

Elections and Right to Information

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Largest democracy in the world is going to general elections shortly. Democracy starts with elections. If the elections are not free and fair, the democratic process becomes meaningless. Transparency is the foundation stone for free and fair elections.

Supreme Court of India, in a landmark judgment¹ held as follows:

Under our Constitution, Art 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.

As a response to the judgment, Parliament inserted Section 33A² by amending the Representation of the People Act, 1951, which asserts the voter's Right to information in the following terms:

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

(i) 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;

¹ *Union of India v Association for Democratic Reforms and another*, Civil Appeal No.7178 of 2001, Date of judgment 2 May 2002.

² Inserted by Act 72 of 2002, s. 2 (entered into force on 24-8-2002)

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate of his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under subsection (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

Later, the Election Commission of India (ECI) issued an Order³ to implement the Supreme Court's Judgment to facilitate voter's Right to Information with the following requirements:

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to the following matters in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order:

1. Case(s) is/are pending against the candidate in which cognizance has been taken by the court.
2. Details of the assets (immovable, movable, bank balance, etc.) of candidate, spouse and dependents
3. Details of liabilities / over dues to public financial institutions and government dues :-
4. Educational qualifications (Name of School / University and the year in which the course was completed should also be given.)

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

³ Order No. 3/ER/2003/JS-II Dated : 27th March, 2003

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

Candidates contesting local body elections are required to file similar affidavits.

In terms of Section 33A of the Representation of the People Act, 1951, read with Rule 4A of Conduct of Election Rules, 1961, each candidate has to file an additional affidavit in Form 26 appended to the Conduct of Election Rules, 1961, giving information on the following:

(i) Cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court.

(ii) Cases of conviction for an offence other than any of the offences mentioned in Section 8 of the Representation of the People Act, 1951, and sentenced to imprisonment for one year or more.

ECI Suggestions:

ECI suggested that a further column may be added in the format about the annual declared income of the candidate for tax purpose and his profession:

The Commission, therefore, recommends that Form 26 may be amended so as to include in it all the items mentioned in the Format of affidavit prescribed by the Commission's order dated 27.3.2003. While doing this, it is also suggested that a further column may be added in the format about the annual declared income of the candidate for tax purpose and his profession.

It has been the experience in the past few elections that in some cases, the candidates leave some of the columns blank, and there have been cases where the candidates are alleged to have given grossly undervalued information, mainly about their assets. Section 125A provides for punishment of imprisonment for a term upto six months or with fine or with both, for furnishing wrong information or concealing any information in Form 26. The Commission is of the view that to protect the right to information of the electors as per the spirit of the judgment dated 13.3.2003 of the Supreme Court referred to above, the punishment here should be made more stringent by providing for imprisonment of a minimum term of two years and doing away with the alternative clause for fine. Conviction for offences under Section 125 A should further be made part of Section 8(1)(i) of the Representation of People Act, 1951, dealing with disqualification or conviction for certain offences. Such a provision will reduce instances of candidates willfully concealing information or furnishing wrong information.

Accessing affidavits

During the bye elections the scanned affidavits will flow directly from the field to the ECI server. However, in case of general elections, as the volume of affidavits is high, during the election period the affidavits will be hosted on the state server and after the elections are over, they will be offloaded from the state server and hosted on the ECI server.⁴

Videography of critical events

Returning Officer of each constituency makes arrangements to record through Videography of critical events during the process of electioneering, including but not restricted to the period of public campaign, the day of poll, the transport and receipt of polled ballot boxes and other materials, counting of votes and the declaration of results in an independent intelligent and purposeful manner.

ECI issued Order No. 447/2007-PLN-IV on 17.01.07 facilitating inspection of videocassettes:

16.5.1 Inspection - (a) Every application for inspection of a videocassette shall be made in writing and should contain the full particulars concerning the cassette of which inspection is required, (b) an inspection of the cassette shall be allowed to any person applying for the same on payment of Rs. 25/- per hour of inspection or

⁴ http://archive.eci.gov.in/Affidavits/Affidavits_fs.htm

part thereof unless inspection is required to be made urgently in which case the fee shall be Rs. 50/- (c) Inspection on an ordinary application shall be allowed on the date following the date on which the application is made or on a subsequent day and inspection on an urgent application shall be made on the same day.

