

orders and providing for the grant of interim relief. The amendment also strengthened the power of the consumer forums and gave more teeth to them. Making the existence of Consumer Councils compulsory was an important part of the Amendment.

Overall the amendment tries to strengthen the rights of the consumers. However sub-

section (2) of Section 12 provides that a complaint has to accompany with fees. This provision is against, the basic objective of establishing Consumer Courts which was to provide justice to poor consumers free of cost. Through this insertion the establishment of Consumer Courts will also run more or less on the pattern of Civil Courts.

RIGHTS AND PRIVILEGES OF A CITIZEN IN DEMOCRACY

By

—MOHD. IMTHIAZUDDIN,
Advocate, Hyderabad

Supreme Court of India in *Peoples Union for Civil Liberties (PUCL) v. Union of India* rendered a well considered judgment (reported in AIR 2003 SC 2363) pertaining to voters' right to know antecedents of candidates contesting election to legislatures. The test laid down in *Association for Democratic reforms* (AIR 2002 SC 2112) that "for survival of the democracy, right of the voter to know the antecedents of a candidate would be part and parcel of his fundamental right" held that conclusions arrived at in the aforementioned case would be the basis for free and fair election which is a "basic structure of the constitution." In *Jyoti Bau's* case (AIR 1982 SC 983) it was held that "a democracy is anomalously enough neither fundamental right nor a common law right. It is pure and simple a statutory right". His Lordship Justice *P.Venkataram Reddy* agreeing with the conclusions of Justice *M.B. Shah* expressed his views of disagreement across a limited area pertaining to right to information of the voter within a sweep of Article 19(1)(a) of the Constitution. While dealing with the case reported in AIR 1982 SC 983 the Learned Judge has expressed that "The right to vote if not fundamental right, certainly a constitutional right". And further held "it is not very accurate to describe it as a statutory right pure and simple". His Lordship framed the issue "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 and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(a)?" answered "while there cannot be a lip service to the valuable right to information, it should be not stretched too far". His Lordship held that disclosure of information pertaining to educational qualification of a candidate is not an essential component of the right to information flowing from Article 19(1)(a).

For the membership of the Parliament under Article 84 and the qualification of the State Legislative under Article 173 envisages that a citizen of India possessing such other qualification as may be prescribed in that behalf by or under any law made by Parliament is fully qualified to fill a seat in Parliament. Article 173 for a membership of the State Legislature is couched in the same language. It is absolutely clear that the only qualification prescribed, to be a candidate to get one self elected is that he should be a citizen of India until unless the Parliament in its wisdom prescribed all or any other qualification. Parliament and Legislative Assembly are created under the constitution and protect the candidate and elected Representatives alike. So also the Supreme Court and High Courts are also the creation

of Parliament under Articles 124 and 214 of the Constitution. Article 124(2) deals with appointment of Judges in the Supreme Court and Article 217 deals with condition of the office of Judges in the High Court. In short the President under his hand and seal appoints Judges after consultation of the Judges of the Supreme Court and of the High Court in the states as the President may deem necessary. So is the case pertaining to appointment of Comptroller and Auditor -General of India as per Article 148. Likewise the election Commissioner and such members also are appointees of the President of India. Constitutional appointment of Judges Comptroller and Auditor-General of India and election Commissioner is vested in the President are not based upon any constitutional guidelines. Nevertheless they are all persons discharging public duties. By constitutional fiction and other Laws and Rules enacted by the Parliament such Appointees are shielded with certain immunities and privileges. The fact remains that Representatives of the people duly elected and enjoying the confidence of voter to contest the elections are neither public appointees nor enjoy the office to retire at a particular limitation of age. Without taking into consideration any other factor is it not just and necessary for citizen as a matter of fundamental right under Article 19(1)(a) of the Constitution to know the antecedents of the Presidential appointees? Is it not necessary that the appointees should disclose their assets and a bio-data of his legitimate proficiency in the field from which springs his abilities to be considered by the President for their appointment?

No institution like Judiciary, Auditor-General and Election Commissioner can survive without accountability. Withholding the information from the people the Presidential consideration about the antecedents of person who is likely to be appointed will deprive the plurality of views on the public issue. His Lordship Justice *Jeevan Reddy* observed "Diversity of opinions, views, ideas and ideology is essential to enable the citizens to arrive at informed judgment on all issues touching them". If a person who desires to contest has to expose himself to several tests

of proving himself beyond the pale of criminality and amassing of wealth by foul means and methods and educational qualification the same parameter has to be applied to all Presidential appointees under the Constitution so that the fundamental right of knowing the appointee's proficiency is also within the range of such parameter. If for the survival of a democracy right of the voter to know the antecedents of a candidate is part and parcel of fundamental right, it is equally fundamental right to know the legal proficiency, ability and antecedents of a person likely to be chosen for the appointment as a Judge to safeguard the judicial system and the confidence of people in judiciary.

As published in *Hindu* dated 19th and 20th October, 1997, Retd. Chief Justice of India His Lordship Justice *J.S. Varma* has said that "Judiciary today suffered three "Cs" - Caste, Cost and Corruption and fear of contempt of Court action prevented people from speaking about it". He further expressed "We cannot lose any more time and must use social sanctions which are more powerful than legal steps. If an outside agency has to enforce this it would be a sad day for judiciary."

The citizens especially the litigant public should have a fundamental right to know that the legal luminaries who are elevated to the Bench from the Bar are persons not only proficient and efficient in the field but also dealt with cases from various branches of law and also hold praise worthy moral turpitude to be regarded all times to come that addressing them as 'MY LORDS' is not insignificant and illusory. If before such constitutional appointee's antecedents is kept in unfathomed deep secrecy from the people the very appointment will be reflected as truncated democracy because the parameters and yardstick applicable to the peoples Representatives is not the same to all constitutional appointments to know as a fundamental right under Article 19(1)(a) to enable the public to have a comprehensive idea of the persons chosen to adorn the high office to dispense Justice Social, economical and political safeguarding liberty equality while assuring the dignity of the individual and the Nation.