

Political Parties in India Critical Analysis of Constitutional and Legal Position of Political Parties in India

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Abstract—Political parties constitute the backbone of any democratic system, acting as essential instruments for political participation, governance, and representation. In India, a vibrant multi-party democracy, political parties play a pivotal role in shaping public policy, mobilizing citizens, and maintaining the democratic framework. Despite their undeniable importance, the constitutional and legal status of political parties in India presents a paradox: while they are central to the functioning of democracy, they are not explicitly recognized or comprehensively regulated within the Constitution of India. This abstract critically examines the constitutional silence, statutory framework, judicial interventions, and regulatory mechanisms governing political parties, while highlighting the challenges of transparency, accountability, and internal democracy.

The Constitution of India does not define or provide a detailed framework for the functioning of political parties. The only indirect reference appears in the Tenth Schedule (Anti-Defection Law), which acknowledges political parties in the context of legislative behaviour and party discipline. This limited constitutional recognition raises questions about the foundational status of political parties within India's democratic system. The absence of explicit constitutional provisions results in reliance on statutory laws and guidelines issued by regulatory authorities, primarily the Election Commission of India (ECI).

The primary legal framework governing political parties in India is found in the Representation of the People Act, 1951 (RPA). Section 29A of the Act provides for the registration of political parties with the Election Commission. While registration is mandatory for contesting elections and availing certain benefits, the Act does not impose stringent requirements regarding internal governance, transparency in decision-making, or financial accountability. Political parties are required to submit annual reports, contribution details, and audited accounts; however, compliance remains

inconsistent, and enforcement mechanisms are relatively weak.

One of the critical issues identified in this analysis is the lack of internal democracy within political parties. Most parties in India function as centralized entities, often dominated by a single leader or family. The absence of mandatory internal elections, transparent candidate selection processes, and accountability mechanisms undermines democratic values within party structures. Although the Election Commission has issued guidelines encouraging internal democracy, these are largely advisory in nature and lack enforceability. Judicial pronouncements have occasionally emphasized the need for democratic functioning within parties, but no comprehensive legal framework has emerged to ensure compliance.

Financial transparency is another area of concern. Political funding in India is characterized by opacity and limited public scrutiny. While the RPA mandates disclosure of contributions above a certain threshold, loopholes allow parties to receive significant funds through anonymous donations and electoral bonds. The introduction of the Electoral Bond Scheme, though intended to formalize political funding, has been criticized for reducing transparency and accountability. The lack of stringent auditing standards and limited oversight further complicates efforts to ensure clean and transparent political financing.

Judicial intervention has played a significant role in addressing some of these gaps. The Supreme Court of India has, in various cases, emphasized the importance of transparency, voter awareness, and accountability of political parties. For instance, the Court has mandated disclosure of criminal antecedents, assets, and liabilities of candidates, thereby indirectly influencing party practices. However, judicial activism has limitations, as it cannot substitute for comprehensive legislative reform. The absence of a dedicated law governing political parties continues to hinder systematic regulation.

Another critical dimension is the role of the Election Commission of India as the regulatory authority. The

ECI exercises significant powers in registering parties, allotting symbols, and monitoring compliance with electoral laws. However, its powers are largely administrative and lack punitive strength in cases of non-compliance with internal democracy or financial transparency norms. The Commission's inability to deregister parties (except under limited circumstances) or enforce strict penalties reflects structural limitations in the existing legal framework.

The Anti-Defection Law, introduced through the Tenth Schedule, aims to curb political instability caused by defections. While it recognizes the role of political parties in maintaining legislative discipline, it has also been criticized for strengthening party leadership at the cost of individual legislators' autonomy. This has further entrenched centralized control within parties, raising concerns about the balance between party discipline and democratic freedom.

The interplay between constitutional silence and statutory regulation creates a fragmented legal framework for political parties in India. On one hand, parties are treated as private associations with considerable autonomy; on the other, they perform public functions that significantly impact governance and democracy. This dual character necessitates a more robust regulatory approach that balances autonomy with accountability.

