

Delhi High Court

Association For Democratic ... vs Union Of India (Uoi) And Anr. on 2 November, 2000

Equivalent citations: AIR 2001 Delhi 126, 2000 (57) DRJ 82

Author: A D Singh

Bench: A D Singh, M Sharma

JUDGMENT Anil Dev Singh, J.

1. Information is a many splended virtue. It is the key to power, fortune, science and technology and even steadfast democracy. Its potential when channelised is capable of banishing ignorance, poverty, hunger and want. It plays significant role in every walk and sphere of life, including the field of politics and democracy. It can transform democratic institutions and the governance of the country.

2. In this petition the petitioner inter alia seeks an informed right of voting for the voters of this country based on information and knowledge about candidates seeking election to Parliament and State Legislatures. The prayer in this regard of the petitioner is as follows :--

"(iv) Issue an appropriate writ, order or direction directing respondent No. 2 to put together the information on criminality of all the candidates for an election and make this information available to public, and print and electronic media for wide dissemination."

3. Besides, the petitioner seeks a direction to the first respondent to amend the provisions of the Representation of the People Act, 1951, in consonance with the recommendations of the Law Commission contained in its 170th Report. At this stage it will be convenient to set out the recommendations of the Law Commission :--

XXX XXX XXX 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, Legislative 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 88 has been framed against him by any Criminal Court."

6.3.3.1. The consequential changes will be required to be carried out in Forms 2A to 2E prescribed by the Conduct of Election Rules, 1961 to bring these in conformity with the amendments recommended in the Representation of the People Act, 1951. Accordingly, it is recommended that

following clauses be inserted as Clauses (d) and (e) in Forms 2A to 2E. Consequently, the existing Clause (d) therein shall be designated as Clause (f) :

(e) that the statement of assets enclosed to this nomination paper represents the true and correct statement of all the assets, movable and immovable, held/owned by me, my spouse and dependent relations. An affidavit affirming the correctness of the said statement is also appended to this nomination paper.

(f) that no criminal Court has framed a charge against me in respect of any of the offences mentioned in Section 8-B of the Act and that no trial in respect of charges of the said offences is pending, or that a charge has been framed against me by the Court of ----- in the case No. ----- on ----- (date) in respect of offence(s) punishable under Sections ----- mentioned in Section 8-B and trial is pending against me, or that though charge was framed against me by the Court of----- in the case No. ----- on ----- (date) in respect of offence(s) punishable under sections ----- mentioned in Section 8-B, I have since been acquitted of the said charge by order ----- (date) (copy enclosed).

4. Moreover, the words "that I am contesting this election as an independent candidate" in Forms 2A and 2B should be deleted.

The petition also seeks a direction to make it mandatory for every candidate to provide the relevant information by amending Form 2A to 2E prescribed by Conduct of Election Rules, 1961, relating to filing of nominations, on the lines of the amendments suggested by the Law Commission and making it penal in the event any of the said disclosures are found to be inaccurate or incorrect and also making the said candidate, if elected, liable to be disqualified. Besides, as already noted, the petition claims a direction to respondent No. 2 to compile information on "criminality of candidates" and make the information available to public by printing and by dissemination through electronic media. For seeking these reliefs the petitioner highlights the fact that over the years there has been criminalization of politics. To illustrate the point it lists forty six candidates who had been nominated by various political parties to contest elections for the Thirteenth Lok Sabha even though they were said to have criminal background. It also cites the example of the recent elections to emphasise that there has been spurt in election related violence.

