

LOKMANYA TILAK'S CALL FOR SWARAJ: THE CONCEPT OF SELF RULE & SUPREME COURT'S DIRECTION TO PUBLISH PENDING CRIMINAL CASES ON WEBSITE

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Abstract

Last year in the month of September Supreme Court directed that all contesting candidates with previous convictions and pending cases would have to publicize the details three times in the month before the upcoming any local, state or national elections in newspapers and on television. As well as Supreme Court also instructed Political parties to do so same and display the relevant facts on their respective websites. While illustrating the concept on Swaraj as in self- rule, it does not mean merely indigenous or rule by any authoritarian or we can say king. Rather, 'self-Rule' suggests control by the people and rule in accordance with their free will. In other words, 'self' is the entire people and 'rule' is governance as per their advice/ instructions. In the democracy, or even in the concept of swaraj (self-rule) people cannot be left to be mute spectators as their representatives and true democracy goes awry, transparency in the electoral process is necessary. This judgment by the Supreme Court sought to accomplish this by bringing political parties within the purview of the people and media. In this paper, significance of this judgment to the concept of Lokmanya Tilak's concept of Swaraj, and how the need for transparency and accountability in the electoral process, especially in the candidate criminal records is emphasized, and it's explains how Swaraj (self-Rule) basically determines the people's rights to know as well as the amendments made in Form-26 (affidavit by candidate) of the Election commission of India in pursuance of the directions in the judgments of the Hon'ble Supreme Court in Writ Petition(C)No. 784of 2015(Lok Prahari Vs. Union of India & Others) and Writ Petition(Civil)No. 536of 2011(Public Interest Foundation & Ors. Vs. Union of India & Anr.).

Keywords: *Law, Swaraj, Lokmanya Bal Gangadhar Tilak, Indian Judiciary, Supreme Court of India, Election Commission, Online Publication, Website, Pending Criminal Cases, Writ petition*

INTRODUCTION

Last year Supreme Court in the landmark judgement directed all the candidate to submit their criminal record to the election commission of India. As well as political parties need to publish this information on their websites for the public. In addition to the above judgement, Supreme Court also directed both the candidate and parties were mandated to publish this information in newspapers and TV at least three times after nomination papers were filed. This has been incorporated by the Election Commission of India in their Regulation and manifesto for the Elections. It is very important that this judgement came in the wake of centenary year of the Death Anniversary of Lokmanya Bal Gangadhar Tilak. Lokmanya Bal Gangadhar Tilak known for the leading advocate of the peoples right of knowing about their representative and their views, this is same as today's right to Information Act, 2005. Lokmanya Tilak's thoughts which were foundation vows of modern India. Tilak's concept of Swarajya is deep rooted to natural birth right. The freedom for which he struggled embedded the roots of our democracy. This includes freedom of speech and expression as well as social, political and economic freedom too. He always believes that, we as a nation have to fight for our freedom of expression and speech, for rights under democracy and human rights. In the above context, it is also serving our nations principles under democracy by going towards the route of the socially aware and

progress state. Today India known as biggest democracy of the world. As Lokmanya Bal Gangadhar Tilak mentioned in Swarajya that, in any democracy people needs to have access to the information held by any person who is running for government positions. As he explains when we have government of people, elected by the people then we will be called as civilized society in the world. In British colonial rule people didn't have any rights regarding the making of policy for the people and resulted into the failed in the implementation. This law also against the very concept of "Swarajya" by the Lokmanya Bal Gangadhar Tilak.

In this study, as researcher we focus on understanding the idea of Swarajya, and by explaining the basic rights of the Indian individual of information, expression and speech. Specifically, researcher investigates the importance of the Supreme Court's judgement to publish information of the candidates, which is core of Lokmanya Bal Gangadhar Tilak's very concept of "Swarajya", it is a soul of Indian Independence. After providing some background on the law, human rights in the constitution, researcher in this study will present literature review of how social justice was denied by violating the rights of the people by political institutions in this Modern era. In this study Researcher compared the information published by the political parties before the judgement and after. Even researcher wants to study the situation where by denying the basic freedom of speech and expression how it is inspired the situation of breach of trust of the people as well as how it is the commitment of the Political parties for protection of fundamental rights and equality was artificial.

