

POLITICAL PARTIES WITHIN RIGHT TO INFORMATION ACT

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Abstract

The availability of appropriate information helps citizen to live a dignified life in a civilized society. In a democratic country each person has the right to freedom of opinion and expression. This right includes right of holding public opinion and to seek, receive and impart information and ideas from the public authorities. The Right to Know was implemented by the Parliament of India in the form of Right to Information Act, 2005¹. The Right to Information is a powerful tool in the hands of the citizen to obtain information from public authorities in our democracy today. Two activists filed an RTI Application with various Political Parties requesting their financial information. The same was not entertained by the parties as they ascertained that they were not ‘public authorities’. This question first arose before the full bench of Chief Information Commission², including the then CIC Satyananda Mishra, which ruled that Political Parties are ‘public authorities’³ and hence, fall within the ambit of the RTI Act and directed the officials to designate Public Information Officers and Appellate Authorities⁴ and respond to the RTI applications within four weeks. Further, the bench also directed the parties to comply with proactive disclosures under the RTI Act. The parties however chose not to comply with the orders of the Chief Information Commission and after 22 months, the court reaffirmed its order, however acceding to the constriction of the power of the Commission to deal with contempt under the RTI Act. The Activists approached the Supreme Court and the matter is currently sub-judice.⁵ The Government’s arguments were that bringing the Political Parties within the ambit of RTI would hamper their internal working and political functioning contending further that the CIC made a liberal interpretation of the RTI Act leading to an erroneous conclusion. This paper seeks to analyze the importance of Political Parties in the functioning of a democracy and alienation of Right to Information in its absence of including Political Parties within its ambit by also analyzing the systems prevalent in similar democracies. The words ‘public authority’ bear very high importance. It would be

¹ Act No. 22 of 2005, (The RTI Bill was passed by Parliament of India on 15 June 2005 and came into force with effect from 12 October 2005). It extends to the whole of India, the words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

² Mr. Anil Bairwal v. Parliament of India, Complaint No. CIC/SM/C/2011/000838 and Shri Subhash Chandra Aggarwal v. Parliament of India, Complaint No. CIC/SM/C/2011/001386 Judgement dated 3 June, 2013.

³ Defined under Section 2(h), Right to Information Act, 2005

⁴ Section 5(2) and 19(1) of Right to Information Act, 2005 respectively.

⁵ Association of Democratic Reforms and Anr. v. Union of India and Ors. (Writ Petition (Civil) No. 333 of 2015), the prayers made in the said writ petition were for (i) a declaration that all national and regional political parties are public authorities under the Right to Information Act, 2005; (ii) a direction to the Election Commission of India to collect all information concerning the finances of political parties; (iii) a direction to all national and regional political parties to mandatorily disclose complete details about their income, expenditure, donations and funding as well as full details of the donors.

important to study the interpretation of the term 'public authority' of the RTI Act to look as to its scope and extent. The Independence of Political Parties is very well-founded and such independence is an important feature of a democracy. The role of the independence of the political parties and its nexus with inclusion into RTI shall be reviewed and analyzed. The Government of India's Right to Information (Amendment) Bill, 2013⁶ to remove political parties from the meaning and scope of 'public authorities' under the RTI Act is a blatant method to adopt undemocratic methods to circumvent orders of judicial or quasi-judicial or other authorities. The Bill by way of specific exclusion has not only removed Political Parties but also gave itself a presiding effect over any judgment, order or decree of any court or commission. This paper shall look into the merits of the said amendment and analyze the intention of the legislature in making such a law. It is RTI's companionship with every democratic institution that makes better accountability in this democracy.

Introduction

India, the seventh largest (area) and second most populous country in the world, is regarded as the largest democracy in the world. The Constitution of India was constituted in 1950 after the independence in 1947 which included five major democratic principles namely Sovereign, Socialist, Secular, Democratic and Republic⁷. Sovereign refers to an independent nation, Socialist implies social and economic equality for all citizens, Secular implies freedom to choose and profess religion of choice, Democratic means that the government is democratically elected and Prime Minister of India is elected by the people and lastly Republic means head of the state i.e. the President of India who is not a hereditary King but is indirectly elected by the people. Free and fair periodical elections, a free Press, an independent judiciary and a non-political civil service are the essential ingredients of a democracy.