16.5.2 Certified copy - (a) Certified print of the video cassette shall be given to any person applying for the same on payment of Rs. 25/- as application fee and the actual cost of copying as may be locally applicable. The application should establish the right of the applicant for inspection or for supply of certified copies- (prints) and for that purpose should clearly disclose that the applicant has a direct and tangible interest in the videocassette and the nature of such interest.

(b) No fee shall be charged when inspection or certified copy (print) of a cassette is required for official purposes. To avoid removal of any footage of the cassette or damage or mutilation of the cassette, effective supervision by officials shall be ensured and simultaneous inspection by a large number of persons shall not be allowed.

16.6 the video cassettes will be made available for inspection in the office of the District Election Officer or Chief Electoral Officer as the case may be;

16.7 No guarantee for authenticity and veracity of the contents of the cassettes will be undertaken under any circumstances and these will be made available on 'as is' basis.

16.2 All such video-cassettes will be in the custody of the District Election Officer concerned as in the case of all other election related records.

16.3 Each videotape shall be indexed with a uniform code number in the following standard formulation: State/District/AC/Date of recording/Gist of event videographed

16.6 the video cassettes will be made available for inspection in the office of the District Election Officer or Chief Electoral Officer as the case may be;

Election Papers

The Registration of Electors Rules, 1960 provide for inspection of election papers:

32. Custody and preservation of rolls and connected papers.—(1) After the roll for a constituency has been finally published, the following papers shall be kept in the office of the registration officer or at such other place as the chief electoral officer may by order specify until the expiration of one year after the completion of the next intensive revision of that roll:—

- (a) one complete copy of the roll;
- (b) statements submitted to the chief electoral officer under rule 7;
- (c) statements submitted to the registration officer under rule 8;
- (d) register of enumeration forms;
- (e) applications in regard to the preparation of the roll;
- (f) manuscript parts prepared by enumerating agencies and used for compiling the roll;
- (g) papers relating to claims and objections; (h) papers relating to appeals under rule 23; and
- (i) applications under sections 22 and 23.

(2) One complete copy of the roll for each constituency duly authenticated by the registration officer shall also be kept in such place as the chief electoral officer may specify [as permanent board].

33. *Inspection of electoral rolls and connected papers.*—Every person shall have the right to inspect the election papers referred to in rule 32 and to get attested copies thereof on payment of such fee as may be fixed by the chief electoral officer.

ECI in *A Guide for the Voters*, states that election papers should be displayed:

8. What is the Disclosure by Candidates?

8.1 Recently the Election Commission of India has made it mandatory consequent upon a Judgment of Hon'ble Supreme Court that all candidates must file an affidavit along with their nomination form with details such as:-

- i. his/her criminal antecedents,
- ii. his/her assets and liabilities and those of his/her spouse and dependents, and
- iii. his/her educational background.

This has been done with a view that every citizen has a right to know about the candidates contesting an election and make an informed choice.

8.2 The Election Commission has directed all Returning Officers to display the copies of nomination papers and accompanying affidavits received during any day

on his notice board immediately on receipt and make copies of these for distribution to the press and any members of public who want this information, free of cost. Any citizen of the country can obtain copies of the nomination form and the affidavit filed by any candidate from the Returning Officer and it shall not be refused. As a voter you have every right to seek this information and get it.

8.3 The details of the dues owed by the candidates to the Government are published by giving an advertisement in the leading newspapers by the Returning Officer for the benefit of electors.

8.4 Above measures help the electors make an informed choice about the candidate they are going to vote for.

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10.7 You must remember that secrecy of voting is important. Every elector is expected to maintain the secrecy of voting and in case of failure to maintain secrecy the elector may not be permitted to vote. Any person who violates the secrecy, will be booked for an offence under Section 128 of Representation of People Act, 1951. You should, therefore, not disclose to any person who you have voted for. Similarly, if any election official attempts to obtain information on who you have voted for, it will amount to an offence committed by that official. Photography of a voter casting vote is prohibited. It may also be noted that no polling official or agent can come inside the voting compartment under the pretext of helping you to vote. You can, however, be permitted to take a companion of not less than 18 years with you for recording your vote, if for any physical infirmity you require such assistance.

