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## ARTICLES

### *UNION OF INDIA V. ASSOCIATION FOR DEMOCRATIC REFORMS*

**- Shivani Mane**

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## INTRODUCTION

*"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper--no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.*

*If we may add, the little large Indian shall not be hijacked from the course of free and fair election by mob muscle methods, or subtle perversion of discretion by men 'dressed in little, brief authority'. For 'be you ever so high, the law is above you'.*

*The Moral may be stated with telling terseness in the words of William Pitt: "Where laws end, tyranny begins', Embracing both these mandates and emphasizing their combined effect is the elemental law and politics of Power best expressed by Benjamin Disraeli [Vivian Grey, BK VI Ch 7]:*

*I repeat ... that all power is a trust that we are accountable for its exercise -- that, from the people and for the people, all springs, and all must exist."*

*- Sir Winston Churchill as referred in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi<sup>1</sup>*

Fundamental Rights which are enshrined in Part III of the Constitution of India and are based on the assumption that Part III of the Constitution is not a collection of rules of personal conduct but it is rather an incorporation of certain values that can lead to a civilized governance. It is helping to awaken the people about their new rights which the rulers have taken a long time to understand. It is here that the judiciary has played a very commendable role. The Courts have also been gradually broadening the scope of the rights. After all the articles embody the liberty and equality values and their meaning and scope is elastic with immense potentialities. Some short-sighted skeptics have been very critical of this judicial role and have branded it as judicial activism. They forget that it is this activism which has saved the people from despondency and disillusionment in the midst of all the abominable things that they hear about, see and experience quite often. It is this issue that is addressed in *Union of India v. Association for Democratic Reforms*.

“Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant”.<sup>2</sup>

The expression “freedom of speech and expression” in Art.19(1)(a) has been expounded by various Supreme Court judgements. This particular case deals with how the right to freedom of speech and expression has also included in it, the right to receive information about a political candidate’s personal life. It has been held since then that, a voter “expresses” his opinion in the form of casting his vote and hence this final stage of voting attracts Art.19(1)(a)<sup>3</sup>. Hence, the right to receive information is a part of Art.19(1)(a) and is of great significance for elections.

Various reports have confirmed the existence of criminalization in politics<sup>4</sup>. The mafia, under-world and numerous such criminals seek to enter politics at the State and Union level. There have been several reports on such practices, but nothing has been done about it so far by the Parliament. This evil in today’s democratic government in India exists and uprooting it is a difficult task that nobody seems to want to take at hand. The Parliament did not enact a law to curb such practices and when the matter was brought to notice to the Delhi High Court, it decided to cleanse the electoral process through the mechanism of the right of people to know. In this judgement, several rules were laid down so that the voters could know more about the history of the person they would want to vote. This

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<sup>1</sup> AIR 1978 SC 851

<sup>2</sup> Supreme Court in Dinesh Trivedi, M.P, and Others v. Union of India (1997) 4 SCC 306

<sup>3</sup> People’s Union for Civil Liberties (PUCL) v, Union of India, (2003) 4 SCC 399

<sup>4</sup> Para 6.2 of the Vohra Committee Report of the Government of India Ministry of Home Affairs of 1993

decision of the High Court was challenged in *Union of India v. Association for Democratic Reforms*<sup>5</sup>. As the court observed “...since the future of the country depends upon the power of the ballot, the voters must be given an opportunity for making an informed decision.” And hence, disclosing of personal information by candidates seeking to stand for elections was made mandatory by bringing about changes in the Representation of People’s Act, 1951.

#### FACTS OF THE CASE

A petition was filed by The Association for Democratic Reforms with the High Court of Delhi to make certain recommendations binding on the electoral process in India. They did this with the intention to make the electoral process more transparent, fair and equitable. On the request of the Government of India, these recommendations had been presented by the Law Commission in its 170<sup>th</sup> Report and to make necessary changes under Rule 4 of the Conduct of Election Rules, 1961<sup>6</sup>. The recommendations were as follows:

- a. The candidates contesting elections should disclose personal background information to the public which included criminal history, educational qualification, personal financial details and other information necessary for judging a candidate’s capacity and capability.
- b. To debar a candidate from contesting an election if charges have been framed against him by a Court in respect of certain offences
- c. A candidate must provide details of any pending criminal cases against him if he wished to contest elections.
- d. Correct and true statement of assets of the candidate and his/her spouse should be disclosed, etc.

