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'Citizens right to know subject to reasonable restrictions': Centre to Supreme Court on electoral bonds

The senior law officer of the government submitted "...right to know for the general health of democracy will be too over-broad".

By: **Express News Service**

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The top court is seized of four petitions — by NGO Association for Democratic Reforms, CPI(M), Congress leader Jaya Thakur and a PIL by one Spandan Biswal — in the matter. (Express file photo by Amit Mehra)

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Attorney General R Venkataramani has told the Supreme Court, which will start hearing **petitions challenging the electoral bonds scheme** from October 31, that the citizens' right to know is subject to reasonable restrictions.

A five-judge Supreme Court Constitution Bench presided by Chief Justice of India D Y Chandrachud will hear petitions challenging the **2018 Electoral Bonds Scheme** on October 31. The bench will also comprise Justice Sanjeev Khanna, B R Gavai, J B Pardiwala and Manoj Misra.

The top court is seized of four petitions — by NGO Association for Democratic Reforms, CPI(M), Congress leader Jaya Thakur and a PIL by one Spandan Biswal —

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in the matter.

"...there can be no general right to know anything and everything without being subjected to reasonable restrictions", Venkataramani said adding, "The right to know as necessary for expression can be for specific ends or purposes and not otherwise".

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The AG said this in his written submissions while refuting the petitioners prayer seeking a "declaration that citizens have a right to know as an aspect/facet of the right to freedom of expression" based on which they "canvassed that the right to have access to the details of contribution to political parties must follow" and that "consequently, the confidentiality facilitated under the Scheme is...impermissible".

The AG submitted that "democracy is a wide concept and comprehends many aspects. Right to know for the general health of democracy will be too over-broad".

He added, "The right to know the criminal antecedents of a candidate which can be of utility and relevance to the choice of a candidate is neither comparable to the case on hand nor can there be a general right to know anything and everything for undefined ends".

The senior law officer also referred to the SC's 2003 ruling in People's Union for Civil Liberties v Union of India and the 2002 judgement in Union of India v Association for Democratic Reforms

He said they "were in the context of making informed choices about electoral candidates and knowing their antecedents. Information limited to such knowledge serves a specific end of citizens' choice of electing candidates free from blemish. The right to know for specific rightful expression was thus conceived. From that, it cannot be said that the right to know for general or broad ends necessarily follows".

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Therefore, these judgments cannot be read as to suggest that a citizen has a right to information under Article 19(1)(a) regarding the funding of a political party. If there is no right under Article 19(1)(a), the further question of locating reasonable restriction under Article 19(2) does not arise.

The AG said that while reading into enumerated constitutional rights or any one of their aspects, the Court should also be alive to the need for stating relevant restrictions on the exercise of such penumbral aspects

Venkataramani said, "The scheme...extends the benefit of confidentiality to the contributor. It ensures and promotes clean money being contributed. It ensures abiding by tax obligations. Thus, it does not fall foul of any existing right".

He added, "A constitutional Court reviews State action only if it impinges upon existing rights and not because State action has not provided for a possible right or an expectation howsoever desirable".

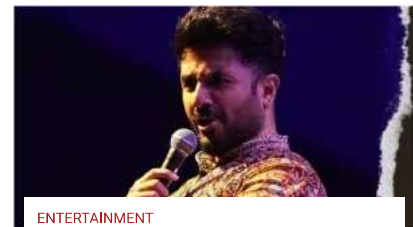
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"The scheme does not impinge upon any existing right of any person and cannot be said to be repugnant to any right under Part III of the Constitution. In the absence of such repugnance, the Scheme will not be illegal. A law which is not so repugnant cannot be voided for any other reason. Judicial review is not about scanning State policies for the purposes of suggesting better or different prescriptions," the AG said.

Venkataramani submitted that it is also not a case for court-driven guidelines.

He said, "Contribution to political parties has democratic significance and a fit subject for political debate and demand of governance accountability free from influences does not mean that the Court will proceed to declare on such matters in the absence of a clear constitutionally offending law".

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Venkataramani added, "These are highly debatable matters and cannot be subjected to simplistic statements without parliamentary debates".

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