ECI in *Hand book for candidates, 2007* facilitates inspection of election papers:

3. PRODUCTION AND INSPECTION OF ELECTION PAPERS

3.1 Rule 92 of the Conduct of Elections Rules, 1961 provides that it is the duty of the District Election Officer within whose jurisdiction the constituency falls (in the case of the Union Territory, the concerned Returning Officer) to keep in safe custody all papers relating to the election.

3.2 Under rule 93(1) of the said rules, the sealed voting machines, sealed packets of registers of voters, sealed packets of unused ballot papers with counterfoils attached thereto, used ballot papers (whether valid, tendered or rejected) the packets of counterfoils of used ballot papers, marked copies of the electoral roll, declarations made by the electors entitled to postal ballot and the attestations of their signature, shall not be opened and their contents shall not be inspected by or

produced before any person or authority except under the order of a competent Court.

3.3 The Commission has directed that the sealed packets of voters slips which will be issued to voters inside the polling station under the Commission's instructions shall also likewise be not open to public inspection, except under the order or a competent Court.

3.4 All other election papers can be inspected, and certified copies obtained by any person applying for it and paying requisite fee.

4. PRODUCTION AND INSPECTION OF OTHER ELECTION PAPERS

4.1 Sub-rule (2) of rule 93 of the Conduct of Elections Rules, 1961 provides that *all papers relating to an election other than those referred to in sub-rule(1) thereof, shall be open to public inspection* subject to such conditions and to the payment of such fee, if any, as the Election Commission may direct.

4.2 In pursuance of the said sub-rule read with section 76 of the Indian Evidence Act, 1872, the Commission has issued the following directions:

(1) INSPECTION

(a) Every application for inspection of the said documents (other than an account of election expenses) shall be made in writing and should contain the particulars concerning the record of which inspection is required.

(b) An inspection of the documents shall be allowed to any person applying for the same on payment of a fee of Rs 1/- per hour of inspection or part thereof, unless inspection is required to be made urgently in which case fee shall be Rs 2/- per hour or fraction thereof.

(c) Inspection on an ordinary application shall be allowed on the day following the date on which the application is made or on a subsequent day and inspection on an urgent application shall be allowed on the same day.

(2) Certified copy- A certified copy of any of the said documents (other than an account of election expenses) shall be given to any person applying for the same, on payment of fees at the same rate as is charged in the State for a copy of an order by a Revenue Office. The procedure to be followed in respect of an application shall be the same as for a similar application made in respect of a case dealt with by a Revenue Officer.

(3) The application should establish the right of the applicant for inspection or for supply of certified copies of documents and for that purpose should clearly disclose

that the applicant has a direct and tangible interest in such document or documents and the nature of such interest.

(4) No fee shall be charged when inspection or certified copy of a documents is required for official purpose.

5. SUPPLY OF COPIES OF RESULT SHEETS AND ELECTION RETURNS

5.1 You may get copies of result sheet in Form 20, if you so desire, on payment of fee as charged for supply of certified copies of other election records.

5.2 You may also obtain copies of election return in Form 21-E from the Returning Officer, District Election Officer, Chief Electoral Officer or Election Commission on a payment of Rs.2/- (Rupees two only) for each copy.

ELECTORAL ROLLS

Election Commission's provides for supply of copies of electoral rolls:⁵

Wherever the CD-ROM (publication and sale) version of the electoral rolls have been prepared after computerisation of electoral rolls with reference to 1.1.2003 as the qualifying date and there has been no modifications in the form of additions, deletions or corrections till the date of draft publication of electoral rolls with reference to 1-1-2004 as the qualifying date, one copy of the CD-ROM along with a printed copy of the electoral roll should be supplied to the political parties as draft roll. Similarly, CDROM (publication and sale version) should be made available on sale to interested parties from the office of the CEO and DEOs. Wide publicity about availability of the electoral rolls in CD-ROM should be given.

