months or fine for

failure to furnish affidavit in accordance

with S.33A, as well as for falsity or

concealment in affidavit or nomination

paper.

S. 75A(5)

Wilful contravention of Rules regarding

asset disclosure may be treated as

breach of privilege of the House.

15. From the aforesaid chart, it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal

offence(s); (b) his assets and liabilities; and (c) his educational qualification. With regard to assets, it is sought to be contended that under the Act

the candidate would be required to disclose the same to the Speaker after being elected. It is also contended that once the person is acquitted or

discharged of any criminal offence, there is no necessity of disclosing the same to the voters.

FINALITY OF THE JUDGMENT:--

16. Firstly, it is to be made clear that the judgment rendered by this Court in Association for Democratic Reforms (Supra) has attained finality. The

voters'' right to know the antecedents of the candidates is based on interpretation of Article 19(1)(a) which provides that all citizens of this country

would have fundamental right to ""freedom of speech and expression"" and this phrase is construed to include fundamental right to know relevant

antecedents of the candidate contesting the elections.

17. Further, even though we are not required to justify the directions issued in the aforesaid judgment, to make it abundantly clear that it is not ipse

dixit and is based on sound foundation, it can be stated thus:--

-- Democratic Republic is part of the basic structure of the Constitution.

-- For this, free and fair periodical elections based on adult franchise are must.

-- For having unpolluted healthy democracy, citizens-voters should be well-informed.

18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the

antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is voter''s discretion whether to vote in

favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious

charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not

be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a

candidate whose liability is minimum and/or there are no over-dues of public financial institution or government dues. From this information, it

would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting

election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting

clan and less polluted persons to govern the country. A little man--a citizen--a voter is the master of his vote. He must have necessary information

so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as M.P. or M.L.A. On occasions, it is stated

that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he

would have guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into

a monocracy and mockery or a farce, information to voters is the necessity.

19. Further, in context of Section 8 of the Act, the Law Commission in its Report submitted in 1999 observed as under:--

5.1 The Law Commission had proposed that in respect of offences provided in Sub-section (1) (except the offence mentioned in Clause (b) of

Sub-section (1), a mere framing of charge should serve as a disqualification. This provision was sought to be made in addition to existing provision

which provides for disqualification arising on account of conviction. The reason for this proposal was that most of the offences mentioned in Sub-

section (1) are either election offences or serious offences affecting the society and that the persons committing these offences are mostly persons

having political clout and influence. Very often these elements are supported by unsocial persons or group of persons, with the result that no

independent witness is prepared to come forward to depose against such persons. In such a situation, it is providing extremely difficult to obtain

conviction of these persons. It was suggested that inasmuch as charges were framed by a court on the basis of the material placed before it by the

prosecution including the material disclosed by the charge-sheet, providing for disqualification on the ground of framing of the charge-sheet would

be neither unjust nor unreasonable or arbitrary.

20. The Law Commission also observed:-

6.3.1. There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich

overnight. Before allowing people to enter public life the public has a right to know the antecedents of such persons. The existing conditions in

which people can freely enter the political arena without demur, especially without the electorate knowing about any details of the assets possessed

by the candidate are far from satisfactory. It is essential by law to provide that a candidate seeking election shall furnish the details of all his assets

(movable/immovable) possessed by him/her, wife- husband, dependent relations, duly supported by an affidavit.

6.3.2. Further, in view of the recommendations of the Law Commission for debarring a candidate from contesting an election if charges have been

framed against him by a Court in respect of offences mentioned in the proposed Section 8-B of the Act, it is also necessary for a candidate seeking

to contest election to furnish details regarding criminal case, if any, pending against him, including a copy of the FIR complaint and any order made

by the concerned court.

6.3.3. In order to achieve, the aforesaid objectives, it is essential to insert a new Section 4-A after the existing Section 4 of the Representation of

the People Act, 1951, as follows--

4-A. Qualification for membership of the House of the People, the Council of States, Legislature Assembly of a State or Legislative Council

A person shall not be qualified to file his nomination for contesting any election for a seat in the House of the People, the Council of States

Legislature Assembly or Legislative Council of a State unless he or she files--

(a) a declaration of all his assets (movable/immovable) possessed by him/her, his/her spouse and dependent relations, duly supported by an

affidavit, and

(b) a declaration as to whether any charge in respect of any offence referred to in Section 8B has been framed against him by any Criminal Court.

21. It is to be stated that similar views are expressed in the report submitted in March 2002 by the National Commission to Review the Working

of the Constitution appointed by the Union Government for reviewing the working of the Constitution. Relevant recommendations are as under:--

Successes and Failures

4.4 During the last half-a-century, there have been thirteen general elections to Lok Sabha and a much large number to various State Legislative

Assembles. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience

has also brought to fore many distortions, some very serious, generating a deep concern in many quarters. There are constant reference to the

unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism.

4.12 Criminlisation--

4.12.2 The Commission recommends that the Representation of the People Act be amended to provide that any person charged with any offence

punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of

Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the Court in that

offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In

case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the

period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the

sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his

antecedents, it should be derecognised and deregistered.

4.12.3. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity etc. should be permanently debarred from contesting for

any political office.

4.12.8 The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which

may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges

were framed in a Court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.

4.14 High Cost of Elections and Abuse of Money Power.

4.14.1 One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts

of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the

honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the

entire system. Corruption, because it codes performance, becomes one of the leading reasons for non-performance and compromised governance

in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted

funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it,

citizens are directly affected because apart from compromised governance, the huge money spent or elections pushes up the cost of everything in

the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine.

Electoral compulsions for funds become the foundation of the whole super structure of corruption.

4.14.3 Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement.

If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities. The Commission

recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These

accounts should be monitored through a system of checking and cross-checking through the income tax returns filed by the candidates, parties and

their well- wisher. At the end of the election each candidate should submit an audited statement of expenses under specific heads. The EC should

devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it

should be enforced by the Election Commission.

Any violation or misreporting should be dealt with strongly.

4.14.4 The Commission recommends that every candidate at the time of election must declare his assets and liabilities along with those of his close

relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define

the term "close relatives".

4.14.6 All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be

made public. Further, as a follow up action, the particulars of the assets and liabilities so given should be audited for a special authority created

specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required

under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their terms of office.

Candidates owing Governing Dues

4.23. It is recommended that all candidates should be required to clear government dues before their candidatures are accepted. This pertains to

payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they

are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be

no excuse.

22. Mr. P.P.Rao, learned senior counsel has drawn our attention to the "Ethics Manual for Members, Officers and Employees of the U.S. House

of Representatives", which inter alia provides as under--

Financial interests and investments of Members and employees, as well as those of candidates for the House of Representatives, may present

conflicts of interest with official duties. Members and employees need not, however, divest themselves of assets upon assuming their positions, nor

must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure

provides a means of monitoring and deterring conflicts.

All Members, officers, and employees are prohibited from improperly using their official positions for personal gain. Members, officers, candidates,

and certain employees must file annual Financial Disclosure Statements, summarizing financial information concerning themselves, their spouses,

and dependent children. Such statements must indicate outside compensation holdings and business transactions, generally for the calendar year

preceding the filing date.

Who must File

The following individuals must file Financial Disclosure Statements:-

* Members of the House of Representatives;

* Candidates for the House of Representatives;

When to File

Candidates who raise or spend more than $5,000 for their campaigns must file within 30 days of doing so, or by May 15, whichever is later, but in

any event at least 30 days prior to the elections in which they run.

Termination reports must be filed within 30 days of leaving government employment by Members, officers, and employees who file Financial

Disclosure Statements.

POLICIES UNDERLYING DISCLOSURE

Members, officers, and certain employees must annually disclose personal financial interests, including investments, income, and liabilities. Financial

disclosure provisions were enacted to monitor and to deter possible conflicts of interest due to outside financial holdings. Proposals for divestiture

of potentially conflicting assets and mandatory disqualification of Members from voting rejected as impractical or unreasonable. Such

disqualification could result in the disenfranchisement of a Member''s entire constituency on particular issues. A Member may often have a

community of interests with his constituency, may arguably have been elected because of and to serve these common interests, and thus would be

ineffective in representing the real interests of his constituents if he were disqualified from voting on issues touching those matters of mutual concern.

In rare instances, the House Rule on abstaining from voting may apply where a direct personal interest in a matter exists.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial

interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is

identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his

public duties.

The House has required public financial disclosure by rule Since 1968 and by statute since 1978.

SPECIFIC DISCLOSURE REQUIREMENTS

The Ethics in Government Act of 1978 mandated annual financial disclosure by all senior Federal personnel, including all Members and some

employees of the House. The Ethics Reforms Act of 1989 totally revamped these provisions and condensed what had been different requirements

for each branch into one uniform title covering the entire Federal Government. Financial Disclosure Statements must indicate outside compensation,

holdings and business transactions, generally for the calender year preceding the filing date. In all instances, filers may disclose addition information

or explanation at their discretion.

23. At this stage, it would be worth-while to note some observations made by the Committee on State Funding of Elections headed by Shri

Indrajit Gupta as Chairman and others, which submitted in report in 1998. In the concluding portion, it has mentioned as under--

CONCLUSION:--

1. Before concluding, the Committee cannot help expressing its considered view that its recommendations being limited in nature and confined to

only one of the aspects of the electoral reforms may bring about only some cosmetic changes in the electoral sphere. What is needed, however, is

an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particulars, criminalisation

of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect

which is sullying the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other sphere of electoral activity

are also urgently needed if the present recommendations of the Committee are to serve the intended useful purpose.

24. From the aforesaid reports of the Law Commission, National Commission to Review the Working of the Constitution, Conclusion drawn in the

report of Shri Indrajit Gupta and Ethics Manual applicable in an advance democratic country, it is apparent that for saving the democracy form the

evil influence of criminalization of politics, for saving the election from muscle and money power, for having true democracy and for controlling

corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it

is for the voters to decide in whose favour he should cast his vote.

25. Further, we would state that this Court has construed "freedom of speech and expression" in various decisions and on basis of tests laid

therein, directions were issued. In short, this aspect is discussed in paragraphs 31, 32 and 33 of our earlier judgment which read as under:--

31. In 272455 , the Constitution Bench considered a question--whether privilege can be claimed by the Government of Uttar Pradesh u/s 123 of

the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar

Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that ""the right to

know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is

claimed for transactions which can, at any rate, have no repercussion on public security"". The Court pertinently observed as under:-

In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets.

The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are

entitled to know the particulars of every public transaction in all its bearing.....

