RTI ON POLITICAL PARTIES - TOWARDS A MORE DEMOCRATIC DEMOCRACY

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I. AMENDMENT BILL 2013: OBJECTING THE OBJECTIVES OF THE PARENT ACT

A Bill seeking to amend the Right to Information (RTI) Act, 2005 to shield political parties from providing information under the transparency law compels us to relook at the very deliverables of the Right to Information Act.

Considering the legislative intent which admits the need for an informed citizenry, and "*to contain corruption and to hold Governments and their instrumentalities accountable to the governed*"[1], we see that the very objective of this Act is to enable Citizens to have atleast the minimum requisite information needed for making an informed decision and to hold all the instrumentalities of the Government accountable. Having the required information will help citizens, from all strata of society, to elect truly accountable representatives and in doing so it furthers the basic tenet of democracy.

There is little doubt regarding the importance of the participation of the entire populace of the country in the working and affairs of a true

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[1] Right to Information Act, Preamble (2005).

democracy. In *R.P.Limited v. Indian Express Newspapers*[2], the Apex Court supported this view while reading into Article 21 the right to know. It was observed that the right to know is a necessary ingredient of participatory democracy.

The right to vote and to participate in the affairs of the country is worthless unless the citizens are well informed on all aspects of the issues, in respect of which they are called upon to express their views. One sided information, disinformation, half-baked information and non-information are all equally responsible for creating an uninformed citizenry which makes democracy a mockery.[3] This clearly undermines the objectives of the Act, enshrined in the Preamble, which is the cornerstone of the entire transparency law in India. Hence, anything in contravention of the goals of the Act would render the freedom pre-supposed under this right meaningless.

This Amendment Bill passed in 2013 seeks to restrict the scope of the term "Public Authorities" by explicitly excluding from its purview the voice of the citizens - their representatives-political parties. This article attempts to review the interpretations of "Public Authority" under S.2 of the RTI Act made by several jurists and judiciary in light of the proposed controversial exclusion of political parties from the ambit of Public Authority by the Amendment Bill pending before the Parliament. This bill is triggered by a recent judgment delivered by the Central Information Commission in *Anil Bairwal v. Parliament of India*[4] wherein political parties were held to be public authorities.

II. UNBRIDLED DEMOCRACY: WAY TO *DEVILCRACY*

The pending RTI Amendment Bill seeks to amend S.2 of the RTI Act that is the definition clause, also the functional dogma of the Right to Information machinery. S.2(h) is to RTI what Art. 12 is to fundamental rights. Both are however, not disconnected concepts. Right to Information is essentially a

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[2] AIR 190 (SC 1989).

[3] Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr. AIR 1236 (SC 1995).

[4] File No. CIC/SM/C/2011/001386, dated 03/06/2013.

fundamental right under Art. 19(1)(a) as well as under Art. 21. The Parliament by restricting the scope of s.2 is creating a bottleneck, obstructing the free flow of information which is diametrically opposite to what the Act seeks to achieve. Thus, it is an attempt to override the legislative intent behind the Act as well as the inferred indication of the provisions.

Re-asserting the idea of analogy between s.2 of the RTI Act and Art.12 of the Indian Constitution, the jurisprudence behind the expansive view of 'State' under Art. 12 adopted by the Courts in a series of judgments[5] holds good for determining the ambit of 'Public Authority' under s.2 and every authority which is an instrumentality or agency of the government must be brought within the definition of 'Public Authority'. However, all public authorities need not fall under the definition of 'state'. Public Authority is a superset of which state (Art.12) and 'A body discharging public functions' (under Art. 226) are subsets, so although political parties contend that they do not comply with the pre-requisites of 'State' or 'A body discharging public functions', this contention undoubtedly does not preclude political parties from being 'Public Authority' within the meaning of Section 2(h)(d)(i) of the RTI Act.

