CASE NO.:
Writ Petition (civil) 490 of 2002
Writ Petition (civil) 509 of 2002
Writ Petition (civil) 515 of 2002

PETITIONER:
People's Union of Civil Liberties (P.U.C.L.) & Anr.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 13/03/2003

BENCH:
P. V. Reddi

JUDGMENT:

J U D G M E N T

P. Venkatarama Reddi, J.

The width and amplitude of the right to information about the candidates contesting elections to the Parliament or State Legislature in the context of the citizen's right to vote broadly falls for consideration in these writ petitions under Article 32 of the Constitution. While I respectfully agree with the conclusion that Section 33(B) of the Representation of the People Act, 1951 does not pass the test of constitutionality, I have come across a limited area of disagreement on certain aspects, especially pertaining to the extent of disclosures that could be insisted upon by the Court in the light of legislation on the subject. Moreover, the importance and intricacies of the subject-matter and the virgin ground trodden by this Court in Union of India Vs. Association for Democratic Reforms [(2002) 5 SCC 294] to bring the right to information of the voter within the sweep of Article 19(1)(a) has impelled me to elucidate and clarify certain crucial aspects. Hence, this separate opinion.

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

In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. We must take legitimate pride that this cherished freedom has grown from strength to strength in the post independent era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional Courts. Barring a few aberrations, the Executive Government and the Political Parties too have not lagged behind in safeguarding this valuable right which is the insignia of democratic culture of a nation. Nurtured by this right, Press and electronic media have emerged as powerful instruments to mould the public opinion and to educate, entertain and enlighten the public.

Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by this Court right from 1950s. It has been variously described as a 'basic human right', 'a natural right' and the like. It embraces within its scope the freedom of propagation and inter-change of ideas, dissemination of information which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution- makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be

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

In due course of time, several species of rights unenumerated in Article 19(1)(a) have branched off from the genus of the Article through the process of interpretation by this apex Court. One such right is the 'right to information'. Perhaps, the first decision which has adverted to this right is State of U.P. Vs. Raj Narain [(1975) 4 SCC 428]. 'The right to know', it was observed by Mathew, J. "which is derived from the concept of freedom of speech, though not absolute is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security". It was said very aptly-

"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries."

The next milestone which showed the way for concretizing this right is the decision in S.P. Gupta Vs. Union of India [(1981) Suppl. SCC Page 87] in which this Court dealt with the issue of High Court Judges' transfer. Bhagwati, J. observed-

"The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception..."

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

"No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy."

These two decisions have recognized that the right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(a). The pertinent observations made by the learned Judges in these two cases were in the context of the question whether the privilege under Section 123 of the Evidence Act could be claimed by the State in respect of the Blue Book in the first case i.e., Raj Narain's case (supra) and the file throwing light on the consultation process with the Chief Justice, in the second case. Though the scope and ambit of Article 19(1)(a) vis--vis the right to information did not directly arise for consideration in those two landmark decisions, the observations quoted supra have certain amount of relevance in evaluating the nature and character of the right.

Then, we have the decision in Dinesh Trivedi Vs. Union of India [(1997) 4 SCC 306]. This Court was confronted with the issue whether background papers and investigatory reports which were referred to in Vohra Committee's Report could be compelled to be made public. The following observations of Ahmadi, C.J. are quite pertinent:--

"In modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute."

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

The next decision which deserves reference is the case of Secretary, Ministry of I & B vs. Cricket Association of Bengal [(1995) 2 SCC Page 161]. Has an organizer or producer of any event a right to get the event telecast through an agency of his choice whether national or foreign? That was the primary question decided in that case. It was highlighted that the right to impart and receive information is a part of the fundamental right under Article 19(1)(a) of the Constitution. On this point, Sawant, J. had this to say at Paragraph 75-

"The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property....."

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

"The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them."

A conspectus of these cases would reveal that the right to receive and impart information was considered in the context of privilege pleaded by the State in relation to confidential documents relating to public affairs and the freedom of electronic media in broadcasting/telecasting certain events.