ACCOUNTS OF ELECTION EXPENSES

Section 78 of the Representation of the People Act, 1951 states as follows:

78. Lodging of account with the district election officer.—4[(1)] Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the 5[district election officer] an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

⁵ Letter No. 23/ER-Summary/2004-PLN-II, dated: 02.06.2004.

Rule 88 of the Conduct of Elections Rules, 1961 facilitates inspection of such accounts:

88. Inspection of account and the obtaining of copies thereof.—Any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf be entitled to obtain attested copies of such account or of any part thereof.

*Hand book for candidates*⁶ provides the following instructions in respect of disclosure of accounts:

ACCOUNT TO BE MADE AVAILABLE BY CANDIDATE FOR INSPECTION AND DISPLAY

4.1 The commission has directed that the day-to-day account as maintained by a candidate in the aforesaid register together with the supporting documents shall be made available by the candidate for inspection once in three days during the process of election to the District Election Officer, Returning Officer, election observer appointed by the Commission or any other such authority nominated by the commission in this behalf. The District Election Officer and the election observer shall prepare a schedule of inspection whereby a three-day cycle of furnishing accounts will be set for every candidate in such manner that on each day, accounts of one or more contesting candidates are made available for scrutiny to the concerned officers. In other words, the turn of every candidate to furnish his accounts for scrutiny will fall every third day throughout the period between the filing of his nomination and declaration of results.

4.2 Failure on the part of a candidate to produce the register and the supporting documents for inspection on demand shall be treated as major default on his part and he would be proceeded against under section 171-1 of the Indian Penal Code.

4.3 While inspecting the accounts of the candidates as per the schedule of inspection fixed, the Returning Officer will ensure that two photocopies of the relevant pages of the register are retained by the inspecting officer. One copy of the relevant pages will be displayed on Returning Officer's notice board and the other copy will be retained in a separate file for each candidate constituency-wise as proof of record with him and furnished to the District Election Officer on conclusion of the poll process. In this exercise the Returning Officer shall ensure that the inspection does not become a source of harassment/oppression to the detriment of the electioneering of the candidate which is his legal right.

4.4 The Commission has also directed that a copy of the day-to-day accounts retained by the Returning Officer may be provided to any person desiring a copy on payment of usual copying charges. He will make this known to the candidates and the general public for their information as soon as the process of nomination begins.

⁶ ECI, *Hand book for candidates*, 2007.

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10. INSPECTION AND COPIES

10.1 Any person can, on payment of a fee of rupee one, inspect the account lodged with the DEO by a candidate. According to rule 88, the Commission has fixed the fee of Rs.1 per folio or part of a folio chargeable for the supply of attested copies of the account of election expenses or of any part thereof.

10.2 If inspection of an account of election expenses has been applied for at any time during the period that the account is with the Election Commission, the application should be kept pending until the account is received back from the Commission after which the inspection will be allowed to the applicant.

Political Funding

A USAID survey⁷ of 118 nations revealed that 37% of the countries surveyed had no disclosure laws. Another 13% have "hidden transparency" where finances are reported only to the government, and the public is not allowed to view the reports. Another 35% of the countries surveyed provided reports that were so brief that they were of little value, particularly for informing the public about the political finance of their leaders. Only the remaining 15% of the countries examined by USAID actually reporting openly and fully to their governments and people.

Transparency and Disclosure Laws' Test

Gene Ward⁸ argues that if political parties, candidates and donors could answer the following five questions with the records they keep and would be willing to be transparent (in a timely manner and accessible by the public) about their political financing arrangements, there would be no need for disclosure laws.

- Who gave? (The donor identity question.)
- How much? (The itemized amount attached to the donor's name)
- When? (The date of the donation.)
- To Whom? (The name of the party or candidate receiving the money or "anything of value".)
- For What? (The name of the vendor or person receiving the money identified by name and category of the expenditure.)

Section 29C of the Representation of the People Act, 1951 states as follows:

⁷ USAID draft publication, *Money & Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies*, Oct. 2002.

⁸ Gene Ward, Ph.D., Democracy Fellow, USAID, *Overview of Disclosure and Transparency in Political Funding in Latin America*.