The very same proposition finds judicial sanction in a recent CIC judgment, which may prove to be a milestone in restructuring politics. The issues which emerged before the Commission in the case of *Anil Bairwal*[6] can be broadly classified into three sets, namely, contentions based on the functions performed by political parties; extent of indirect finance received by these parties from the government and whether this indirect financing amounts to substantial financing for the purposes of s.2(h) of the RTI Act along the lines of legislative intent.

In India, the political parties are entrusted with issues of great criticality and a large chunk of the duties which they discharge are of a public character. For instance, political parties hold the power to decide how the government

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[5] Biman Krishna Bose v. United India Insurance Company Ltd. & Anr. (2001) 6 SCC 477 ; Ajay Hasia v. Khalid Mujib Sehravardi AIR 487 (SC 1981).

[6] Anil Bairwal v. Parliament of India, File No. CIC/SM/C/2011/001386, dated 03/06/2013.

should function and also decide policies that directly affect the lives of millions amongst the public. These parties are constantly engaged in discharging functions which are of public interest. This action should reinforce and further the offering of transparency of their financial operations to public. The political parties are the life and blood of the entire constitutional scheme in a democratic polity and have a committed and binding nexus with the populace.

III. SUBSTANTIALLY FINANCING-ABSOLUTELY ACCOUNTABLE

Political parties are indirectly financed by the Central Government and the State Governments in various ways such as allocation of plots/buildings/accommodation in prime locations/free air time on government TV channels during elections, etc. These facilities are not only provided to them at nominal rates but their maintenance, upgradation, modernization, renovation, etc. are often also done at State expense. [7]

It would be ironic to expect that political parties which do not uphold democratic principles in their internal functioning will respect those principles in the governance of the country.[8] If we look closely, the aggregate public funds that are spent on providing facilities to these political parties would amount to hundreds of crores. With such wide ramifications of their actions on the public, should they be exempt from the scope of public accountability? Certainly not! Given that the entire political setup in our country revolves around a handful of dominant political parties. As was held by the Central Information Commission, *"It will be a fallacy to hold that transparency is good for the bureaucracy but not good enough for the political parties which control those bureaucracies through political executives"*. [9]

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[7] *Ibid*.
[8] Law Commission of India, Reform of Electoral Laws (1999).
[9] *Supra* note 6.

Allocation of houses, real estate, exemption from tax and providing property on subsidized rate amounts to 'indirect financing' within the meaning of s.2(h)(d)(ii) of the RTI Act.[10] Political parties cannot function without the funding it receives from the government and by this financial support, it becomes substantially dependent on the government and thus considering this factor, it is a public authority.[11]

Further, this funding is unconditional; a truly independent body would have been under an obligation to return the fund it receives. Thus, it becomes a dependent organization substantially financed by the government.[12]

The political parties cannot take the defense that the financing received by them does not cover a majority of their expenses and hence does not amount to substantial financing given that the Central Information Commission has clarified the stand regarding 'substantial financing' by stating that for a private entity to qualify to be a public authority, substantive financing does not mean 'majority' financing. *What amounts to "substantial" financing cannot be straight-jacketed into a rigid formula of universal application.* The Commission has held that percentage of funding received by the body, whether the funding amounts to "majority" financing, whether the body is controlled or autonomous are irrelevant and impermanent tests. On the contrary, achieving a felt need of a section of the public, or securing larger societal goals seems to be more germane.[13] Political parties are involved in predominantly public functions and receive substantial public financing. Substantial financing has been held to mean agricultural plots, concessions, grants, subsidies as well as other facilities which would translate into cash flow and not just direct financing.[14]

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[10] The Sutlej Club v. State Information Commission (Complaint No. : CIC/SM/C/2011/0838) ; Mr. Tilak Raj Tanwar v. Government of NCT of Delhi, (File No. : CIC/AD/A/2011/001699).

[11] Indian Olympic Association and others v. Veeresh Malik & others (WP)(C) No. 876/2007

[12] *Ibid.*

[13] Amardeep Walia v. Chandigarh Lawn Tennis Association (File No. CIC/LS/C/2009/900377).

