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People Power

Briefing on The Representation of The People (Amendment) Bill, 2002

7th December, 2002, Rajiv Gandhi Foundation, New Delhi
What is Disclosure About?

- It is people’s fundamental right to know about their candidates
- The right is derived from Art 19 (freedom of speech and expression)
- It is not a right granted by a law or decree
- A natural right flowing from the very concepts of democracy and popular sovereignty
Is the Candidate’s Right to Privacy Affected?

- Two competing rights – candidate’s right to privacy vs and citizens’ right to be informed
- Candidates seek public office to exercise power on people’s behalf
- The citizens’ and the community rights will prevail over those of a candidate
- Right to privacy is an individual right, but public figures have an obligation to disclose
Disclosures in the Bill

- All charges framed by a competent court entailing imprisonment of 2 years or more
- All convictions with imprisonment of a term of 1 year or more
- All convictions for offences listed under section 8 of RP Act 1951
- Financial disclosure statement of members to be filed with the presiding officer within 90 days
What does this Law Mean?

- Provides for satisfactory criminal disclosures

- Financial disclosures of members only after the elections and not of candidates – violative of the SC judgment

- Section 33 B explicitly prohibits any further disclosures, which is unconstitutional
Is this Going to End Criminalization?

- Criminalization process will be arrested but not reversed
- Established criminals will continue
- New criminals will be prevented
- Parties will tend to avoid nominating new candidates with unsatisfactory record
What’s the Effect of Financial Disclosures?

- Does not seek to embarrass honest elements with legitimate sources of income and accountable wealth.

- The public debate generated about the candidates’ antecedents, the comparison between the lifestyles and known assets will force political parties to look for candidates with clean record.
Disclosure vs Disqualification

- This whole debate is about disclosure and not disqualification
- Only non-disclosure can be made a ground for rejection
- False disclosure can be made ground for subsequent prosecution and for election petition
- Para 14(4) of EC’s order can be amended through Rule 4 of Conduct of Election Rules
- Judicial reforms
- Separation of powers at state and local level
Case for Judicial Reforms

- Self-appointment of judges
- Unaccountable judiciary and failure of impeachment process
- Growing encroachment of executive jurisdiction
- Arbitrary and perverse orders
- 25 million cases pending
- No enthusiasm for procedural and judicial reforms
Is this a Legislature vs Judiciary Battle?

- Primacy of legislature is supreme.

- This is a wrong case to assert legislative supremacy.

- The court has a right to interpret fundamental rights
People’s Ballot

- 850,000 people participated
- 98.09% voted for full disclosures
- Public opinion is fully in favour of disclosures
- Parties should respect public opinion even if disclosure is not a fundamental right
Practices in Other Democracies

- Done as a custom and not mandated by law
- Strong media and public opinion compel full disclosures by all serious candidates
- In US candidates for both the Congress and the Senate candidates have to file personal financial disclosure statements
- US Ethics Committee censures or expels members for violations
  - Eg: Sen. Robert Tericelli Of NJ had to withdraw after censure
What More Needs to be Done?

- Funding Reform
- Proportional Representation
- Voter registration through post offices
- Inner party democracy