CLEAR STATEMENT OF HYPOTHESIS

Clear Statement of hypothesis – That, how Lokmanya Tilak's call for Swaraj: The concept of Self Rule is relevant to the judgement of the Supreme Court's where they have given directions to the all political parties to publish pending criminal cases of their candidate on their websites

OBJECTIVE OF THE STUDY

1. To understand the Lokmanya Bal Gangadhar Tilak's concept of "Swarajya".
2. To find out about Voter's Right to Know and Article 21 of the Constitution
3. To understand the importance of Right to Information Act, 2005
4. To find out how Supreme Court judgement helps to preserve the Indian citizens Human rights
5. To find out how it is important that political establishment to publish information of their candidate on website
6. To understand the Election Commission Procedures.

BACKGROUND

I. Lokmanya Bal Gangadhar Tilak's Concept of "Swarajya" –

The partition of Bengal triggered a wave off unrest. Britishers made this move to cause a rift between religions in India, However, people rose against this move and become unified and vocal against this decision of British Empire. Tilak saw this as an opportunity to weld young minds and create a unified force. He presented a fourfold program which comprising, Boycott, Swadeshi, National Education and Swaraj (Self – Rule) [1].

The word "Swaraj" means Self- rule, He wanted the people to have a definite say in their future and in their administration which also in today legal system we called as freedom of speech and expression. Lokmanya Bal Gangadhar Tilak believes that, it is the people who knows what they want.

Furtherly, Lokmanaya Bal Gangadhar Tilak wanted to state that, self- rule, people right to decide, is the only way forward; this is also explains that, in healthy democracy preservation of people's rights is very much important [1]. The freedom for which he struggled embedded the roots of our democracy. This includes freedom of speech and expression as well as social, political and economic freedom too. He always believes that, we as a nation have to fight for our freedom of expression and speech, for democratic rights and human rights. In the above context, it is also serving our nations democratic principles by going towards the route of the socially aware and progress state.

Lokmanaya Tilak in his address in Calcutta as in today's Kolkata in the year 2nd January 1907, explained the British Colonial rule at that time who didn't gave us any rights; "We all are in subordinate service, the whole government is carried on with our assistance and they try to keep us in ignorance of our power of cooperation between ourselves by which that which is in our own hands at present can be claimed by us and administered by us and administered by us." Further he states that, "At present, we are willing instruments of our own oppression in the hands of an alien government, and that government, is ruling over us in ignorance and blindness to the perception of this fact [2].

In the March 1908, Lokmanaya Bal Gangadhar Tilak expressed his views on Transference of Authority, in his view he states that, The only way to restore good relation between the officers of the authority and the people at present is, therefore, to create by law the necessity of consulting the people or their leaders, whose advice they practically followed, as a matter of policy like in earlier unsettled times. Further he extends his views on government duty to educate the people in the management of their own affairs, even at the cost of some efficiency and without entertaining any misgivings regarding the ultimate growth and result of such matter [2].

On 1st June 1916, at Ahmednagar, Lokmanaya Bal Gangadhar Tilak in his speech state that, "In public matter different people have different opinions. Some say, "Do you not possess authority? Do not consume drink, and all is done'. The advice is sweet indeed, but stopping all the people from drinking cannot be done by mere advice. This requires some authority. He who has not got that authority in hands cannot do that work. Government has come into existence for giving effect to the things desired by a large number of people, we ask Swarajya of this kind [2].

In his speech he further explains that, there is chief question is whether a certain nation is to be treated like beasts or whether considering the people in the nation to be men and their sentiment, their desire is to be given the right direction and they are to be brought and placed in the rank of civilized nation. If matter be considered from such a stand-point there is no either way to accomplish this than SWARAJYA"[2].

II. Voter's Right to Know and Article 21 of the Constitution

The right to know is the part of fundamental legal right to empower the people while deciding to cast their votes in support of candidates in the election. The right to know helps them to elect right candidate and it is one of the fundamental principles of representative democracy [3][4].

The right to know of the antecedents of the candidates as prescribed under Section 33 A and B and 125 A deals as follows;

1. A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made there under, in his/ her nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether –

- a) 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 court of competent jurisdiction;
- b) he has been convicted of an offence (other than any offence) and sentenced to imprisonment for one year or more.

Penalty for filing false affidavit, etc. – A candidate who himself or through his proposer, with intent to be elected in an election –

1. fails to furnish information relating to sub-section (1) of section 33A; or
2. give false information which he knows or has reason to believe to be false; or
3. conceals any information – in his nomination paper delivered which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being force, be punishable with imprisonment for a term which may extend to six month, or with fine, or with both.