32. In Indian Express Newspapers (Bombay) Private Ltd. and Ors. etc. v. Union of India and Ors. : [1986] 159 ITR 856 (SC) , this Court dealt

with the validity of customs duty on the newsprint in context of Article 19(1)(a). The Court observed (in para 32) thus:

` ""The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make

responsible judgments.....

33. The Court further referred (in para 35) to the following observations made by this Court in 281763

...(The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the

proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse.... (But) ""it is

better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper

fruits"".

26. Again in paragraph 68, the Court observed:-

The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a

democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves (Per Lord Simon

of Glaisdale in Attorney-General v. Times Newspapers Ltd. 1973) 3 All ER 54. Freedom of expression, as learned writers have observed, has

four broad social purposes to serve: (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the

capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a

reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them

freely to others. In sum, the fundamental principle involved here is the people''s right to know. Freedom of speech and expression should,

therefore, receive a generous support from all those who believe in the participation of people in the administration.....

27. Even with regard to telecasting of events such as cricket, football and hockey etc., this Court in 288682 held that ""the right to freedom of

speech and expression also includes right to educate, to inform and to entertain and also the right to be educated, informed and entertained."" The

Court further held as under:-

82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in

the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to

express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which

makes democracy a farce when medium of information in monopolised either by a partisan central authority or by private individuals or oligarchic

organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 1/2 per cent of the

population has an access to the print media which is not subject to precensorship.....

28. The aforesaid passage leaves no doubt that right to participate by casting vote at the time of election would be meaningless unless the voters

are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation,

misinformation, non-information all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce. On this

aspect, no further discussion is required. However, we would narrate some observations made by Bhagwati, J. (as he then was) in 279525 , while

dealing with the contention of right to secrecy that--""there can be little doubt that exposure to public gaze and scrutiny is one of the surest means of

achieving a clean and healthy administration"". Further, it has been explicitly and lucidly held thus:--

64. Now it is obvious from the constitution that we have adopted a democratic form of Government. Where a society has chosen to accept

democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by

whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No

democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information

about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy

assigns to them and make democracy a really effective participatory democracy. ""Knowledge"" said James Madison, ""will for ever govern

ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government

without popular information or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both."" The citizens'' right to know the

facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for

openness in the government is increasingly growing in different parts of the world.

65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist

merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking

any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous

and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the

conduct of the government and the merits of public policies, so that democracy does not remain merely (SIC) sporadic exercise in voting but

becomes a continuous process of government--an attitude and habit of min(SIC) But this important role people can fulfil in a democracy only if it is

an open government where there is full access to information in regard to the functioning of the government.

29. It was further observed.

67. .....The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech

and expression guaranteed under Article 19(1)(a).....The approach of the court must be to attenuate the area of secrecy as much as possible

consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is

in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act.

30. From the aforesaid discussion it can be held that it is expected by all concerned and as has been laid down by various decisions of this Court

that for survival of true democracy, the voter must be aware of the antecedents of his candidate. Voter has to caste intelligent and rational vote

according to his own criteria. A well informed voter is the foundation of democratic structure. That information to a voter, who is the citizen of this

country, is one facet of the fundamental right under Article 19(1)(a).

ARTICLE 145(3) OF THE CONSTITUTION OF INDIA--

31. Mr. Arun Jaitley, learned Senior Counsel and Mr. Kirit N. Raval, learned Solicitor General submitted that the question involved in these

petitions is a substantial question of law as to the interpretation of the Constitution and, therefore, the matter may be referred to a Bench consisting

of Five Judges.

32. In our view, this contention is totally misconceived. Article 19(1)(a) is interpreted in numerous judgments rendered by this Court. After

considering various decisions and following tests laid therein, this Court in Association for Democratic Reforms (supra) arrived at the conclusion

that for survival of the democracy, right of the voter to know antecedents of a candidate would be part and parcel of his fundamental right. It

would be the basis for free and fair election which is a basic structure of the Constitution. therefore, the question relating to interpretation of Article

19(1)(a) is concluded and there is no other question which requires interpretation of Constitution.

33. Dealing with the similar contention, Five Judge Bench of this Court in 282044 succinctly held thus:--

What does interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood. The

question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision--one party suggesting one

construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in

respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution. On an interpretation

of Article 14, a series of decisions of this Court evolved the doctrine of classification. As we have pointed out, at no stage of the proceedings either

the correctness of the interpretation of Article 14 or the principles governing the doctrine of classification have been questioned by either of the

parties. Indeed accepting the said doctrine, the appellants contended that there was a valid classification under the rule while the respondents

argued contra. The learned Additional Solicitor General contended, for the first time, before us that the appeal raised a new facet of the doctrine of

equality, namely, whether an artificial person and a natural person have equal attributes within the meaning of the equality clause, and, therefore, the

case involves a question of interpretation of the Constitution. This argument, if we may say so, involves the same contention in a different garb. If

analysed, the argument only comes to this: as an artificial person and a natural person have different attributes, the classification made between

them is valid. This argument does not suggest a new interpretation of Article 14 of the Constitution, but only attempts to bring the rule within the

doctrine of classification. We, therefore, hold that the question raised in this case does not involve any question of law as to the interpretation of the

Constitution.

34. The aforesaid judgment is referred to and relied upon in 283276 .

35. From the judgment rendered by this Court in Association for Democratic Reforms (supra), it is apparent that no such contention was raised by

the learned Solicitor General who appeared in appeal filed on behalf of the Union of India that question involved in that matter was required to be

decided by five-Judge Bench, as provided under Article 145(3) of the Constitution. The question raised before us has been finally decided and no

other substantial question of law regarding the interpretation of the Constitution survives. Hence, the matter is not required to be referred to five-

Judge Bench.

WHETHER IMPUGNED SECTION 33B CAN BE CONSIDERED AS VALIDATING PROVISION:--

36. The learned counsel for the respondent submitted that by the impugned legislation, most of the directions issued by the Court are complied with

and vacuum pointed out is filled in by the legislation. It is their contention that the Legislature did not think it fit that the remaining information as

directed by this Court is required to be given by a contesting candidate.

37. This submission is, on the face of it, against well settled legal position. In a number of decisions rendered by this Court, similar submission is

negatived. The legislature has no power to review the decision and set it at naught except by removing the defect which is the cause pointed out by

the decision rendered by the court. If this is permitted it would sound the death knell of the rule of law as observed by this Court in various

decisions. In P. Sambamurthy v. State of Andhra Pradesh, AIR 1987 SC 663 this Court observed:--

4. .....it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the

Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that

the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power

of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the

State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by

overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would cease to have any meaning, because

then it would be open to the State Government to defy the law and yet to get away with it. The proviso to Clause (5) of Article 371-D is,

therefore, clearly violative of the basic structure doctrine.

38. In 273117 the Court referred to and relied upon the decision in P. Sambamurthy (Supra). In that case, the Court dealt with the validity of the

Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 issued by the Government of Karnataka giving overriding effect that

notwithstanding anything contained in any order, report or decision of any Court or Tribunal except the final decision under the provisions of Sub-

section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956 shall have any effect and held that the Ordinance in

question which seeks directly to nullify the order of the Tribunal impinges on the judicial power of the State and is, therefore, ultra vires. After

referring to the earlier decisions, the Court observed thus:--

74. .....it would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if

legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific

settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the

judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and

thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter

parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and

to functioning as an appellate court or tribunal.

39. Further, in 267266 this Court (in para 7) held thus:--

...But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts. The

limits of the power of Legislatures to interfere with the directions issued by courts were considered by several decisions of this Court. In 280357 ,

our present Chief Justice speaking for the Constitution Bench of the Court observed:

Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general.

When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for

ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course, is that

the Legislature must possess the power to impose the tax for, if it does not, the action must ever remain ineffective and illegal. Granted legislative

competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in

exercise of judicial power which the Legislature does not possess or exercise. A court"s decision must always bind unless the conditions on which

it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to

be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction.

Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact

removed and the tax thus made legal. Sometime this is done by providing for jurisdiction where jurisdiction had not been properly invested before.

Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand

under the re-enacted law

40. In 293354 , Mitter, J., speaking for the Court stated the legal position in these words:

The argument of counsel for the appellant was that although it was open to the State legislature by an Act and the Governor by an Ordinance to

amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for either of them to validate an order of

transfer which had already been quashed by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could

not be resuscitated by the Governor or the Legislature and the validating measures could not touch any adjudication by the Court.

.....A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence

of the Legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down or declare invalid any Act

or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any

decision of a court of law to be void or of not effect.

41. For the purpose of deciding these petitions, the principles emerging from various decisions rendered by this Court from time to time can inter

alia be summarised thus:--

-- the legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, this power can be

exercised subject to Constitutional provision, particularly, legislative competence and if it is violative of fundamental rights enshrined in Part-III of

the Constitution, such law would be void as provided under Article 13 of the Constitution. Legislature also cannot declare any decision of a Court

of law to be void or of no effect.

42. As stated above, this Court has held that Article 19(1)(a) which provides for freedom of speech and expression would cover in its fold right of

the voter to know specified antecedents of a candidate, who is contesting election. Once it is held that voter has a fundamental right to know

antecedents of his candidate, that fundamental right under Article 19(1)(a) could be abridged by passing such legislation only as provided under

Article 19(2) which provides as under:

19. Protection of certain rights regarding freedom of speech, etc.--(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any

existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred

by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public

order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

43. So legislative competence to interfere with a fundamental right enshrined in Article 19(1)(a) is limited as provided under Article 19(2).

44. Learned counsel for the respondents have not pointed out how the impugned legislation could be justified or saved under Article 19(2).

DERIVATIVE FUNDAMENTAL RIGHT--

45. Learned senior counsel Mr. Jaitley developed an ingenious submission that as there is no specific fundamental right of the voter to know

antecedents of a candidate, the declaration by this Court of such fundamental right can be held to be derivative, therefore, it is open to the

Legislature to nullify it by appropriate legislation.

46. In our view, this submission requires to be rejected as there is no such concept of derivative fundamental rights. Firstly, it should be properly

understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedom have no fixed contents. From time to

time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since last more than 50 years, this Court has interpreted articles

14, 19 and 21 and given meaning and colour so that nation can have a truly republic democratic society. This cannot be undone by such an

Ordinance/Amended Act. For this, we would refer to the discussion by Mohan, J. in 273875 , while considering the ambit of Article 21, he

succinctly placed it thus:--

25. In 289511 , Mathew J stated therein that the fundamental rights themselves have no fixed content, most of them are empty vessels into which

each generation must pour its content in the light of its experience. It is relevant in this context to remember that in building up a just social order it

is sometimes imperative that the fundamental rights should be subordinated to directive principles.