29C. Declaration of donation received by the political parties.—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

Election Commissioners Dr S.Y. Quraishi commented, “It’s true that most political parties don’t submit their annual report on donations, but we can’t take action against political parties not furnishing details of their funding as there is no penal provision in the law.” Of the 50 recognised and 900 unrecognised but registered political parties in the country, only 15 political parties filed their annual report to the ECI in 2005-06 and — one less — 14 in 2006-07.⁹

ECI uploads contribution reports of political parties at:

<http://www.eci.gov.in/mis-Political_Parties/political_parties.asp>

or at

<http://www.eci.gov.in/mis-Political_Parties/ContributionReport_of_Political_parties.pdf>

Assets of the Members of Lok Sabha

Section 75A of the Representation of the People Act, 1951 requires disclosure of assets elected candidates:

⁹ Kanwar Sandhu and Manish Tiwari, ‘No law, so parties don’t reveal funding details’, *Hindustan Times*, May 03, 2008.

75A. Declaration of assets and liabilities.—(1) Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to—

(i) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;

(ii) his liabilities to any public financial institution; and

(iii) his liabilities to the Central Government or the State Government, to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate for a House of Parliament referred to in sub-section (1) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

Speaker, Lok Sabha has framed “The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004” which came into force with effect from 4 August, 2004. Under the Rules, a duty has been cast upon the members to furnish information pertaining to their assets and liabilities and that of their spouses and dependent children, which are kept under the custody of the Speaker, Lok Sabha. As and when such information has been sought under the Right to Information Act, the same has

been invariably provided to the applicant with the permission of the Speaker, Lok Sabha.¹⁰

In 2004, Mr Chatterjee issued an order asking all MPs to follow this rule in letter and spirit. There has been cent per cent adherence to the order for sending the details of MPs' assets and liabilities in sealed covers to the secretariat. It is also mandatory for the MPs to update these details on an yearly basis as and when there is a change in its status.

When the RTI Act was subsequently enacted, many applications started reaching the Lok Sabha secretariat, seeking the latest details of Mps' assets, creating an entirely new situation for the staff. The initial advise to the Speaker from the Lok Sabha secretariat was against letting public know the details. The Speaker then over-ruled this view and issued an order, asking the designated staff to open the sealed covers. The only condition was that the applicants should reach the Lok Sabha secretariat to personally see the declared assets.¹¹

Relevant Rules of the Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004 are as follows:

3. Furnishing of information regarding assets and liabilities by members.—

Every elected candidate for the House of the People shall, within ninety days from the date on which he makes and subscribes an oath or affirmation for taking his seat, furnish as in Form I the following information as required to be furnished by him to the Speaker in pursuance of sub-section (1) of section 75 A, namely:—

(i) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;

(ii) his liabilities to any public financial institution; and

(iii) his liabilities to the Central Government or to the State Governments.

4. Register of Declaration of Assets and Liabilities.—

(1) The Secretary-General shall maintain a register to be called the Register of Declaration of Assets and Liabilities of Elected Members as in Form II.

¹⁰ Twelfth Report of Committee Of Privileges (Fourteenth Lok Sabha) on "Requests from Courts of Law and investigating agencies, for documents pertaining to proceedings of House, Parliamentary Committees or which are in the custody of Secretary General, Lok Sabha, for production in Courts of Law and for investigation purposes", 28 April, 2008.

¹¹http://economictimes.indiatimes.com/News/PoliticsNation/To_check_MPs_assets_just_send_RTI_to_Speaker/articleshow/2980989.cms

(2) The Secretary-General shall cause entries to be made in the Register based on the information furnished by every member under rule 3.

(3) The information in relation to each member, his spouse and dependent children shall be recorded on a separate page in the Register.

(4) The information contained in the Register shall be treated as confidential and it shall not be made available to any person except with the written permission of the Speaker.

Register of Members' interests

Rajya Sabha adopted on 21st March, 2006 Sixth Report of its Committee on Ethics on Procedure, under Sub-Rule (3) of Rule 293 for giving information contained in the "Register of Members' Interests" to the general public.