The Election Commission of India⁸ is an autonomous, established federal authority responsible for administering all the electoral processes in the Republic of India. Under the supervision of the election commission, free and fair elections have been held in India at regular intervals as per the principles enshrined in the Constitution. The Representation of the People Act, 1951⁹ deals in detail with all aspects of conduct of elections and post-election disputes.

The Indian Constitution, while not mentioning the word "press", provides for "the right to freedom of speech and expression" under Article 19(1)(a). However, this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offense".

Independence of Judiciary is a very important tool of democracy. It ensures justice to the citizens of the country. Indian Constitution has given high importance to independence of judiciary. Independence of Judiciary states that judiciary as an organ of the government should be free from the other two organs of the government namely legislature and executive. It not only ensures public good

⁶ Bill No. 112 of 2013, the Statement of Objects and Reasons of the Bill states that there are already provisions in the Representation of People Act, 1951 as well as in the Income Tax Act, 1961 which deal with transparency in the financial aspects of political parties and their candidates. It also adds that declaring a political party as public authority under the RTI Act would hamper its internal functioning and political rivals could misuse the provisions of the RTI Act, thus affecting the functioning of political parties.

⁷ Preamble, Constitution of India, 1950

⁸ Article 324 of the Constitution provides that the power of superintendence, direction, and control of elections to parliament, state legislatures, the office of the president of India, and the office of vice-president of India shall be vested in the election commission.

⁹ Act No. 43 of 1951

but paves a protection to individual freedom. The Constitution of India adopts diverse devices to ensure the independence of the judiciary in keeping with both the doctrines of Constitutional and Parliamentary sovereignty. The hierarchy of judicial system in India also plays an important role in maintaining the independence of judiciary. Hence these are the various factors which lead to the emergence of India as the world's largest democracy.

Historical Perspective of Right to Information

The foundation of RTI Act 2005 was laid down by the National Campaign for People's Right to Information (NCPRI) which was founded in 1996. One of the primary objectives of NCPRI was facilitating the fundamental right to information. NCPRI and Press Council of India formulated the draft of RTI law. Subsequently Freedom of Information Bill was introduced in Parliament in 2002. NCPRI forwarded to the National Advisory Council a set of suggestions for amendment of Freedom of Information Act, 2002. The endorsement of these suggestions by the Advisory Council formed the basis for the subsequent Right to Information Bill introduced in the Parliament on 22nd December 2004. Due to various weaknesses hundreds of amendments were made including the jurisdiction to extend to whole of India. Pursuant to the 77th Report of Parliament Standing Committee headed by Shri Pranab Mukherjee, finally, the RTI Act came into effect all over India from 12th October, 2005.

Right to Information Act, 2005 provides for setting out a regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matter connected therewith or incidental thereto.¹⁰ The Act defines 'right to information' as the right to access information accessible under the Act which is held or under the control of a public authority. Since the provisions of the Act are applicable only to public authorities as defined under Section 2(h) of the Act, the Act imposes certain obligations as mentioned in Section 4 of the Act on public authorities pertaining to indexing, cataloguing and computerization of records within reasonable time. RTI Act, 2005 mandates public authorities to periodically publish information regarding its organization, employees, rules & regulations, remuneration paid to employees, proposed expenditures, budgetary allocations etc. The Act provide immense powers to the citizens for suo motu provision of information through various media.

Judicial Perspective: The Right to Know

Right to know or to be informed is the foundation of democracy. Right to know is implicit in freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India. In the case of *State of Uttar Pradesh v. Raj Narain*¹¹, the court observed that freedom of speech and expression includes right of citizens to know every public act, everything that is done in a public way, by their public functionaries. The freedom to speech and expression is inclusive of right to impart and receive information. The restrictions to Article 19(1)(a) are provided in 19(2). Hence right to know is derived from the plenary provisions of Article 19(1)(a) of the Constitution of India. The Supreme Court in another case of *Peoples Union for Civil Liberties v. Union of India*¹² held that true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sided of issues in respect of which they are called upon to express their views. It is obvious from the Constitution that India has adopted a democratic form of government. It is elementary that the citizen's