5. The Election Commission of India has filed an affidavit in response to the writ petition. It is stated that the Election Commission of India is very keen that certain amendments be carried out in the electoral laws. It had suggested even before the 170th Report of the Law Commission was submitted to the Government of India in May, 1999, to disqualify persons from standing in the elections charged with serious offences. According to the Election Commission it has been raising the issue for over two years. It is asserted that the Election Commission pointed out to the Government of India serious anomalies in Section 8 of the Representation of the People Act, 1951, which deals with disqualification of candidates on the ground of conviction. The affidavit also mentions the fact that a communication had been received from the Government of India, Ministry of Home Affairs, dated May 27, 1998 for comments of the Election Commission of India with regard to the question of requiring the candidates to declare their assets and those of their spouses, sons, daughters, brothers,

sisters etc. In response, the Commission had conveyed its views on June 25, 1998.

6. Respondent No. 1, the Union of India, has filed a short affidavit. It is stated that the entire approach of the Government in the matter of electoral reforms has all along been consensual in nature. Since the amendments suggested by the Law Commission affect political parties, the Government is in favour of a through debate in public. The Government of India wants to proceed on the basis of unanimity of views on the subject. It is further stated that the Union of India is not in a position to give any categorical assurance with regard to carrying into effect of the recommendations of the Law Commission. It will be appropriate at this stage to set out the averments of the Union of India in this regard :--

"4. In the light of the submissions made in the preceding paragraphs it is stated that the Union of India is not in a position, at this stage, to give a categorical assurance that the Forms 2A to 2E prescribed in the Conduct of Elections Rules, 1961, will be amended as suggested by the Law Commission. It is also not possible to give a definite time frame by which a decision in the matter will be taken. The Government on its part can only assure the Hon'ble Court that the matter will receive its serious consideration and depending upon the outcome of the public debate and the consensus amongst the political parties, the Government will bring a comprehensive Electoral Reforms Bill which will also include provisions for putting a check on criminalization of politics and misuse of money and muscle power in elections."

7. As is evident, the Government has not been able to table an Electoral Reforms Bill in the Parliament for lack of unanimity amongst the Political parties. The Government has been searching for consensus which has alluded it so far. It appears that without the acquiescence of the parties it is impossible for the Government to do the plainest right and to undo the plainest wrong. The existing electoral law does not measure up to the realities of the situation, but we cannot give a direction to the Parliament or to the rule making authority to amend the Representation of the People Act, 1951, and forms 2A to 2E of the Conduct of Election Rules 1961, as the case may be, since we have no such power or power to legislate. The power to legislate with respect to the matter of Election to Parliament and to the State Legislatures or to carry out amendments in the existing provisions of the Representation of the People Act, 1951 lies in the exclusive domain of Parliament under Article 246 of the Constitution read with Entry 72 of List I of the Seventh Schedule thereof. We cannot trench upon that field even if reforms in the election law may be the felt necessity of time. The matter, however, does not end here.

8. The question which still survives for determination is whether or not an elector, a citizen of this country, has a fundamental right to receive information regarding candidates' criminal activities and to know facts about them which have a bearing on their suitability and competence for being elected as Parliamentarians or legislators, as the case may be, so that the elector casts an informed vote. In other words should a voter as a matter of right be allowed to peep into the past of the candidate for making an estimate for himself as to whether the person, who is standing in the election, has a background making him worthy of his vote. In the present scenario the question has great relevance and needs to be determined.

9. We first propose to focus on the present scenario. No less an authority than the Election Commission of India, which has the first hand experience of elections of about five decades has expressed grave concern over the criminalization of politics. Its official publication "Electoral Reforms (Views and proposals)" alludes to the much discussed concerns regarding the anti-social and criminal elements making inroads into the electoral and political fields and the need to amend the Representation of the People Act, 1951. The following excerpts from the publication turn the spot light towards the growing nexus between the political parties and anti social elements :--

"(1) CRIMINALISATION OF POLITICS The whole country is now expressing serious concern over the anti-social and criminal elements entering the electoral arena. Even Parliament, in the debates on 50 years of independence and the resolution passed in its special Session in August, 1997, had shown a great deal of concern about the increasing criminalization of politics. It is widely believed that there is a growing nexus between the political parties and anti-social elements, which is leading to criminalization of politics, where the criminal themselves are now joining election fray and often even getting elected in the process. Some of them have even adorned ministerial berths and, thus, law breakers have become law makers.