26. In 274242 , it has been stated that:

The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than accentuate their meaning and content by

process of judicial construction... Personal liberty in Article 21 is of the widest amplitude.

27. In this connection, it is worthwhile to recall what was said of the American Constitution in Missouri v. Holland 252 US 416:

When we are dealing with words that also are constituent act, like the Constitution of the United States, we must realize that they have called into

life a being the development of which could not have been foreseen completely by the most gifted of its begetters.

47. Thereafter, the Court pointed out that several unenumerated rights fall within the ambit of Article 21 since personal liberty is of widest

amplitude and categorized them (in para 30) thus:--

(1) The right to go abroad. 281045

(2) The right to privacy. 284762 . In this case reliance was placed on the American decision in Griswold v. Connecticut 381 US 479.

(3) The right against solitary confinement 276776 .

(4) The right against bar fetters. 280063 .

(5) The right to legal aid 278155 .

(6) The right to speedy trial 284764 .

(7) The right against handcuffing. 279409 .

(8) The right against delayed execution 271962 .

(9) The right against custodial violence. 286818 .

(10) The right against public hanging. A.G. of India v. Lachma Devi : 1986CriLJ364 .

(11) Doctor''s assistance. 285792 .

(12) 258808 .

48. Further, learned senior counsel Mr. Sachhar referred to the following decisions of this Court giving meaning to the phrase ""freedom of speech

and expression"":--

(1) 281763

Freedom of speech and expression includes freedom of propagation of ideas which is ensured by freedom of circulation. [Head note (ii)]

(2) 281925

Pre-censorship of a journal is restriction on the liberty of press.

(3) 265363

Advertisements meant for propagation of ideas or furtherance of literature or human thought is a part of Freedom of Speech and Expression.

(4) 284272

Freedom of Speech and Expression carries with it the right to publish and circulate one''s ideas, opinions and views.

(5) 282606

Freedom of Press means right of citizens to speak, publish and express their views as well as right of people to read. (Para 45)

(6) Indian Express Newspapers (Bombay) (P) Ltd. and Ors. v. Union of India and Ors. : [1986] 159 ITR 856 (SC)

Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self fulfillment,

(ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a

mechanism by which it would be possible to establish a reasonable balance between stability and social change.

(7) 290756 .

Freedom of Speech and Expression includes right of citizens to exhibit film on doordarshan.

(8) 270511

Freedom of Speech and Expression means the right to express one''s opinion by words of month, writing, printing, picture or in any other manner.

It would thus include the freedom of communication and the right to propagate or publish opinions.

(9) 282502

Freedom of speech and expression is a natural right which a human being acquires by birth. It is, therefore, a basic human right (Article 19 of

Universal Declaration of Human Rights relied on). Every citizen, therefore, has a right to air his or her views through the printing and/or electronic

media or through any communication method.

(10) 288682

The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the

citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful

democracy posits an ''aware'' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed

judgment on all issues touching them.

(11) 279525

Right to know is implicit in right of free speech and expression. Disclosure of information regarding functioning of the government must be the rule.

(12) 272455

Freedom of speech and expression includes the right to know every public act, everything that is done in a public way, by their public functionaries.

(13) 298785

Freedom of speech and expression includes right of the citizens to know about the affairs of the Government.

49. There are many other judgments which are not required to be reiterate in this judgment. All these developments of law giving meaning to

freedom of speech and expression or personal liberty are not required to be re-considered nor there could be legislation so as to nullify such

interpretation except as provided under the exceptions to Fundamental Rights.

50. Learned counsel for the respondents relied upon 280375 and submitted that in the said case the Court observed that right to privacy is not

enumerated as fundamental right in our Constitution but has been inferred from Article 21. In that case reliance was placed on 279388 , 284762

and other decisions of England and American Courts and thereafter, the Court held that petitioners have a right to publish what they alleged to be a

life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go

beyond that and publish his life story, they may be invading his right to privacy for the consequences in accordance with law. For this purpose, the

Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education

among other matters. None can publish anything concerning the above matters without his consent--whether truthful or otherwise and whether

laudatory or critical. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a

controversy. The Court also pointed out an exception namely:--

This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate

subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an

exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further

be subjected to the indignity of her name and the incident being published in press/media.

51. From the aforesaid observations learned Solicitor General Mr. Raval and learned senior counsel Mr. Jaitley contended that rights which are

derivatives would be subject to reasonable restriction. Secondly, it was sought to be contended that by insisting for declaration of assets of a

candidate, right to privacy is affected. In our view, the aforesaid decision nowhere supports the said contention. This Court only considered--to

what extent a citizen would have right to privacy under Article 21. The court itself has carved out the exceptions and restrictions on absolute right

of privacy. Further, by declaration of a fact, which is a matter of public record that a candidate was involved in various criminal cases, there is no

question of infringement of any right of privacy. Similarly, with regard to the declaration of assets also, a person having assets or income is normally

required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to

acquire public office, such declaration would not affect his right or privacy. This is the necessity of the day because of statutory provisions of

controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other

Committees as stated above.

52. Even the Prime Minister of India in one of his Speeches has observed to the same effect. This has been reproduced in B.R. Kapur"s case

(supra) by Pattanaik, J. (as he then was) (in Para 74) as under:--

.....Mr. Diwan in course of his arguments, had raised some submissions on the subject--""Criminalization of Politics"" and participation of criminals

in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated

28.8.1997.....--""Whither Accountability"", published in The Pioneer, Shri Atal Behari Vajpayee had called for a national debate on all the possible

alternatives for systematic changes to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither

Parliament nor the State Vidhan Sabhas are doing, with any degree of competence or commitment, what they are primarily meant to do; legislative

function. According to him, barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in

law making nor do they seem to have at inclination to develop the necessary knowledge and competence in their profession. He has further

indicated that those individuals in society who are generally interested in serving the electorate and performing legislative functions are finding it

increasingly difficult to succeed in today''s electoral system and the electoral system has been almost totally subverted by money power, muscle

power, and vote bank considerations (SIC) castes and communities. Shri Vajpayee also has indicated that the corruption in the governing

structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing

structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek

opportunities alliances and coalitions often without the popular mandate. Yet they capture and survive in power due to inherent systematic flows.

He further stated that casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. The

manifestos, policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability.

53. Further, this Court while dealing with the election expenses observed in 293084 observed thus:--

18. ...Flags go up, walls are painted and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs

and VVIPs come and go, some of them in helicopters and air-taxies. The political parties in their quest for power spend more than one thousand

crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability

anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody

know. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot

be permitted.

54. To combat this naked display of unaccounted/black money by the candidate, declaration of assets is likely to have check of violation of the

provisions of the Act and other relevant Acts including Income Tax Act.

55. Further, the doctrine of the Parliamentary sovereignty as it obtains in England does not prevail here except to the extent and in the fields

provided by the Constitution. The entire scheme of the Constitution is such that it ensures the sovereignty and integrity of the country as a Republic

and the democratic way of life by parliamentary institutions based on free and fair elections.

56. In 280963 , this Court observed thus--

... Parliamentary democracy is part of the basic structure of the Constitution. It is settled law that in interpreting the constitutional provision the

Court should adopt a construction which strengthens the foundational features and basic structure of the Constitution. [See: 261354 .

57. In 264213 the Court observed (in para 22) thus:--

...If the call for ""purity of elections"" is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect

of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have

made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by Parliament.

58. In 296183 , this Court observed thus--

10. The Preamble of our Constitution proclaims that we are a Democratic Republic Democracy being the basic feature of our constitutional set-

up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in

the country.

59. As observed in Kesavananda Bharati''s case (Supra), the fundamental rights themselves have no fixed content and it is also to be stated that

the attempt of the Court should be to expand the reach and ambit of the fundamental rights. The Constitution is required to be kept young,

energetic and alive. In this view of the matter, the contention raised by the learned counsel for the respondents, that as the phrase ''freedom of

speech and expression'' is given the meaning to include citizens'' right to know the antecedents of the candidates contesting election of MP or

MLA, such rights could be set at naught by legislature, requires to be rejected.

RIGHT TO VOTE IS STATUTORY RIGHT:--

60. Learned counsel for the respondents vehemently submitted that right to clear or to be elected is pure and simple statutory right and in the

absence of statutory provision neither citizen has a right to elect nor has he a right to be elected because such right is neither fundamental right nor a

common law right. It is, therefore, submitted that it cannot be held that a voter has any fundamental right of knowing the antecedents/assets of a

candidate contesting the election. Learned Solicitor General Mr. Raval also submitted that on the basis of the decision rendered by this Court, the

Act is amended by the impugned Ordinance/Amendment Act. However, for the directions which are left out, the presumption would be - it is

deliberate omission on the part of Legislature and, therefore, there is no question of it being violative of Article 19(1)(a). He submitted that law

pertaining to election depends upon statutory provisions. Right to vote, elect or to be elected depends upon statutory rights. For this purpose, he

referred to the decision in 272390 , 290885 and 264213

61. There cannot be any dispute that the right to vote or stand as a candidate for election and decision with regard to violation of election law is not

a civil right but is a creature of statute or special law and would be subject to the limitations envisaged therein. It is for the Legislature to examine

and provide provisions relating to validity of election and the jurisdiction of the Court would be limited in accordance with such law which creates

such election Tribunal.

62. In the case of N.P. Punnuswami (supra), a person whose nomination paper was rejected, filed a writ of certiorari, which was dismissed on the

ground that it had no jurisdiction to interfere with the order of the Returning officer by reason of Article 329(b) of the Constitution.

63. In the case of G.N. Narayanswami (supra), this Court was dealing with the election petition wherein the issue which was required to be

decided was whether the respondent was not qualified to stand for election to the Graduates constituency on all or any of the grounds set out by

the petitioner in paragraphs 7 to 9 of the election petition. The Court referred to Article 171 and thereafter observed that the term ''electorate''

used in Article 171(3(a)(b)(c) has neither been defined by the Constitution nor in any enactment by Parliament. The Court thereafter referred to the

definition of ''elector'' given in Section 2(1)(a) of the RP Act and held that considering the language as well as the legislative history of Articles 171

and 173 of the Constitution and Section 6 of the RP Act, there could be a presumption of deliberate omission of the qualification that the

representative of the Graduates should also be a graduate.

64. Similarly, in C. Narayanaswamy''s case (supra), the Court was dealing with the validity of an election of a candidate on the ground of alleged

corrupt practice as provided u/s 123(1)(A) of the Act and in that context the Court held that right of a person to question the validity of an election

is dependent on a conditions prescribed in the different Sections of the Act and the Rules framed thereunder. The Court thereafter held that as the

Act does not provide that any expenditure incurred by a political party or by any other association or body of persons or any individual other than

the candidate or his election agent, it shall not be deemed to be expenditure in connection with the election or authorised by a candidate or his

election agent for the purpose of Sub-section (1) of Section 77 read with Rule 90.

