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Voter's Right to Know the Antecedents of the Candidates

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ABSTRACT

The Right to know is the part of fundamental legal right to empower the people while deciding to cast their votes in support of candidates in the election. The right to know helps them to elect right candidate and it is one of the fundamental principles of representative democracy. Unless you know the credentials of the candidates the Parliament is formed from unknown members and the government is formed accordingly. Small city states provide easier opportunities to voters to know the candidates but Indian voters do not have such easier opportunities. The right to know of the antecedents of the candidates as proscribed under Section 33A and 125 of the Representation of People Act, 1951. These are all the information which will explain the nature of candidates and the voters are given options to choose their candidates. The Supreme Court has given several decision that the voters have right to know. In the present paper the researcher will discuss the right to know the antecedents of the candidates in light of the Right to Information Act, 2005 and various judgments.

Keywords: *Voter, Antecedent, Legal, Right.*

I. INTRODUCTION

The right to know is the part of fundamental legal right to empower the people while deciding to cast their votes in support of candidates in the election. The right to know helps them to elect right candidate and it is one of the fundamental principles of representative democracy. Unless you know the credentials of the candidates the Parliament is formed from unknown members and the government is formed accordingly. Small city states provide easier opportunities to voters to know the candidates but Indian voters do not have such easier opportunities.[2]

The provisions relating to right to information regarding the antecedents of the candidates are prescribed under Sections 33 A[3] and B[4] and 125 A[5] of the Representation of the People Act, 1951.

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[2] P. Rathna Swamy, Handbook on Election Law,Lexis Nexis, 1st Ed.(2014)p.293.
[3] Section 33A of The Representation of the People Act, 1951
[4] Section 33B of The Representation of the People Act, 1951
[5] Section 125A of The Representation of the People Act, 1951

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There is all the information which will explain the nature of candidate and the voters are given option to choose their candidates. The Supreme Court has given several decision that the votes have right to know.

II. RIGHT TO KNOW

The right to know is discussed in various decisions of the Supreme Court. The right to know is discussed in the Right to Information Act, 2005. The same may not be appropriate to election law. Nevertheless the right to know is a legal issue which will lay foundation in election law too. The right to know is part of freedom of expression and thereby it becomes a fundamental right.

On the emerging concept of an open Government , about more than three decades ago, the Constitution Bench of Supreme Court of India in the case of *The State of Uttar Pradesh v. Raj Narain & Others*[6] held that:

"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. 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 transaction which can, at any rate, have no repercussion on public security…………….. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired."

Another Constitution Bench in *S.P. Gupta and Ors. v. President of India and Ors.*[7] Relying on the ratio in Raj Narain held.

"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 Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be at attenuating the area of secrecy as much as possible consistently with the requirement of public interest, hearing in mind all the time that disclosure also serves an important aspect of public interest….."[8]

It is, therefore, clear from the ratio in the above decisions of the Constitution Bench of this Court that the right to information, which is basically founded on the right to know, is an

[6] AIR 1975 SC 865.
[7] AIR 1982 SC 149.
[8] *Ibid.*

intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. It has an extraordinary ramification on the secrecy versus fundamental right. The complication fundamental right forms a personal against writ at large particularly of the state. The private disclosure does into form part of state responsibility to ensure public interest enforceable like fundamental right enshrined in the Constitution of India. The right to know travels into grey area which may curb the freedom of expression. Lack of Legal provisions may strengthen secrecy as slowly the statutory right turns to be discovered as fundamental right. The judicial opinions are guideline to interpret law but not the law since the judicial opinions are overruled in several times. The said Act was, thus, enacted to consolidate the fundamental right of free speech.

Again in *Reliance Petrochemicals Ltd v. Proprietors of Indian Express Newspapers Bombay Pvt, Ltd. and others*[9] this Court recognized that the Right to Information is a fundamental right Article 21 of the Constitution. This Court speaking through Justice Sabyasachi Mukharji, as His Lordship then was, held":

""...We must remember that he people at large have a right ti now in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."[10]

In *People's Union for Civil Liberties and Anr. v. Union of India and Ors.*[11] this Court reiterated, relying on the aforesaid judgments, that right to information is a facet of the right to freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of Indian and also held that right to information is definitely a fundamental right. In coming to this conclusion, this Court traced the origin of the said right from the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights, which was ratified by India in 1978. This Court also found a similar renunciation of principle in the Declaration of European Convention for the Protection of Human Right (1950) and found that the spirit of the Universal Declaration of 1948 is echoed in Article 19(1)(a) of the Constitution. The exercise of judicial discretion in favour of free speech is not only peculiar to our jurisprudence; the same is a part of the jurisprudence in all the countries which are