¹⁰ Preamble RTI 2005

¹¹ 1975 4 SCC 428

¹² AIR 2003 SC 2363

right to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if the people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both. The citizen's right to know the facts, the true facts about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world. The important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to functioning of government. Enlightened and informed citizens would undoubtedly enhance democratic values. In the absence of law on right to information, the Supreme Court observed in case of *Union of India v. Association for Democratic Reforms*¹³ wherein it gave the directives and that were included to operate only till the law was made by the Legislature and in that sense 'pro tempore' in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right to information available to the citizens. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right. In a government of responsibility, where all the agents of the public must be responsible for their conduct, there can be but few secrets. 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. They are entitled to know the particulars of every public transaction in all its bearing. The Supreme Court earlier in 1950 also has observed that the freedom lay at the foundation of all democratic organisations, for without free political discussion on public education, so essential the proper functioning of the processes of popular government. A freedom of such amplitude might involve risks of abuse. But it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. The fundamental rights involved are the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration (*Attorney General v. Time News Papers Ltd.*¹⁴). The member of the democratic society should be sufficiently informed so that they may influence intelligently the decisions, which may affect them. Further the right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. (*Union of India v. Association for Democratic Reform*¹⁵). The public interest in freedom of discussion stems from the requirement that members of a democratic society should be sufficiently informed. (*Indian Express News Papers (Bombay) v. Union of India*¹⁶). Between these periods a plethora of sensitive judgments followed the Supreme Court's concern on the right to know. In 2002 the Law Commission of India's 179th Report was public interest disclosure and protection of informer followed the Freedom of Information Act 2002 and finally Indian Parliament passed the law on Right to Information in May 2005.

¹³ AIR 2002 SC 2112

¹⁴ 1973 3 ALL ER 54

¹⁵ AIR 2002 SC 2112

¹⁶ AIR 1986 SC 515

An Analysis on the Judgment of the CIC dated 3rd June 2013

The Chief Information Commission on an appeal presented before it by Subhash Agarwal and Anil Bairwal gave a decision that Political Parties feature within the ambit of RTI Act, 2005. The Complainants sought information from six national political parties including INC, BJP, NCP, CPI(M), CPI and BSP¹⁷ with regard to election manifestos, satisfaction of promises in election manifestos, outline of receipts and payments, contribution to party funds by Center or State level party and details with regard to that, corrupt practices, proposals with regard to electoral reforms. With regard to the information sought, most of the information was available on the respective websites of the Political Parties and their databases. Upon denial of being 'Public Authorities' under RTI Act, the Complainant approached the said Authority by way of appeals. The Court went ahead to the extent to *obiter* that it would not be an exaggeration to say that devoid of political parties in India, there is no democracy. The CIC took into consideration the following aspects of Political Parties that suggest to be a public character.

Legal or General Aspects:

Political parties are building blocks of a constitutional democracy. They are the utmost institutions that are crucial in the functioning of the government and its institutions. The Tenth Schedule of the Indian Constitution vests immense powers in the political parties and is the striking part which enables a political party to issue *whips* and those who do not follow orders of such whips, *may be suspended by the speaker upon recommendation* by the parties. This gives a lot of power to the political parties. Political Parties are registered under Section 29A of Representation of People Act, 1951 and hence are statutory bodies. They are so powerful that in the words of Prof. Harold Laski, in his textbook 'Grammar of Politics' has termed them 'natural' though not 'perfect'.

Further, the court observed that under section 29C of the RP Act, 1951, a Political Party is required to submit a report for each Financial Year to the Election Commission of India in respect of contributions received by it in excess of 20,000/- rupees from any person as also contributions in excess of 20,000/- rupees received from non-Government companies and that when Section 29A be read with Article 324 and Rules 5 and 10 of Conduct of Election Rules, 1961, the Election Commission has issued Election Symbols (Reservation & Allotment) Order, 1968¹⁸, under which election symbols are allotted to various National/State Political Parties. Further, the Election Commission can suspend or withdraw recognition of a recognized political party in the event of violation of provisions of Election Symbol (Reservation & Allotment) Order, 1968. The order of the CIC dated 29.04.2008 directing Political Parties to disclose their income tax returns holds the field and is complied with.

Financial Aspects

The following financial aspects were noted by the court

- The Land & Development Office of the Ministry of Urban Development has allotted large tracts of land in Delhi to various Political Parties either free of cost or at concessional rates;
- The Directorate of Estates, Ministry of Urban Development, has allotted accommodation in Delhi to various Political Parties on rental basis at concessional rates
- Political Parties have been claiming and granted total tax exemption under section 13A of the Income Tax Act for all their income

¹⁷ Indian National Congress/ All India Congress Committee (AICC); Bhartiya Janata Party (BJP); Communist Party of India (Marxist) (CPM); Communist Party of India (CPI); Nationalist Congress Party (NCP) and Bahujan Samaj Party (BSP).