The Vohra Committee Report was also relied upon which enlisted criminalization of politics as a growing evil in today’s society. Para 6.2 of the Vohra Committee Report acknowledged the growing presence of mafias and criminals in politics- directly and indirectly and contended that despite these reports, the Government of India had failed to take any progressive action to curb these menaces. High Court of Delhi upheld that the candidate’s background cannot be kept in the dark as it is not for the best interest of democracy. It also noted that it was the function of the Parliament to amend the Representation of People’s Act 1951. The Court ordered the Election Commission to obtain such information so that the voters can make a prudent choice. This decision by the High Court of Delhi was challenged by the Union of India through an appeal to the Supreme Court of India saying that the High Court of Delhi acted ultra vires and that the voter’s did not have this right to know the personal details of candidates they would consider voting for, in an election.

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<sup>5</sup> JT 2002(4) SC 501

<sup>6</sup> Law Commission of India 170<sup>th</sup> Report on Reform of the Electoral Laws, May 1999

### ISSUES INVOLVED

1. Whether, before casting their votes, voters are entitled to know the relevant particulars of a candidate?
2. Whether the High Court of Delhi had jurisdiction to issue directions in a writ petition filed under Article 226 of the Constitution of India?

### ARGUMENTS

#### **BY RESPONDENTS REPRESENTED BY MR. HARISH SALVE (UOI)**

The High Court should have waited for the necessary amendments to take place in the Representation of People's Act, 1951 by the Government and should not have given the directions to the Election Commission. He cited various Sections of the Act and submitted that provisions for disqualification of a candidate were already laid down in several sections and hence, there is no need for an amendment. It is his submission that it is for the political parties to decide whether such amendments should be brought and carried out in the Act and the Rules. He further submitted that as the Act or the Rules nowhere disqualify a candidate for non-disclosure of the assets or pending charge in a criminal case and, therefore, directions given by the High Court would be of no consequence and such directions ought not to have been issued.

#### **BY RESPONDENTS ASHWINI: BEHALF OF INC – INTERVENER**

He referred to the debates by the Constituent Assembly and contended that the grounds of educational qualification recommended in the Report were already deliberated upon in these debates. The Constituent Assembly reached a conclusion to not include it as a criterion as most of the population was illiterate. Hence, he submitted that it is not at all relevant to check the assets or educational qualifications of a candidate. He also submitted that maintaining a delicate balance between the jurisdiction of the Parliament and the Court is essential and the High Court's decision was ultra vires.

#### **BY K.K. VENUGOPAL- COUNSEL FOR ELECTION COMMISSION**

The suggestions made by the Election Commission were that except certain modifications, Election Commission virtually supported the directions issued by the High Court and that candidates must be directed to furnish necessary information with regard to pending criminal cases as well as assets and educational qualification.

#### **BY RAJINDER SACHHAR, LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF THE PETITIONERS**

It was presumed that High Court did not have any power to direct the Election Commission, as stated by the petitioners of the appeal. But, he advanced an argument saying that the Supreme Court could do so by exercising its powers under Article 142 which would have the effect of law. He relied upon

the decision given by the Supreme Court in Vineet Narain and Ors. v Union of India<sup>7</sup> and submitted that considering the widespread illiteracy of the voters, and at the same time their overall culture and character, if they are well-informed about the candidates contesting election as M.P. or M.L.A. they would be in a position to decide independently to cast their votes in favor of a candidate who, according to them, is much more efficient to discharge his functions as M.P. or M.L.A.

**BY COUNSEL MRS. KAMINI JAISWAL**

Referred to the decision in Kihoto Hollohan v. Zachillhu and Ors.<sup>8</sup> where in the Court observed "democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provisions for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority". She, therefore, contended that for free and fair elections and for survival of democracy, entire history, background and the antecedents of the candidate are required to be disclosed to the voters so that they can judiciously decide in whose favour they should vote otherwise, there would not be true reflection of electoral mandate. For interpreting Article 324, she submitted that this provision outlines broad and general principles giving power to the Election Commission and it should be interpreted in a broad perspective as held by this Court in various decisions. In these matters, questions requiring consideration are- Whether Election Commission is empowered to issue directions as ordered by the High Court? Whether a voter - a citizen of this country - has right to get relevant information, such as, assets, qualification and involvement in offence for being educated and informed for judging the suitability of a candidate contesting election as MP or MLA?

