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THE RIGHT TO KNOW IN ELECTORAL DEMOCRACY: PUBLIC DISCLOSURE AND FREE AND FAIR ELECTIONS UNDER THE INDIAN CONSTITUTION

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ABSTRACT

Free and fair elections constitute the bedrock of constitutional democracy in India. The legitimacy of representative governance depends not merely on the formal act of voting, but on the ability of voters to make informed choices. In this context, the *right to know*—particularly the right of citizens to access information relating to candidates, political parties and electoral processes—has emerged as a vital facet of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Over the past two decades, the Supreme Court of India has played a transformative role in constitutionalising the right to electoral information, linking it intrinsically with democratic participation, transparency, and accountability. This paper undertakes a comprehensive analysis of the constitutional foundations, judicial evolution, statutory framework, and contemporary challenges surrounding public disclosure in the Indian electoral system. It critically examines landmark judgments such as *Association for Democratic Reforms v. Union of India*, *People's Union for Civil Liberties v. Union of India*, and subsequent cases that have expanded and, at times, constrained the scope of electoral transparency. The paper also analyses legislative responses, including amendments to the Representation of the People Act, 1951, the Right to Information Act, 2005, and the introduction of electoral bonds. By situating the Indian experience within broader democratic theory, this study argues that meaningful public disclosure is indispensable for ensuring free and fair elections, and that any dilution of the right to know poses serious risks to constitutional democracy.

Keywords: *Right to Know, Free and Fair Elections, Article 19(1)(a), Electoral Transparency, Public Disclosure, Indian Constitution*

1. INTRODUCTION

Democracy, in its most substantive sense, presupposes an informed citizenry capable of participating meaningfully in the governance process. Elections are the primary mechanism through which this participation is realised in a representative democracy. However, the mere conduct of periodic elections does not suffice to meet the constitutional mandate of *free and fair elections*. The quality of electoral choice depends upon access to relevant information

regarding candidates, political parties, funding sources, and the integrity of electoral processes.

In India, the Constitution does not explicitly enumerate a “right to vote” as a fundamental right, but the Supreme Court has consistently recognised free and fair elections as part of the basic structure of the Constitution. Within this framework, the *right to know* has been judicially evolved as an essential component of the freedom of speech and expression under Article 19(1)(a). The rationale is straightforward: expression is rendered meaningless if citizens

are denied access to information necessary for forming opinions and making electoral choices.

The issue of public disclosure in elections has gained heightened significance in light of criminalisation of politics, escalating election expenditure, opaque political funding, and declining public trust in democratic institutions. Judicial intervention, civil society activism, and legislative measures have together shaped the contours of electoral transparency in India. Yet, tensions persist between transparency and competing interests such as privacy, administrative feasibility, and political autonomy. This paper explores these tensions through a doctrinal and analytical study of constitutional provisions, judicial precedents, statutory frameworks, and recent developments. It seeks to answer the central question: *To what extent does the Indian Constitution guarantee a right to know in the electoral context, and how effectively does public disclosure contribute to free and fair elections?*

2. CONSTITUTIONAL FOUNDATIONS OF THE RIGHT TO KNOW

2.1. Article 19(1)(a) and the Freedom of Information

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. Although the Constitution does not expressly mention a right to information, the Supreme Court has long held that the freedom of speech and expression includes the right to acquire and disseminate information. In *State of Uttar Pradesh v. Raj Narain*, the Court famously observed that “the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.”¹⁵²³ This judicial interpretation laid the groundwork for recognising transparency as a constitutional value. Information enables citizens to scrutinise government action, engage in public debate, and hold representatives accountable. In the electoral

context, the relevance of information is even more pronounced, as voters must assess the suitability of candidates who seek to represent them.

2.2. Democracy, Elections, and the Basic Structure Doctrine

The doctrine of basic structure, articulated in *Kesavananda Bharati v. State of Kerala*, places democracy and free and fair elections beyond the reach of ordinary legislative alteration.¹⁵²⁴ Subsequent decisions have affirmed that any law or practice that undermines electoral fairness violates the basic structure of the Constitution.

Free and fair elections are not limited to the absence of coercion or fraud; they encompass conditions that allow voters to exercise their choice freely and rationally. The right to know thus derives additional constitutional support from the democratic ethos embedded in the basic structure. Denial of relevant electoral information directly impairs the voter’s ability to participate meaningfully in the democratic process.

3. JUDICIAL EVOLUTION OF ELECTORAL TRANSPARENCY

3.1. Association for Democratic Reforms Case

The watershed moment in the recognition of the right to electoral information came with *Union of India v. Association for Democratic Reforms (ADR)*.¹⁵²⁵ The Supreme Court held that voters have a fundamental right to know the antecedents of candidates contesting elections, including their criminal records, assets, liabilities, and educational qualifications. The Court reasoned that such information is essential for voters to make an informed choice and is protected under Article 19(1)(a).