The Committee in its Fourth Report identified five pecuniary interests *viz.* Remunerative Directorship, Regular Remunerated Activity, Shareholding of Controlling Nature, Paid Consultancy and Professional Engagement, and recommended that Members may declare their interests in the prescribed form for registration in the 'Register of Members' Interests'.

The Committee after some discussion unanimously adopted the following procedure, under sub-rule (3) of Rule 293, for giving information contained in the 'Register of Members' Interests' to the general public:

The information contained in the 'Register of Members' Interests' may be made available to a person with written permission of the Chairman, Committee on Ethics. The application should state:

- (i) that person's name, occupation and address;
- (ii) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and
- (iii) that such person is aware of the prohibitions on the obtaining or use of the information as in the following para.

It will be illegal for any person to obtain or use the said information: (i) for any unlawful purpose; (ii) for any commercial purpose, other than by news and communications media for dissemination to the general public; (iii) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

The conditions of public access to the 'Register of Members' Interests' may be as follows:

- (i) Access is to be supervised.
- (ii) Inquirers may make notes. A photocopy of a Member's statement or declaration may be supplied if requested. In all cases, a photocopy will be supplied only of a Member's complete statement or declaration, and not extracts. A copy of a statement or declaration may be collected in person or may be sent by post.
- (iii) The following access records will be maintained: name and address of inquirer (and organization, if relevant), date and time of inspection, and total number of pages photocopied.
- (iv) Details from the register (e.g. advice as to whether a particular Member has or has not declared a particular interest or notified a particular alteration) will not be provided over the telephone.

Income Tax Returns filed by political parties

Information Commissioner A.N. Tiwari pronounced a landmark Decision¹² directing disclosure of Income Tax Returns filed by political parties. Association for Democratic Reforms filed an RTI application before the CPIO, Central Board of Direct Taxes, seeking information on the following points:

- (i) Whether the political parties mentioned in the RTI-application have submitted their Income Tax Returns for the years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07.
- (ii) PAN Nos. allotted to these parties.
- (iii) Copies of the Income Tax Returns filed by the political parties for the aforementioned years along-with the corresponding assessment orders, if any.

The CPIO transferred the application to the appropriate CPIOs in the office of Chief Commissioners of Income Tax at New Delhi, Delhi, Chennai, Mumbai, Chandigarh, Hyderabad, Guwahati, Jammu & Kashmir.

The CPIO in the office of Commissioner of Income Tax, Jammu & Kashmir, Jammu, provided information in respect of Income Tax Returns of Jammu & Kashmir People's Democratic Party and the CPIO in the office of Commissioner of Income Tax, Guwahati provided information in respect of Income Tax Returns of Asom Gana Parishad.

All other CPIOs declined to divulge the information citing various Reasons.

Notices were issued by the Commission on 12.11.2007 to political parties asking them to file their written-submissions by 18.12.2007.

¹² *Anumeha, Association for Democratic Reforms v. Commissioner of Income Tax (ITA), CBDT & Others* [CIC/AT/A/2007/01029 ,CIC/AT/A/2007/01263-1270(Total : 9 Appeals)Date of Decision 29 April, 2008]

In pursuance of the Notice issued by the CIC, the Election Commission in their response stated that under the law the political parties are not required to furnish to the Commission information about their Income Tax Returns. However, under Section 29C of the Representation of the People Act, 1951, the political parties are required to prepare a report in respect of the contributions received by them from any person or company in excess of Rs.20,000/- in a financial year and the report is to be submitted to the Commission under the Conduct of Elections Rules, 1961. However, filing of this report is optional. The Commission also stated that they have submitted a proposal suggesting an amendment so as to make it mandatory for the political parties to publish their audited accounts annually for information and scrutiny of the general public.

The Communist Party of India, vide their letter dated 04.04.2007 addressed to the Commissioner of Income Tax, New Delhi, stated that they have had no objection if information concerning them was disclosed. The Communist Party of Marxists also submitted 'no objection' to the disclosure of information. Other parties objected to the disclosure.