It is difficult to define as to who a criminal is. Under the jurisprudence, a person is presumed to be innocent unless proved otherwise and convicted by a Court of law. Thus, in strict legal parlance, a criminal may be one who has been convicted of crime by a Court of law. But a common man perceives otherwise. In his eyes, a person who has been charged with certain types of offences and is under trial is also a criminal. The common man considers it criminalisation of politics if he sees a history-sheerer or a notorious bad character, involved though perhaps not finally convicted in various crimes of heinous nature like murder, dacoity or rape, contesting elections and getting elected. There is clamour that such history-sheerers and bad characters should be debarred from contesting and holding any elective office.

The Election Commission has also been devoting serious thought to this vital issue. In August, 1997, it issued an order under Article 324 of the Constitution, whereby all candidates for elections to Parliament and State Legislatures are now required to file affidavits about their convictions in cases covered by Section 8 of the Representation of the People Act, 1951, which disqualifies persons convicted of those specified offences. The Commission also clarified that the conviction by the trial Court itself is sufficient to attract disqualification and even those who are released on bail during the pendency of their appeals against their convictions are disqualified for contesting elections. It is a small step forward in combating the situation, but has been greatly welcomed by the common people.

The Commission conveyed its serious concern and anxiety in the matter to the Government at the highest level, through a letter written by the Chief Election Commissioner to the then Prime Minister in Sept. 1997. In that letter, the Commission has also pointed out grave incongruities in the existing provisions of Sub-section (1), (2) and (3) of the said Section 8 of the Representation of the People Act, 1951, illustrating the case of a rapist, convicted and sentenced to ten years imprisonment, being disqualified only for six years under Sub-section (1) and being free to contest elections, even while in prison serving the last four years of his sentence. The Commission had

suggested that the law may be simplified by amending said Section 8 to provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years. A copy of the said letter of Chief Election Commissioner is annexed hereto as Annexure-I.

The Commission reiterates its above suggestion.

The Commission is also prepared to suggest that any person who is accused of any offence punishable with imprisonment for five years or more should be disqualified, even when his trial is pending, provided that the competent Court of law has taken cognizance of the offence and framed the charges against him.

..... In the Commission's considered opinion, a person who is facing trial in a serious offence, if kept out of the electoral fray till he is exonerated of the charge, should not have a legitimate grievance, as such restriction on his right to contest elections would be a reasonable restriction in the greater public interest and for bringing sanctity to the august Houses which are the supreme law making bodies of the country."

10. From the above it is evident that the fact of criminalization of politics stands recognised even by the Parliament in its resolution passed in a special session in August, 1997 whereby it showed great concern regarding increased criminalization of politics. It is also manifest from the aforesaid publication that criminals are no longer contend with making others win elections but are now contesting the elections themselves, and the irony of the situation is that those who live by breaking the law are turning into law makers, and some of them had even found ministerial berths. It is a dangerous development which does not augur well for the country and the Parliamentary democracy.

11. Even the Law Commission in its 170th report noted the strong opinion expressed by several participants at the national seminar about the politicisation of crime and the use of criminals at the time of elections. It also noted the increasing electoral malpractices with every passing election. In view of the grave situation the Law Commission suggested amendment in the Representation of the People Act, 1951. At this stage it will be advantageous to quote from the Report of the Law Commission :-

xxxx xxxx xxxx 5.2. View of different persons considered. -

.....Shri Dilip Padgaonkar, Editor, Times of India, in his keynote speech at the National Seminar referred to Dr. Radhakrishnan's concern about corruption expressed in 1947 and to Vohra Committee Report. According to him, a negative process was in progress in India, namely, criminalization of politics and politicisation of crime. He observed that Indian society was basically tolerant of human failings and that it respected acquisition of wealth by whatever means. He referred also to facts and figures concerning the increasing criminalization and the increasing number of crimes committed at every succeeding election. He referred to the increasing electoral

