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# INDIA V. ASSOCIATION FOR DEMOCRATIC REFORMS, (2002)

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## INTRODUCTION

*Union of India v. Association for Democratic Reforms* is a landmark in the history of Indian constitutional jurisprudence in that it entrenched the right to know of the voter as an intrinsic part of democracy. The case was heard on 2 May 2002 after a public interest litigation applied to have criminal antecedents, financial assets, liabilities and education level of electoral candidates disclosed on compulsory basis. Fundamentally, the case brought out a critical constitutional challenge of whether citizens could exercise their franchise meaningfully without being able to access pertinent information on those running in the elections.

On the interpretation of Article 19(1) (a) of the Constitution, the Supreme Court broadened the meaning of freedom of speech and expression to cover the right to access information required to make an informed electoral decision. The decision further consolidated the principle of free and fair elections as constitutive of the fundamental framework of the Constitution and affirmed the plenary authority of the Election Commission in Article 324 of the Constitution to promote transparency in where the statutory law is silent.

The Court enhanced the participatory democracy and institutional responsibility by closing the loopholes in the legislation without usurping the role of the parliament. The decision, therefore, transformed Indian electoral democracy, which had traditionally been more of a process, to a substantive, informed, and transparent constitutional process.

S.NO.	CHRONOLOGICAL STAGE	DETAILED FACTUAL MATRIX
1.	<b>The Genesis: ADR's Writ Petition (1999)</b>	<p><b>1.1. Background:</b> Association of Democratic Reforms (ADR) had petitioned (No. 7256/1999) writ in the Delhi High Court</p> <p><b>1.2. The Prayer:</b> They requested a guide to the Election Commission (EC) to adopt the 170<sup>th</sup> Report of the Law</p>

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		<p>Commission that suggested that candidate backgrounds be disclosed compulsorily.</p> <p><b>1.3. Objective:</b> The point was to restrain the criminalization of politics based on the transparency.</p>
2.	<b>The High Court Mandate (Nov 2000)</b>	<p><b>2.1. Decision:</b> The decisional petition, which was allowed on 02.11.2000 by the Delhi High Court, was against decision.</p> <p><b>2.2. Directive:</b> It instructed EC to seek information among candidates in terms of their criminal background, assets and educational background.</p> <p><b>2.3. Legal Basis:</b> The HC held that "voter awareness" is a prerequisite for a healthy democracy.</p>
3.	<b>The Appeal by Union of India (2001)</b>	<p><b>3.1. Challenge:</b> The Union of India, which felt that the HC had encroached on its power to make judicial rulings, lodged a Civil Appeal (No. 7178/2001) in the Supreme Court</p> <p><b>3.2. Contention (A):</b> The Union submitted that the EC could not give directions which would have the effect of giving rise to law, because the <i>Representation of the People Act, 1951</i> did not require disclosures to the same effect.</p> <p><b>3.3. Contention (B):</b> They argued that the Judiciary is not able to undertake filling a legislative gap where the Parliament has actively opted not to pass a law.</p>
4.	<b>Final Judgment (May 2002)</b>	<p><b>4.1. Decision:</b> The SC denied the appeal of the Union, 02.05.2002.<sup>2</sup></p> <p><b>4.2. Execution:</b> It supported the instructions of the HC and expanded it which solidified the 5-point disclosure requirement of all candidates who submit nominations</p>

<sup>2</sup> Union of India v. Association for Democratic Reforms,(2002) 5 SCC 294 : AIR 2002 SC 2112

## ISSUES RAISED BEFORE THE SUPREME COURT

- **ISSUE – 1:** Is the right to know the antecedents of the candidates running the elections is part of the fundamental right to freedom of speech and expression as laid out in Article 19(1)(a) of the Constitution of India?
- **ISSUE – 2:** Weather the Election Commission of India has the constitutional power to direct the candidates to reveal their criminal records, financial resources and liabilities as well as educational attainments in the absence of a clear statutory provision in the Representation of the People Act, 1951?
- **ISSUE -3:** Did the orders given by the Delhi High Court to the Election Commission constitute either judicial overstep or usurpation into the legislative arena of Parliament?

## RELEVANT LEGAL RULES (R)

### A. Article 19(1)(a) - Right to Information as a Fundamental Right.

The most applicable and enforceable regulation is in the form of Article 19(1) (a)<sup>3</sup> of the Constitution of India that ensures the freedom of speech and expression. This has been further extended by judicial interpretation to the right to information, especially that information that can help citizens make informed democratic decisions<sup>4</sup>. This right in the electoral issue also entails the right of the voters to be informed of the criminal background, monetary condition and educational attainment of the party members who are nominated to run in the elections<sup>5</sup>.

### B. Basic Structure is the Doctrine of Free and Fair Elections.

One of the binding rules of the Constitution is that free and fair elections are a constituent of the basic structure of the Constitution<sup>6</sup>. Any form of elections that deny access to pertinent information about candidates undermines the transparency and fairness of elections and democratic rule<sup>7</sup>.