It is an established fact that a member of All India Service is required to disclose his/her assets including that of spouse and the dependent children.<sup>9</sup> It is also submitted that even the Gazetted Officers in all government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually.

**DECISION OF THE COURT**

The Court decided that the Election Commission had plentiful power to fill the void where the Constitution is truant. It is the obligation of the official to dispatch the vacuum by official requests on the grounds that its field is coextensive with that of the governing body, and where there is inaction by the official, for reasons unknown, the legal must stride in, in activity of its established commitments to give an answer till such time the assembly demonstrations to perform its part by authorizing fitting enactment to cover the field. The antagonistic effect of absence of fidelity out in the open life prompting a high level of debasement is complex. Consequently, if the hopeful is coordinated to

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<sup>7</sup> AIR 1998 SC 889

<sup>8</sup> AIR 1993 SC 412

<sup>9</sup> Rule 16 of All India Service (Conduct) Rules, 1968

proclaim his/her mate's and dependents' benefits unfaltering, moveable and significant articles it would have its own particular impact.

The confinement on entire character of force is the point at which the Parliament or State Legislature has made a substantial law identifying with or regarding decisions, the Commission is obliged to act in similarity with the said procurements. On the off chance that where law is quiet, Article 324 is a supply of energy to represent the admitted reason for having free and reasonable decision. Constitution has dealt with leaving degree for activity of residuary power by the Commission in its own particular perfectly fine animal of the Constitution in the unending mixed bag of circumstances that may rise up out of time to time in an extensive majority rules system, as every possibility couldn't be predicted or foreseen by the instituted laws or the tenets. By issuing vital bearings Commission can fill the vacuum till there is enactment on the subject.<sup>10</sup>

"Elections" incorporates the whole procedure of decision which comprises of a few stages and it grasps numerous strides, some of which have a critical bearing on the procedure of picking a hopeful. Reasonable race mulls over divulgence by the competitor of his past including the advantages held by him to give a legitimate decision to the hopeful as per his reasoning and feeling. As expressed before, in Common Cause case, the Court managed a discord that decisions in the nation are battled with the assistance of cash influence which is accumulated from dark sources and once chosen to influence, it turns out to be anything but difficult to gather huge amounts of dark cash, which is utilized for holding force and for re-race. In the event that on affirmation a competitor is obliged to unveil the benefits held by him at the season of decision, voter can choose whether he could be re-chosen been on the off chance that where he has gathered huge amounts of cash.

To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role.

The right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; *this right shall include freedom to seek, receive and impart information and ideas of all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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<sup>10</sup> Kanhiya Lal Omar Vs. R.K. Trivedi & Others (1985) 4 SCC 628

(3) It is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Article 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.

(4) Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters'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**. For this purpose, information about the candidate to be selected is must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The voter may think over before making his choice of electing law breakers as law makers**. It was held that The Election Commission can ask the candidates the following things-

1. Any criminal charges and convictions in the candidate's past,
2. Any pending cases in which the candidate is an accused,
3. All assets of a candidate including those of his/her spouse,
4. All liabilities of a candidate, and all educational qualifications of a candidate.

The Court hence held that there is no question of the citizens asking for personal details of a candidate. Instead, knowing these aspects about a candidate is a must in today's world, where corruption and criminal practices are on a rise. The above decision of the Court came with a directive to the Election Commission to issue necessary orders to obtain from each candidate for election to Parliament or State Legislature information on the following aspects of their background.

#### **REASONING FOR THE DECISION BY SUPREME COURT**

The Court issued two main rulings in this case-

#### **WHETHER ELECTION COMMISSION IS EMPOWERED TO ISSUE DIRECTIONS AS ORDERED BY THE HIGH COURT?**

If the legislature does not mention about a particular subject and an entity, like the Election Commission, has been authorized to implement laws with respect to such a subject, it will be assumed by the Court that the entity has the power to issue such directions or orders. This is done so that the entity can fill the void created by the absence of a legislative order. This could be an interim order until a suitable law on the particular subject is enacted. The Court affirmed that Art. 324<sup>11</sup> "operate in

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<sup>11</sup> Art. 324 of Indian Constitution- Superintendence, direction and control of elections to be vested in an Election Commission

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President

areas unoccupied by legislation” and that “the silence of a statute has no exclusionary effect except where it flows from necessary implication”. The Court relied upon Vineet Narain’s<sup>12</sup> case, where it was observed that sufficient powers are given to the Supreme Court by the Constitution to remedy the defects that arise due to absence of legislatures either permanently, or until the time a proper legislative action is done. The Court contended that

“There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution.”