[14] Bangalore International Airport Limited v. Karnataka Information Commission, ILR 3214 (Kar 2010).

CIC, in *Anil Bairwal v. Parliament of India*[15] took the view that allotment on concessional rates and exemption from income tax liabilities (which exempts them from paying roughly 30% of their income) of political parties sums up to substantial financing. 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 organization.

Certain political leaders opine that political parties must be exempt from Income tax liabilities since they work for strengthening the democratic polity. If that be the case, by the same logic, another facet of the very same democratic polity also includes accountability to public and the so called 'strengtheners of the democratic polity' must be made answerable to the public.

IV. INTENTIONAL DISREGARD TO LEGISLATIVE INTENT

Now, looking into the parliamentary intention behind the ambit of 'public authority', it is worthwhile to refer to the judgment given by Justice Ravindra Bhat in *Indian Olympic Association v. Veerish Malik and others*[16] which makes it clear that the political parties can also not take the defence of their not being 'constituted or established by a notification issued by an appropriate government' In this case, he constructs the following provisions of the RTI Act :-

(i) Body owned, controlled or substantially financed;

(ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

The controlling clause in the definition which reads 'established or constituted by or under' a notification issued by the appropriate government cannot be construed to exclude certain bodies like political parties from the ambit of public authority because if such was the intention, then the sub-

[15] *Supra* note 6.
[16] *Supra* note 11.

clause (i) would be surplusage since the body would have to be one of self-government, substantially finances and constituted by a notification issued by the appropriate government. Secondly, it is anomalous to expect a 'non-governmental organization' to be constituted or established by or under a notification. These two points culminate into the objective indication of extending the scope of public authority and it is not necessary that organizations have to be established or constituted by a notification issued in that regard. As Justice Bhat says, the parliamentary intent is to expand the scope of the definition and not restrict it to the four categories mentioned in the first part by bringing within its purview other bodies or institutions, regardless of the mode of constitution of a body, if it receives substantial financing from appropriate government, it is deemed to be a public authority.

S.8 and 9 of the RTI Act list the exempted circumstances wherein information can be denied. However, political parties have not been incorporated in the list. This non-incorporation reflects their far-sightedness to include certain exceptional situations and the absence of political parties is a strong indicator of their clear intention to not exclude it from the domain of RTI. Hence, it can be said without any doubt that political parties fall within the extended definition of 'public authority', if not by way of literal interpretation.

V. CLASS WITHIN A CLASS: VIOLATIVE OF ARTICLE 14

The legislative attempt to over-ride the decision providing for the inclusion of political parties within the definition of 'public authority' amounts to arbitrary classification. The proposed amendment to RTI Act, excluding political parties from the definition of public authority, may not withstand constitutional challenge[17] as it is creating a class within a class without having any consideration to the principle of intelligible differentia having reasonable nexus with the objective of the RTI Act.[18] The classification is not based upon a real and substantial distinction and is, moreover at conflict

[17] INDIA CONST. art. 14.
[18] A.G. Vahanvati, Parliamentary Panel Report (2013).

with the objective of the legislation, far from being in furtherance. The RTI Act was enacted to provide for an effective framework for effectuating the right of information recognized under Article 19 of the Constitution.

The CIC rightly identified the intent of the legislature in the case of *Anil Bairwal v. Parliament of India*. The proposition before the Commission in that case was with regard to the construction of the term 'public authorities'- whether it covers within its ambit the activities of political parties, or not. This is a step ahead of interpretation, which, ordinarily consists of discovering the linguistic meaning of authoritative legal text. Going beyond the semantics involved, the court seeks to provide contextually what may constitute the phrase 'public authorities'. It is undoubtedly an instance of construction and not interpretation. Interpretation recognizes or discovers the linguistic meaning of an authoritative legal text. However, conceptually, construction gives legal effect to the semantic content of a legal text and goes on to conclusions which are in spirit, even though not within the letter of law.[19] This judicial construction, although ahead of interpretation is not judicial creativity and the intervention is not totally uncalled for since there have been numerous cases wherein the substantial question of law hinges upon the scope of the term 'public authority'. However, mere exercise of defining the scope is not judicial creation but is judicial application of mind to ascertain the intent of the legislature.