The judgment rejected the argument that the right to vote being statutory limits the scope of voter information. Instead, it emphasised that

¹⁵²³ State of U.P. v. Raj Narain, (1975) 4 SCC 428.

¹⁵²⁴ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁵²⁵ Union of India v. Ass’n for Democratic Reforms, (2002) 5 SCC 294.

the act of voting is an expression of opinion, and therefore the right to know information relevant to that expression is constitutionally protected.

3.2. People's Union for Civil Liberties Case

Following the ADR judgment, Parliament enacted amendments to the Representation of the People Act, 1951, which diluted certain disclosure requirements. These amendments were challenged in *People's Union for Civil Liberties (PUCL) v. Union of India*.¹⁵²⁶ The Supreme Court struck down the amendments as unconstitutional, reaffirming that voters' right to know cannot be curtailed by ordinary legislation. The Court clarified that while reasonable restrictions under Article 19(2) may apply, such restrictions must be narrowly tailored and cannot undermine the core of the right to know. The PUCL judgment firmly entrenched electoral transparency within the constitutional framework.

3.3. Subsequent Jurisprudence

Later cases expanded and refined the scope of electoral disclosure. In *Resurgence India v. Election Commission of India*, the Court held that candidates cannot leave disclosure columns blank, as incomplete information defeats the purpose of transparency.¹⁵²⁷ Similarly, in *Lok Prahari v. Union of India*, the Court addressed the issue of asset disclosure by candidates and their families, reinforcing the need for comprehensive transparency.¹⁵²⁸

However, judicial enthusiasm for transparency has not been uniform. Certain decisions reflect judicial restraint, particularly where disclosure claims intersect with privacy or legislative policy choices.

4. STATUTORY FRAMEWORK FOR PUBLIC DISCLOSURE

4.1. Representation of the People Act, 1951

The Representation of the People Act, 1951 (RPA) governs the conduct of elections in India.

Following judicial directions, provisions were incorporated requiring candidates to file affidavits disclosing criminal antecedents, assets, liabilities, and educational qualifications. These disclosures are made publicly accessible through the Election Commission of India.

Despite these measures, gaps remain. The RPA does not impose stringent consequences for false disclosures, and enforcement mechanisms are often weak. Moreover, the Act largely focuses on candidate-centric disclosure, leaving party-level transparency under-regulated.

4.2. Right to Information Act, 2005

The enactment of the Right to Information Act, 2005 (RTI Act) marked a significant step towards institutionalising transparency. The Act empowers citizens to seek information from public authorities, including bodies substantially financed by the government.

The applicability of the RTI Act to political parties has been a contentious issue. In *Central Information Commission v. State of Manipur*, political parties were held to be public authorities under the Act, but legislative resistance has effectively stalled implementation.¹⁵²⁹ This reluctance underscores the political challenges inherent in enforcing electoral transparency.

4.3. Electoral Bonds and Funding Transparency

The introduction of the electoral bond scheme represented a major shift in political funding. While ostensibly aimed at curbing black money, the scheme has been criticised for enabling anonymous donations and undermining the voter's right to know the sources of political finance. Judicial scrutiny of the scheme has brought renewed attention to the constitutional dimensions of funding transparency.

5. RIGHT TO KNOW VERSUS COMPETING INTERESTS

¹⁵²⁶ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

¹⁵²⁷ *Resurgence India v. Election Comm'n of India*, (2014) 14 SCC 189.

¹⁵²⁸ *Lok Prahari v. Union of India*, (2018) 4 SCC 699.

¹⁵²⁹ See generally *Right to Information Act, 2005*; CIC Decision No. CIC/SM/C/2011/001386.

5.1. Privacy and Data Protection

One of the principal arguments against expansive disclosure is the right to privacy, recognised as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*.¹⁵³⁰ Candidates have argued that disclosure of personal information infringes their privacy rights. The Supreme Court, however, has generally balanced privacy against the compelling public interest in electoral transparency, particularly where candidates seek public office. In electoral matters, candidates voluntarily enter the public domain by seeking public office. Judicial reasoning has generally favoured transparency, recognising that the public interest in informed electoral choice outweighs the limited intrusion into personal privacy associated with disclosure requirements.

5.2. Reasonable Restrictions under Article 19(2)

The State may impose reasonable restrictions on the freedom of speech and expression in the interests enumerated under Article 19(2). Any restriction on the right to know must satisfy the tests of legality, necessity, and proportionality. The proportionality doctrine articulated in *Modern Dental College v. State of Madhya Pradesh*¹⁵³¹ provides a structured framework for evaluating such restrictions. Blanket exemptions or excessive secrecy in electoral matters are unlikely to meet these constitutional standards. In the electoral context, disclosure requirements serve a legitimate constitutional purpose and bear a rational nexus to the objective of informed democratic participation. Judicial application of proportionality has thus consistently upheld transparency as constitutionally justified.

6. COMPARATIVE PERSPECTIVES

Comparative constitutional practice across democratic jurisdictions reveals a discernible and sustained movement towards enhancing

electoral transparency as a foundational element of democratic legitimacy.