malpractices with every passing election. He pointed out that while in 1957, repoll was ordered only in 65 booths, in 1989 it was ordered in 1670 booths. He pointed out that in 1991, in Bihar alone repoll was ordered in 1046 booths and in 2173 booths in 1996. He suggested strong measures to arrest the trend towards criminalization of politics and elections, Shri V.R. Reddy, Senior Advocate and former Additional Solicitor General extended qualified support to the proposals of the Law Commission in this behalf. According to him, this amendment did not really provide the solution inasmuch as the police was not willing to take action against criminals because of the nexus between politicians and criminals.

5.2.1. Strong opinions were expressed by several participants at the National Seminar about the politicians taking the help of criminals not only at the time of elections but even at other times, as well as to the direct entry of criminals themselves into politics. One of the suggestions was that the antecedents and history as also the assets of each candidate at an election should be published in newspapers before their nomination was accepted."

xxx xxx xxx xxx 5.3 Analysis of views "Having given our earnest consideration to the issue, we are of the opinion that the proposal put forward by us should be reiterated and affirmed but with certain changes. The changes we are making are the following: (a) Section 8 shall remain as it stands now; (b) the electoral offences and offences having a bearing upon the conduct of elections under Sections 153A and 505, IPC and serious offences punishable with death or life imprisonment shall be put in a separate section viz. Section 8B. Section 8B (proposed) provides that framing of charges shall be a ground of disqualification but this disqualification shall last only for a period of five years or till the acquittal of the person of those charges, whichever event happens earlier. (In case such person is convicted for any of the offences mentioned in Section 8B (proposed) he gets disqualified under Section 8). This course we are adopting for the reason that a person committing election offences or serious offences punishable with life imprisonment should be disqualified even if charges are framed against him by the Court. It must be remembered in this context that persons committing electoral offences or election related offences are generally influential person or persons having the backing of influential persons. So far as offences punishable with life imprisonment are concerned, they seriously affect the public and very often involve moral turpitude. In this connection, we feel constrained to make certain remarks about the criminal judicial system of this country which has also become extremely corrupt at certain levels. In several instances, offences are registered merely with a view to pressurise the persons to pay bribes to the investigating agencies and then the case is closed. The real offenders are quite often left untouched either because they are capable of bribing the investigating agencies or able to pressurise them in various well-known ways. So far as the prosecuting agency is concerned, the appointment process of public prosecutors and other prosecutors in criminal Courts has also become thoroughly politicised. Appointments are no longer made on the basis of merit but almost exclusively on the basis of political affiliations. It is a common phenomenon in the States to see the public prosecutors and the Government advocates changing with every change of Government -- not merely when a different political party comes into power but also when the incumbent in the office of chief minister changes within the same political party. Such kind of appointments, coupled with frequent changes (leaving short terms at the disposal of the incumbents), is keeping away people with merit from these offices. No advocate with merit and having some work, is prepared to accept these offices because they have become too precarious and

dependent, upon the whims and fancies of the political bosses. Efficiency and integrity have both become scarce in many of the holders of these offices. So far as the witnesses are concerned, the inordinate delays in bringing the accused to trial is acting as a damper. Very often witnesses are won over, threatened or otherwise pressurised not to speak the truth. If their evidence is recorded soon after the offence, more often than not, they will speak the truth. But if there is an interval of a year or more--which is invariably the case now-a-days -- they become weak in their resolve to uphold the truth and succumb to pressures. Lastly, so far as the judges are concerned, the common complaint heard is that inefficiency, and corruption in some cases have both unfortunately made an entry into the hitherto sacred portals of judiciary.

XXX XXX XXX XXX 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 over night. 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 the assets (movable/immovable) possessed by him/ her, wife/husband, dependent relations, duly supported by an affidavit.

6.3.2. Further, in view of recommendation of the Law Commission for debaring 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.