[9] AIR 1989 SC 190.
[10] *Ibid.*
[11] (2004) 2 SCC 476, AIR 2004 SC 1442, (2004)1 SCRR 232.

governed by rule of law with an independent judiciary. In this connection, if we may quote what Lord Action said in one of his speeches. "Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity". Justice Frank further also opined: "The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization." 'We live by symbols.' The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution."[6]

Recently the Supreme Court held that the voter has a right to know his voting in the Electronic Voting Machines (EVMs) and he can have a proof of it.[12] This appeal is directed against the judgment and order dated 17 January, 2012 passed by the Division Bench of the High Court of Delhi at New Delhi in *Dr. Subramanian Swamy v. Election Commission Of India*[13] whereby the High Court disposed of the petition by disallowing the prayer made by the appellant herein for issuance of a writ of *mandamus* directing the election Commission of India (ECI)-Respondent herein to incorporate a system of "paper trail/paper receipt" in the EVMs as a convincing proof that the EVM has rightly registered the vote cast by a voter in favour of a particular candidate.

As a result of the various steps taken by judiciary and the Election Commission of India now VVPAT units have been attached with the EVMs. With the help of these the voter can ensure that he has exercised his right to vote according to his/ her will.

III. The Antecedent of the Candidates

In November, 1995 Ministry of Law, Justice and Company Affairs requested the Law Commission to study and recommend the measures required expediting hearings of election petitions and the Law Commission carried out *suo-moto* thorough review of the Representation of the People Acts with the underlying object to make the electoral process more fair, transparent and equitable. The Law Commission has made several recommendations to amend the Constitution of India, Representation of the People Acts of 1950 and 1951 and the Indian Penal Code 1860, in its 170th report to the government submitted in May 1999. Among the several recommendations, one of them is suggested for amendments to the law for the purpose

[12] Chief Information Commr. & Another v. State of Manipur and Another, SLP (Civil) no 32768 -32469 /2010 order dated 12 December, 2011.
[13] W.P.(C) No. 11879 of 2009.

of disqualifying persons facing criminal charges to obstruct the entry of criminals into politics. One of the suggestions was that antecedents as also the assets of each candidate at an election should be published before their nominations were accepted. As nothing was done by the government on the implementation of those recommendations of the Law Commission, a writ petition was filed by the Association for Democratic Reforms before the Delhi High Court in December 1999. The Delhi High Court on 2nd November, 2000, held that the court could not give a direction to the government or Parliament to amend the law but the electors had a right to information as part of their fundamental right of freedom of speech and expression enshrined in Article 19(1)(a) so that the persons with questionable backgrounds to not occupy seats in Parliament and state legislatures. The High Court directed the Election Commission to secure the voters the following information pertaining to each of the candidates for election to Parliament and state legislatures and the parties they represent:

a) Whether the candidate is accused of any offence(s) punishable with imprisonment? If, so the details thereof.

b) Assets possessed by a candidate, his or her spouse and dependent relations.

c) Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator including details of his/her educational qualifications.

d) Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the state legislature.

The Central Government filed an appeal before the Supreme Court against the order of Delhi High Court. The Election Commission prayed to the Supreme Court for modification of the direction of the Delhi High Court, particularly with the regard to the direction to it to give information regarding the capacity and capability of the political parties, as the Commission considered that it would impinge upon its neutrality and impartiality. The Supreme Court, by tis order dated 2nd May 2002 held that:

"The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps. The limitation on plenary character of power is when the Parliament or state legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where aw is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken

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care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar's* case,[14] the court construed the expressions 'superintendence, direction and control' in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders."

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 balances 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.

The Supreme Court further directed that the norms and modalities to carry out and give effect to its above directions should be drawn up properly by the Election Commission as early as possible and in any case within two months. The Election Commission was of the view that the most efficacious manner of implementing the above order of the Supreme Court would be to amend forms of nomination papers and accordingly requested the government on 14th May, 2002 to suitably amend the said forms. The government, however, by their letter dated 19th June, 2002, informed the Commission that the matter of amending the forms of nomination papers was receiving consideration and that he government had convened a meeting of the

[14] AIR 1986 SC 111, 1985 (2) Scale 1370, (1985) 4 SCC 628.

political parties for consideration of the matter on 8th July, 2002. The government also requested the Commission to approach the Supreme Court to give further two months time beyond 1 July, 2002, for the implementation of the Court's order dated 2nd May, 2002. In reply, the Commission informed the Government on 21st June, 2002 that it was for the Union of India to request the Supreme Court for time, if it considered this necessary. In the absence of any direction to the contrary by the Supreme Court or extension of time by it, the Commission felt duty bound to implement the above order dated 2nd May, 2002 of the Supreme Court within two months from the date of pronouncement of that order,. that is to say, by 1st July, 2002 as the said order had the force of law within the meaning of Article 141 of the Constitution and was enforceable throughout the territory of India under Article 142 of the Constitution.