¹⁸ S.O. 2959, dated the 31st August, 1968.

- The State has been indirectly financing Political Parties by way of free air time on All India Radio and Doordarshan of India during the elections
- Recognized Political Parties are issued copies of electoral rolls by the Election Commission, free of cost, at the time of elections

The Public Authority Debate

The scope of Right to Information Act is limited to the public authorities. Therefore, under RTI, citizens have right to information which can be exercised only against public authorities. The definition of public authorities is defined under Section 2(h) of the RTI Act 2005. The scope of public authorities under RTI has been discussed in various cases to understand the ambit of 'public authorities' under the RTI Act. Section 2 (h) of the Right to Information Act 2005¹⁹ reads as follows –

“(h) “public authority” means any authority or body or institution of self-government established or constituted—

- a) by or under the Constitution;
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government, and includes any—
body owned, controlled or substantially financed;
- e) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

In the case of *The Hindu Urban Cooperative Bank Limited and Ors. v. The State Information Commission and Ors.*²⁰, the Punjab & Haryana Court laid down certain conditions as to what can be brought under the purview of the definition of public authorities. Deciding on 24 civil writ petitions, the court laid down that those institutions which come under the definition of public authorities would be legally required to impart the required information in concurrence with the procedure laid down in the RTI Act. The conditions laid down in the aforementioned case are as follows –

- (i) the institution has to be registered and regulated by the provisions of a legislation; or
- (ii) the State Government has some degree of control over it through the medium of *Acts/Rules*; or
- (iii) it is substantially financed by means of funds provided directly, or indirectly, by the appropriate Government; or
- (iv) the mandate and command of the provisions of the RTI Act along with its Preamble, aims, objects and regime extends to their public dealing; or
- (v) the larger public interest and totality of the other facts and circumstances emanating from the records suggest that such information may be disclosed.

The court further laid down that the arguments on the contrary would lead to dilution of public interest and would be against the objectives and reasons for emergence of Right to Information Act 2005.

The Central Information Commission (CIC) had alluded to the judgement given by Madras High Court in the case of *Tamil Nadu Newsprint & Papers Ltd. v. State Information Commission*²¹. The Court observed that the mere requirement of the RTI Act for an institution to be deemed a public authority under Section 2 (h) of the Act is that the Government must substantially finance it. The Court further laid down that whether or not government exercises such control is immaterial. In another case of

¹⁹ <http://rti.gov.in/rti-act.pdf>

²⁰ (2011) ILR 2 Punjab and Haryana 64

²¹ CDJ 2008 MHC 1871

*Diamond Jubilee Higher Secondary School v. Union of India*²², the Madras High Court held that even a private aided school can fall within the ambit of public authority under the RTI Act because it was both substantially funded by the appropriate Government and was under its control.

The Madras High Court in another case of *New Tirupur Area Development v. State of Tamil Nadu*²³ held that Section 2(h)(d)(i) qualifies a 'body owned' or 'body controlled' but nowhere it states that the body must be wholly owned or controlled and even the term 'substantially financed' has not been defined in the Act. Section 2(h)(d)(ii) further ropes in non-governmental organisations (NGOs) that are substantially financed.

Some of the institutions are exempted from being under the definition of public authorities under the Act. In the case of *A C Bhanunni Valluvanattukara v. The Commissioner, Malabar Devaswom Board*²⁴, the Kerela High Court exempted the offices and officers of public religious institutions. In various other judgements it has been held that cooperative housing societies, banks etc. are not creation of law made by the legislature or not as bodies owned or controlled or substantially financed by the Government, and hence, exempt from the ambit of a "public authority" under the RTI Act. The judgement was criticized on the grounds that the Kerela High Court overlooked the basic objectives of larger public interest enshrined in the Act.

The issue is whether these political parties would qualify as public authorities. The points raised are as follows

1. Indirect Substantial Funding by Central Government
2. Performance of public duty by the Political Parties
3. Constitutional/legal provisions vesting Political Parties with rights and liabilities.