12. The Supreme Court in *Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil*, , has also lamented the criminalization of politics which is the result of growing influence of money power during elections.

13. A reference may also be made to the report of a committee headed by Shri N.N. Vohra, Former Home Secretary, Government of India, known as "Vohra Committee Report", submitted to the Central Government in the year 1995, to bring home the extent of penetration of crime in the political arena. In this regard paras 6.2 and 6.3 of the report need to be referred to. These paras read as follows :--

"6.2. Like the Director, CBI, the DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed sen as, drug Mafias, smuggling gangs, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-State sector. Some of these Syndicates also have international links, including the foreign intelligence agencies. In this context, the DIB has given the following examples :--

(i) In certain States, like Bihar, Haryana and U.P., these gangs enjoy the patronage of local level politicians, cutting across party lines and the protection of Governmental functionaries. Some political leaders become the leaders of these gangs/armed sen as and, over the years, get themselves elected to local bodies. State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardising the smooth functioning of the administration and the safety of life and property of the common man, causing a sense of despair and alienation among the people.

(ii) The big smuggling Syndicates, having international linkages, have spread into and infected the various economic and financial activities including havala transactions, circulation of black money and operations, of a vicious parallel economy causing serious damages to the economic fibre of the country. These Syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the Government machinery at all levels and yield enough influence to make the task of Investigating and prosecuting agencies extremely difficult: even the members of the Judicial system have not escaped the embrace of the Mafia.

(iii) Certain elements of the Mafia have shifted to narcotics, drugs and weapon smuggling and established narcoterrorism networks, specially in the States of J. & K. Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/detective systems. The virus has spread to almost all the centres in the country, the coastal and the border States have been particularly affected.

(iv) The Bombay bomb blast case and the communal riots in Surat and Ahmedabad have demonstrated how the Indian underworld has been exploited by the Pak ISI and the letter's network, in UAE to cause sabotage, subversion and communal tension in various parts of the country. The investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political circles, business sector and the film world.

6. 3 DIB has stated that the network of the Mafia is virtually running a parallel Government, pushing the State apparatus into irrelevance. It is thus most immediately necessary that an institution is established to effectively deal with the menace. In this connection, the DIB has stated :--

(i) Presently, there is no system mechanism which is specifically designated to collect and collate intelligence pertaining to the linkages developed by crime Syndicates/Mafias with the Governmental set up. Nonetheless, the various intelligence/investigating/enforcement agencies collect, in the normal course of their functioning, information about the nexus between the bureaucracy and politicians with the Mafia gangs, smugglers and the underworld. These agencies use such available inputs "only within the narrow confines of their work charter and choose not to take undue cognisance and follow up action, leave alone sharing with any other agencies". Thus, all these agencies "function within their own cocoons, with the result that a plethora of information fails to get specific and purposeful attention needed for the exposure of the linkages". It is, therefore,

necessary to immediately have an institutionalised system which "while giving total freedom to the various agencies to pursue their charter of work, would simultaneously cast on them the onus of sharing such inputs to a nodal outfit whose job will be to process this information for attention of a single designated authority." This will enable the Nodal Group to provide useful leads to the various agencies and, over time, a progressive data base will get generated to facilitate periodic reviews and analysis which could then be passed to a designated body."

14. There are startling and shocking revelations. The facts and figures revealing the defiling of election process by the criminals can be gleaned from the book titled the Pathology of Corruption" (1998, Harper Collin Publishers, India) authored by Shri S.S. Gill, a career civil servant who retired as Secretary, Ministry of Information and Broadcasting. The book describes the situation thus :