### C. Article 324- Plenary Powers of the Election Commission.

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<sup>3</sup> Article 19(1)(a), Constitution of India

<sup>4</sup> State of U.P. v. Raj Narain, (1975) 4 SCC 428

<sup>5</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

<sup>6</sup> Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1

<sup>7</sup> Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651

Article 324 of the constitution gives broad constitutional powers to the Election Commission of India to oversee and organize elections<sup>8</sup>. Where the statutory law is silent, the Commission has the power to give the appropriate directions to make the electoral process pure and fair provided that the directions do not conflict with the constitutional principles<sup>9</sup>.

#### **D. Transparency and Open Government Principle.**

The open governance doctrine states that secrecy is an exception and disclosure is the rule<sup>10</sup>. Accountability and public trust in the democratic institutions require transparency in the public affairs, particularly elections<sup>11</sup>.

### **3. ANALYSIS:**

#### **A. The Right to Know: Broadening out the Horizon of Article 19(1)(a).**

[Rule and Ingredients] The rule used in this case is Article 19(1)(a)<sup>12</sup>. The Court provided that freedom of speech and expression was not about the right to talk, but to act in an informed way<sup>13</sup>. The critical elements of this rule, in its application, are:

- The most important kind of political expression is the expression through the Ballot<sup>14</sup>.
- Information as Precondition: No citizen can give a meaningful expression of choosing without knowing what is already in place before the individual deciding<sup>15</sup>.

**[Logic & Arguments]:** The Court overturned the Union argument that voter awareness is a legislative issue. Rather it took a **Rights-Based Approach**.

- **Rationale:** The Court likened a voter to a consumer. Similar to the right of the consumer to obtain information about the quality of a product under consumer protection laws, the voter the consumer of democracy should also have a right to know the quality of his or her candidate.
- **Objection:** The Union claim that as the Representation of the People Act (RPA), 1951 made no statement on disclosures, the Court was establishing a new fundamental right. The Court responded that it was simply expressing a right which was implicit in Article 19.

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<sup>8</sup> Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405

<sup>9</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

<sup>10</sup> State of U.P. v. Raj Narain, (1975) 4 SCC 428

<sup>11</sup> S.P. Gupta v. Union of India, 1981 Supp SCC 87

<sup>12</sup> Article 19(1)(a), Constitution of India

<sup>13</sup> State of U.P. v. Raj Narain, (1975) 4 SCC 428

<sup>14</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

<sup>15</sup> ibid

**[Citations and Foreign Judgments]:** The Court referred to *State of U.P. v. Raj Narain (1975)*<sup>16</sup> which stated that the people of this country have a right to know all public acts.

- **Foreign Context:** The Court examined a case of U.S. Supreme Court in *Buckley v. The decision of Valeo (1976)*<sup>17</sup>, that supported the disclosure of campaign funds, in favor of transparency being the best check against corruption. It also cited the case of *Libman v. in Canada. Quebec (1997)*<sup>18</sup> which stated that an equal election requires the presence of informational equality.

**B. Article 324: Filling the “Legislative Vacuum”.**

**[Rule and Ingredients]:** The second rule is Article 324<sup>19</sup> which vests to the Election Commission (EC) superintendence, direction and control of elections. This was what the Court called a Reservoir of Power<sup>20</sup>.

The key Defence by the Union was the Doctrine of Separation of Powers<sup>21</sup>. They claimed that the Judiciary could not put up disclosure requirements as only Parliament can do it under Articles 102 and 191 to establish the qualification of a candidate.

**Application:** The Court surgically differentiated between Disqualification and Disclosure<sup>22</sup>. It also believed that disqualification could only be done by a Parliament but disclosure could be ordered by EC (under the guidance of the Court) so as to have a free and fair process<sup>23</sup>.

**Reasoning:** Parliament must be silent (a legislative gap) in order that EC is not an idle bystander. It still retains the residual authority to give orders in order to safeguard the integrity of the vote.

**[Citations]:** The Court referred to Mohinder Singh Gill Case (1978) where it was determined that article 324 was a plenary provision which was to deal with unforeseen circumstances where the law is silent.

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<sup>16</sup> State of U.P. v. Raj Narain, (1975) 4 SCC 428

<sup>17</sup> Buckley v. Valeo, 424 U.S. 1 (1976)

<sup>18</sup> Libman v. Quebec (Attorney General), [1997] 3 SCR 569

<sup>19</sup> Article 324, Constitution of India

<sup>20</sup> Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405

<sup>21</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

<sup>22</sup> ADR case, (2002) 5 SCC 294

<sup>23</sup> ibid

### **C. The Proportionality Test: Privacy and Public Interest.**

[Logic & Arguments] The Union brought up a Right to Privacy issue with the candidate (which was subsequently enshrined in Puttaswamy)<sup>24</sup>. They contended that compelling them to disclose their assets and family liabilities was excessive.

**Arguments:** It is a personal issue of a candidate being rich or not.

**Counter-Arguments:** The Court used the Doctrine of Proportionality. It decided that the claim of privacy of an individual is curtailed when he/she enters the political life to manage the public money and policy, in the interest of the Right to Know of the people.