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

For the first time in Union of India Vs. Association for Democratic Reforms' case (supra), which is the forerunner to the present controversy, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a). There can be no doubt that by doing so, a new dimension has been given to the right embodied in Article 19(1)(a) through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. It must be noted that the right to information

evolved by this Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though to a certain extent, there may be overlapping. The right to information of the voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters. Secondly, that right cannot materialize without State's intervention. The State or its instrumentality has to compel a subject to make the information available to public, by means of legislation or orders having the force of law. With respect, I am unable to share the view that it stands on the same footing as right to telecast and the right to view the sports and games or other items of entertainment through television (vide observations at Paragraph 38 of of Association for Democratic Reforms case). One more observation at Paragraph 30 to the effect that "the decision making process of a voter would include his right to know about public functionaries who are required to be elected by him" needs explanation. Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. Therefore, the right to know about a public act done by a public functionary to which we find reference in Raj Narain's case (supra) is not the same thing as the right to know about the antecedents of the candidate contesting for the election. Nevertheless, the conclusion reached by the Court that the voter has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article 19(1)(a) can be justified on good and substantial grounds. To this aspect, I will advert a little later. Before that, I would like to say that it would have been in the fitness of the things if the case [U.O.I. vs. Association for Democratic Reforms] was referred to the Constitution Bench as per the mandate of Article 145(3) for the reason that a new dimension has been added to the concept of freedom of expression so as to bring within its ambit a new species of right to information. Apparently, no such request was made at the hearing and all parties invited the decision of three Judge Bench. The law has been laid down therein elevating the right to secure information about a contesting candidate to the position of a fundamental right. That decision has been duly taken note of by the Parliament and acted upon by the Election Commission. It has attained finality. At this stage, it would not be appropriate to set the clock back and refer the matter to Constitution Bench to test the correctness of the view taken in that case. I agree with my learned brother Shah, J. in this respect. However, I would prefer to give reasons of my own-may not be very different from what the learned Judge had expressed, to demonstrate that the proposition laid down by this Court rests on a firm Constitutional basis.

I shall now proceed to elucidate as to how the right to know the details about the contesting candidate should be regarded as a part of the freedom of expression guaranteed by Article 19(1)(a). This issue has to be viewed from more than one angle-from the point of view of the voter, the public viz., representatives of Press, organizations such as the petitioners which are interested in taking up public issues and thirdly from the point of view of the persons seeking election to the legislative bodies.

The trite saying that 'democracy is for the people, of the people and by the people' has to be remembered for ever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult

suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a candidate. "Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue", as observed by this Court in Lily Thomas Vs. Speaker, Lok Sabha [(1993) 4 SCC 234] quoting from Black's Law Dictionary. The citizens of the country are enabled to take part in the Government through their chosen representatives. In a Parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The peoples' representatives fill the role of law-makers and custodians of Government. People look to them for ventilation and redressal of their grievances. They are the focal point of the will and authority of the people at large. The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny. The character, strength and weakness of the candidate is widely debated. Nothing is therefore more important for sustenance of democratic polity than the voter making an intelligent and rational choice of his or her representative. For this, the voter should be in a position to effectively formulate his/her opinion and to ultimately express that opinion through ballot by casting the vote. The concomitant of the right to vote which is the basic postulate of democracy is thus two fold: first, formulation of opinion about the candidates and second, the expression of choice by casting the vote in favour of the preferred candidate at the polling booth. The first step is complementary to the other. Many a voter will be handicapped in formulating the opinion and making a proper choice of the candidate unless the essential information regarding the candidate is available. The voter/citizen should have at least the basic information about the contesting candidate, such as his involvement in serious criminal offences. To scuttle the flow of information-relevant and essential would affect the electorate's ability to evaluate the candidate. Not only that, the information relating to the candidates will pave the way for public debate on the merits and demerits of the candidates. When once there is public disclosure of the relevant details concerning the candidates, the Press, as a media of mass communication and voluntary organizations vigilant enough to channel the public opinion on right lines will be able to disseminate the information and thereby enlighten and alert the public at large regarding the adverse antecedents of a candidate. It will go a long way in promoting the freedom of speech and expression. That goal would be accomplished in two ways. It will help the voter who is interested in seeking and receiving information about the candidate to form an opinion according to his or her conscience and best of judgment and secondly it will facilitate the Press and voluntary organizations in imparting information on a matter of vital public concern. An informed voter-whether he acquires information directly by keeping track of disclosures or through the Press and other channels of communication, will be able to fulfil his responsibility in a more satisfactory manner. An enlightened and informed citizenry would undoubtedly enhance democratic values. Thus, the availability of proper and relevant information about the candidate fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information. In turn, it would lead to the preservation of the integrity of electoral process which is so essential for the growth of democracy. Though I do not go to the extent of remarking that the election will be a farce if the candidates' antecedents are not known to the voters, I would say that such information will certainly be conducive to fairness

in election process and integrity in public life. The disclosure of information would facilitate and augment the freedom of expression both from the point of view of the voter as well as the media through which the information is publicized and openly debated.