65. Learned counsel further referred to the decisions in 285565 wherein similar observations are made by this Court while deciding election

petition:

8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure

and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right

to be elected and no right to dispute and election. Statutory creations they are, and therefore, subject to statutory limitation. ..... Concepts familiar

to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on

considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes is what the statute lays down. .....

We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity.

We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?

66. It has to be stated that in an election petition challenging the validity of election, rights of the parties are governed by the statutory provisions for

setting aside the election but this would not mean that a citizen who has right to be a voter and elect his representative in the Lok Sabha or

Legislative Assembly has no fundamental right. Such a voter who is otherwise eligible to cast vote to elect his representative has statutory right

under the Act to be a voter and has also a fundamental right as enshrined in Chapter-III. Merely because a citizen is a voter or has a right to elect

his representative as per the Act, his fundamental rights could not be abridged, controlled or restricted by statutory provisions except as

permissible under the Constitution. If any statutory provision abridges fundamental right, that statutory provision would be void. It also requires to

be well understood that democracy based on adult franchise is part of the basic structure of the Constitution. The right of adult to take part in

election process either as a voter or a candidate could be restricted by a valid law which does not offend Constitutional provisions. Hence, the

aforesaid judgments have no bearing on the question whether a citizen who is a voter has fundamental right to know antecedents of his candidate.

It cannot be held that as there is deliberate omission in law, the right of the voter to know antecedents of the candidates, which is his fundamental

right under Article 19(1)(a), is taken away.

67. Mr. Raval, learned Solicitor General submitted that an enactment can not be struck down on the ground that Court thinks it unjustified.

Members of the Parliament or the Legislature are representatives of the people and are supposed to know and be aware of what is good and bad

for the people. The Court can not sit in the judgment over their wisdom. He relied upon the decision rendered by this Court in 286359 , wherein

the Court considered the validity of Section 77(1) of the Act and referred to report of the Santhanam Committee on Prevention of Corruption,

which says (para 10):

The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by

political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can

also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties

should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognised that political

parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathisers

of the parties concerned.

68. The Court also referred to various decisions and thereafter held thus:--

13. We have referred to this large data in order to show that the influence of big money on the election process is regarded universally as an evil

of great magnitude. But then, the question which we, as Judges, have to consider is whether the provision contained in Explanation 1 suffers from

any constitutional infirmity and, particularly, whether it violates Article 14. On that question we find it difficult, reluctantly though, to accept the

contention that Explanation 1 offends against the right to equality. Under that provision, (i) a political party or (ii) any other association or body of

persons or (iii) any individual, other than the candidate or his election agent, can incur expenses, without any limitation whatsoever, in connection

with the election of a candidate. Such expenses are not deemed to be expenditure in connection with the election, incurred or authorised by the

candidate or by his election agent for the purposes of Section 77(1).

69. Learned Solicitor General heavily relied upon paragraph 19, wherein the Court observed thus:--

The petitioner is not unjustified in criticising the provision contained in Explanation 1 as diluting the principle of free and fair elections, which is the

cornerstone of any democratic polity. But, it is not for us to lay down policies in matters pertaining to elections. If the provisions of the law violate

the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which

underlies it.

70. From the aforesaid discussion it is apparent that the Court in that case was dealing with the validity of the Explanation-I and was deciding

whether it suffered from any Constitutional infirmity, particularly, whether it was violative of Article 14. The question of Article 19(1)(a) was not

required to be considered and the Court had not even touched it. At the same time, there cannot be any dispute that if the provisions of the law

violate the Constitutional provisions, they have to be struck down and that is what is required to be done in the present case. It is made clear that

no provision is nullified on the ground that the Court does not approve the underlying the policy of the enactment.

71. As against this, Mr. Sachar, learned senior counsel rightly referred to a decision rendered by this Court in 282606 , where similar contentions

were raised and negative while imposing restrictions by Newspaper Control Order. The Court"s relevant discussion is as under:--

31. Article 19(1)(a) provides that all citizens shall have the right to freedom of speech and expression, Article 19(2) states that nothing in Sub-

clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes

reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State; friendly relations with

foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Although Article

19(1)(a) does not mention the freedom of the Press, it is the settled view of this Court that freedom of speech and expression includes freedom of

the Press and circulation.

32. In the Express Newspapers case (supra) it is said that there can be no doubt that liberty of the Press is an essential part of the freedom of

speech and expression guaranteed by Article 19(1)(a). The Press has the right of free propagation and free circulation without any previous

restraint on publication. If a law were to single out the Press for laying down prohibitive burdens on it that would restrict the circulation, penalise its

freedom of choice as to personnel, prevent newspapers from being started and compel the press to Government aid. This would violate Article

19(1)(a) and would fall outside the protection afforded by Article 19(2).

33. In Sakal Papers case (supra) it is said that the freedom of speech and expression guaranteed by Article 19(1) gives a citizen the right to

propagate and publish his ideas to disseminate them, to circulate them either by words of mouth or by writing. This right extends not merely to the

matter it is entitled to circulate but also to the volume of circulation. In Sakal Papers case (supra) the Newspaper (Price and Page) Act, 1956

empowered the Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate the allocation of space for

advertisement matter. The Government fixed the maximum number of pages that might be published by a newspaper according to the price

charged. The Government prescribed the number of supplements that would be issued. This Court held that the Act and the Order placed

restraints on the freedom of the press to circulate. This Court also held that the freedom of speech could not be restricted for the purpose of

regulating the commercial aspects of activities of the newspapers.

72. The Court also dealt with the contention that newsprint policy does not directly deal with the fundamental right mentioned in Article 19(1)(a). It

was also contended that regulatory statutes which do not control the content of speech but incidentally limit the venture exercise are not regarded

as a type of law. Any incidental limitation or incidental restriction on freedom of speech is permissible as the same is essential to the furtherance of

important governmental interest in regulating speech and freedom. The Court negatived the said contention and in para 39 held thus:--

39. Mr. Palkhivala said that the tests of pith and substance of the subject-matter and of direst and incidental effect of the legislation are relevant to

question of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and

correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The true test is whether the effect of the

impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct

abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the

subject matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject-matter may be

different.

73. The Court observed in Paragraph 80 at page 823:--

...The faith in the popular Government rests on the old dictum, ""let the people have the truth and the freedom to discuss it and all will go well."" The

liberty of the press remains an ""Art of the Covenant"" in every democracy.

74. Further, the freedom of speech and expression, as has been held repeatedly, is basic to and indivisible from a democratic polity. It includes

right to impart and receive information. [Secretary, Min. of Information & Broadcasting (supra)]. Restriction to the said right could be only as

provided in Article 19(2). This aspect is also discussed in paragraph 151 (page 270) thus:

Article 19(1)(a) declares that all citizens shall have the right of freedom of speech and expression. Clause (2) of Article 19, at the same time,

provides that nothing in Sub-clause (i) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar

as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and

integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality of in relation to contempt of

court, defamation or incitement of an offence. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and

expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of india,

security of the State, friendly relations with the foreign States. Public order, decency or morality. Similarly, the said right cannot be so exercised as

to amount to contempt of court, defamation or incitement of an offence. Existing laws providing such restrictions are saved and the State is free to

make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining conditions in which

the said right can meaningfully and peacefully be exercised by the citizen of this country.

75. Hence, in our view, right of a voter to know bio-date of a candidate is the foundation of democracy. The old dictum--let the people have the

truth and the freedom to discuss it and all will go well with the Government--should prevail.

76. The true test for deciding the validity of the Act is--whether it takes away or abridges fundamental rights of the citizens? If there is direct

abridgment of fundamental right of freedom of speech and expression, the law would be invalid.

77. Before parting with the case, there is one aspect which is to be dealt with. After the judgment in Association for Democratic Reforms case, the

Election Commission gave certain directions in implementation of the judgment by its Order No. 3/ER/2002/JS-II/Vol-111, dated 28th June,

2002. In the course of arguments, learned Solicitor General as well as learned senior counsel appearing for the intervenor (B.J.P.) pointed out that

direction No. 4 is beyond the competence of the Election Commission and moreover, it is not necessary to give effect to the judgment of this

Court. The said direction reads as follows:

Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may

also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered

by the returning officer to be a defeat of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing

wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is

capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by

him at the time of scrutiny of nominations u/s 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be

taken into account by him for further consideration of the question whether the same is a defect of substantial character."

78. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Association for Democratic

Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a

summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the

returning officer to consider the truth or otherwise of the details furnished with reference to the ''documentary proof''. Very often, in such matters

the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient

time is provided, he may be able to produce proof to contradict the objector''s version. It is true that the aforesaid directions issued by the Election

Commission is not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in

the light of directions issued in Association for Democratic Reforms case (supra) and as provided under the Representation of the People Act and

its 3rd Amendment.

79. Finally, after the amendment application was granted, following additional contentions were raised:--

1. Notice should be issued to the Attorney General as vires of the Act is challenged.

2. Parliament in its wisdom and after due deliberation has amended the Act and has also incorporated the directions issued by this Court in its

earlier judgment in Association for Democratic Reforms (supra) including the direction for declaration of assets and liabilities of every elected

candidate for a House of Parliament. The are also required to declare assets of their spouse and dependent children.

80. The Contention that notice is required to be issued to the Attorney General as vires of the Act is challenged, is of no substance because ''Union

of India'' is party respondent and on its behalf learned Solicitor General is appearing before the Court. He has forcefully raised the contentions

which were required to be raised at the time of hearing of the matter. So, service of notice to learned Attorney General would be nothing but

empty formality and the contention is raised for the sake of raising such contention.

81. Further, we have also reproduced certain recommendations of the National Commission to Review the Working of the Constitution in the

earlier paragraphs and have also relied upon the same. In the report, the Commission has recommended that any person charged with any offence

punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of

Parliament of Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the Court in that

offence. The Commission has also recommended that every candidate at the time of election must declare his assets and liabilities along with those

of his close relatives and all candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by

them should be made public. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final

statement in this regard at the end of their term of office. Many such other recommendations are reproduced in earlier paragraphs.

82. With regard to the second contention, it has already been dealt with in previous paragraphs.

83. What emerges from the above discussion can be summarised thus:--

(A) The legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective but the legislature

has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Court. A declaration that an order made

by a Court of law is void is normally a part of the judicial function. Legislature cannot declare that decision rendered by the Court is not binding or

is of no effect.

It is true that legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is

subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any Court or directions issued by the Election

Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed

or furnished under the Act or the Rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that vote has

a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in

this judgment.