**Foreign Jurisprudence:** The Australian High Court had an impact on the Court in *Lange v. Australian Broadcasting Corporation*<sup>25</sup> that noted that a representative government should enable its citizens to communicate and access information on the political candidates without compromising on their privacy

### **D. Influence on Electoral Reforms:**

ADR had a direct impact on the mandatory disclosure norms in the Representation of the People Rules in that affidavits were required of applicants in terms of criminal background, assets and education. It gave power to the voters to make informed decisions and minimize criminalization of politics.

### **E. Comparative Perspective:**

Foreign Law This case Law Foreign law *McCutcheon v. FEC (USA)*<sup>26</sup> and *Claude-Reyes v. Chile*<sup>27</sup> (IACtHR) supports the idea, according to which meaningful participation in

democracy is possible only with the help of transparency. These instances give analogical support on the reasoning of the Court in the ADR.

### **F. Critiques and Counterpoints:**

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<sup>24</sup> ADR case, (2002) 5 SCC 294

<sup>25</sup> *Lange v Australian Broadcasting Corporation*, (1997) 189 CLR 520

<sup>26</sup> *McCutcheon v. Federal Election Commission*, 572 U.S. 185 (2014)

<sup>27</sup> *Claude Reyes v. Chile*, IACtHR, Judgment of 19 Sept 2006

Although ADR has been criticized as judicial overreach, it is an example of judicial gap-filling or constitutional guardianship and not judicial encroachment<sup>28</sup>. The Court used a test of proportionality, privacy of the candidates and national interest.

### G. FOREIGN CASE LAWS

SR.NO	CASE NAME	HOLDING	RELEVENCE TO UOI V. ADR, (2002) CASE
1.	<b>McCutcheon v. Federal Election Commission, 572 U.S. 185 (2014)</b> <sup>29</sup>	The U.S. Supreme Court acknowledged that to engage in democracy meaningfully, a healthy political communication is undermined by the lack of financial influence on the candidates when it is hidden.	Aids the rationale of ADR that voter awareness is a critical component in democratic choice, especially in relation to the occult factors on electoral integrity.
2.	<b>Bennett v. Horseferry Road Magistrates' Court [1993]</b> <sup>30</sup>	The House of Lords determined that an abuse of process also comprised of state action which eroded the community trust in the courts.	Analogically gives a rein to ADR by considering it as an abuse of democratic process caused by non-disclosure of information of the candidates which reduces the trust of the population.

### H. CRITICAL OBSERVATION

<sup>28</sup> Union of India v. Association for Democratic Reforms,(2002) 5 SCC 294 : AIR 2002 SC 2112

<sup>29</sup> McCutcheon v. Federal Election Commission, 572 U.S. 185 (2014) (*U.S. Supreme Court*)

<sup>30</sup> R v. Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 AC 42 (HL)

*Union of India v. Association for Democratic Reforms (2002)*<sup>31</sup> is a revolutionary constitutional step towards new Indian democracy, completely changing the nature of Indian democracy as a formal electoral process to a substantive participatory process. The ruling boldly destroyed the idea that democracy is fulfilled only by occasionally voting and rather claimed the idea that informed choice is the spirit of democratic legitimacy. The Court in reading the right to know of the voter into Article 19(1)(a) took transparency in elections to the annex of a fundamental right and thus transferred power to a position where it belongs to the electorate as opposed to the political elites.

More importantly, invoking the constitutional silence and Article 324 as this Court did was an indication of a pragmatic but principled practice. The Court did not seize legislative power and instead there was a democratic vacuum which it needed to fill to avoid erosion of free and fair elections, which is part and parcel of the basic structure. This kind of judicial activism can be more clearly perceived as constitutional guardianship, and not overreach. The case also established a delicate balance between privacy and public interest where the judges understood that when a person is seeking a public office, the expectation on him or her is an increased level of scrutiny. This way, it preempted the future privacy jurisprudence by implicitly using proportionality.

- **CONCLUSION**

The case, *Union of India v. Association for Democratic Reforms (2002)* is a notable case that fortified democracy of India in a fundamental way. The acknowledgment of the right to know as a vital element of Article 19(1)(a) by the Supreme Court in connection with the functionality of the basic form of free and fair elections and the attainment of transparency, accountability, and informed participation made transparency, accountability, and informed participation the pillars of electoral democracy that were not compromised. The rationale of the Court thus fills a gap in the legislation by means of Article 324 without overstepping the authority of Parliament, that is, exhibiting judicial care and constitutional foresight.

The case also cautiously weighed the privacy of each individual and the interests of the masses by dictating that individuals who aspire to hold office in the political arena are more obligated to disclose information to ensure the integrity of elections. Its impact can be observed in the further cases such as *PUCL v. Union of India*, Resurgence India (2003) Case, that strengthened and made operational the provisions codified in ADR.

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<sup>31</sup> Union of India v. Association for Democratic Reforms,(2002) 5 SCC 294 : AIR 2002 SC 2112

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