The problem can be approached from another angle. As observed by this Court in Association for Democratic Reforms' case (supra), a voter 'speaks out or expresses by casting vote'. Freedom of expression, as contemplated by Article 19(1)(a) which in many respects overlaps and coincides with freedom of speech, has manifold meanings. It need not and ought not to be confined to expressing something in words orally or in writing. The act of manifesting by action or language is one of the meanings given in Ramanatha Iyer's Law Lexicon (edited by Justice Y.V. Chandrachud). Even a manifestation of an emotion, feeling etc., without words would amount to expression. The example given in Collin's Dictionary of English language (1983 reprint) is: "tears are an expression of grief", is quite apposite. Another shade of meaning is: "a look on the face that indicates mood or emotion; eg: a joyful expression". Communication of emotion and display of talent through music, painting etc., is also a sort of expression. Having regard to the comprehensive meaning of phrase 'expression', voting can be legitimately regarded as a form of expression. Ballot is the instrument by which the voter expresses his choice between candidates or in respect to propositions; and his 'vote' is his choice or election, as expressed by his ballot (vide 'A Dictionary of Modern Legal Usage'; 2nd Edition, by Garner Bryan A). "Opinion expressed, resolution or decision carried, by voting" is one of the meanings given to the expression 'vote' in the New Oxford Illustrated Dictionary. It is well settled and it needs no emphasis that the fundamental right of freedom of speech and expression should be broadly construed and it has been so construed all these years. In the light of this, the dictum of the Court that the voter "speaks out or expresses by casting a vote" is apt and well founded. I would only reiterate and say that freedom of voting by expressing preference for a candidate is nothing but freedom of expressing oneself in relation to a matter of prime concern to the country and the voter himself.

I. (3) Right to vote is a Constitutional right though not a fundamental right but right to make choice by means of ballot is part of freedom of expression.

The right to vote for the candidate of one's choice is of the essence of democratic polity. This right is recognized by our Constitution and it is given effect to in specific form by the Representation of the People Act. The Constituent Assembly debates reveal that the idea to treat the voting right as a fundamental right was dropped; nevertheless, it was decided to provide for it elsewhere in the Constitution. This move found its expression in Article 326 which enjoins that "the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 21* years of age, and is not otherwise disqualified under the Constitution or law on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice-shall be entitled to be registered as voter at such election" (* Now 18 years). However, case after case starting from Ponnuswami's case [(1952) SCR 218] characterized it as a statutory right. "The right to vote or stand as a candidate for election", it was observed in Ponnuswami's case "is not a civil right but is a creature of statute or special law and must be subject to the limitations

imposed by it." It was further elaborated in the following words:

"Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

In Jyoti Basu Vs. Debi Ghosal [1982 (3) SCR 318] this Court again pointed out in no uncertain terms that: " a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right." With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. Act. That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of people and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met. Here, a distinction has to be drawn between the conferment of the right to vote on fulfillment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of ballot. Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom. None of the decisions of this Court wherein the proposition that the right to vote is a pure and simple statutory right was declared and reiterated, considered the question whether the citizen's freedom of expression is or is not involved when a citizen entitled to vote casts his vote in favour of one or the other candidate. The issues that arose in Ponnuswami's case and various cases cited by the learned Solicitor-General fall broadly within the realm of procedural or remedial aspects of challenging the election or the nomination of a candidate. None of these decisions, in my view, go counter to the proposition accepted by us that the fundamental right of freedom of expression sets in when a voter actually casts his vote. I, therefore, find no merit in the submission made by the learned Solicitor General that these writ petitions have to be referred to a larger bench in view of the apparent conflict. As already stated, the factual matrix and legal issues involved in those cases were different and the view, we are taking, does not go counter to the actual ratio of the said decisions rendered by the eminent Judges of this Court.