Amendment Act does not wholly cover the directions issued by this Court. On the contrary, it provides that candidate would not be bound to

furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in Association for Democratic Reforms (supra) has attained finality, therefore, there is no question of

interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to known the antecedents of a

candidate, the directions given by this Court are against the statutory provisions are, on the face of it, without any substance. In an election petition

challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However,

voters fundamental right to know antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this

country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be

sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless

unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one

of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour

its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of

judicial interpretation. During last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between

the fundamental rights mentioned in Chapter-III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this

Court.

84. In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective

effect but would be prospective. Writ petitions stand disposed of accordingly.

P. Venkatarama Reddi, J.

85. The width and amplitude of the right to information about the candidates contesting elections to the Parliament or State Legislature in the

context of the citizen''s right to vote broadly falls for consideration in these writ petitions under Article 32 of the Constitution. While I respectfully

agree with the conclusion that Section 33(B) of the Representation of the People Act, 1951 does not pass the test of constitutionality, I have come

across a limited area of disagreement on certain aspects, especially pertaining to the extent of disclosures that could be insisted upon by the Court

in the light of legislation on the subject. Moreover, the importance and intricacies of the subject-matter and the virgin ground trodden by this Court

in 272687 to bring the right to information of the voter within the sweep of Article 19(1)(a) has impelled me to elucidate and clarify certain crucial

aspects. Hence, this separate opinion.

I. (1). Freedom of expression and right to information

86. In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the

firmament of Part III. We must take legitimate pride that this cherished freedom has grown from strength to strength in the post independent era. It

has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional Courts. Barring a few

aberrations, the Executive Government and the Political Parties too have not lagged behind in safeguarding this valuable right which is the insignia of

democratic culture of a nation. Nurtured by this right, Press and electronic media have emerged as powerful instruments to mould the public

opinion and to educate, entertain and enlighten the public.

87. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by this Court

right from 1950s. It has been variously described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom

of propagation and inter-change of ideas, dissemination of information which would help formation of one"s opinion and viewpoint and debates on

matters of public concern. The importance which our Constitution- makers wanted to attach to this freedom is evident from the fact that reasonable

restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the

right.

88. In due course of time, several species of rights unremunerated in Article 19(1)(a) have branched off from the genus of the Article through the

process of interpretation by this apex Court. One such right is the "right to information". Perhaps, the first decision which has adverted to this right

is 272455 . "The right to know", it was observed by Mathew, J. ""Which is derived from the concept of freedom of speech, though not absolute is

a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security"". It

was said very aptly--

In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets.

The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.

89. The next milestone which showed the way for concretizing this right is the decision in 279525 in which this Court dealt with the issue of High

Court Judges'' transfer. Bhagwati, J. observed--

The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and

expression guaranteed under Article 19(1)(a). therefore, disclosure of information in regard to the functioning of the Government must be the rule

and secrecy an exception...

90. Peoples'' right to know about governmental affairs was emphasized in the following words:

No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information

about the functioning of the Government. It is only when people known how Government is functioning that they can fulfill the role which

democracy assigns to them and make democracy a really effective participatory democracy.

91. These two decisions have recognized that the right of the citizens to obtain information on matters relating to public acts flows from the

fundamental right enshrined in Article 19(1)(a). The pertinent observations made by the learned Judges in these two cases were in the context of

the question whether the privilege u/s 123 of the Evidence Act could be claimed by the State in respect of the Blue Book in the first case i.e., Raj

Narain''s case (supra) and the file throwing light on the consultation process with the Chief Justice, in the second case. Though the scope and ambit

of Article 19(1)(a) vis-a-vis the right to information did not directly arise for consideration in those two landmark decisions, the observations

quoted supra have certain amount of relevance in evaluating the nature and character of the right.

92. Then, we have the decision in 298785 . This Court was confronted with the issue whether background papers and investigatory reports which

were referred to in Vohra Committee''s Report could be compelled to be made public. The following observations of Ahmadi, C.J. are quite

pertinent:--

In modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been

elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has

recognized limitations; it is, by no means, absolute.

93. The proposition expressed by Mathew, J. in Raj Narain''s Case (supra) was quoted with approval.

94. The next decision which deserves reference is the case of 288682 . Has an organizer or producer of any event a right to get the event telecast

through an agency of his choice whether national or foreign? That was the primary question decided in that case. It was highlighted that the right to

impart and receive information is a part of the fundamental right under Article 19(1)(a) of the Constitution. On this point, Sawant, J. had this to say

at Paragraph 75--

The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the

Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to

telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property.....

95. Jeevan Reddy, J. spoke more or less in the same voice:

The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this

country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy

posits an ''aware'' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all

issues touching them.

96. A conspectus of these cases would reveal that the right to receive and impart information was considered in the context of privilege pleaded by

the State in relation to confidential documents relating to public affairs and the freedom of electronic media in broadcasting/telecasting certain

events.

I. (2). Right to information in the context of the voter''s right to known the details of contesting candidates and the right of the media and others to

enlighten the voter.

97. For the first time in Union of India v. Association for Democratic Reforms'' case (supra), which is the forerunner to the present controversy,

the right to known about the candidate standing for election has been brought within the sweep of Article 19(1)(a). There can be no doubt that by

doing so, a new dimension has been given to the right embodied in Article 19(1)(a) through a creative approach dictated by the need to improve

and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. It must be

noted that the right to information evolved by this Court in the said case is qualitatively different from the right to get information about public affairs

or the right to receive information through the Press and electronic media, though to a certain extent, there may be overlapping. The right to

information of the voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to

his personal matters. Secondly, that right cannot materialize without State''s intervention. The State or its instrumentality has to compel a subject to

make the information available to public, by means of legislation or orders having the force of law. With respect, I am unable to share the view that

it stands on the same footing as right to telecast and the right to view the sports and games or other items of entertainment through television (vide

observations at Paragraph 38 of of Association for Democratic Reforms case). One more observation at Paragraph 30 to the effect that ""the

decision making process of a voter would include his right to known about public functionaries who are required to be elected by him"" needs

explanation. Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. therefore, the

right to know about a public act done by a public functionary to which we find reference in Raj Narain''s case (supra) is not the same thing as the

right to know about the antecedents of the candidate contesting for the election. Nevertheless, the conclusion reached by the Court that the voter

has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article 19(1)(a) can be justified on

good and substantial grounds. To this aspect, I will advert a little later. Before that, I would like to say that it would have been in the fitness of the

things if the case [U.O.I. v. Association for Democratic Reforms] was referred to the Constitution Bench as per the mandate of Article 145(3) for

the reason that a new dimension has been added to the concept of freedom of expression so as to bring within its ambit a new species of right to

information. Apparently, no such request was made at the hearing and all parties invited the decision of three Judge Bench. The law has been laid

down therein elevating the right to secure information about a contesting candidate to the position of a fundamental right. That decision has been

duly taken note of by the Parliament and acted upon by the Election Commission. It has attained finality. At this stage, it would not be appropriate

to set the clock back and refer the matter to Constitution Bench to test the correctness of the view taken in that case. I agree with my learned

brother Shah, J. in this respect. However, I would prefer to give reasons of my own--may not be very different from what the learned Judge had

expressed, to demonstrate that the proposition laid down by this Court rests on a firm Constitutional basis.

98. I shall now proceed to elucidate as to how the right to know the details about the contesting candidate should be regarded as a part of the

freedom of expression guaranteed by Article 19(1)(a). This issue has to be viewed from ore than one angle--from the point of view of the voter,

the public viz., representatives of Press, organizations such as the petitioners which are interested in taking up public issues and thirdly from the

point of view of the persons seeking election to the legislative bodies.

99. The trite saying the ''democracy is for the people, of the people and by the people'' has to be remembered for ever. In a democratic republic, it

is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections

based on universal adult suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a

candidate. ""Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue"", as observed by this

Court in 267214 quoting from Black''s Law Dictionary. The citizens of the country are enabled to take part in the Government through their

chosen representatives. In a Parliamentary democracy like ours, the Government of the day is responsible to the people through their elected

representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The peoples''

representatives fill the role of law-makes and custodians of Government. People look to them for ventilation and redressal of their grievances. They

are the focal point of the will and authority of the people at large. The moment they put in papers for contesting the election, they are subjected to

public gaze and public scrutiny. The character, strength and weakness of the candidate is widely debated. Nothing is therefore more important for

sustenance of democratic polity than the voter making an intelligent and rational choice of his or her representative. For this, the voter should be in

a position to effectively formulate his/her opinion and to ultimately express that opinion through ballot by casting the vote. The concomitant of the

right to vote which is the basic postulate of democracy is thus two fold: first, formulation of opinion about the candidates and second, the

expression of choice by casting the vote in favour of the preferred candidate at the polling booth. The first step is complementary to the other.

Many a voter will be handicapped in formulating the opinion and making a proper choice of the candidate unless the essential information regarding

the candidate is available. The voter/citizen should have at least the basic information about the contesting candidate, such as his involvement in

serious criminal offences. To scuttle the flow of information--relevant and essential would affect the electorate''s ability to evaluate the candidate.

Not only that, the information relating to the candidates will pave the way for public debate on the merits and demerits of the candidates. When

once there is public disclosure of the relevant details concerning the candidates, the Press, as a media of mass communication and voluntary

organizations vigilant enough to channel the public opinion on right lines will be able to disseminate the information and thereby enlighten and alert

the public at large regarding the adverse antecedents of a candidate. it will go a long way in promoting the freedom of speech and expression. That

goal would be accomplished in two ways. It will help the voter who is interested in seeking and receiving information about the candidate to form

an opinion according to his or her conscience and best of judgment and secondly it will facilitate the Press and voluntary organizations in imparting

information on a matter of vital public concern. An informed voter--whether he acquires information directly by keeping track of disclosures or

through the Press and other channels of communication, will be able to fulfil his responsibility in a more satisfactory manner. An enlightened and

informed citizenry would undoubtedly enhance democratic values. Thus, the availability of proper and relevant information about the candidate

fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information. In turn, it would

lead to the preservation of the integrity of electoral process which is so essential for the growth of democracy. Though I do not go to the extent of

remarking that the election will be a farce if the candidates'' antecedents are not known to the voters, I would say that such information will

certainly be conducive to fairness in election process and integrity in public life. The disclosure of information would facilitate and augment the

freedom of expression both from the point of view of the voter as well as the media through which the information is publicized and openly

debated.