Comparative perspectives from other democracies reveal that many countries have enacted comprehensive laws governing political parties, including provisions for internal democracy, financial transparency, and state funding. In contrast, India's regulatory framework remains underdeveloped, relying heavily on piecemeal reforms and judicial interventions. This gap underscores the urgent need for a comprehensive law on political parties that addresses structural deficiencies and aligns with democratic principles.

The analysis concludes that the current constitutional and legal position of political parties in India is inadequate to ensure transparency, accountability, and democratic functioning. While existing laws and regulatory mechanisms provide a basic framework, they fall short of addressing the complexities of modern political dynamics. There is a pressing need for legislative reform that explicitly recognizes political parties within the constitutional framework and establishes clear standards for their functioning. Such reforms should include mandatory internal elections, transparent funding mechanisms, strict disclosure norms, and enhanced regulatory powers for oversight authorities.

In essence, strengthening the legal framework governing political parties is crucial for deepening democracy in India. Political parties must not only act as vehicles of representation but also embody democratic values in

their internal structures and practices. Without comprehensive reforms, the gap between the democratic ideals enshrined in the Constitution and the practical functioning of political parties will continue to widen, undermining public trust and the integrity of the democratic process.

Index Terms—Political Parties, Indian Democracy, Constitutional Law, Representation of the People Act, Election Commission of India, Anti-Defection Law, Tenth Schedule, Electoral Reforms, Political Funding, Transparency, Accountability, Internal Democracy, Judicial Intervention, Electoral Bonds, Governance.

I. INTRODUCTION

Political parties are the lifeblood of democratic governance and the primary instruments for ensuring political participation, representation, and accountability in a democracy. In India, the largest democracy in the world, political parties play a decisive role in shaping policies, mobilizing citizens, and facilitating governance. The Indian democratic system, founded on the principles of universal adult suffrage and representative government, relies heavily on political parties to organize electoral contests, formulate public policies, and ensure the execution of constitutional mandates. However, despite their central role, political parties in India occupy a somewhat ambiguous position in the constitutional and legal framework. Unlike the United States or many European democracies, where political parties are explicitly recognized in the Constitution or governed by comprehensive laws, Indian political parties are largely regulated through statutes, guidelines, and judicial pronouncements rather than through explicit constitutional recognition.

The Constitution of India, adopted in 1950, envisions a parliamentary democracy in which elected representatives form the government based on the majority in the legislature. Although the Constitution presupposes the existence of political parties, it does not define or regulate them comprehensively. The only direct reference to political parties is found in the Tenth Schedule, inserted by the 52nd Constitutional Amendment Act, 1985, commonly known as the Anti-Defection Law. The Tenth Schedule addresses political defections and the consequences for legislators who violate party directives, thus acknowledging the significant role of parties in maintaining legislative

discipline. Yet, this recognition is limited to controlling the behaviour of elected representatives and does not address broader questions of party organization, internal democracy, financial accountability, or transparency. The absence of a constitutional definition of political parties raises critical questions regarding their legitimacy, functioning, and accountability within India's democratic framework.

The legal regulation of political parties in India primarily occurs through the Representation of the People Act, 1951. Section 29A of the Act requires political parties to register with the Election Commission of India (ECI) in order to contest elections and avail certain privileges such as the allocation of a party symbol and access to electoral rolls. While registration provides a basic legal framework, the Act does not mandate rigorous standards for internal governance, democratic functioning, or financial transparency. Political parties are expected to submit annual reports, including details of contributions, assets, and liabilities, to the Election Commission. However, compliance with these requirements is inconsistent, and the regulatory mechanisms to enforce accountability are relatively weak, resulting in a democratic deficit within party structures.

A critical aspect of the functioning of political parties in India is the lack of internal democracy. Most parties operate under a highly centralized model of leadership, often dominated by a single individual or family. This centralization affects decision-making processes, candidate selection, and policy formulation. While the Election Commission has issued guidelines promoting internal democracy, these remain largely advisory and lack statutory enforceability. Judicial interventions have occasionally emphasized the importance of internal democracy in party functioning. For instance, in *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court recognized the significance of party control in legislative discipline while also hinting at the need for democratic practices within party organization.¹ Despite such pronouncements, the

absence of a robust legal framework leaves party structures vulnerable to nepotism, favouritism, and lack of accountability.