Reliance has been placed by the learned Solicitor General on the Constitution Bench decision in Jamuna Prasad Vs. Lachhi Ram [(1955) 1 SCR Page 608]. That was a case of special appeal to this Court against the decision of an Election Tribunal. Apart from assailing the finding of the Tribunal on the aspect of 'corrupt practice', Sections 123(5) and 124(5) (as they stood then) of the R.P. Act were challenged as ultra vires Article 19(1)(a). The former provision declared the character assassination of a candidate as a major corrupt practice and the latter provision made an appeal to vote on the ground of caste a minor corrupt practice. The contention that these provisions impinged on the freedom of speech and expression was unhesitatingly rejected. The Court observed that those provisions did not stop a man from speaking. They merely prescribed conditions which must be observed if a citizen wanted to enter the Parliament. It was further observed that the right to stand as a candidate and contest an election is a special right created by the statute and can only be exercised on the conditions laid down by the statute. In that context, the Court made an observation that the fundamental right chapter had no bearing on the right to contest the election which is created by the statute and the appellant had no fundamental right to be elected as a member of Parliament. If a person wants to get elected, he must observe the rules laid down by law. So holding, those Sections were held to be intra vires. I do not think that this decision which dealt with the contesting candidate's rights and obligations has any bearing on the freedom of expression of the voter and the public in general in the context of elections. The remark that 'the fundamental right chapter has no bearing on a right like this created by statute' cannot be divorced from the context in which it was made.

The learned senior counsel appearing for one of the interveners (B.J.P.) has advanced the contention that if the right to information is culled out from Article 19(1)(a) and read as an integral part of that right, it is fraught with dangerous consequences inasmuch as the grounds of reasonable restrictions which could be imposed are by far limited and therefore, the Government may be constrained to part with certain sensitive informations which would not be in public interest to disclose. This raises the larger question whether apart from the heads of restriction envisaged by sub-Article (2) of Article 19, certain inherent limitations should not be read into the Article, if it becomes necessary to do so in national or societal interest. The discussion on this aspect finds its echo in the separate opinion of Jeevan Reddy, J. in Cricket Association's case (supra). The learned Judge was of the view that the freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of the society, even if the expression 'national interest' or 'public interest' has not been used in Article 19(2). It was pointed out that such implied limitation has been read into the first amendment of the U.S. Constitution which guarantees the freedom of speech and expression in unqualified terms.

The following observations of the U.S. Supreme Court in Giltow Vs. New York [(1924) 69 L.Ed. 1138] are very relevant in this context:

"It is a fundamental principle, long established, that the freedom of speech and of the Press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may

choose, or an unrestricted and unbridle license
that gives immunity for every possible use of
language, and prevents the punishment of those
who abuse this freedom."

Whenever the rare situations of the kind anticipated by the learned counsel arise, the Constitution and the Courts are not helpless in checking the misuse and abuse of the freedom. Such a check need not necessarily be found strictly within the confines of Article 19(2).

II. Sections 33-A & 33-B of the Representation of People (3rd Amendment) Act, 2002-whether Section 33-A by itself effectively secures the voter's/citizen's right to information-whether Section 33-B is unconstitutional?

II. (1). Section 33-A & 33-B of the Representation of People (3rd Amendment) Act:

Now I turn my attention to the discussion of core question, that is to say, whether the impugned legislation falls foul of Article 19(1)(a) for limiting the area of disclosure and whether the Parliament acted beyond its competence in deviating from the directives given by this Court to the Election Commission in Democratic Reforms Association case. By virtue of the Representation of the People (Amendment) Act, 2002 the only information which a prospective contestant is required to furnish apart from the information which he is obliged to disclose under the existing provisions is the information on two points: (i) Whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed and; (ii) Whether he has been convicted of an offence (other than the offence referred to in sub-Sections (1) to (3) of Section 8) and sentenced to imprisonment for one year or more. On other points spelt out in this Court's judgment, the candidate is not liable to furnish any information and that is so, notwithstanding anything contained in any judgment or order of a Court OR any direction, order or instruction issued by the Election Commission. Omission to furnish the information as per the mandate of Section 33B and furnishing false information in that behalf is made punishable. That is the sum and substance of the two provisions namely, Section 33A and 33B.