This is not beyond the scope of the powers or functions of the judiciary. Legislations are written in a very general language which needs to be understood correctly before their application. A marginal space is always left for their construction in accordance with changing circumstances, thus, preventing them from becoming obsolete and helps in adapting them to dynamic societal changes. This by default, necessitates the judiciary to interpret and construct statutes; forming an important function of the judiciary-the prime function in most cases! For it is judiciary which puts life into the words of a statute. It is essentially the duty and province of the judiciary to say what the law is. Obviously, those who apply rules to varying

[19] In Re Sea Customs Act, AIR 1760 (SC 1963).

sets of facts and circumstances must necessarily interpret the rules to further the ends of justice.[20]

VI. JUDICIAL LEGISLATION - A NECESSARY TRANSGRESSION INTO SEPARATION OF POWERS

The judicial announcement of including political parties within the domain of 'public authority' under s. 2(h)(d)(ii) is the judiciary's construction of the phrase and cannot be termed as judicial over-reach. The Central Information Commission, despite being a quasi-judicial body is essentially engaged in discharging judicial functions. It would not be wrong in doubting to call this act of the judiciary as judicial adventurism, which has a connotation of a tag of acting ultra vires attached to it. Rather, this is judicial activism, a philosophy of the judicial process, which has developed as a practice by entrusting the court with the responsibility of intervention over decisions of policymakers through precedents in case laws which is binding on future courts.[21]

In the absence of judicial activism, the function of our Honorable judges would have been reduced to a mere resolution of the present dispute without making clear the prevalent law. This is further supported by Antonin Scalia J. when he indicates that a judge, when presented with a fact, simply decides the result and cites the specific features of the circumstances to support the decision. Such a law becomes valid for future by virtue of the doctrine of stare decisis, and decisions thereby acquire permanence required of law.[22]

The argument that judiciary, by virtue of the doctrine of separation of powers, is not to interfere with the functions of the legislature, seems baseless in a country like India where strict separation of powers is not followed with absolute rigidity. Yet it is pertinent to note that even though

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[20] Ashok Kumar Gupta v. State of Uttar Pradesh AIR 226 (SC 1951).

[21] Nicholas Katers, 'judicial Activism and Restraint: The Role of The Supreme Court' <http://www.associatedcontent.com/article/21725/judicial_activism_and_restraint_the.html, Last visited on January 30, 2014.

[22] JUSTICE ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW, PRINCETON UNIVERSITY PRESS, 1997.

judges are not entrusted with the task of bringing new laws into existence because the constitution provides for a complete separation of judicial powers[23], lawmaking occurs when judges issue decisions that create binding precedents for prospective cases[24] by virtue of the doctrine of stare decisis.[25]

Ours, being a parliamentary system of government, believes in a close liaison, or collaboration between the various organs and a customized version of the doctrine along with its modified nuances as applicable in India. As the Supreme Court has pointed out that there are demarcations of functions which are designated to the organs, and the Constitution framers did not contemplate one organ assuming powers of another, yet, there is no separation between them in its absolute rigidity.[26]

Legislation, not being a self-executing document, leaves little doubt for the necessary power of review by some independent organ of the system. In the absence of such an authority, there would be prevalence of discord as a natural consequence, if different organs take conflicting action in the name of the constitution, or when the government takes action against the individual. Hence the judiciary is empowered as a neutral and independent body to actively indulge in the interpretation and construction of law made by the legislature and in the garb of legislation judges often make law.[27]

In agreement with the view of Justice A. S. Anand, former Chief Justice of India, it is imperative for the judiciary to act with caution and proper restraint, falling short of assuming power to run the government. Judges are not entrusted with the authority of introducing new laws and have to act within certain restrictions. Simultaneously, it is to be necessarily respected that the validity of judicious exercise of judicial activism is to be respected.