In these circumstances, the Election Commission issued an order on 28th June, 2002 requiring the candidates to file affidavits giving the information asked for in the Supreme Court's order. In this order, the Commission even provided that the furnishing of any wrong information in the affidavit or suppression of any material information there from would be a ground for rejection of nomination of the candidate concerned. Subsequently, the President of India promulgated the Representation of People (Amendment) Ordinance, 2002 on 24th August, 2002, inserting Sections 33 A, 33B, and 125A in the 1651 Act and amending Section 169 of that Act, and thereby diluting the commission's aforesaid order of 28th June, 2002. By these amendments, it was provided by Section 33 A that a candidate need to file an affidavit only giving information as to whether he was accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge had been framed by the court of competent jurisdiction, and whether he had been convicted of an offence (other than offences referred to in sub-sections (1), (2), and (3) of Section 8 of the Act[15] which attract disqualification for contesting election) and sentenced to imprisonment for one year or more. Further, it was specifically provided in the newly inserted Section 33B that, 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 was not required to be disclosed or furnished under the said Act or the rules made there under. By Section 125A, failure to furnish information under Section 33 A or giving false information or concealing any information in the nomination paper was made a penal offence punishable with imprisonment for a term which may extend to six months or with fine or with both. The government then amended the 1961 Rules on 3rd September, 2002 prescribing a new Form 26 in which the

[15] The Representation of People Act, 1951.

candidates had to furnish the information in terms of the above referred Section 33 A.[16]

The Association for Democratic Reforms and People's Union for Civil Liberties filed a writ petition before the Supreme Court challenging the constitutional validity of the Presidential Ordinance dated 24th August, 2002 (which was subsequently replaced by the Representation of the People (Amendment) Act, 2002 on 28 December, 2002) and the Supreme Court, by its order and judgment dated 13th March, 2003 declared Section 33 B of the amended 1951 Act as illegal, null and void, and further directed as follows.

"The right to information provided for by the Parliament under Section 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. The Election Commission has to issue revised instructions to ensure implementation of Section 33 A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The election Commission's order 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."

The Election Commission thereupon issued a fresh order on 27th March, 2003 to give effect to the above order dated 13th March, 2003 of the Supreme Court. The Election Commission's order provided that:

- Every candidate at the time of filing his nomination paper for any election to the Council of State, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to all the five maters, specified by the Hon'ble Supreme Court, in an affidavit.
- The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of th4e State concerned.
- Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned

[16] Supra note 2 at 296.

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shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non – furnishing of the affidavit.

- The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.
- If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.
- Accordingly the Election Commission instructed the format of an affidavit which the candidates had to file along with their nomination papers furnishing the information directed to be disclosed by the Supreme Court by its order dated 2nd May, 2002 and 13th March, 2003. The Election Commission on 9th March, 2004 modified that format which included the disclosure of the government dues owed by them, if any, to the departments dealing with the government accommodation, electricity, water, telephone, and transport (including aircrafts and helicopters) and also any other dues as per the direction of the Delhi High Court. The Delhi High Court directed for publication of these information in at least two newspapers having local circulation for information of electors. The Election Commission instructed the Returning Officers to publish the above information in at least two newspapers having local circulation, one of which should be vernacular newspaper and in case of more than one constituency in a district, the district election officer may publish the above information in consolidated form in respect of all such constituencies (constituency-wise) in that district.[17]

IV. Right to know and right to information

The Right to Information Act (RTI) is an Act of the Parliament "to provide for setting out the practical regime of right to information for citizens" and it is applicable to all states and territories except the State of Jammu and Kashmir which has separate RTI Act, 2009. It permits a citizen to request information from a "public authority", which may be a governmental body or "instrumentality of state" and it is mandatory to reply promptly or within a period of 30 days, depending on the nature of the request and the nature of the information queried for. The citizen who seeks certain information is not obliged to make disclosure of himself or herself

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[17] Supra 2 at 305.