Political funding in India represents another area of concern. Political parties rely on donations from individuals, corporations, and other entities to finance electoral campaigns and administrative operations. While the Representation of the People Act requires disclosure of contributions above a certain threshold, significant loopholes exist that allow parties to receive anonymous donations, unaccounted cash contributions, and funds through mechanisms such as Electoral Bonds. Introduced in 2018, the Electoral Bond Scheme was intended to formalize political funding and reduce cash transactions. However, critics argue that it has increased opacity by enabling anonymous corporate donations, limiting public scrutiny, and concentrating financial power in the hands of few entities.² Weak enforcement mechanisms further exacerbate the problem, raising concerns about corruption, undue influence, and erosion of democratic integrity.

The judiciary in India has played an important role in addressing some of the gaps in party regulation. The Supreme Court and High Courts have delivered landmark judgments that have improved transparency and accountability. For instance, in *Association for Democratic Reforms v. Union of India* (2002), the Court mandated disclosure of criminal antecedents, assets, and liabilities of candidates by political parties, thereby enhancing voter awareness and promoting accountability.³ Nevertheless, judicial interventions have limitations, as they cannot substitute for comprehensive legislative reform. Reliance on court directives alone is insufficient to ensure consistent compliance with democratic principles and regulatory norms within political parties.

The Election Commission of India, as the apex electoral authority, plays a critical regulatory role. It oversees party registration, monitors compliance with statutory provisions, allocates symbols, and conducts elections. While the Commission possesses administrative authority, its powers to enforce internal

¹ *Kihoto Hollohan v. Zachillhu*, (1992) 1 SCC 309.

² Centre for Policy Research, *Electoral Bonds: Transparency or Obfuscation?* CPR Report, 2019.

³ *Association for Democratic Reforms v. Union of India*, AIR 2002 SC 2110.

democracy, financial transparency, or deregister parties for non-compliance are constrained. In practice, the ECI can issue warnings, notices, and directives, but it lacks punitive power to compel structural reforms within parties. This gap underscores the structural inadequacies of India's regulatory framework for political parties and highlights the need for legislative intervention.

The Anti-Defection Law, a notable constitutional intervention, has both strengthened and constrained political party functioning. While the law reduces legislative instability by discouraging defections, it has also reinforced central control within parties, limiting the autonomy of individual legislators. Consequently, elected representatives often prioritize party directives over constituents' interests, creating tension between party discipline and democratic accountability.⁴

Comparative studies reveal that political parties in other democracies operate under more comprehensive legal frameworks. For instance, countries such as Germany, the United Kingdom, and UK have statutory provisions for internal democracy, financial transparency, and state funding of political parties. India's regulatory regime, in contrast, remains fragmented, piecemeal, and reactive, largely depending on judicial pronouncements, administrative guidelines, and selective legislative interventions. The absence of a dedicated law on political parties creates systemic gaps, undermining the ideals of representative democracy and public trust in political institutions.

In conclusion, the constitutional and legal position of political parties in India is marked by ambiguity, gaps, and insufficient regulation. While parties are central to the democratic process, the lack of explicit constitutional recognition, inadequate statutory provisions, limited enforcement mechanisms, and weak internal democracy undermine their effectiveness and accountability. Strengthening the legal framework governing political parties is imperative to ensure transparency, democratic functioning, and financial accountability. Legislative reforms should include provisions for mandatory

internal elections, transparent funding mechanisms, regular audits, and enhanced regulatory oversight. Only through such measures can politically parties in India fulfil their constitutional mandate, represent citizens effectively, and strengthen the democratic foundation of the country.

The study of political parties in India, therefore, is not merely an academic exercise but a critical endeavour to identify structural deficiencies, enhance governance, and ensure that political organizations embody the democratic values they are entrusted to uphold. As India continues to evolve as a robust democracy, the regulation, accountability, and constitutional positioning of political parties will remain central to the health and vibrancy of its political system.