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[23] INDIA CONST. art. 50.

[24] Frederick Schauer, Opinions as Rules, 53 U. CHI. L. REV. 682, 684 (1986) (reviewing Bernard Schwartz, The Unpublished Opinions Of The Warren Court (1985).

[25] INDIA CONST. art. 141; This well-known principle is Latin for "to stand by things decided." Black's Law Dictionary 1414 (7th ed. 1999).

[26] Ram Jawaya Kapoor v State of Punjab, AIR SC 549 (SC 1955); In re, Delhi Laws Act, 1912, AIR 332 (SC 1951).

[27] Justice Markandey Katju, 'Separation of Powers, Judicial Review and Judicial Activism' <http://justicekatju.blogspot.in/2013/10/separation-of-powers-judicial-review.html>, Last visited January 30, 2014.

The role of judges in such cases, go beyond the traditional "interpretative" role that has been assigned to them, and shifts to a model by which judges seek to make law, encroaching on the separation of powers doctrine, in its strict interpretation. Simultaneously, they must remain within bounds of the customized version of the doctrine as applicable in India. Hence, the judiciary is well within its functionary limits to actively interpret and construct laws, consequentially validating such a decision given in the case of *Mr. Anil Bairwal v. Parliament of India*.[28]

VII. LEGISLATIVE SOVEREIGNTY VERSUS JUDICIAL SUPREMACY

While there has been some discussion on the issue of activism by the judiciary, fitting into the doctrine of separation of power as suitable for the country, it is pertinent to note that there are also instances of the legislature, while remaining within its prescribed four-corners, and using its law making powers to reverse the outcome of some judgments.

This instance of the legislature passing a Bill to amend the RTI Act reverberates with many such episodes of the Parliament overturning judicial decisions so as to nullify their effect and cause less inconvenience to the Parliament itself. In such cases there is no controversy regarding the legislature destroying the foundation of separation of powers. Nevertheless, the Parliament exercising its law making power with the soul objective of nullifying the opinion of the judiciary has a mala fide intention due to conflicting interests. It is hence, definitely unjustified in doing so.

There has been an ever-continuing conflict between Parliament sovereignty and judicial activism. As Wade points out; "All law students are taught that Parliamentary sovereignty is absolute. But it is the judges who have the last word. If they interpret an Act to mean the opposite of what it says, it is their view which represents the law."[29]

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[28] *Supra* note 6.

[29] WADE, CONSTITUTIONAL FUNDAMENTALS, 65. J.A.G GRIFFITH, THE POLITICS OF JUDICIARY (1977).

The famous decision of the seven-judge Bench in Madan Mohan Pathak v. Union of India,[30] stipulates that bringing legislation in order to invalidate the court's judgment would amount to *trenching* on judicial power. This judgment went to the extent of making impermissible all legislations which indirectly takes away the right embodied in a judgment. Yet, governments consistently encroach upon the judiciary's law making power as prescribed by the Constitution.[31]

Some assert that judicial review is undemocratic as the judges who interpret and declare statutes unconstitutional are neither elected by, nor are responsible to, the people.[32] With regard to this argument, the immediate question arising relates to the political parties as representatives of the people-do they truly present the voice of the masses? It is not necessary that members of houses represent majority vote. Data analysis shows that the electoral participation in general elections since independence was less than or equal to 50% of the total population of India. Of this 50% also, only a few vote for those candidates whom we see as policymakers in the Houses of the Parliament. Hence, the very base of the claim that majoritarianism is synonymous with democracy, falls, as the Parliamentarians are elected by a small percentage of the population-not amounting to even a simple majority.