100. The problem can be approached from another angle. As observed by this Court in Association for Democratic Reform''s case (supra), a

voter ''speaks out or expresses by casting vote''. Freedom of expression, as contemplated by Article 19(1)(a) which in many respects overlaps

and coincides with freedom of speech, has manifold meanings. It need not and ought not to be confined to expressing something in words orally or

in writing. The act of manifesting by action or language is one of the meanings given in Ramanatha Iyer''s Law Lexicon (edited by Justice Y.V.

Chandrachud). Even a manifestation of an emotion, feeling etc., without words would amount to expression. The example given in Collin''s

Dictionary of English language (1983 reprint) is: ""tears are an expression of grief"", is quite apposite. Another shade of meaning is: ""a look on the

face that indicates mood or emotion; eg: a joyful expression"". Communication of emotion and display of talent through music, painting etc., is also a

sort of expression. Having regard to the comprehensive meaning of phrase ''expression, voting can be legitimately regarded as a form of

expression. Ballot is the instrument by which the voter expresses his choice between candidates or in respect to propositions; and his ''vote'' is his

choice or election, as expressed by his ballot (vide ''A Dictionary of Modern Legal Usage''; 2nd Edition, by Garner Bryan A). ""Opinion expressed,

resolution or decision carried, by voting"" is one of the meanings given to the expression ''vote'' in the New Oxford Illustrated Dictionary. It is well

settled and it needs no emphasis that the fundamental right of freedom of speech and expression should be broadly construed and it has been so

construed all these years. In the light of this, the dictum of the Court that the voter ""speaks out or expression by casting a vote"" is apt and well

founded. I would only reiterate and say that freedom of voting by expressing preference for a candidate is nothing but freedom of expressing

oneself in relation to a matter of prime concern to the country and the voter himself.

1. (3) Right to vote is a Constitutional right though not a fundamental right but right to make choice by means of ballot is part of freedom of

expression.

101. The right to vote for the candidate of one''s choice is of the essence of democratic polity. This right is recognized by our Constitution and it is

given effect to in specific form by the Representation of the People Act. The Constituent Assembly debates reveal that the idea to treat the voting

right as a fundamental right was dropped; nevertheless, it was decided to provide for it elsewhere in the Constitution. This move found its

expression in Article 326 which enjoins that ""the elections to the House of the People and to the Legislative Assembly of every State shall be on

the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 21* years of age, and is not otherwise

disqualified under the Constitution or law on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice--shall be entitled

to be registered as voter at such election"" (* Now 18 years). However, case after case starting from 272390 characterized it as a statutory right.

The right to vote or stand as a candidate for election"", it was observed in Ponnuswami"s case ""is not a civil right but is a creature of statute or

special law and must be subject to the limitations imposed by it."" it was further elaborated in the following words:

Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the

legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be

exercised in accordance with the law which creates it.

102. In 285565 this Court again pointed out in no uncertain terms that: ""a right to elect, fundamental though it is to democracy, is, anomalously

enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right."" With great reverence to the eminent Judges, I

would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and

in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. act. That, in my

understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of people and Legislative Assemblies.

It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General

that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an

integral part of any fundamental right, remains to be squarely met. Here, a distinction has to be drawn between the conferment of the right to vote

on fulfillment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of

ballot. Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth

and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his

opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is

where Article 19(1)(a) is attracted. Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries

with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom. None of

the decisions of this Court wherein the proposition that the right to vote is a pure and simple statutory right was declared and reiterated, considered

the question whether the citizen''s freedom of expression is or is not involved when a citizen entitled to vote casts his vote in favour of one or the

other candidate. The issues that arose in Ponnuswami''s case and various cases cited by the learned Solicitor-General fall broadly within the realm

of procedural or remedial aspects of challenging the election or the nomination of a candidate. None of these decisions, in my view, go counter to

the proposition accepted by us that the fundamental right of freedom of expression sets in when a voter actually casts his vote. I, therefore, find no

merit in the submission made by the learned Solicitor General that these writ petitions have to be referred to a larger bench in view of the apparent

conflict. As already stated, the factual matrix and legal issues involved in those cases were different and the view, we are taking, does not go

counter to the actual ratio of the said decisions rendered by the eminent Judges of this Court.

103. Reliance has been placed by the learned Solicitor General on the Constitution Bench decision in 284535 . That was a case of special appeal

to this Court against the decision of an Election Tribunal. Apart from assailing the finding of the Tribunal on the aspect of "corrupt practice",

Sections 123(5) and 124(5) (as they stood then) of the R.P. act were challenged as ultra vires Article 19(1)(a). The former provision declared the

character assassination of a candidate as a major corrupt practice and the latter provision made an appeal to vote on the ground of caste a minor

corrupt practice. The contention that these provisions impinged on the freedom of speech and expression was unhesitatingly rejected. The Court

observed that those provisions did not stop a man from speaking. They merely prescribed conditions which must be observed if a citizen wanted to

enter the Parliament. It was further observed that the right to stand as a candidate and contest an election is a special right created by the statute

and can only be exercised on the conditions laid down by the statute. In that context, the Court made an observation that the fundamental right

chapter had no bearing on the right to contest the election which is created by the statute and the appellant had no fundamental right to be elected

as a member of Parliament. If a person wants to get elected, he must observe the rules laid down by law. So holding, those Sections were held to

be intra vires. I do not think that this decision which dealt with the contesting candidate''s rights and obligations has any bearing on the freedom of

expression of the voter and the public in general in the context of elections. The remarks that "the fundamental right chapter has no bearing on a

right like this created by statute'' cannot be divorced from the context in which it was made.

104. The learned senior counsel appearing for one of the interveners (B.J.P.) has advanced the contention that if the right to information is culled

out from Article 19(1)(a) and read as an integral part of that right, it is fraught with dangerous consequences inasmuch as the grounds of reasonable

restrictions which could be imposed are by far limited and therefore, the Government may be constrained to part with certain sensitive informations

which would not be in public interest to disclose. This raises the larger question whether apart from the heads of restriction envisaged by Sub-

article (2) of Article 19, certain inherent limitations should not be read into the Article, if it becomes necessary to do so in national or societal

interest. The discussion on this aspect finds its echo in the separate opinion of Jeevan Reddy, J. in Cricket Association''s case (supra). The learned

Judge was of the view that the freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of

the society, even if the expression ''national interest'' or ''public interest'' has not been used in Article 19(2). It was pointed out that such implied

limitation has been read into the first amendment of the U.S. Constitution which guarantees the freedom of speech and expression in unqualified

terms.

105. The following observation of the U.S. Supreme Court in Giltow v. New York (1924) 69 L.Ed. 1138 are very relevant in this context:

It is a fundamental principle, long established, that the freedom of speech and of the Press which is secured by the Constitution does not confer an

absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridle license that gives immunity for

every possible use of language, and prevent the punishment of those who abuse this freedom.

106. Whenever the rare situations of the kind anticipated by the learned counsel arise, the Constitution and the Courts are not helpless in checking

the misuse and abuse of the freedom. Such a check need not necessarily be found strictly within the confines of Article 19(2).

II. Sections 33-A & 33-B of the Representation of People (3rd Amendment) Act, 2002--whether Section 33-A by itself effectively secures the

voter''s/citizen''s right to information--whether Section 33-B is unconstitutional?

II. (1). Section 33-A & 33-B of the Representation of People (3rd Amendment) Act:

107. Now I turn my attention to the discussion of core question, that is to say, whether the impugned legislation falls foul of Article 19(1)(a) for

limiting the area of disclosure and whether the Parliament acted beyond its competence in deviating from the directives given by this Court to the

Election Commission in Democratic Reforms Association case. By virtue of the Representation of the People (Amendment) Act, 2002 the only

information which a prospective contestant is required to furnish apart from the information which he is obliged to disclose under the existing

provisions is the information on two points: (i) Whether he is accused of any offence punishable with imprisonment for two years or more in a

pending case in which a charge has been framed and; (ii) Whether he has been convicted of an offence (other than the offence referred to in Sub-

sections (1) to (3) of Section 8) and sentenced to imprisonment for one year or more. On other points spelt out in this Court''s judgment, the

candidate is not liable to furnish any information and that is so, notwithstanding anything contained in any judgment or order of a Court OR any

direction, order or instruction issued by the Election Commission. Omission to furnish the information as per the mandate of Section 33B and

furnishing false information in that behalf is made punishable. That is the sum and substance of the two provisions namely, Section 33A and 33B.

108. The plain effect of the embargo contained in Section 33B is to nullify substantially the directives issued by the Election Commission pursuant

to the judgment of this Court. At present, the instructions issued by the Election Commission could only operate in respect of the items specified in

Section 33A and nothing more. It is for this reason that Section 33B has been challenged as ultra vires the Constitution both on the ground that it

affects the fundamental right of the voter/citizen to get adequate information about the candidate and that the Parliament is incompetent to nullify the

judgment of this Court. I shall briefly notice the rival contentions on this crucial issue.

II. (2). Contentions:

109. Petitioner''s contention is that the legislation on the subject of disclosure of particulars of candidates should adopt in entirety the directives

issued by this Court to the Election Commission in the pre-ordinance period. Any dilution or deviation of those norms or directives would

necessarily violate the fundamental right guaranteed by Article 19(1)(a) as interpreted by this Court and therefore the law, as enacted by

Parliament, infringes the said guarantee. This contention has apparently been accepted by my learned brother M.B. Shah, J. The other view point

presented on behalf of Union of India and one of the interveners is that the freedom of legislature in identifying and evolving the specific areas in

which such information should be made public cannot be curtailed by reference to the ad hoc directives given by this Court in pre-ordinance

period and the legislative wisdom of Parliament, especially in election matters, cannot be questioned. This is the position even if the right to know

about the candidate is conceded to be part of Article 19(1)(a). It is for the Parliament to decide to what extent and how far the information should

be made available. In any case, it is submitted that the Court''s verdict has been duly taken note by Parliament and certain provisions have been

made to promote the right to information vis-a-vis the contesting candidates. Section 33B is only a part of this exercise and it does not go counter

to Article 19(1)(a) even though the scope of public disclosures has been limited to one important aspect only.

II. (3). Broad points for consideration

110. A liberal but not a constricted approach in the matter of disclosure of information in relation to candidates seeking election is no doubt a

desideratum. The wholesale adoption of the Court''s diktats on the various items of information while enacting the legislation would have received

public approbation and would have been welcomed by public. It would have been in tune with the recommendations of various Commissions and

even the statements made by the eminent and responsible political personalities. However, the fact remains that the Parliament in its discretion did

not go the whole hog, but chose to limiting the scope of mandated disclosures to one only of the important aspects highlighted in the judgment. The

question remains to be considered whether in doing so, the Parliament out-stepped its limits and enacted in law in violation of the guarantee

enshrined in Article 19(1)(a) of the Constitution. The allied question is whether the Parliament has no option but to scrupulously adopt the

directives given by this Court to the Election Commission. Is it open to the Parliament to independently view the issue and formulate the parameters

and contents of disclosure, though it has the effect of diluting or diminishing the scope of disclosures which, in the perception of the Court, were

desirable? In considering these questions of far reaching importance from the Constitutional angle, it is necessary to have a clear idea of the ratio

and implications of this Court''s Judgments in the Association for Democratic Reforms case.