ISSUES FOR DETERMINATION:

Whether income tax returns of an assessee along with its assessment order and PAN of various political parties can be considered to be exempted under Sections 8(1) (d), (e), (g), (h) and (j) of the RTI Act and as to whether such information can be disclosed in larger public interest?

DECISION AND REASONS:

28. Political parties are a unique institution of the modern Constitutional State. These are essentially civil society institutions and are, therefore, nongovernmental. Their uniqueness lies in the fact that in spite of being nongovernmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that has assumed critical significance in the context of the Right of Information — an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the political parties, which control the most important of those organs. For example, 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.

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In *People's Union for Civil Liberties (PUCL) and Ors Vs. Union of India and Anr.* (AIR2003SC2363), the apex court stated that it is true that the elections are fought by the political parties, yet election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decisions to vote either in favour of 'A' or 'B' candidate would be without any basis. Such election would be

neither free nor fair. In *Union of India v. Association for Democratic Reforms & another* (AIR 2002 SC 2112) also, the Apex Court has observed as follows:-

“To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.”

30. The RTI Act aims at expanding accountability through transparency at all levels of governance. It is difficult to be persuaded by the argument that though political parties control the political executive — who are their appointees — these parties should be allowed to be insulated from the demands of transparency. In other words, political parties be allowed to escape the obligations / norms transparency imposes, and inferentially, escape accountability, even though these parties almost always influence and, frequently control, State power through the organs of the State. That shall be an unacceptable proposition — especially in a democracy — as accountability is the underpinning of the actions of all stake-holders who have anything to do with State power.

31. The question that additionally needs to be asked is whether the avowed purpose of the RTI Act, as set out in its Preamble — to combat corruption — is being achieved by allowing the finances of the political parties to remain beyond public scrutiny or even public view. There is now widespread concern about a hyphenated relationship developing between party finance and political corruption. The lack of openness and transparency in party finance is matched by the lack of adequate State regulation of such finance.

32. The National Commission to Review the Working of the Constitution in its report submitted in March 2002 has recommended that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads. The National Commission has further suggested that the Election Commission should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.

33. The Supreme Court in *People's Union for Civil Liberties Vs. Union of India* (AIR2003SC2363) considered the report of the Law Commission, National Commission to Review the Working of the Constitution, conclusion drawn in the report of Shri Indrajit Gupta and Ethics Manual applicable in an advance democratic country and observed that it is apparent that for saving democracy from the evil influence of criminalization of politics, for saving the election from muscle and money power, for having true democracy and for controlling

corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it is for the voters to decide in whose favour he should cast his vote.

34. In *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081), Supreme Court dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293A of the Companies Act, 1956, Section 13A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, was to bring transparency in the election funding. The people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended before the Supreme Court that elections in the country were fought with the help of money power which was gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle had polluted the wellspring of democracy in the country. The Court held that purity of election was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party. The Apex Court summed up the position thus:-

"...The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

35. In *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081), the Apex Court has further observed that to combat this naked display of unaccounted/black money by the candidates, declaration of assets was likely to check violation of the provisions of the P.R. Act and other relevant Acts including Income Tax Act. The Apex Court did not agree that the declaration of assets would result in infringement of the right of privacy. The following observations of the Court in this context are quite relevant:- "Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right or privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above.

36. In *Dr. P. Nalla Thampy Terah v. Union of India and Ors.* [1985 Suppl. SCC 189], the Apex Court considered the validity of Section 77(1) of the Representations of People's Act and referred to the report of the Santhanam Committee on Prevention of Corruption, which says:

“The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned.”

37. These judicial pronouncements unmistakably commend progressively higher levels of transparency in the functioning of political parties in general, and their funding in particular. Quite importantly, these pronouncements by the nation’s Supreme Court were made much before the RTI Act came into being and, in a sense, even before transparency was enshrined, through the RTI Act, as an avowed objective of governance, Supreme Court delineated the evolutionary process that would culminate in the year 2005 in adoption of the historic enactment of RTI Act by India’s Parliament. The convergence of approach of the nation’s Supreme Court and its Supreme Legislature - the Parliament - in preparing the country to embrace the values of transparency in all aspects of governance is striking. It was their response to an idea, whose time had come. And, it is in this context that the case for transparency in political funding - and its concomitant, the case for disclosure of Income Tax Returns of political parties - is to be evaluated.