The plain effect of the embargo contained in Section 33B is to nullify substantially the directives issued by the Election Commission pursuant to the judgment of this Court. At present, the instructions issued by the Election Commission could only operate in respect of the items specified in Section 33A and nothing more. It is for this reason that Section 33B has been challenged as ultra vires the Constitution both on the ground that it affects the fundamental right of the voter/citizen to get adequate information about the candidate and that the Parliament is incompetent to nullify the judgment of this Court. I shall briefly notice the rival contentions on this crucial issue.

II. (2). Contentions:

Petitioners' contention is that the legislation on the subject of disclosure of particulars of candidates should adopt in entirety the directives issued by this Court to the Election Commission in the pre-ordinance period. Any dilution or deviation of those norms or directives would necessarily violate the fundamental right guaranteed by Article 19(1)(a) as interpreted by this Court and therefore the law, as enacted by Parliament, infringes the said guarantee. This contention has apparently been accepted by my learned brother M.B. Shah, J. The other view point presented on behalf of Union of India and

one of the interveners is that the freedom of legislature in identifying and evolving the specific areas in which such information should be made public cannot be curtailed by reference to the ad hoc directives given by this Court in pre-ordinance period and the legislative wisdom of Parliament, especially in election matters, cannot be questioned. This is the position even if the right to know about the candidate is conceded to be part of Article 19(1)(a). It is for the Parliament to decide to what extent and how far the information should be made available. In any case, it is submitted that the Court's verdict has been duly taken note of by Parliament and certain provisions have been made to promote the right to information vis--vis the contesting candidates. Section 33B is only a part of this exercise and it does not go counter to Article 19(1)(a) even though the scope of public disclosures has been limited to one important aspect only.

II. (3). Broad points for consideration

A liberal but not a constricted approach in the matter of disclosure of information in relation to candidates seeking election is no doubt a desideratum. The wholesale adoption of the Court's diktats on the various items of information while enacting the legislation would have received public approbation and would have been welcomed by public. It would have been in tune with the recommendations of various Commissions and even the statements made by eminent and responsible political personalities. However, the fact remains that the Parliament in its discretion did not go the whole hog, but chose to limiting the scope of mandated disclosures to one only of the important aspects highlighted in the judgment. The question remains to be considered whether in doing so, the Parliament out-stepped its limits and enacted a law in violation of the guarantee enshrined in Article 19(1)(a) of the Constitution. The allied question is whether the Parliament has no option but to scrupulously adopt the directives given by this Court to the Election Commission. Is it open to the Parliament to independently view the issue and formulate the parameters and contents of disclosure, though it has the effect of diluting or diminishing the scope of disclosures which, in the perception of the Court, were desirable? In considering these questions of far reaching importance from the Constitutional angle, it is necessary to have a clear idea of the ratio and implications of this Court's Judgment in the Association for Democratic Reforms case.

II. (4) Analysis of the judgment in Association for Democratic Reforms case-whether and how far the directives given therein have impact on the Parliamentary legislation-Approach of Court in testing the legislation.

The first proposition laid down by this Court in the said case is that a citizen/voter has the right to know about the antecedents of the contesting candidate and that right is a part of the fundamental right under Article 19(1)(a). In this context, M.B. Shah, J. observed that-

"...Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote."

It was then pointed out that the information about the candidate to be selected is essential as it would be conducive to transparency and purity in the process of election. The next question considered was how best to enforce that right. The Court having noticed that there was void in the field in the sense that it was not covered by any legislative provision, gave

directions to the Election Commission to fill the vacuum by requiring the candidate to furnish information on the specified aspects while filing the nomination paper. Five items of information which the Election Commission should call for from the prospective candidates were spelt out by the Court. Two of them relate to criminal background of the candidate and pendency of criminal cases against him. Points 3 & 4 relate to assets and liabilities of the candidate and his/her family. The last one is about the educational qualifications of the candidate. The legal basis and the justification for issuing such directives to the Commission has been stated thus (vide paragraphs 19 & 20) :

"19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.

x x x

20. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted."

Again, at paragraph 49 it was emphasized-
"It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible."