"A matter of most immediate concern to a politician is the winning of an election. Despite the rivers of money that flow during the polls, money alone does not win you elections. Use of violence provides an effective short cut. If you capture a booth or frighten away hostile voters from reaching the polling station, you have moved closer to the goalpost. The way poll violence has spread in India is truly frightening. In the 1957 general elections, repoll was ordered in sixty five booths. This figure rose to 1,670 in 1989. In Bihar alone repoll had to be ordered in 1,046 booths in 1991, and 1,273 booths In 1996. In the 1984 Lok Sabha elections thirty -three persons were killed. This figure rose to 130 in 1989 and 198 for the 1991 Lok Sabha Poll. Figures for assembly elections have also kept pace with this trend. The extent of the rot in Bihar may be gauged from the remarks of an MLA. "Unless you have hundred men with guns you cannot contest elections in Bihar." A minister in Karpoori Thakur's ministry said, "I am honest enough to declare that I keep goondas. For, without them, it is virtually impossible to win elections." Earlier, poll violence was mostly confined in UP and Bihar. Now it has spread to Andhra Pradesh, Tamil Nadu, Gujarat, Maharashtra, Haryana and other States."

xxxx xxxx xxxx xxxx "..... all the political parties (in UP) maintain gangs of criminals. A pre-assembly election report (1996), prepared by a top police official, identified 136 such gangs, fifty five of which were patronized by political parties. In the UP assembly elected in 1996 'almost 185 of the MLA's had criminal records. Almost five hundred of the candidates belonging to almost all mainstream political parties who contested (these) elections had criminal backgrounds.' No less an authority than the Election Commission gave out in August 1997 that forty sitting MPS and seven hundred MLA's had criminal records.

It is a common practice in Bihar and UP that winning candidates take out victory processions with scores of their followers carrying unlicensed arms"

15. Even if half of this were true, alarm bells must sound loud and clear. In a situation like this, if information regarding the antecedents of the candidate is not furnished to the voter , it will amount to mockery of the democratic system of governance in this country. It is only by furnishing candidates that one can hope that the voters would make an informed selection of candidates and seal the entry of undesirable candidates to the Parliament and the Legislatures. But the question which arises is whether a citizen has a right to such information.

16. Article 19(1)(a) of the Constitution confers on a citizen right to freedom of speech and expression. It comprehends right to know- right to receive information regarding matters of public concern. This right also emanates from the preamble to our constitution which secures to all its citizens liberty of thought and expression.

17. In State of U.P. v. Raj Narain, it was held that Article 19(1)(a) not only guarantees freedom of speech and expression, it also ensures to the citizens a right to receive information. The Supreme Court while holding that the right to know is derived from the concept of freedom of speech and expression observed as follows (at p. 884 of AIR) :--

"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. 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. 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. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

18. In Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal, the Supreme Court commenting on the scope of Article 19(1)(a) held that the freedom of speech and expression includes right to acquire information and to disseminate it. In this regard it held as follows (Paras 11, 53 and 54 of AIR) :--

"Freedom to speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy....."

XXX XXX XXX XXX "The freedom of speech and expression is a right given to every citizen of this country and not merely to a few. No one can exercise his right of speech in such a manner as to violate another man's right of speech. One man's right to speak ends where the other man's right to speak begins. Indeed, it may be the duty of the State to ensure that this right is available to all in equal measure and that it is not hijacked by a few to the detriment of the rest. This obligation flows from the preamble to our constitution which seeks to secure to all its citizens liberty of thought, expression, belief and worship. State being a product of the constitution is as much committed to this goal as any citizen of this country. Indeed, this obligation also flows from the injunction in Article 14 that "the State shall not deny to any person equality before the law" and the direction in Article 38(2) to the effect: "The State, shall, in particular-endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people....." Under our constitutional scheme, the State is not merely under an obligation to respect

the fundamental rights guaranteed by Part III but under an equal obligation to ensure conditions in which those rights can be meaning fully and effectively enjoyed by one and all.

The fundamental significance of this freedom has been stressed by this Court in a large number of decisions and it is unnecessary to burden this judgment with those decisions. Freedom of speech and expression, it has been held repeatedly, is basic to and indivisible from a democratic polity. It encompasses freedom of press. It includes right to impart and receive information...."