II. OVERVIEW OF POLITICAL PARTIES, THEIR ROLE, AND RELEVANCE IN DEMOCRACY

Overview of Political Parties in India

Political parties are indispensable institutions in India's democratic framework. They organize public opinion, aggregate interests, contest elections, and form governments at both Union and State levels. While the Constitution of India does not expressly define "political party," its provisions relating to representative democracy, parliamentary government, universal adult suffrage, and freedoms under Articles 19(1)(a) and 19(1)(c) constitutionally sustain their existence and functioning.⁵

Legal and Regulatory Basis

The statutory foundation for political parties is laid down in the Representation of the People Act, 1951 (RPA). Section 29A of the Act provides for the registration of political parties with the Election Commission of India (ECI).⁶ The ECI further regulates recognition of parties as National or State parties based on electoral performance, in accordance with the Election Symbols (Reservation and Allotment) Order, 1968.

Additionally, the Tenth Schedule of the Constitution of India, introduced by the 52nd Constitutional Amendment Act, 1985, addresses party defections by

⁴ S. Chandra, *Democracy and Political Parties in India*, Oxford University Press, 2020, pp. 145–162.

⁵ Constitution of India

⁶ Representation of the People Act, 1951

disqualifying legislators who defect from their parties.⁷ This provision underscores the institutional importance of party affiliation within legislative functioning.⁸

Nature of the Party System

India follows a multi-party system characterized by ideological diversity and regional representation. Political parties in India may broadly be classified into:

National Parties – These have a recognized presence in multiple states and influence national politics. Examples include the Bharatiya Janata Party and the Indian National Congress.

State (Regional) Parties – These primarily operate within specific states, reflecting regional aspirations, such as the Shiv Sena and the Dravida Munnetra Kazhagam.

Registered Unrecognized Parties – Parties registered under the RPA but not meeting recognition criteria.

The evolution of India's party system has moved from a dominant-party phase in the early decades after independence to a competitive and coalition-oriented system, particularly from the 1990s onward.

Functions and Democratic Role

Political parties perform several core democratic functions:

Representation: They articulate and aggregate public interests.

Electioneering: They nominate candidates and mobilize voters.

Government Formation: Majority parties or coalitions form governments.

Opposition and Accountability: Opposition parties scrutinize executive actions.

Political Education: They promote awareness and political participation.

Through these functions, political parties operationalize constitutional democracy and enable participatory governance.⁹

Contemporary Issues

Despite their centrality, Indian political parties face persistent challenges, including:

Limited internal democracy and concentration of leadership.

Concerns over transparency in political funding.

Criminalization of politics.

Tensions between party discipline and individual legislative autonomy.

Reform discussions increasingly focus on strengthening intra-party democracy, ensuring financial transparency, and enhancing accountability mechanisms.¹⁰

Role of Political Parties in India

Political parties are indispensable to the functioning of India's constitutional democracy. Although the Constitution of India does not explicitly define "political party," their role is institutionally recognized through statutory and judicial frameworks.¹¹

Electoral Mobilisation and Representation:

Political parties nominate candidates, articulate policy positions, and mobilise voters during elections. Under the Representation of the People Act, 1951, parties are registered and regulated by the Election Commission of India.¹² Parties provide voters with identifiable choices and simplify electoral decision-making in a vast and diverse polity.¹³

Formation of Government:

In parliamentary democracy, the party or coalition commanding majority support in the Lok Sabha forms the government.¹⁴ The executive is thus politically accountable to the legislature through party structures. The principle of collective responsibility under Article 75 strengthens party discipline in governance.

Law-Making and Policy Formulation:

Political parties shape legislative agendas, introduce bills, and influence parliamentary debates. Party ideology and manifestos translate electoral promises into public policy, affecting socio-economic reforms, welfare schemes, and regulatory frameworks.

Accountability and Opposition:

Opposition parties scrutinize government action, raise questions, and demand transparency. The anti-defection mechanism under the Tenth Schedule of the Constitution of India seeks to maintain party stability

⁷ Election Commission of India, Election Symbols (Reservation and Allotment) Order, 1968.

⁸ Constitution of India

⁹ Austin, Granville, Working a Democratic Constitution. Oxford University Press.

¹⁰ Kashyap, Subhash C., Our Constitution. National Book Trust.