In constitutional bench, the **State of Uttar Pradesh V. Raj Narain & Others**, through Justice Mathew; “.. The people of this country have a right to know every public act, everything, that is done in public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its hearing. The right to know, which is derived from concept of freedom of speech [3].

III. Right to Information Act, 2005 -

It is a act of Parliament “to provide for setting out the practical regime of right to information for citizens” and it is applicable to all states and territories. This act permits every citizen to request information from a “Public authority”, which may be a governmental body and it is mandatory to reply promptly or within a period of 30 days, depending on the nature of request and nature of the information of information queried to [3][4].

Dr. B. R. Ambedkar while framing the constitution recognized the importance of safeguarding this right due to the free flow of opinions and ideas are the essential to sustain the life of the Indian Citizens.

On 25th October, 2013, in what seems to be a ground baking step towards cleansing the political system of the country, the Chief Information Commissioner upheld it final declaration, that political parties are indeed “public authorities” and hence are compelled to respond to any queries furnished under RTI Act. The department of personnel and Training (DoPT), which acts as nodal department for the implementation of the RTI Act, in consultation with law ministry decided to amend this law and seeks to change the definition of public authorities mentioned under Section 2 of the RTI Act to keep all recognized political parties out of the jurisdiction of RTI [3][4]. It seems that all the political parties are against the above decision which properly implemented the democracy is strengthened.

In **Bombay environmental group & others V. Pune Cantonment Board**, the honorable Supreme Court of India observed that “real democracy cannot be worked by men sitting at the top. It has to be worked from below by the people of every village and town. The sovereignty resides in and flows from the people. So said the father of Nation in whose name we swear. Therefore, “who will watch the watchman?” is a vexed question before our democracy. For this people ‘s participation at all levels is a must” [3][6]

IV. The Freedom of Speech and Expression –

Article 19(1) (a) of the constitution states that, ‘Freedom’ is the condition of being free i.e set at liberty. The preamble of the constitution of India promotes that, “Liberty of thought, expression, belief, faith and worship” [5].

As per Article 19 of the Universal Declaration of Human Rights, 1948 states that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” [5].

Freedom of speech and expression means the right to express one’s own conviction and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression is an idea of person or persons through any communicable medium or visible representation, such as gesture and signs [5].

Freedom of expression serves the following purposes [5] –

1. it helps an individual, to attain self-fulfilment;
2. It assists in the discovery of truth;
3. It strengthens the capacity of an individual in participating in decision making; and
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others.

V. Amendments made in Form-26 (affidavit by candidate) of the Election commission of India

On 10th October 2018, Election commission given directions to all the candidate and political parties for publishing declaration regarding criminal cases of candidate and Amendment made in the Form 26.

As per the order No. 3/4/2017/ SDR/ Vol. II dated 10th October 2018 states that, The candidates at all elections are required to file affidavit in Form-26, along with nomination paper, declaring information about criminal cases, assets, liabilities and educational qualifications. Form-26 has now been amended vide Ministry of Law & Justice Notification No. H. 11019 (4)/2018-Leg.II, dated 10th October, 2018. The amendments made in Form-26 are in pursuance of the directions in the judgments of the Hon'ble Supreme Court in Writ Petition (C) No. 784 of 2015 (Lok Prahari Vs. Union of India & Others) and Writ Petition (Civil) No. 536 of 2011 (Public Interest Foundation & Ors. Vs. Union of India & Anr.). A copy of the said notification along with a copy of the updated Form-26 is enclosed herewith. The candidates are now required to file the affidavit in the amended Form-26 [7].

VI. Case - In Writ Petition (C) No. 784 of 2015 (Lok Prahari Vs. Union of India & Others) and Writ Petition (Civil) No. 536 of 2011 (Public Interest Foundation & Ors. Vs. Union of India & Anr.).

Supreme Court directions as follows [7];

1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein [7].
2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate [7].
3. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her [7].
4. The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents [7].
5. The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers" [7].