II. (4) Analysis of the judgment in Association for Democratic Reforms case--whether and how far the directives given therein have impact on the

Parliamentary legislation--Approach of Court in testing the legislation.

111. The first proposition laid down by this Court in the said case is that a citizen/voter has the right to know about the antecedents of the

contesting candidate and that right is a part of the fundamental right under Article 19(1)(a). In this context, M.B. Shah, J. observed that--

Voter''s speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote.

112. It was then pointed out that the information about the candidate to be selected is essential as it would be conducive to transparency and purity

in the process of election. The next question considered was how best to enforce the right. The Court having noticed that there was void in the field

in the sense that it was not covered by any legislative provision, gave directions to the Election Commission to fill the vacuum by requiring the

candidate to furnish information on the specified aspects while filing the nomination paper. Five items of information which the Election Commission

should call for from the prospective candidates were spelt out by the Court. Two of them relate to criminal background of the candidate and

pendency of criminal cases against him. Points 3 & 4 relate to assets and liabilities of the candidate and his/her family. The last one is about the

educational qualifications of the candidate. The legal basis and the justification for issuing such directives to the Commission has been stated thus

(vide paragraphs 19 & 20):

19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for

Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the

Rules.

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20. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has

constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void

till the suitable law is enacted.

113. Again, at paragraph 49 it was emphasized--

It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is

unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly

by the Election Commission as early as possible.

114. Thus, the Court was conscious of the fact that the Election Commission could act in the matter only so long as the field is not covered by

legislation. The Court also felt that the vacuum or void should be suitably filled so that the right to information concerning a candidate would soon

become a reality. In other words, till the Parliament applied its mind and came forward with appropriate legislation to give effect to the right

available to a voter-citizen, the Court felt that the said goal has to be translated into action through the media of Election Commission, which is

endowed with ''residuary power'' to regulate the election process in the best interests of the electorate. Instead of leaving it to the Commission and

with a view to give quietus to the possible controversies that might arise, the Court considered it expedient to spell out five points (broadly falling

into three categories) on which the information has to be called for from the contesting candidate. In the very nature of things, the directives given

by the Court were intended to operate only till the law was made by legislature and in that sense "pro tempore" in nature. The five directives

cannot be considered to be rigid theorems--inflexible and immutable, but only reflect the perception and tentative thinking of the Court at a point of

time when the legislature did not address itself to the question.

115. When the Parliament, in the aftermath of the verdict of this Court, deliberated and thought it fit to secure the right to information to a citizen

only to a limited extent (having a bearing on criminal antecedents), a fresh look has to be necessarily taken by the Court and the validity of the law

made has to be tested on a clean slate. It must be remembered that the right to get information which is a corollary to the fundamental right to free

speech and expression has no fixed connotation. Its contours and parameters cannot be precisely defined and the Court in my understanding,

never meant to do so. It is often a matter of perception and approach. How far to go and where to stop? These are the questions to be pondered

over by the Legislature and the Constitutional Court called upon to decide the question of validity of legislation. For instance, many voters/citizens

may like to have more complete information--a sort of bio-data of the candidate starting from his school days such as his academic career, the

properties which he had before and after entering into politics, the details of his income and tax payments for the last one decade and sources of

acquisition of his and his family''s wealth. Can it be said that all such information which will no doubt enable the voter and public to have a

comprehensive idea of the contesting candidate, should be disclosed by a prospective candidate and that the failure to provide for it by law would

infringe the fundamental right under Article 19(1)(a)? The preponderance of view would be that it is not reasonable to compel a candidate to make

disclosures affecting his privacy to that extent in the guise of effectuating the right to information. A line has to be drawn somewhere. While there

cannot be a lip service to the valuable right to information, it should not be stretched too far. At the same time, the essence and substratum of the

right has to be preserved and promoted, when once it is brought within the fold of fundamental right. A balanced but not a rigid approach, is

needed in identifying and defining the parameters of the right which the voter/citizen has. The standards to be applied to disclosures vis-a-vis public

affairs the governance AND the disclosures relating to personal life and bio-date of a candidate cannot be the same. The measure or yardstick will

be somewhat different. It should not be forgotten that the candidates'' right to privacy is one of the many factors that could be kept in view, though

that right is always subject to overriding public interest.

116. In my view, the points of disclosure spelt out by this Court in the Association for Democratic Reforms case should serve as broad indicators

or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court,

though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this

Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain

essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure

spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote

the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the

legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is

crucial, by any objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the

areas of disclosure carved out by the Legislature are reasonably adequate to safeguard the citizens'' right to information. The Court has to take a

holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens'' right to information to know about the personal

details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two

reasonable alternatives. It is not a proper approach to test the validity of legislation only from the stand- point whether the legislation implicitly and

word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once

legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily

ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits

and demerits of the candidates. In embarking on this exercise, as already stated, this Court''s directives on the points of disclosure even if they be

tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. But, I reiterate that the shape of legislation need not be

solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot

be placed in straight jacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary.

III. Section 33B is unconstitutional

III. (1). The right to information cannot be frozen and stagnated.

117. In my view, the Constitutional validity of Section 33B has to be judged from the above angle and perspective. Considered in that light, I agree

with the conclusion of M.B. Shah, J. that Section 33B does not pass the test of Constitutionality. The reasons are more than one. Firstly, when the

right to secure information about a contesting candidate is recognized as an integral part of fundamental right as it ought to be, it follows that its

ambit, amplitude and parameters cannot be chained and circumscribed for all time to come by declaring that no information, other than that

specifically laid down in the Act, should be required to be given. When the legislation delimiting the areas of disclosure was enacted, it may be that

the Parliament felt that the disclosure on other aspects was not necessary for the time being. Assuming that the guarantee of right to information is

not violated by making a departure from the (SIC) set by the Court, it is not open to the Parliament to stop all further disclosures concerning the

candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment, irrespective of need of

the hour and the future exigencies and expedients is, in my view, impermissible. It must be remembered that the concept of freedom of speech and

expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist

on additional information on the aspects not provided for by law. New situations and march of events may demand the flow of additional facets of

information. The right to information should be allowed to grow rather than being frozen and stagnated; but the mandate of Section 33B prefaced

by the non obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of prohibition u/s 33B, the

Election Commission which is entrusted with the function of monitoring and supervising the election process will have to sit back with a sense of

helplessness inspite of the pressing need for insisting on additional information. Even the Court may at times feel handicapped in taking necessary

remedial steps to enforce the right to information. In my view, the legislative injunction curtailing the nature of information to be furnished by the

contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to

freedom of expression of which the right to information is a part. The very objective of recognizing the right of information as part of the

fundamental right under Article 19(1)(a) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33B is taken

to its logical effect.

III. (2) Impugned legislation fails to effectuate right to information on certain vital aspects.

118. The second reason why Section 33B should be condemned is that by blocking the ambit of disclosures only to what has been specifically

provided for by the amendment, the Parliament failed to give effect to one of the vital aspects of information, viz., disclosure of assets and liabilities

and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which

is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and

liabilities as discussed hereinafter, the Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged

on the guarantee enshrined in Article 19(1)(a).

III. (3) How far the principle that the Legislature cannot encroach upon the judicial sphere applies.

119. It is a settled principle of constitutional jurisprudence that the only way to render a judicial decision ineffective is to enact a valid law by way

of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The legislature cannot overrule

or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court because it is obvious that the

legislature cannot trench on the judicial power vested in the Courts. Relying on this principle, it is contended that the decision of apex Constitutional

Court cannot be set at naught in the matter in which it has been done by the impugned legislation. As a sequel, it is further contended that the

question of altering the basis of judgment or curing the defect does not arise in the instant case as the Parliament cannot pass a law in curtailment of

fundamental right recognized, amplified and enforced by this Court.

120. The contention that the fundamental basis of the decision in Association for Democratic Reforms case has not at all been altered by the

Parliament, does not appeal to me. I have discussed at length the real scope and ratio of the judgment and the nature and character of directives

given by this Court to the Election Commission. As observed earlier, those directions are pro tempore in nature when there was vacuum in the

field. When once the Parliament stepped in and passed the legislation providing for right of information, may be on certain limited aspects, the void

must be deemed to have been filled up and the judgment works itself out, though the proposition laid down and observations made in the context

of Article 19(1)(a) on the need to secure information to the citizens will hold good. Now the new legislation has to be tested on the touchstone of

Article 19(1)(a). Of course, in doing so, the decision of this Court should be given due weight and there cannot be marked departure from the

items of information considered essential by this Court to effectuate the fundamental right to information. Viewed in this light, it must be held that

the Parliament did not by law provide for disclosure of information on certain crucial points such as assets and liabilities and at the same time,

placed an embargo on calling for further informations by enacting Section 33B. That is where Section 33B of the impugned amendment Act does

not pass the muster of Article 19(1)(a), as interpreted by this Court.

IV. Right to Information with reference to specific aspects:

121. I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the

Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the

contesting candidates broadly on three points, namely, (i) criminal record (ii) assets and liabilities and (iii) educational qualification. The third

amendment to R.P. Act which was preceded by an Ordinance provided for disclosure of information. How far the third amendment to the

Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the

question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in Association for

Democratic Reforms case.

IV. (1). Criminal background and pending criminal cases against candidates--Section 33A of the R.P. (3rd Amendment) Act.

122. As regards the first aspect, namely criminal record, the directives in Association for Democratic Reforms case are two fold: ""(i) whether the

candidate is convicted/acquitted/ discharged of any criminal case in the past--if any, whether he is punished with imprisonment or fine and (ii) prior

to six months of filing of nomination, whether the candidate is an accused in any pending case of any offence punishable with imprisonment for two

years or more and in which charge is framed or cognizance is taken by the Court of law."" As regards the second directive, the Parliament has

substantially proceeded on the same lines and made it obligatory to the candidate to furnish information as to whether he is accused of any offence

punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent Court. However, the

case in which cognizance has been taken but charge has not been framed is not covered by Clause (i) of Section 33A(I). The Parliament having

taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide

for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of

variety of reasons such as the delaying tactics of one or the other accused and inadequacies of prosecuting machinery, framing of formal charges

get delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall

not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The

citizen"s right to information, when once it is recognized to be part of the fundamental right under Article 19(1)(a), cannot be truncated in the

manner in which it has been done. Clause (i) of Section 33(A)(I) therefore falls short of the avowed goal to effectuate the right of information on a

vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the

voters/citizens, in addition to what is provided for in Clause (i) of Section 33A.