¹¹ Constitution of India

¹² Representation of the People Act, 1951

¹³ Election Commission of India

¹⁴ Lok Sabha

and prevent political opportunism, though it has generated debates on intra-party democracy.¹⁵

Political Socialisation and Leadership Recruitment:

Parties train leaders, mobilize grassroots workers, and create channels for political participation. They act as intermediaries between citizens and the State, aggregating diverse interests into structured political demands.

Judicial decisions such as *Indian National Congress (I) v. Institute of Social Welfare* have clarified the regulatory powers of the Election Commission over party registration, reinforcing institutional accountability.¹⁶

Relevance of Political Parties in Democracy

Political parties remain central to democratic governance in India for several normative and functional reasons.

Ensuring Popular Sovereignty:

Democracy is premised on representation. Parties convert public opinion into governmental authority by contesting periodic elections, thus operationalizing the constitutional vision of democratic self-rule.

Maintaining Stability in a Diverse Society:

India's social, linguistic, and regional diversity necessitates structured political platforms. National and regional parties integrate competing interests within constitutional boundaries, preventing fragmentation.

Institutionalising Political Competition:

Parties provide an organised mechanism for peaceful transfer of power. The recognition of "free and fair elections" as part of the basic structure doctrine in *Indira Nehru Gandhi v. Raj Narain* underscores the centrality of party-based electoral competition.¹⁷

Promoting Constitutional Values:

Political parties are expected to uphold secularism, equality, and rule of law as embodied in the Preamble and fundamental rights framework. In *Kihoto Hollohan v. Zachillhu*, the Supreme Court examined the constitutional validity of the anti-defection law, balancing party discipline with democratic freedoms.¹⁸

Facilitating Public Participation and Accountability:

Through campaigns, debates, and policy advocacy, parties encourage citizen engagement beyond voting. They provide a structured opposition essential for democratic checks and balances.

III. CONSTITUTIONAL POSITION OF POLITICAL PARTIES

Analysis of Constitutional Provisions Relevant to Political Parties

The Constitution of India does not expressly define or comprehensively regulate political parties. However, their constitutional position can be understood through a cluster of provisions that indirectly structure their functioning and legitimacy.

Article 19(1)(c):

Article 19(1)(c) guarantees to all citizens the fundamental right to form associations or unions. Political parties derive their constitutional legitimacy primarily from this provision. The right to form a political party is treated as a facet of the freedom of association, subject to reasonable restrictions under Article 19(4) in the interests of sovereignty, integrity, public order, and morality.¹⁹

Articles 324–329 (Elections):

Articles 324 to 329 establish the constitutional framework for elections. Article 324 vests the "superintendence, direction and control" of elections in the Election Commission of India.²⁰ Though political parties are not explicitly mentioned, the electoral process presupposes their existence. Party symbols, recognition, and registration are regulated under statutory law—particularly the Representation of the People Act, 1951—pursuant to the constitutional scheme.²¹

Tenth Schedule (Anti-Defection Law):

Inserted by the Constitution (Fifty-second Amendment) Act, 1985, the Tenth Schedule grants constitutional recognition to political parties in legislative functioning. Disqualification for defection is tied to party membership, party whip, and merger provisions.²² This marks a significant constitutional

¹⁵ Tenth Schedule of the Constitution of India

¹⁶ *Indian National Congress (I) v. Institute of Social Welfare*

¹⁷ *Indira Nehru Gandhi v. Raj Narain*

¹⁸ *Kihoto Hollohan v. Zachillhu*

¹⁹ Constitution of India

²⁰ Constitution of India

²¹ Representation of the People Act, 1951

²² Representation of the People Act, 1951

acknowledgment of parties as institutional actors in parliamentary democracy.

Articles 75(3) and 164(2):

These Articles establish collective responsibility of the Council of Ministers to the House of the People and State Legislative Assemblies, respectively. Although parties are not named, the principle of collective responsibility operates largely through party discipline and majority support in legislatures.²³

Article 102 and 191:

These Articles provide grounds for disqualification of Members of Parliament and State Legislatures.²⁴

While they do not directly refer to political parties, the Tenth Schedule supplements these provisions by connecting disqualification to party allegiance.