Thus, the Court was conscious of the fact that the Election Commission could act in the matter only so long as the field is not covered by legislation. The Court also felt that the vacuum or void should be suitably filled so that the right to information concerning a candidate would soon become a reality. In other words, till the Parliament applied its mind and came forward with appropriate legislation to give effect to the right available to a voter-citizen, the Court felt that the said goal has to be translated into action through the media of Election Commission, which is endowed with 'residuary power' to regulate the election process in the best interests of the electorate. Instead of leaving it to the Commission and with a view to give quietus to the possible controversies that might arise, the Court considered it expedient to spell out five points (broadly falling into three categories) on which the information has to be called for from the contesting candidate. In the very nature of things, the directives given by the Court were intended to operate only till the law was made by legislature and in that sense 'pro tempore' in nature. The five directives cannot be considered to be rigid theorems-inflexible and immutable, but only reflect the perception and tentative thinking of the Court at a point of time when the legislature did not address itself to the

question.

When the Parliament, in the aftermath of the verdict of this Court, deliberated and thought it fit to secure the right to information to a citizen only to a limited extent (having a bearing on criminal antecedents), a fresh look has to be necessarily taken by the Court and the validity of the law made has to be tested on a clean slate. It must be remembered that the right to get information which is a corollary to the fundamental right to free speech and expression has no fixed connotation. Its contours and parameters cannot be precisely defined and the Court in my understanding, never meant to do so. It is often a matter of perception and approach. How far to go and where to stop? These are the questions to be pondered over by the Legislature and the Constitutional Court called upon to decide the question of validity of legislation. For instance, many voters/citizens may like to have more complete information-a sort of bio-data of the candidate starting from his school days such as his academic career, the properties which he had before and after entering into politics, the details of his income and tax payments for the last one decade and sources of acquisition of his and his family's wealth. Can it be said that all such information which will no doubt enable the voter and public to have a comprehensive idea of the contesting candidate, should be disclosed by a prospective candidate and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(a)? The preponderance of view would be that it is not reasonable to compel a candidate to make disclosures affecting his privacy to that extent in the guise of effectuating the right to information. A line has to be drawn somewhere. While there cannot be a lip service to the valuable right to information, it should not be stretched too far. At the same time, the essence and substratum of the right has to be preserved and promoted, when once it is brought within the fold of fundamental right. A balanced but not a rigid approach, is needed in identifying and defining the parameters of the right which the voter/citizen has. The standards to be applied to disclosures vis--vis public affairs and governance AND the disclosures relating to personal life and bio-data of a candidate cannot be the same. The measure or yardstick will be somewhat different. It should not be forgotten that the candidates' right to privacy is one of the many factors that could be kept in view, though that right is always subject to overriding public interest.

In my view, the points of disclosure spelt out by this Court in the Association for Democratic Reforms case should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any

objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the Legislature are reasonably adequate to safeguard the citizens' right to information. The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the stand-point whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits and demerits of the candidates. In embarking on this exercise, as already stated, this Court's directives on the points of disclosure even if they be tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. But, I reiterate that the shape of legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straight jacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary.

III. Section 33-B is unconstitutional

III. (1). The right to information cannot be frozen and stagnated.

In my view, the Constitutional validity of Section 33B has to be judged from the above angle and perspective. Considered in that light, I agree with the conclusion of M.B. Shah, J. that Section 33B does not pass the test of Constitutionality. The reasons are more than one. Firstly, when the right to secure information about a contesting candidate is recognized as an integral part of fundamental right as it ought to be, it follows that its ambit, amplitude and parameters cannot be chained and circumscribed for all time to come by declaring that no information, other than that specifically laid down in the Act, should be required to be given. When the legislation delimiting the areas of disclosure was enacted, it may be that the Parliament felt that the disclosure on other aspects was not necessary for the time being. Assuming that the guarantee of right to information is not violated by making a departure from the paradigms set by the Court, it is not open to the Parliament to stop all further disclosures concerning the candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment, irrespective of need of the hour and the future exigencies and expedients is, in my view, impermissible. It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnated; but the mandate of Section 33B prefaced by the non obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of the prohibition under Section 33B, the Election Commission which is entrusted with the function of monitoring and supervising the election process will have to sit back with a sense of helplessness inspite of the

pressing need for insisting on additional information. Even the Court may at times feel handicapped in taking necessary remedial steps to enforce the right to information. In my view, the legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part. The very objective of recognizing the right to information as part of the fundamental right under Article 19(1)(a) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33B is taken to its logical effect.

III. (2) Impugned legislation fails to effectuate right to information on certain vital aspects.

The second reason why Section 33B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, the Parliament failed to give effect to one of the vital aspects of information, viz., disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and liabilities as discussed hereinafter, the Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1)(a).