This view is based on the inconsistent assumption that democracy is equivalent to majoritarianism, and that the power of the majority in a democratic society must be absolute and unfettered.

It is a baseless argument because legislative procedures embodying bare majority rule are not symbolic of democracy and it is not the sole characteristic of democracy as a substantive concept, but is rather only an institutional framework of a democratic regime.

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[30] 1978 AIR 803.

[31] INDIA CONST. art. 141.

[32] Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv LR 129 (1889); Schwartz , A Basic History of the US Supreme Court, 87 (1970).

In addition, while considering the reliability of the legislature as a representative body, it is to be kept in mind that it is not always necessary that the majority view is correct. In fact, it is possible that the majority suppresses the minority rights for their own benefit. Therefore, the power of the majority cannot be unrestricted as it would lead to arbitrariness and discrimination. Hence, the judiciary, through judicial review, keeps such a tendency in check. As Chief Justice Warren has said; "The Courts essential function is to act as the final arbiter of minority rights". No system is perfect, however, the chances of a system having 'checks and balances' is likely to be more successful than one which is devoid of this.

It is further argued that a democracy need not have all officials elected, and that judicial review is democratic as it promotes democracy by safeguarding the rights of the people and cabining government organs within the confines of the constitution.[33] Judicial supremacy is one of the essentials of the Dicean concept of rule of law[34] that shows the importance of having an independent judiciary as a factor behind development.

Acknowledging the stand taken by the Honorable Supreme Court that mere apprehension that the legislature overriding the judiciary may not be a healthy practice and may lead to abuse of power in a particular case are no grounds for limiting the powers of the Legislature[35], it is reasserted that in the present case the act of the legislature has gone way beyond a mere apprehension of abuse of power as is evident by their vested interest which would have otherwise been detrimental to the interest of the political parties.

Allowing the so called democratically elected representatives of the people, which do not represent the public at large, to have the ultimate say in a matter which affects all citizens, would tantamount to them judging their own cause with a tainted perspective smeared, with its inimacil myopic self-serving intimate interests.

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[33] Rostow, 'The Democratic Character of Judicial Review', 66 Harv LR 193 (1952); Black Jr.,'the People and the Court: judicial Review in a Democracy' (1960).

[34] Dicey, An Introduction to the Study of the Law of the Constitution, (Macmillan and Co., 3rd Edition,1889).

[35] Kanta Kathuria v. Manak Chand Surana, AIR 694 (SC 1970).

Hence, besides being in flagrant disregard of transparency and principles of a participatory democracy, the pending Amendment Bill also defies the basic rules of natural justice, particularly *nemo iudex in causa sua* i.e. no one shall be a judge in his own cause. As Ms. Aruna Roy, a leading campaigner for the RTI Act has rightly said, the government has become a judge in its own cause and has delivered its own judgment. There exists a clear conflict of interest and it is sound logic to assume that Legislature will not amend a statute in a way that its benefits are taken away. Further, this Bill presents an exceptional situation in the sense that since both, the party in power and the opposition parties have been milking profits out of the exclusion of parties from the ambit of RTI, the usual oppositional check on partisan-oriented majority proposals in the Parliament would be absent in this case. The Legislature and the Executive are politically partisan bodies and are committed to certain policies and programs which they wish to implement. Therefore, opportunities of political convenience must be carefully cutbed. The Amendment Bill in question is one such instance where the Parliament to safeguard its illegitimate vested interests is trying to override judicial decision in order to tilt the law in its favor, thus clearly and conclusively violating the principles of *jus naturale*.

VIII. CONCLUSION

The RTI Act has been given an over-riding effect vis-a-vis other laws which clearly suggests that its application is intended to be the general rule save in extraordinary circumstances. As has been stated time and again, political parties do not present such an exceptional situation and hence there is no clear reason why they should be excluded from the domain of RTI.