This decision was given in the backdrop of further such precedents that will be stated herein. In Erach Sam Kanga v. Union of India<sup>13</sup>, the Constitution Bench laid down certain guidelines relating to the Emigration Act. In Lakshmi Kant Pandey v. Union of India<sup>14</sup>, guidelines for adoption of minor children by foreigners were laid down. In State of W.B. v. Sampat Lal<sup>15</sup>, K. Veeraswami, v. Union of India, Union Carbide Corporation. v. Union of India, Delhi Judicial Service Association v. State of Gujarat (Nadiad Case), Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Dines Trivedi, M.P. v. Union of India, guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Association v. Union of India (2nd Judges case)* a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishaka v. State of Rajasthan* elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. The Court in this case observed that- “The following principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (As amended at Manila, 28<sup>th</sup> August, 1997) as those representing the minimum the standards necessary to be observed in order to maintain the

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(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause ( 1 )

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine; Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner

(6) The President, or the Governor of a State, shall, when so requested by th Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause ( 1 )

<sup>12</sup> supra

<sup>13</sup> W.P. No. 2632 of 1978

<sup>14</sup> AIR 1984 SC 469

<sup>15</sup> AIR 1985 SC 195



independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

**Objectives of the Judiciary:**

- (a) To ensure that all persons are able to live securely under the rule of law;
- (b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) To administer the law impartially among persons and between persons and the State."

Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field<sup>16</sup>." The Court's decision means that the Court's power to issue directions regarding Art. 324 is comprehensive. And thus, by extension, the Election Commission, as directed by the SC, can issue suitable directions to maintain the purity and transparency of the "entire process of election."

The Court accepted that it was impossible for the Court to give any directions for amending the Act or the statutory Rules. It is for the 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. One of the basic structures of our government is its republican and democratic spirit. Any person with the necessary qualifications<sup>17</sup> can contest elections and educational or any other qualifications are not the criterion prescribed by the Constitution. However, the powers to make these decisions vests with the Election Commission<sup>18</sup> under Article 324, the superintendence, direction and control of the 'conduct of all elections' to Parliament and to the Legislature of every State vests in Election Commission. The phrase 'conduct of elections' is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections. The voters are the most important aspect in a democracy and in the opinion of the SC, they should be well informed in deciding whom to elect and knowing such information that would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided--its result, if pending-- whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters.

The Court then went ahead to reject Mr. Salve's contention that because there was no provision under which the High Court could issue directions to the Election Commission does not mean that it cannot. In stating this, the Court relied on *Mohinder Singh Gill v. The Chief Election Commissioner, New*

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<sup>16</sup> Beijing, Statement of Principles of the Independence of Judiciary in the LAWASIA region.

<sup>17</sup> Art. 326 of Constitution of India

<sup>18</sup> By the power vested in EC by Art. 324

*Delhi*<sup>19</sup> which held that in a democratic form of government, the voter has utmost importance and that they cannot be prevented from the course of free and fair elections by subtle perversion of discretion of casting votes. A voter can do a social audit about the person he is supposed to vote, and for doing so, he must be well informed about his candidate. Article 324 operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. The silence of statute has no exclusionary effect except where it flows from necessary implication. Therefore, Commission can cope with situation where the field is unoccupied by issuing necessary orders.

In an earlier precedent, it was established that the Election Commission could deal with the Constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 which was issued by the Election Commission in its plenary exercise of power under Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Election Rules, 1961.<sup>20</sup> Thereafter, this Court in *Common Cause (A Registered Society) v. Union of India and others*<sup>21</sup> held that election in the country are fought with the help of money power which is gathered from black source and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle has totally polluted the basic democracy in the country. The Court held that purity of election is fundamental to democracy and the Commission can ask the candidates about the expenditure incurred by the candidates and by a political party and for this purpose. The Court, relying on all these decisions held that the Election Commission was hence, capable of deciding on matters relating to elections Constitution has made comprehensive provision under Article 324 to take care of surprise situations and it operates in areas left unoccupied by legislation.