19. In *S. P. Gupta v. Union of India*, , the Supreme Court emphasised the need for increased disclosure in matters relating to public affairs.

20. *In Indian Express Newspapers (Bombay) Private Ltd. v. Union of India*, , Article 19(1)(a) was liberally interpreted to include the right to circulate one's views by word of mouth or writing or through audio visual devices. The right to freedom of speech and expression was held to include the right to propagate one's views through print media, i.e., periodicals, magazines or journals, or through other communication channels, for example, radio and television.

21. Having regard to the decisions cited above, it appears to us that the right of freedom of expression includes several specific rights which are bound together and through which a common string passes. These include :--

1. Right to voice one's opinion.

2. Right to seek information and ideas,

3. Right to receive information.

4. Right to impart information, etc. It also appears to us that the State is under an obligation to create conditions in which the aforesaid rights flowing from Article 19(1)(a) can be effectively and efficiently enjoyed by the citizens. Right to seek, receive and impart information can be through word of mouth, in writing or in print, in the form of art or through television, radio, etc.

22. Right to receive information acquires great significance in the context of elections. It will be a farce if a citizen casts his vote in ignorance, without knowing the background of the candidate. It will not amount to intelligent and rational voting. Therefore, it is imperative to ensure the availability of the right to a citizen to receive the information so essential for casting his vote. At this stage it will be apposite to quote the observations, of the Supreme Court in the case of *S.P. Gupta*, (supra) dealing inter alia with the importance of casting intelligent and rational vote :--

"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 rulers and, once the vote is cast, then retiring passively 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 a sporadic exercise in voting but becomes a continuous process of government -- an attitude and habit of mind. But this important role people can fulfill 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."

23. In *Gadakh Yashwantrao Kankarrao*, (supra) the Supreme Court held that the best available men should be chosen as people's representatives for proper governance of the country.

24. For making a right choice it is essential that the past of the candidate should not be kept in dark as it is not in the interest of the democracy and well being of the country. The antecedents of a person standing for election must be placed under public gaze and that is possible only when all wraps covering information about him are cast away. For the survival of democracy it is essential that the voter casts an educated vote based upon his knowledge derived from information supplied to him about the candidates. In *Gadakh Yashwantrao Kankarrao*, (supra) it was held by the Supreme Court that the real education of the electorate contemplates informing them of the past achievements and future plans of the political parties and their candidates' qualifications. In this regard the Supreme Court observed as follows (at p. 691 and 692 of AIR) :--

".....For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power which has eliminated from electoral contest many men of undoubted ability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only if elections are contested on a positive vote and the comparison is between the merits and abilities of the contestant without the influence of power and pelf and not between their comparative demerits and the support of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalization of politics.

xxx xxx xxx Real education of the electorate contemplates informing them of the past achievements and future plans of the political party on a positive note and its candidate's qualifications to serve that purpose compared with those of the other political parties and their candidates and not projection of the comparative greater demerits of the opponents. This is with a view to emphasise that the functioning of the democracy depends on the quality of the men chosen for the governance of the country. This is the need which the election campaign is meant to serve in an election based on party lines, the qualifications of the candidates being material for this purpose.

The duty at the top echelons of leadership at the State and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it percolates to the lower levels and provides a congenial atmosphere for a free and fair poll....."

25. In His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala , and P.V. Narsimha Rao v. State (CBI/SPE) , the Supreme Court specifically held that parliamentary democracy is part of the basic structure of the Constitution. Thus, such is the importance of the parliamentary democracy that it has been made immutable. At the same time, fundamental right to receive information, which springs forth from the right of freedom of speech and expression enshrined in Article 19(1)(a), is also a part of the basic structure of the Constitution. This right must be secured to the citizens with reference to the elections as well. This right along with other fundamental rights constituting the core of our Constitution will not acquire its full potential till such time the voter is posted with right information for making a right choice at the hastings to break the linkages which Vohra Committee has brought out in its report.