III. (3) How far the principle that the Legislature cannot encroach upon the judicial sphere applies.

It is a settled principle of constitutional jurisprudence that the only way to render a judicial decision ineffective is to enact a valid law by way of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The legislature cannot overrule or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court because it is obvious that the legislature cannot trench on the judicial power vested in the Courts. Relying on this principle, it is contended that the decision of apex Constitutional Court cannot be set at naught in the manner in which it has been done by the impugned legislation. As a sequel, it is further contended that the question of altering the basis of judgment or curing the defect does not arise in the instant case as the Parliament cannot pass a law in curtailment of fundamental right recognized, amplified and enforced by this Court.

The contention that the fundamental basis of the decision in Association for Democratic Reforms case has not at all been altered by the Parliament, does not appeal to me. I have discussed at length the real scope and ratio of the judgment and the nature and character of directives given by this Court to the Election Commission. As observed earlier, those directions are pro tempore in nature when there was vacuum in the field. When once the Parliament stepped in and passed the legislation providing for right of information, may be on certain limited aspects, the void must be deemed to have been filled up and the judgment works itself out, though the proposition laid down and observations made in the context of Article 19(1)(a) on the need to secure information to the citizens will hold good. Now the new legislation has to be tested on the touchstone of Article 19(1)(a). Of course, in doing so, the decision of this Court should be given due weight and there cannot be marked departure from the items of information considered essential by this Court to

effectuate the fundamental right to information. Viewed in this light, it must be held that the Parliament did not by law provide for disclosure of information on certain crucial points such as assets and liabilities and at the same time, placed an embargo on calling for further informations by enacting Section 33B. That is where Section 33B of the impugned amendment Act does not pass the muster of Article 19(1)(a), as interpreted by this Court.
IV. Right to information with reference to specific aspects:

I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (i) criminal record (ii) assets and liabilities and (iii) educational qualification. The third amendment to R.P. Act which was preceded by an Ordinance provided for disclosure of information. How far the third amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in Association for Democratic Reforms case.
IV. (1). Criminal background and pending criminal cases against candidates-Section 33-A of the R.P. (3rd Amendment) Act.

As regards the first aspect, namely criminal record, the directives in Association for Democratic Reforms case are two fold: "(i) whether the candidate is convicted/ acquitted/discharged of any criminal case in the past-if any, whether he is punished with imprisonment or fine and (ii) prior to six months of filing of nomination, whether the candidate is an accused in any pending case of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the Court of law." As regards the second directive, the Parliament has substantially proceeded on the same lines and made it obligatory to the candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent Court. However, the case in which cognizance has been taken but charge has not been framed is not covered by Clause (i) of Section 33A(I). The Parliament having taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of variety of reasons such as the delaying tactics of one or the other accused and inadequacies of prosecuting machinery, framing of formal charges get delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen’s right to information, when once it is recognized to be part of the fundamental right under Article 19(I)(a), cannot be truncated in the manner in which it has been done. Clause (i) of Section 33(A)(I) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in Clause (i) of Section 33A.

Coming to Clause (ii) of Section 33A(I), the Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to draw a line between major/serious offences and minor/non-serious offences while giving direction No.2 (vide Para 48). If so, the legislative thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide adequate information about the candidate. If the Parliament felt that the convictions and sentences of the long past related to petty/non serious offences need not be made available to electorate, it cannot be definitely said that the valuable right to information becomes a casuality. Very often, such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned senior counsel pointed out that the political personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to take the view that such information will not be of much relevance inasmuch as acquittal prima facie implies that the accused is not connected with the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in the acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate.

I am therefore of the view that as regards past criminal record, what the Parliament has provided for is fairly adequate.

One more aspect which needs a brief comment is the exclusion of offences referred to in sub-Sections (1) and (2) of Section 8 of the R.P. Act, 1951. Section 8 deals with disqualification on conviction for certain offences. Those offences are of serious nature from the point of view of national and societal interest. Even the existing provisions, viz., Rule 4A inserted by Conduct of Elections (Amendment) Rules, 2002 make a provision for disclosure of such offences in the nomination form. Hence, such offences have been excluded from the ambit of Clause (ii) of Section 33A.