VII. Election Commission's stand and directions given to implement supreme court's judgement –

To implement the judgement by the Supreme Court in above mentioned case following are the direction given by the Election commission;

1. Candidates at elections to the House of the People, Council of States, Legislative Assembly or Legislative Council who have criminal cases against them - either pending cases or cases in which candidate has been convicted, shall publish a declaration about such cases, for wide publicity, in newspapers with wide circulation in the constituency area. This declaration is to be published in Format C-1 of the Election Nomination form of the Election Commission [7].
2. at least on three different dates from the day following the last date for withdrawal of candidatures and upto two days before the date of poll. The matter should be published in font size of at least 12 and should be placed suitably in the newspapers so that the directions for wide publicity are complied with in letter and spirit [7].
3. All such candidates with criminal cases are also required to publish the above declaration on TV channels on three different dates during the above mentioned period. But, in the case of the declaration in TV Channels, the same should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll [7].
4. In the case of all candidates who have criminal cases as per the declarations in Items 5 and 6 of Form-26, the Returning Officer shall give a written reminder about the directions herein for publishing declaration about the criminal cases in newspapers and TV channels for wide publicity. A standard format for such reminder to the candidates is annexed as Format C-3. The candidates shall submit the copies of newspapers in which their declaration in this regard was published to the District Election Officer, along with their account of election expenses [7].
5. In the case of candidates with criminal cases set up by political parties, whether recognized parties or registered un-recognized parties, such candidates are required to declare before the Returning Officer concerned that they have informed their political party about the criminal cases against them. Provision for such declaration has been made in Form-26 in the newly inserted Item (6A) [7].
6. In Case of Political Party - recognized parties and registered un-recognised parties, which set up candidates with criminal cases, either pending cases or cases of past conviction, are required to publish declaration giving details in this regard on their website as well as in TV channels and newspapers having wide circulation in the State

concerned. This declaration by political parties is to be published in Format C-2, annexed hereto. Publishing of the declaration in newspapers and TV channels is required to be done at least on three different dates during the period mentioned in Para-2(a) above. In the case of TV channels, it shall be ensured that the publishing should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll for the election. All such political parties shall submit a report to the Chief Electoral Officer of the State concerned stating that they have fulfilled the requirements of these directions, and enclosing therewith the paper cuttings containing the declarations published by the party in respect of the State/UT concerned. This shall be done within 30 days of completion of election. Thereafter, within the next 15 days, the Chief Electoral Officer should submit a report to the Commission confirming compliance by the parties concerned, and pointing out cases of defaulters, if any [7].

NEED AND IMPORTANCE OF THIS STUDY

Here, it is important to note that, to create awareness of criminalisation of politics and the victims of this oppression due to hiding information by the candidate and also it is relevant to know that, for the principles of democracy, and to preserve the fundamental rights of the society, implementation of this order is a significantly important and also to examine the status is very much needed for this study. Understanding the situation of human rights violation and misuse of interpretation of the Election laws suggests that in future we are choosing the candidate with less information and fails to prevent and control this. Researcher compares this situation of the judgement and benefits of preservation rights of freedom of speech and expression in the society. Primary prevention aims to prevent misuse or grievance from occurring by hiding truth about criminal pending cases of the candidate. Secondary prevention aims to reduce the impact of unrest due to casting vote to the candidate which is principally not viable for the post and tertiary prevention aims to stop the human rights violation through implementation and order of the Election Commission to be known to as many as people possible. From the concern of Indian political perspective then, primary prevention aims to prevent criminal politicians from entering the house or public office and maintaining safe environments in the nation, secondary prevention aims to address discourtesies to the political parties before they select candidate with pending criminal case to lead them into elections and eventually to begin the process of decriminalisation of political parties which also controls the any illegal activities occur in future, and tertiary prevention aims to accept the change by the political parties.

IMPLEMENTATION OF RESEARCH METHODOLOGY

This study has been conducted through historical-analytical approach. Both primary and secondary resources have been taken into consideration while collecting and exercising the relevant data. The Analysis was carried out in three stages. In the first stage we examined the political parties candidates cases, in the second stage we examined the responses of individual on violation of their fundamental rights, and in the third stage analyses of modification carried out after supreme court judgement by the election commission and their responses from the individuals within the period of judgement and election after judgement and results.

First Stage

The candidates pending criminal cases;

1. To examine the individual's response on candidature criminal profile.

2. To examine the total number of responses across the scale within each area of Individuals.
3. To compare with the all politicians with pending criminal cases running for the office before the judgement and after the judgement and respective results in their constituency.

Ultimately this will help to position the opinion of pattern of responses of the people in relation with the statement of hypothesis.

Second Stage

While examining the responses of individual on violation of their fundamental rights; it is need to be examined the difference between negative responses and the number positive responses of the individuals. This procedure also enables us to compare the negative and positive for each statement with reference to the human rights violations.