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except for his/her name and contact details Until the verdict of a complete bench of CIC on 3rd June, 2013, constituted by the Chief Information Commissioner, Satyananda Mishra, and Information Commissioners Annapurna Dixit and M.L.Sharma, held that "the RTI Act is a applicable to political parties." Minister of Information and Broadcasting, Manish Tiwari, declared in a statement given on 16th July, 2013m, "If you read the RTI Act, if you go back to the debate which led to its conceptualization, if the intent was to bring political parties under it, that would have been stated....... And the law doesn't allow you to do something indirectly which cannot be done directly and that's why we have said very respectfully that the CIC's order is misconceived and fails on the fundamental appreciation of the law."[18]

On 25th October, 2013, in what seems to be a groundbreaking step towards cleansing the political system of our country, the CIC upheld its final declaration, that political parties are indeed "public authorities" and hence, are compelled to respond to any queries furnished under the RTI Act. "The presidents, general secretaries of these parties are hereby directed to designate CPIOs and Appellate Authorities at their headquarters in six weeks. The CPIOs so appointed will respond to the RTI applications extracted in this order in four weeks time." The bench also instructed the said political parties to accede to the compulsory and voluntary admission conditions as stated under the RTI Act and update their websites with the minutes of such information. The Department of Personnel and Training (DoPT), which acts as nodal department for the implementation of the RTI Act, in consultation with Law Ministry decided to amend the law. The Government seeks to change the definition of public authorities mentioned under Section 2 of the RTI Act to keep all recognized political parties out of the jurisdiction of RTI, the sources said. The government will have to introduce a Bill in this regard in the monsoon session of Parliament.[19]

V. Major loopholes

While efforts have been made to bring accountability and transparency in Indian Politics, still Section 125A of the RPA- which provides for prosecution of candidates for furnishing false information in the affidavits, still remains in blue. Instead, the Court recommended the Parliament to make laws to prevent the criminalization of politics. Further, the court has issued directives to the Election Commission and the parties to publish information about the candidates through social media, newspaper or television, however, there are no defined parameters, which may ensure that the directives are being followed. Therefore, even after

[18] *Ibid.*
[19] Supra note 2 at 306.

certain landmark rulings, the problem of the criminalization of politics has not been addressed and solved completely.[20]

VI. Conclusion and suggestions

The Government is attempting to dilute it by exempting the political parties. All the political parties are against the above decision of the Chief Information Commissioner. If the decision is properly implemented the democracy is strengthened. Unfortunately it has not promoted democratic values. Effective electoral system depends upon effective democratic values. In UK the political parties disclose all the accounts after election and during the election annually and such disclosures are voluntary under the respective laws. The purpose of it is to regulate donations to the political parties.[21] The apex court has time and again reiterated the significance of the right to know of the voters through its various judgments. Being a fundamental right, voters have a right to know about the candidate who might become their representative in the Parliament or the State Assemblies. Further, the directive issued by the apex court in its various judgments has not only mandated the parties to mention the criminal past of their candidates, but it has also mandated the parties to give reasons behind the fielding of a candidate who has criminal charges against him.

However, there is a common thread which is followed by all the political parties in their forms which states the reason for the nomination of a candidate to be the seniority, experience and dedication of the candidate. Further, the reason behind the preference given to a candidate with criminal charges over the candidate with a clear record is the edge that the candidate has over others and that the charges being alleged against him have no substance and are driven by a vindictive approach. The parties clearly state that the criminal case framed against their members is politically driven for the fulfilment of personal vendetta by the opposite political parties. Further, since a candidate cannot be disqualified from contesting elections on the grounds of furnishing false statements in the affidavit, candidates misuse this aspect and make submissions which are either incomplete or false. Prosecution of the candidate for furnishing false statements under Section 125A of the RPA is possible only when a complaint is received against the candidate and that too does not affect the nomination or election of the candidate. Therefore, in order to resolve the issue of the criminalization in politics and to provide the Right to Know to the voters, it is essential to ensure that the candidates furnish correct information in the affidavits and the parties are transparent about the information of their

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[20] https://blog.ipleaders.in/right-know-about-criminal-contestants/

[21] I*d* at 307.

members.[22]

For the establishment of true democracy in India it is necessary that the political parties should be under the ambit of Right to Information Act, 2005. So that the source of the donations to the political parties can be find out. It will be a step to put a check on the corruption by the political parties and the unseen donors.

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[22] https://blog.ipleaders.in/right-know-about-criminal-contestants/

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