Judicial pronouncements suggest that a progressively higher level of transparency is required in the functioning and expenditure of political parties.[36] It is a major concern since the current transparency system provides no effective check on political parties' functioning. The closest that the public can get to access information about political parties is through

[36] Union of India v. Association of Democratic Reforms & Anr. AIR 2112 (SC 2002); Common Cause (A Registered Society) v. Union of India AIR 3081 (SC 1996).

their Income tax return which is again a very misleading source of information, since tax evasion is a common practice of politicians. The fact that Article 324 empowers the Election Commission of India to require the political parties to disclose expenditure incurred by them in relation to elections is also irrelevant because of two reasons.[37] Firstly, only the election expenditure is covered and for all the other times the parties escape scott-free and unaccountable. Secondly, the relations between Election Commission and various political parties are not completely clear and above reproach.

'Public Authority' is broader and more generic than the word 'State' under Article 12 of the Constitution. Hence, the intention of the Parliament was clearly based on giving the citizens the right to information over all entities owned by them, as well as where their money is being invested or spent. Common sense suggests that since the public funds all the luxuries which politicians lavishly enjoy, they should be made accountable to the public.

The question assumes greater significance in the context of amendments made for political convenience. Particularly so, when the amendment is intended to benefit the amendment-makers alone. The claim of the centre that exemption of political parties from the ambit of RTI is justified on the grounds of threat of potential abuse which the inclusion holds cannot stand the test of reasonableness since the courts have repeatedly held that mere possibility of future abuse cannot be a reasonable ground of challenge.

Exclusion of political parties from the purview of RTI is clearly unintended by the makers of RTI Act, 2005 since it is not expressly provided for in the list of 22 exempted organizations in the statute under S. 8 and S.9. Had the Legislature intended, it could have incorporated political parties in this list. But the non-incorporation indicates a different intention. In addition, the establishments of the Parliament, Judiciary, President and the Governors have also been brought under the surveillance of the common citizen and this further raises doubts regarding exclusion of political parties from such surveillance. Thus, the quasi-judicial body has rightly identified the intent of legislature and the arguments of judicial over-reach hold no merits.

[37] Common Cause v. Union of India, AIR 3081 (SC 1996).

Acknowledging that judicial restraint is an essential virtue to ensure separation and supporting the view that judiciary can act only as an 'alarm-clock' but not as a 'time-keeper'. It cannot be ignored that judiciary in India has been the most vigilant defender of democratic values. Thus, the construction of public authority to include political parties is, in our view, under no stretch of imagination, an instance of judicial over-reach.

In the course of this article we have broadly invoked two reasons to justify the inclusion of political parties under the umbrella of Public Authority, namely, substantial financing by government and the criticality of the role being played by these political parties in our democratic set up which also points towards their public character, bringing them in the ambit of section 2(h).[38] Finally, we come to the conclusion that if not strictly within the letter of the particular provisions of S.2 then at least, in spirit, these political parties can be said to have been constituted by their registration with the Election Commission of India, a fact akin to the establishment or constitution of a body or institution by an appropriate government.

Lastly, our Constitution as befits the Constitution of a Socialist Secular Democratic Republic recognizes the paramount nature of the public weal over private interest. Natural justice, ultra vires, public policy, or any other rule of interpretation must, therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society.[39]

Thus, this Amendment Bill, which is now under the scanner of Parliamentary Standing Committee, in the guise of removing the 'adverse' effects of the CIC decision, which included political parties in the ambit of 'Public Authority', thereby, making them accountable to public, is in reality a means to reverse a politically inconvenient judgment. While our esteemed Parliamentarians opine that such inclusion is not 'fit' for the Indian system and would hamper the 'smooth functioning' of the RTI machinery, we firmly dissent from the validity of the justifications put forth by the so-called 'representatives of people' supporting such self-serving exclusion.

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[38] *Supra* note 6.

[39] Swadeshi Cotton Mills v. UOI, AIR 818 (SC 1981).