6.1. Electoral Transparency and the Informational Interest of Voters in the United States

In the United States, the constitutional justification for electoral transparency has evolved through judicial recognition of the electorate's "informational interest" as a component of democratic self-governance. The Supreme Court has consistently held that disclosure of campaign finance and candidate-related information enables voters to assess the sources of political influence and to evaluate the credibility and motivations of those seeking public office. In *Buckley v. Valeo*, the Court upheld disclosure requirements on the ground that transparency assists voters in making informed electoral choices and deters corruption by exposing financial relationships to public scrutiny. Subsequent decisions have reaffirmed that disclosure serves a vital democratic function by enhancing accountability without unduly burdening political participation. Electoral transparency in the United States is therefore understood not merely as a regulatory mechanism, but as a constitutional safeguard that strengthens the deliberative quality of electoral decision-making.¹⁵³²

6.2. Statutory Regulation and Institutional Oversight of Electoral Disclosure in the United Kingdom

The United Kingdom approaches electoral transparency primarily through statutory regulation and independent institutional oversight. The Political Parties, Elections and Referendums Act, 2000 establishes an extensive framework governing the disclosure of political donations, campaign expenditures, and financial reporting obligations of political actors. This framework is administered by the Electoral Commission, which is tasked with monitoring compliance and promoting transparency in

¹⁵³⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
¹⁵³¹ AIR ONLINE 2010 SC 329

¹⁵³² Buckley v. Valeo, 424 U.S. 1, 66–67 (1976); McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 223 (2014).

political finance. The British model reflects an institutional understanding that openness in electoral funding is essential to preserving public confidence in democratic processes and preventing undue influence in political competition. Disclosure is thus treated as an integral element of electoral integrity, reinforcing trust between the electorate and those who seek to exercise political power.¹⁵³³

6.3. Constitutional Protection of Participatory Democracy through Disclosure in South Africa

In South Africa, electoral transparency has been constitutionally linked to the protection of participatory democracy and political accountability. The Constitutional Court has recognised that access to information relating to political party funding is essential for voters to exercise their political rights meaningfully. In *My Vote Counts NPC v. Speaker of the National Assembly*, the Court held that the absence of adequate disclosure undermines the ability of citizens to make informed political choices and to hold elected representatives accountable. The judgment situates transparency within the broader constitutional values of openness, responsiveness, and accountability, affirming that public access to electoral information is a prerequisite for democratic legitimacy. South Africa's constitutional experience demonstrates how disclosure obligations can be directly grounded in the normative foundations of constitutional democracy.¹⁵³⁴

6.4. Comparative Constitutional Significance for the Indian Electoral Framework

Despite variations in constitutional structure, electoral administration, and political context, the comparative experiences of the United States, the United Kingdom, and South Africa reveal a shared democratic commitment to electoral transparency as a condition for

informed political participation. In each jurisdiction, public disclosure is justified by the need to enable voters to exercise meaningful choice and to strengthen the accountability of political actors. Indian constitutional jurisprudence reflects convergence with this global trend through the judicial interpretation of Article 19(1)(a) to include the voter's right to know. The comparative perspective reinforces the understanding that transparency in elections is not merely an administrative convenience but a constitutional value that underpins the substantive functioning of democratic governance.

7. CHALLENGES AND CRITIQUE

Despite progressive judicial pronouncements, several challenges undermine the effectiveness of public disclosure in India. These include non-compliance by candidates, lack of verification mechanisms, low public awareness, and the absence of meaningful sanctions. Furthermore, selective transparency—where certain information is disclosed while other critical aspects remain opaque—weakens the transformative potential of the right to know.

Critics also caution against over-judicialisation, arguing that courts should not substitute legislative judgment. However, given the structural incentives for opacity within political institutions, judicial intervention has often been the primary driver of reform.

8. CONCLUSION AND SUGGESTIONS

The right to know has emerged as a cornerstone of free and fair elections under the Indian Constitution. Rooted in Article 19(1)(a) and reinforced by the basic structure doctrine, it empowers citizens to participate meaningfully in the democratic process. Judicial creativity has played a pivotal role in advancing electoral transparency, often in the face of legislative inertia or resistance.

To strengthen this constitutional promise, several measures are necessary: clearer statutory mandates for disclosure, robust enforcement mechanisms, enhanced voter

¹⁵³³ Political Parties, Elections and Referendums Act 2000, c. 41 (UK); UK Electoral Comm'n, *Political Finance: Transparency and Accountability* (2019).

¹⁵³⁴ *My Vote Counts NPC v. Speaker of the Nat'l Assembly* 2016 (1) SA 132 (CC) ¶¶ 44–47 (S. Afr.).

awareness, and greater transparency in political funding. Ultimately, the health of Indian democracy depends on the extent to which citizens are informed participants rather than passive voters. Any erosion of the right to know risks hollowing out the democratic process itself.

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