26. If criminalization of politics is to be prevented and purity in the system of governance is to be infused, the right needs to be enforced. This will ensure in the real sense the continued participation of the people in the democratic process. The grave danger posed by the criminalisation of politics as highlighted by the Vohra Committee Report could be eliminated provided the voters are made aware of the criminal propensities and activities of a candidate. To keep such activities under a veil of secrecy will perpetuate and aggravate the situation and will not arrest the trend towards criminalization of politics. Persons with questionable backgrounds do not deserve to be occupying seats in Parliament and the State Legislatures. Such persons need to be eliminated from the race. Exercise of informed option to vote in favour or against a candidate will strengthen democracy and root out the evil of corruption and criminality in politics. Political parties will think twice before putting up candidates with criminal record if the people were to be given information about their activities. Therefore an elector ought to know whether or not a candidate has criminal record. He must know about the competence and suitability of the candidate for the high office of the Member of Parliament or the State Legislature including his educational qualifications. We, however, hasten to add that we should not be understood to laying down any qualifications for a candidate for seeking election.

27. It is well established that a decision which does not take into consideration relevant material is no decision in the eyes of law. The courts have in catena of authority emphasised the importance of an informed decision. But this was in relation to the judicial and executive decisions. It seems to us that 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. This is possible only when the electors are posted with relevant antecedents of the candidates and the activities of the political parties they represent. In our considered opinion, the aforesaid information is a sine qua non for a meaningful, effective and vibrant democracy. This process would also make the voters aware of the value and worth, of the ballot paper. This may ultimately lead to rooting out some of the ills that have taken roots in the parliamentary system.

28. Under Article 226 of the Constitution, the High Court is required to act as a sentinel on the qui vive to guard against the violations of the fundamental rights of the citizens. It is the obligation of this Court to enforce their fundamental rights. In this view of the matter, in discharge of our constitutional duty to enforce the fundamental right guaranteed to the citizens to seek and receive information for casting intelligent and rational votes certain directions need to be given by us.

Accordingly, it is directed that the Election Commission shall secure to the voters the following information pertaining to each of the candidates standing for election to the Parliament and to the State Legislatures and the parties they represent:--

1. Whether the candidate is accused of any offence(s) punishable with imprisonment? If so, the details thereof.
2. Assets possessed by a candidate, his or her spouse and dependent relations.
3. Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator including details of his/her educational qualifications.
4. 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.

29. In order to comply with the aforesaid directions it will be open to the Election Commission to issue directives to the concerned government(s) or department(s), e.g., Central Government, State Government(s), Intelligence Bureau, etc., to render assistance to gather the requisite and relevant information as the Election Commission deems fit and proper and the said authorities shall be duty bound to provide the same. It shall also be incumbent upon a candidate standing for the election to the Parliament or the State Legislature to submit the requisite information at the time of filing of nomination paper with the Election Commission. It is needless to point out that furnishing of false information in the affidavit will result in prosecution of the candidate. It will also be open to the Election Commission to file complaint against a candidate in a criminal Court in case the affidavit contains false information. Non-compliance with the edict(s) issued by the Election Commission pursuant to and in conformity with our aforesaid directions, whether by the concerned Governments/departments or the intending candidates will entail consequences according to law.

30. We understand that there is a programme being telecast by Doordarshan allowing the political parties to unfold their election manifestoes and plans just before the elections to the Parliament and the State Legislatures. In addition thereto we direct that pre-election debates be held before elections which should be telecast by Doordarshan on its national network in which authorised representatives of the political parties fielding the candidates present their election manifestoes, programmes, plans and background and capabilities of their candidates, and answer questions posed by the audience relating thereto,

31. The norms and modalities to carry out and give effect to the aforesaid directions should be drawn up by the Election Commission within four months.

32. The writ petition is disposed of with the above directions and observations.