Indirect Substantial Funding

- The land has been allocated at hugely concessional rates and lease value and premium do not reflect true value of these properties. Hence, this is indirect funding. Tax Exemption from PPs makes it Substantial Indirect Funding
- Allotment of houses on rental basis on concessional rates. Information given by complainant. The rental value of the property does not even closely match with the rent paid by the PPs.
- Total exemption from payment of income tax in accordance with Section 13A of the Income Tax Act
- 30% of the income received by Political Parties was given up by the Government. No one can deny that this is substantial funding by the Central Government
- To the argument that even NGOs are given tax subsidies, the court held There is a great difference between the tax exemption given to charitable and non-profit nongovernmental organisations and that given to the political parties. The exemption given to the former is strictly conditional: full or part exemption is given to these organisations only if they pursue the objectives outlined in their respective charters, be it the memorandum of association and bye-laws in case they are societies or the trust deeds, in case they are private trusts. There are other strict conditions laid down in the Income Tax Act which the assessee must comply with. In other words, if any of these non-governmental organisations are found not to be pursuing their objectives or spending the tax-exempt amount on activities other than what is enshrined in their respective charters or not comply with the conditions, their entire income becomes

²² (2007) 3 MLJ 77

²³ AIR 2010 Mad 176

²⁴ 2011 Kerela High Court

subject to taxation, sometimes with penalty. On the other hand, the tax exemption given to the political parties is complete, the only condition being that they must report to the Election Commission of India, every year, the details of all the contributors who contribute Rs. 20,000 or more to the political party concerned. Thus, the political parties enjoy an almost unfettered exemption from payment of income tax, a benefit not enjoyed by any other charitable or non-profit non-governmental organisations.

- Beneficiaries of free time on AIR

Hence, the court held that the Central Government substantially finances the Political Parties. The question remains to be whether the same is *substantial financing*. In *Indian Olympic Association v. Veeresh Malik and Ors.*²⁵, the Delhi High Court observed that Public Authority has to be interpreted liberally and not restrictively. A *majority of funding* test supports a narrow interpretation of such word and that is not the test to be applied. Similar view has been taken by the Karnataka High Court in *Bangalore International Airport Limited v. Karnataka Information Commission*²⁶. Thus, majority funding is not the criterion. Funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals. Therefore, the political parties have been substantially funded by the Government and they are public authorities.

Performance of Public Duty

The political parties are life-blood of our polity. Political parties (Ruling & Alliance) draws its development plans on the basis of political agenda. It affects the citizens directly in every conceivable way in which the public interacts with the Government. Hence, their accountability is always a question that remains intact. It would be odd to argue that transparency is good for all State organs but not so good for Political Parties, which, in reality, control all the vital organs of the State.

In *Bangalore International Airport Limited v. Karnataka Information Commission*, the Karnataka High Court defined public authority as

“A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as a public authority or body, and the meaning of a public authority or body may vary according to the statutory context; one of the distinguishing features of an authority not being a public authority, is profit making. It is not incumbent that a body in order to be a public body must always be constituted by a statute; for an authority to be a ‘public authority’ it must be an authority exercised or capable of being exercised for the benefit of the public”

In *Union of India v. ADR*²⁷, SC has laid emphasis on purity of elections. National Commission to Review Working of Constitution in its 2002 report recommended that Political Parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. In *Common Cause v. Union of India*, the SC dealt with issue of Political Parties and mentions that people of India need to know the cause and source of expenditure of Political Parties and the candidates in election.

“We may also add that the preamble to the Constitution of India aims at securing to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; and, EQUALITY of status and of opportunity. Coincidentally, the preamble of RTI Act also aims to promote these principles in the form of transparency and accountability in the working of every public

²⁵ Writ Petition(C) No. 876/2007.

²⁶ Writ Petition No. 12076/2008; 2010 (4) KarLJ 433.

²⁷ AIR 2002 SC 2112

authority. It also aims to create an 'informed citizenry' and to contain corruption and to hold government and their instrumentalities accountable to the governed. Needless to say, Political Parties are important political institutions and can play a critical role in heralding transparency in public life. Political Parties continuously perform public functions which define parameters of governance and socio-economic development in the country."

Comment

Firstly, to analyze, the judgment, it is important to look into the Statement of Objects and Reasons of the RTI Act, 2005

"Whereas the Constitution of India has established *democratic Republic*;

And whereas *democracy* requires an *informed citizenry* and transparency of information which are vital to its functioning and also to contain *corruption* and to hold *Governments and their instrumentalities* accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of *confidentiality of sensitive information*;

And whereas it is necessary to *harmonise these conflicting interests* while preserving the *paramountcy of the democratic ideal*;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it."