IV. (2). Assets and liabilities

Disclosure of assets and liabilities is another thorny issue. If the right to information is to be meaningful and if it is to serve its avowed purpose, I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles of household use). A member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a 'public servant' within the meaning of Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao Vs. State [(1998) 4 SCC 626]. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family

members viz., spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money-a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money. 'Assets and liabilities' is one of the important aspects to which extensive reference has been made in Association for Democratic Reforms case. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the observations made by this Court in this regard have been given a short shrift by the Parliament with little realization that they have significant bearing on the right to get information from the contesting candidates and such information is necessary to give effect to the freedom of expression.

As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen has equal accessibility in public arena. If the information is meant to mobilize public opinion in favour of an affluent/financially sound candidate, the tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view that this information on assets would enable the public to verify whether unaccounted money played a part in contesting the election. So long as the Explanation-I to Section 77 of R.P. Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy of such disclosure vis--vis right to information only.

It has been contended with much force that the right to information made available to the voters/citizens by judicial interpretation has to be balanced with the right of privacy of the spouse of the contesting candidate and any insistence on the disclosure of assets and liabilities of the spouse invades his/her right to privacy which is implied in Article 21. After giving anxious consideration to this argument, I am unable to uphold the same. In this context, I would like to recall the apt words of Mathew J, in Gobind Vs. State of M.P. [(1975) 2 SCC 148]. While analyzing the right to privacy as an ingredient of Article 21, it was observed:

"There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior" (emphasis supplied).

It was then said succinctly:

"If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right."

It was further explained-

"Privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values."

By calling upon the contesting candidate to disclose the assets and liabilities of his/her spouse, the fundamental right to information of a voter/citizen is thereby promoted. When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given. It cannot be denied that the family relationship and social order in our country is such that the husband and wife look to the properties held by them as belonging to the family for all practical purposes, though in the eye of law the properties may distinctly belong to each of them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse benami is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well. That is one way of looking at the problem. More important, it is to be noted that the Parliament itself accepted in principle that not only the assets of the elected candidates but also his or her spouse and dependent children should be disclosed to the constitutional authority and the right of privacy should not come in the way of such disclosure; but, the hitch lies in the fact that the disclosure has to be made to the Speaker or Chairman of the House after he or she is elected. No provision has been made for giving access to the details filed with the presiding officer of the House. By doing so, the Parliament has omitted to give effect to the principle, which it rightly accepted as a step in aid to promote integrity in public life. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of other family members, the Parliament refrained from making a provision for furnishing the information at the time of filing the nomination. This has resulted in jeopardizing the right to information implicitly

guaranteed by Article 19(1)(a). Therefore, the provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the presiding officer has failed to effectuate the right to information and the freedom of expression of the voters/citizens.

IV. (3). Educational qualifications

The last item left for discussion is about educational qualifications. In my view, the disclosure of information regarding educational qualifications of a candidate is not an essential component of the right to information flowing from Article 19(1)(a). By not providing for disclosure of educational qualifications, it cannot be said that the Parliament violated the guarantee of Article 19(1)(a). Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, I am inclind to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well known fact that barring a few exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly educated even if they are not Graduates or Post-Graduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well educated persons such as those having graduate and post-graduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in public life and the Legislatures have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well educated persons. I do not think that it is necessary to supply information to the voter to facilitate him to indulge in an infructuous exercise of comparing the educational qualifications of the candidates. It may be that certain candidates having exceptionally high qualifications in specialized field may prove useful to the society, but it is natural to expect that such candidates would voluntarily come forward with an account of their own academic and other talents as a part of their election programme. Viewed from any angle, the information regarding educational qualifications is not a vital and useful piece of information to the voter, in ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that the Parliament should have necessarily made the provision for disclosure of information regarding educational qualifications of the candidates.

V. Conclusions:

Finally, the summary of my conclusions:

1. Securing information on the basic details concerning the candidates contesting for elections to the Parliament or State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though, to a certain extent, there may be overlapping.

2. The right to vote at the elections to the House of people or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in

Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

3. The directives given by this Court in Union of India Vs. Association for Democratic Reforms [(2002) 5 SCC 294] were intended to operate only till the law was made by the Legislature and in that sense 'pro tempore' in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

4. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

5. Section 33B inserted by the Representation of People (3rd Amendment) Act, 2002 does not pass the test of constitutionality firstly for the reason that it imposes blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

6. The right to information provided for by the Parliament 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.

7. The provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

8. The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No.4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

Accordingly, the writ petitions stand disposed of without costs.