38. The laws of the land do not make it mandatory for political parties to “Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right or privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above.

39. In fact provision for disclosure of such information exists in the Income Tax Act itself. Section 138(1)(b) of the Income Tax Act empowers the Commissioner of Income Tax to disclose, “in public interest”, any information which comes into the hands of the public authority. That Section reads as follows:-

“(b) Where a person makes an application to the [Chief Commissioner or Commissioner] in the prescribed form for any information relating to any assessee [received or obtained by any income-tax authority in the performance of his functions under this Act], the [Chief Commissioner or Commissioner] may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in

any court of law.”

40. What this Section states is that any information in the hands of the Income Tax authorities would be ordinarily held as confidential, but can be made public, if in the judgement of the Commissioner of Income Tax, it serves public purpose. Therefore, the contention that all Income Tax Returns — an information provided by assesseees to Income Tax authorities — are permanently barred from disclosure, is not correct. This information can be disclosed in public interest, either in a given case, or a class of cases, under Income Tax laws. As has been shown in the preceding paragraphs there is public interest in disclosing the class of information, viz. Income Tax Returns of the Political Parties.

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46. In this case, the information asked for is available with the Public Authority, i.e. Income Tax Department and is asked for by a citizen. The information relates to various political parties and has been provided by them to a Public Authority in obedience to the provisions of law. The Commission has been consistently holding that the Income Tax Returns and other details concerning an assessee are not to be disclosed unless warranted by requirements of

public purpose. (Mrs. Shobha R. Arora Vs. Income Tax, Mumbai (Appeal No.CIC/MA/A/2006/00220; Decision No.119/IC(A)/2006; Date of Decision:14.7.2006) and Ms. Neeru Bajaj Vs. Income Tax (Appeal Nos.CIC/AT/A/2006/00644 & CIC/AT/A/2006/00646; Date of Decision 21.2.2007)

47. Thus, an information which is otherwise exempt, can still be disclosed if the public interest so warrants. That public interest is unmistakably present is evidenced not only in the context of the pronouncements of the Apex Court but also the recommendations of the National Commission for the Review of the Working of the Constitution and of the Law Commission.

48. Political financing and its potentiality for distorting the functioning of the government, has been the subject of wide public debate in contemporary democracies. It is recognized that political parties do need large financial resources to discharge their myriad functions. But this recognition is tinged with the apprehension that non-transparent political funding could, by exposing political parties, and through it the organs of State which come under the control or its influence, to the corrupting influence of undisclosed money, can inflict irreversible harm on the institutions of government. There is public purpose in preventing such harm to the body-politic.

49. Democratic States, the world over, are engaged in finding solutions to the problem of transparency in political funding. Several methodologies are being tried such as State subsidy for parties, regulation of funding, voluntary disclosure by donors — at least large donors — and so on. The German Basic Law contains very elaborate provisions regarding political funding. Section 21 of the Basic Law enjoins that political parties shall publicly account for the sources and the use of their funds and for their assets. The German Federal Constitutional Court has in its decisions strengthened the trend towards transparency in the functioning of political parties. It follows that transparency in funding of political parties in a democracy is the norm and, must be promoted in public interest. In the present

case that promotion is being effected through the disclosure of the Income Tax Returns of the political parties.

50. The Commission directs that the public authorities holding such information shall, within a period of six weeks of this order, provide the following information to the appellant:-

Income Tax Returns of the political parties filed with the public authorities and the Assessment Orders for the period mentioned by the appellant in her RTI-application dated 28.02.2007.

The Commission also directs that the PAN of those political parties whose Income Tax Returns are divulged to the applicant shall not be disclosed. It has been decided not to disclose PAN in view of the fact that there is a possibility that this disclosure could be subjected to fraudulent use, reports of which have lately been appearing. It is, therefore, considered practical that while Income Tax Returns and the Assessment Orders pertaining to political parties be disclosed, there should be no disclosure of the PANs of such parties.”