It is important to look that the RTI Act has been enacted with a purpose to keep the citizenry of the democracy informed. From a bare reading of the Statement of Objects and Reasons, it can be reasonably derived that the democratic bodies and their instrumentalities are to be held accountable to the people through the Right to Information. Further, containing corruption is a reason for enactment of the RTI. It is now important to look into the long title of the RTI Act.

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information *under the control of public authorities*, in order to promote *transparency* and *accountability* in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto"

It is important to look into the usage of the word 'Government and its Instrumentalities' as enshrined in the Statement of Objects and Reasons. The word 'instrumentality' has been defined by Oxford Dictionary as "the fact or quality of serving as an instrument or means to an end". Further, the word 'instrument' has been defined as 'tool to implement'. Hence, interpretively, instrumentality may be understood to be the quality of serving as a tool to implement or means to an end.

Political Parties form an important way of implementing the policies of the ruling government. Manifestos of Political Parties depict a public character as every policy directly effects the people. The Government, through the Ruling Political Party's ideology implements various policies and thus, it is important to consider the same.

Political Parties under the Representation of People Act, 1951

The Representation of People Act, 1951 provides for under Section 29A (Part IVA) that

"29A. **Registration with the Election Commission of associations and bodies as political parties.**— (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made, (a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement....."

Hence, it makes provision for registration of Political Party under the Act for availing itself of provisions under this Part. This provides for statutory recognition of Political Parties under the provisions of the Representation of People Act, 1951. The public character of a Political Party may be observed by the spirit of Section 29A(5)

“(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.”

The procedural provision that mandates a political party to have a provision in Memorandum of Association that the body shall bear true faith and allegiance to the Constitution and to the principles of Socialism, Secularism and Democracy. Without having a public character, a *private body* would not be under an obligation under law to conform to the principles of Secularism, Socialism and the true ideals of the Constitution of India.

Difference between legal framework of societies and political parties

Section 2 of Societies Registration Act, 1860 may be looked into the for the same purpose

“The memorandum of association shall contain the following things, that is to say-

- a) the name of the society;
- b) the object of the society;
- c) the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.
- d) A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association”

While Section 29A(5) of Representation of People Act, 1951 mandates that the Memorandum of Association must conform to the ideals of democracy and the Constitution, the collorary of Societies Act, 1860.

Conclusion

India, the seventh largest (area) and second most populous country in the world, is regarded as the largest democracy in the world. Democracy means that the government is democratically elected and Prime Minister of India is elected by the people and lastly Republic means head of the state i.e. the President of India who is not a hereditary King but is indirectly elected by the people. Political Parties are a central feature of any democracy. They are the hands of the people which bring public interests and aspirations together for betterment of the society. They play an intermediary role to control and influence public policy linking the institutions of government to economic, ethnic, cultural, and religious and other societal groups. Right to know or to be informed is the foundation of democracy. Right to know is implicit in freedom of speech and expression enshrined under Article 19 (1) (a) of the Constitution of India. The freedom to speech and expression is inclusive of right to impart and receive information. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. The Supreme Court in case of *Peoples Union for Civil Liberties v Union of India*²⁸ held that true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. Further the right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. (*Union of India v Association for*

²⁸ AIR 2003 SC 2363

*Democratic Reform*²⁹). Between these periods a plethora of sensitive judgments followed the Supreme Court's concern on the right to know. In 2002 the Law Commission of India's 179th Report was public interest disclosure and protection of informer followed the Freedom of Information Act 2002 and finally Indian Parliament passed the law on Right to Information in May 2005³⁰. The scope of Right to Information Act is limited to the public authorities. Therefore, under RTI, citizens have right to information which can be exercised only against public authorities. The definition of public authorities is defined under Section 2(h) of the RTI Act 2005. The Court laid down in various judgements that the arguments on the contrary as mentioned in Section 2 (h) of the RTI Act would lead to dilution of public interest and would be against the objectives and reasons for emergence of Right to Information Act 2005. The Right to Information is a light in this democracy. Political Parties should be within the ambit of the Right to Information in the better interests of the democracy. The closer the political parties are to accountability, the higher chances the democracy is fulfilled.

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²⁹ AIR 2002 SC 2112

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