#### **WHETHER THE CITIZENS HAVE THE RIGHT TO KNOW ABOUT THE CANDIDATES CONTESTING ELECTIONS?**

The citizens have a right to know about public functionaries. The concept of freedom of speech and expression imbibes within itself, the right to know about the background of candidates for public office. The expression "freedom of speech and expression" in Art.19(1)(a) has been expounded by various Supreme Court judgements. This particular case deals with how the right to freedom of speech and expression has also included in it, the right to receive information about a political candidate's personal life. It has been held since then that, a voter "expresses" his opinion in the form of casting his vote and hence this final stage of voting attracts Art.19(1)(a) . Hence, the right to receive information is a part of Art.19(1)(a) and is of great significance for elections. The Court further advanced that a successful democracy strives towards an "aware citizenry" and

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<sup>19</sup> AIR 1978 SC 851

<sup>20</sup> *Kanhiya Lal Omar v. R.K. Trivedi and other* AIR 1986 SC 111

<sup>21</sup> AIR 1996 SC 3081

misinformation or non-misinformation of any kind will create a “uninformed citizenry which makes democracy a farce.”

The following cases were referred to while giving the judgment on this topic:

*In State of Uttar Pradesh v. Raj Narain and Others*<sup>22</sup> 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". In *Indian Express Newspapers (Bombay) Private Ltd. and Others etc. v. Union of India and others*<sup>23</sup>, the 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..." In *Romesh Thappar v. State of Madras*<sup>24</sup>, that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes. In *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*, democracy cannot survive without free and fair election, without free and fairly informed voters. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of 'speech and expression' and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy. *Dinesh Trivedi, M.P. and Ors. v. Union of India and Ors*<sup>25</sup>, the Court dealt with citizen's right to freedom of information and observed "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, seek to formulate sound policies of governance aimed at their welfare". The Court also observed "democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant. In *P.V. Narasimha Rao v. State (CBI/SPE)*<sup>26</sup> it was established that an MP/MLA is a public servant. In *Vishka v. State of Rajasthan*<sup>27</sup> dealt with incident of sexual harassment of a woman at work place with resulted in violation of fundamental right of

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<sup>22</sup> AIR 1975 SC 865

<sup>23</sup> AIR 1986 SC 515

<sup>24</sup> AIR 1950 SC 124

<sup>25</sup> (1997) 4 SCC 306

<sup>26</sup> AIR 1998 SC 2120

<sup>27</sup> AIR 1997 SC 3011

gender equality and the right to life and liberty and laid down that in absence of legislation, it must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in Vineet Narain's case (supra) where the Court has issued necessary guidelines to the CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of rule of law.

#### COMMENT

The Supreme Court's observation ceased to be mere rhetorics talking points when in *Union of India v. Association for Democratic Reforms* a threejudge seat of the Court issued certain mandates to the Election Commission of India to be actualized by it under article 324 of the Constitution obliging the competitors, looking for decision to the Parliament or to a State Legislature, to make certain revelations about them. By an alteration of the Representation of the People Act, 1951 the Government consolidated just piece of the mandates and further gave that an applicant couldn't be obliged to uncover much else. Quickly from that point, in *PUCL v. Union of India*, another three judge seat held that the Court's before orders couldn't be spurned on the grounds that they were gotten from article 19(1)(a) which epitomized the rule of the privilege to know. As I would see it, the Court's comprehension of the extent of article 19(1)(a) was imperfect. Still, since India is going through an impossible to miss stage in its working of the political procedure and since it needs some sort of legal oversight all the time in that circle for remaining immovably established in constitutionalism, progressivism, and standard of law, it is proposed that the Court can practice the force of legal oversight with a perspective to uphold the standards of responsibility to the individuals; however this force will be gotten from the essential structure of majority rule government in the Constitution. It might likewise be expressed that the Right to Information Act, 2005, is simply the administrative usage of the protected standard of the privilege to know accessible to the individuals against the Government as a piece of the equitable structure of the Constitution.