123. Coming to Clause (ii) of Section 33A(I), the Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to

draw a line between major/serious offences and minor/non-serious offences while giving direction No. 2 (vide Para 48). If so, the legislative

thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide

adequate information about the candidate. If the Parliament felt that the convictions and sentences of the long past related to petty/non serious

offences need not be made available to electorate, it cannot be definitely said that the valuable right to Information becomes a causality. Very often,

such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned senior counsel pointed out that the political

personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short

imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the

candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted

merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to

take the view that such information will not be of much relevance inasmuch as acquittal prima facie implies that the accused is not connected with

the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in the acquittal, the

voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading

signals about the honesty and integrity of the candidate.

124. I am therefore of the view that as regards past criminal record, what the Parliament has provided for is fairly adequate.

125. One more aspect which needs a brief comment is the exclusion of offences referred to in Sub-sections (1) and (2) of Section 8 of the R.P.

Act, 1951. Section 8 deals with disqualification on conviction for certain offences. Those offences are of serious nature from the point of view of

national and societal interest. Even the existing provisions, viz., Rule 4A inserted by Conduct of Elections (Amendment) Rules, 2002 make a

provision for disclosure of such offences in the nomination form. Hence, such offences have been excluded from the ambit of Clause (ii) of Section

33A.

IV. (2). Assets and liabilities

126. Disclosure of assets and liabilities is another thorny issue. If the right to information is to be meaningful and if it is to serve its avowed purpose,

I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles

of household use). A member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is

a "public servant" within the meaning of Prevention of Corruption Act as ruled by this Court in the case of 280963 . They are the repositories of

public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for

misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to

the office had amassed wealth either in his own name or in the name of family members viz., spouse and dependent children. At the time when the

candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to the assess whether

the (SIC) public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power

for making quick money--a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards

liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions

or the Government. Such Information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public

money. "Assets and liabilities" is one of the important aspects to which extensive reference has been made in Association for Democratic Reforms

case. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the

observations made by this Court in this regard have been given a short shrift by the Parliament with little realization that they have significant bearing

on the right to get information from the contesting candidates and such information is necessary to give effect to the freedom of expression.

127. As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the

candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen

has equal accessibility in public arena. If the information is meant to mobilize public opinion in favour of an affluent/financially sound candidate, the

tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view

that this information on assets would enable the public to verify whether unaccounted money played a part in contesting the election. So long as the

Explanation-I to Section 77 of R.P. Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a

citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and

liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy

of such disclosure vis-a-vis right to Information only.

128. It has been contended with much force that the right to information made available to the voters/citizens by judicial interpretation has to be

balanced with the right of privacy of the spouse of the contesting candidate and any insistence on the disclosure of assets and liabilities of the

spouse invades his/her right to privacy which is implied in Article 21. After giving anxious consideration to this argument, I am unable to uphold the

same. In this context, I would like to recall the apt words of Mathew J, in 284762 . While analyzing the right to privacy as an ingredient of Article

21, it was observed;

There can be no doubt that privacy-dignity claims deserves to be examined with care and to be denied only when an important countervailing

interest is shown to be superior

(emphasis supplied).

129. It was then said succinctly:

If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State

interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right.

130. It was further explained--

Privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy

must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the

context of other rights and values.

131. By calling upon the contesting candidate to disclose the assets and liabilities of his/her spouse, the fundamental right to information of a

voter/citizen is thereby promoted. When there is a competition between the right to privacy of an individual and the right to information of the

citizens, the former right has to be subordinated to the latter right as it serves larger public interest. The right to know about the candidate who

intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and

liabilities is given. It cannot be denied that the family relationship and social order in our country is such that the husband and wife look to the

properties held by them as belonging to the family for all practical purposes, though in the eye of law the properties may distinctly belong to each of

them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse

benami is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a

candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well. That

is one way of looking at the problem. More important, it is to be noted that the Parliament itself accepted in principle that not only the assets of the

elected candidates but also his or her spouse and dependent children should be disclosed to the constitutional authority and the right of privacy

should not come in the way of such disclosure; but, the hitch lies in the fact that the disclosure has to be made to the Speaker or Chairman of the

House after he or she is elected. No provision has been made for giving access to the details filed with the presiding officer of the House, By doing

so, Parliament has omitted to give effect to the principle, which it rightly accepted as a step in aid to promote integrity in public life. Having

accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of other family members, the

Parliament refrained from making a provision for furnishing the information at the time of filing the nomination. This has resulted in jeopardizing the

right to information implicitly guaranteed by Article 19(1)(a). therefore, the provision made in Section 75A regarding declaration of assets and

liabilities of the elected candidates to the presiding officer has failed to effectuate the right to information and the freedom of expression of the

voters/citizens.

IV. (3). Educational qualifications

132. The last item left for discussion is about educational qualifications. In my view, the disclosure of information regarding educational

qualifications of a candidate is not an essential component of the right to information flowing from Article 19(1)(a). By not providing for disclosure

of educational qualifications, it cannot be said that the Parliament violated the guarantee of Article 19(1)(a). Consistent with the principle of adult

suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly.

That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful

purpose in the present context and scenario. It is a well known fact that barring a few exceptions, most of the candidates elected to Parliament or

the State Legislatures are fairly educated even if they are not Graduates or Post-Graduates. To think of illiterate candidates is based on a factually

incorrect assumption. To say that well educated persons such as those having graduate and post-graduate qualifications will be able to serve the

people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience

and events in public life and the Legislatures have demonstrated that the dividing line between the well educated and less educated from the point

of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of

concern to the welfare of the people. These characteristics are not the monopoly of well educated persons. I do not think that it is necessary to

supply information to the voter to facilitate him to indulge in an infructuous exercise of comparing the educational qualifications of the candidates. It

may be that certain candidates having exceptionally high qualifications in specialized filed may prove useful to the society, but it is natural to expect

that such candidates would voluntarily come forward with an account of their own academic and other talents as a part of their election

programme. Viewed from any angle, the information regarding educational qualification is not a vital and useful piece of information to the voter, in

ultimate analysis. At any rate, two views are reasonably possible. therefore, it is not possible to hold that the Parliament should have necessarily

made the provision for disclosure of information regarding educational qualifications of the candidates.

V. Conclusions:

133. Finally, the summary of my conclusions:

1. Securing information on the basic details concerning the candidates contesting for elections to the Parliament or State Legislature promotes

freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however,

qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media,

though, to a certain extent, there may be overlapping.

2. The right to vote at the elections to the House of people or Legislative Assembly is a constitutional right but not merely a statutory right; freedom

of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the

other candidate marks the accomplishment of freedom of expression of the voter.

3. The directives given by this Court in 272687 were intended to operate only till the law was made by the Legislature and in that sense "pro

tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of

information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this

exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial

departure therefrom cannot be countenanced.

4. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying

down the parameters of that right.

5. Section 33B inserted by the Representation of People (3rd Amendment) Act, 2002 does not pass the test of constitutionality firstly for the

reason that it imposes blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and

the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now

provided for is deficient and inadequate.

6. The right to information provided for by the Parliament u/s 33A in regard to the pending criminal cases and past involvement in such cases is

reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending

cases in which cognizance has been taken by Court from the ambit of disclosure.

7. The provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the

House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on

disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament ought to have made

a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article

19(1)(a).

8. The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment

regarding the cases in which cognizance has been taken. The Election Commission"s orders related to disclosure of assets and liabilities will still

hold good and continue to be operative. However, direction No. 4 of para 14 insofar as verification of assets and liabilities by means of summary

enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be

enforced.

134. Accordingly, the writ petitions stand disposed of without costs.

Dharmadhikari J.

135. I have carefully gone through the well considered separate opinions of Brothers MB Shah J. and P.V. Reddi JJ. Both the learned judges have

come to a common conclusion that Section 33B inserted in the Representation of People Act, 1951 by Amendment Ordinance 4 of 2002, which

on repeal is succeeded by 3rd Amendment Act of 2002, is liable to be declared invalid being violative of Article 19(1)(a) of the Constitution.

136. I am in respectful agreement with the above conclusion reached in common by both the learned brothers. I would, however, like to

supplement the above conclusion.

137. The reports of the advisory Commission set up one after the other by the Government to which a reference has been made by Brother Shah

J., highlight the present political scenario where money-power and muscle-power have substantially polluted and perverted the democratic

processes in India. To control the ill-effects of money-power and muscle-power the Commission recommend that election system should be

overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted

attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of

the Act here and there, but a much improved election system is required to be evolved to make the election process both transparent and

accountable so that influence of tainted money and physical force of criminals do not make democracy a farce - Citizen''s fundamental ''right of

information'' should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct

from exercise of his right as a voter which is to be regulated by statutory law on the election like the R.P. Act.

138. Making of law for election reform is undoubtedly a subject exclusively of legislature. Based on the decision of this Court in the case of

Association for Democratic Reforms (supra) and the directions made therein to the Election Commission, the Amendment Act under consideration

has made an attempt to fill the void in law but the void has not been filled fully and does not satisfy the requirements for exercise of fundamental

freedom of citizen to participate in election as a well informed voter.

139. Democracy based on ''Free and fair elections'' is considered as basic feature of the Constitution in the case of Keshvanand Bharati (supra).

Lack of adequate legislative will to fill the vacuum in law for reforming the election process in accordance with the law declared by this Court in the

case of Association for Democratic Reforms (supra), obligates this Court as an important organ in constitutional process to intervene.

140. In my opinion, this Court is obliged by the Constitution to intervene because the legislative filed, even after the passing of the Ordinance and

the Amendment Act, leaves a vacuum. This Court in the case of Association for Democratic Reforms (supra) has determined the ambit of

fundamental ''right of information'' to a voter. The law, as it stands today after amendment, is deficient in ensuring ''free and fair elections''. This

court has, therefore, found it necessary to strike down Section 33B of the Amendment Act so as to revive the law declared by this Court in the

case of Association for Democratic Reforms (supra).

141. With these words, I agree with conclusions (A) to (E) in the opinion of Brother Shah J. and conclusion Nos. (1), (2), (4), (5), (6), (7) & (9)

in the opinion of Brother P.V. Reddi J.

142. With utmost respect, I am unable to agree with conclusion Nos. (3) & (8) in the opinion of Brother P.V. Reddy J., as on those aspects, I

have expressed my respectful agreement with Brother Shah J.