Third Stage

The basic analysis in this stage is to showcase the effect of the judgement on the individual's choices while casting vote, this study also raise the awareness which Lokmanya Bal Gangadhar Tilak wanted to have in any individual about their right in their own Swarajya.

FINDINGS AND DISCUSSIONS

Following are the researcher's findings for the discussions

1. Lokmanya Tilak explained importance of Right to know and freedom expression to the people using concept called "Swaraj"–

It is found out by the researcher that, Lokmanya Tilak in his speeches and writings try to explain people about the importance of transparency and inclusiveness of peoples in the administration and policy making. He also explains in his speeches that, people with more information about the public office helps run the effective administration. He further also extends his statement by saying, the whole government is carried on with our assistance and they try to keep us in ignorance of our power of cooperation between ourselves by which that which is in our own hands at present can be claimed by us and administered by us and administered by us." Further he states that, "At present, we are willing instruments of our own oppression in the hands of an alien government, and that government, is ruling over us in ignorance and blindness to the perception of this fact

2. Breach of Right to know as prescribed under section 33A and B and 125 A

It has been found out by the researcher that, there is a breach of right to know of every human being when the candidates of political parties did not disclose information of their pending criminal cases in the public domain. It is grave violation human rights by misusing the trust as per the responses given in the survey. Naturally from independence struggle Indians have tendency voicing their reservations but as well as trusting the leaders blindly, which is ultimately resulted into oppressions by the same elected officials. Therefore, it is found out that, majority responses of the individuals believe that their right to know is breached by the political parties in general.

3. Low Awareness about Voters Right to know and Article 21

It has been also found out by the researcher from the responses given by the individuals that, there is very less awareness of the right to know and article 21 of the constitution, there is all the information and literature available but when they asked about their knowledge of using this right to get information about their candidate, it is found that majority of the responses was negative. Even it is found out that, there are very less NGO's who works in this area. There was very less information given by the Election Commissions on the decision to implement Supreme Court judgement need to emphasize by way of TV, Newspaper and social media advertisements.

4. Political parties' disinterest to come under Right to Information Act

It has been found out by the researcher from the responses that, Nodal department with the help of law ministry decided to amend this law and seeks to change the definition of public authorities mentioned under Section 2 of the RTI Act to keep all recognized political parties out of the jurisdiction of this law. Therefore, from the responses, it has been found out that majority of individuals believes all the political class are against the decision of implementation of supreme court order. It is also found out that from the responses that, individuals look as properly implementation of the order resulted into strengthening democracy.

5. Low Awareness regarding the Form 26 of the Election Commission

It has been also found out by the researcher that; from the responses it has been seen as very few percentages of the people knows about this election commission changes made in the form 26 for the candidates. And it has been found out that, even less percentage of people knows about these changes took place to preserve the rights of themselves only.

These results show that, the young generation as well as middle aged people place a greater emphasis upon the use of media mediums in dealings with situation within the election period, where as within the election period majority people emphasises upon the use of strong ways and means to check the candidatures eligibility.

CONCLUSION

Researcher must emphasize that, our data consists of reports of responses about their thinking, behavior in certain conditions and these responses have been obtained through the use of scheduled period. The analysis of the degree and type of oppression on the part of the political party and its candidates gives us reasonable ground that the election commissions order for the inclusion of publishing the information and the period were appropriate. Researcher also believes that, the order is such that the 'Negative' or conventional response was not obvious to the question on the implementation of this judgement. However, researcher cannot present at the moment an analysis of possible differences between responses on who is responsible for violation of human rights political party or the candidate.

In conclusion, researchers' recommendations as follows;

1. Need to spread awareness through social media and other digital platform by putting Lokmanya Bal Gangadhar Tilak speeches and writing on concept of 'Swaraj', so people can be more persuasive for their rights for which our freedom fighter fought long battle.

2. The Election commission by using machinery of central and state government ensure wide publicity among the voters regarding the Amendments in form 26 of the affidavit taken from candidate in elections.
3. The government should give more emphasis to the cases against breach of the publication of information of candidate's pending criminal case on online mode, so government can assure voters on the implementation of law. This also ensures administration willing to protect freedom of expression and speech of every citizen.
4. Election commission can use digital platforms to train voters, to check every time before voting the criteria and information which submitted by the candidate.
5. A nationwide public awareness campaign should be launched to ensure the voter regarding safety of their rights and which also help to minimizes the feel of unrest among voters.

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