In substance, the suggestions set around the Court in the twin cases were that article 19(1)(a) privilege incorporated the privilege to know which the Court had made an interpretation of into specific orders to the Election Commission with a perspective to empower the voter to settle on an educated decision when he went to make his choice. Be that as it may, the disputable inquiry is whether these recommendations fit in the acknowledged importance of the privilege to the right to speak freely and expression typified in article 19(1)(a). The reality of the matter is that the privilege incorporates right to look for, get and bestow data. Be that as it may, it is constrained to such data as is as of now in general society area or as can be acquired from an eager speaker. Article 19(1) rights including the

privilege of discourse and expression contained in article 19(1)(a), are freedom rights and not guarantee rights.<sup>5</sup> If somebody is willing to make certain divulgements, he can't be kept by the Government from doing as such with the exception of on the grounds said in condition (2) of article 19. In any case, article 19(1)(a) is completely restricted to the idea of pressured discourse or that of hostage gathering of people. In none of the cases referred to anything has been chosen in opposition to this. The very expression 'right to know' is of American source and is seen in the setting of correspondence between an eager speaker and willing audience members. Mandatory divulgements can be requested, and are requested, in prosecution similar to the position in *S.P.Gupta v. Union of India* still the judge utilized the talk of right to know which was not the slightest pertinent there. Now that its out in the open, the expression is being utilized nowadays by willing speakers to add weight and respectability to their demeanors as in business discourse cases, or to assert the office of a gathering as when access to the press is guaranteed. What is highlighted is that the speaker was stating something for his own satisfaction as well as to convey certain things helpful to the individuals as far as anyone is concerned. Accordingly, it is consciously presented that the Court absolutely misconstrued the significance and import of the expression 'right to know'. No commitment can emerge, unless the beneficiary of the data has a legitimate case to that data.

Second, in the setting of the case, the putative competitors were themselves qualified for the security of article 19(1)(a) which gives each individual the flexibility to talk or not to talk and the opportunity to choose what to talk and what not to talk. It is not that a hopeful can't be made to reveal certain things. In any case, that should be possible under a law went by Parliament under article 327. Since none has a crucial right to be a hopeful, this benefit can be given by law subject to sensible conditions. That Parliament decided to fuse just piece of the first orders issued by the Court can be discussed as an issue of legitimacy; at the same time, as I would see it was mistaken to hold that the Parliament was not equipped to do as such. In all actuality the Court has yielded to Parliament in decision matters even the ability to force confinements on race talks not allowed under article 19(2).

What the Supreme Court for this situation has strived to do is to set up an association between article 19(1)(a) and the privilege to vote. Then again, the Court appears to have fizzled in its grandiose goal. The reason is that the association tried to be built up was made in an unnatural path between slender lawful procurements. We all realize that article 19(1)(a), (b) and (c) ensures social equality as well as political rights. The privilege to make political discourse, right to sort out open meeting and political challenge, and the privilege to shape a political gathering constitute the quintessence of majority rule process. Every one of these exercises without a doubt encourage the activity of the privilege to vote in an important way. They are connected together naturally and bring into presence a vote based structure. Be that as it may, fruitful operation of majority rule government hypothesizes numerous things, just some of which are guaranteed by operation of the legitimate procedure. No vote based system can be pictured without enough space for play of political powers, and the amusement is not

generally played in a legitimate and sound way. In developed majority rules systems, numerous things are dealt with by cautious popular feeling. Be that as it may, our own is a developing majority rule government and law courts are assuming a pivotal part. Here, we need to discover a doctrinally faultless standard which can permit the better courts than keep on assuming their part following Indian popular government is still in its improvement stage. For that we need to find a general rule which gives sufficient part to the pinnacle Court. This general standard is the popularity based structure which the Constitution builds up, and every single other procurement are just appearances of that rule. The regulation of fundamental structure has effectively made us acquainted with the interpretive tenet that numerous standards can be gotten from the structure of the Constitution, and that everything need not be composed in the content. The heart of popularity based structure is equitable responsibility and that requires educated citizenry and flexibility of data. Be that as it may, the privilege to discourse and expression does exclude right to get data from an unwilling speaker, however an educated subject can all the more viably practice his entitlement to vote. Along these lines, that right we must situate in the majority rule character of the Constitution and not in article 19(1)(a) and when we discussion of the privilege to data we don't intend to constrain the reach to the minor matter of a few exposures by putative hopefuls; rather, we expect to incorporate in the extent the whole representing structure. Along these lines, the standard of vote based responsibility would respect people in general the right that the administering organizations and authoritative offices might not make counterfeit checks to shield their working from basic man's sight and that the distinctive offices should make accessible the data that is looked for by the general population. So comprehended, the Right to Information Act, 2005 can be seen as just giving a solid shape to that fundamental established standard in the same route as the Protection of Civil Rights Act, 1955 gives a solid shape to hostile to untouchability and non-segregation procurements of the Constitution.

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