Thus, the Constitution provides an indirect yet functional recognition of political parties, embedding them within the democratic and parliamentary structure.

Judicial Interpretations Regarding Political Parties

The judiciary has played a crucial role in clarifying the constitutional status and obligations of political parties.

In *Indian National Congress (I) v. Institute of Social Welfare*, the Supreme Court held that political parties registered under Section 29A of the Representation of the People Act, 1951, are subject to constitutional and statutory limitations. The Court recognized that registration confers certain legal benefits but does not elevate parties to constitutional bodies.²⁵

In *Kihoto Hollohan v. Zachillhu*, the Supreme Court upheld the constitutional validity of the Tenth Schedule. The judgment acknowledged the importance of political parties in maintaining stability in parliamentary democracy while also recognizing concerns about excessive party control over legislators.²⁶

In *Union of India v. Association for Democratic Reforms*, the Court expanded the scope of voters' right to information under Article 19(1)(a), directing disclosure of criminal antecedents and financial details of candidates. Although the case concerned

candidates, its implications directly affect political parties, enhancing transparency and accountability.²⁷

Similarly, in *People's Union for Civil Liberties (PUCL) v. Union of India*, the Court reaffirmed that voters' right to know is a component of freedom of speech and expression. This judgment strengthened democratic accountability mechanisms applicable to parties.²⁸

These decisions illustrate that while political parties are not constitutional organs, their activities are subject to constitutional discipline, especially regarding transparency, internal democracy, and electoral integrity.

Indirect Recognition and Constitutional Gaps

Despite their centrality in governance, political parties remain largely unregulated at the constitutional level. This creates several structural gaps:

Absence of Explicit Constitutional Status:

Unlike some democratic constitutions (e.g., Germany or South Africa), the Indian Constitution does not expressly define political parties or mandate internal democracy within them. Their recognition is largely statutory.

Lack of Internal Democracy Requirements:

There is no constitutional provision requiring periodic internal elections, transparent funding, or democratic candidate selection. Regulation is limited to statutory disclosure norms under the Representation of the People Act, 1951.²⁹

Concentration of Leadership Power:

Judicial observations have occasionally noted the dominance of party leadership structures. However, courts have refrained from intervening in internal party affairs unless statutory or constitutional violations are evident.

Limited Judicial Review of Party Decisions:

Political parties are generally treated as voluntary associations. Unless their actions intersect with public law obligations (such as election processes), courts hesitate to subject them to strict constitutional scrutiny.

²³ Representation of the People Act, 1951

²⁴ Constitution Of India

²⁵ *Indian National Congress (I) v. Institute of Social Welfare*

²⁶ *Indian National Congress (I) v. Institute of Social Welfare*

²⁷ *Union of India v. Association for Democratic Reforms*

²⁸ *People's Union for Civil Liberties (PUCL) v. Union of India*

²⁹ Representation of the People Act, 1951

Tension Between Party Discipline and Representative Autonomy:

The anti-defection law strengthens party control but may dilute deliberative democracy by restricting legislators' freedom of speech within the House.

IV. LEGAL FRAMEWORK GOVERNING POLITICAL PARTIES

Registration under the Representation of the People Act, 1951

Political parties in India derive their formal legal recognition primarily from the Representation of the People Act, 1951 (RPA, 1951).³⁰ While the Constitution of India does not explicitly define or regulate political parties, statutory recognition is provided under Part IVA of the Act.

Section 29A of the RPA, 1951 lays down the procedure for registration of political parties with the Election Commission of India (ECI). Any association or body of individual citizens calling itself a political party may apply for registration within 30 days of its formation.³¹ The application must contain:

- a. The party's name, head office address, and office-bearers' details;
- b. A copy of the party constitution;
- c. Provisions affirming allegiance to the Constitution of India and principles of socialism, secularism, democracy, and the sovereignty, unity, and integrity of India;
- d. An undertaking to contest elections in accordance with the law.

The ECI examines whether the party's constitution and objectives conform to constitutional values. Upon satisfaction, the Commission grants registration. Registration enables the party to avail itself of certain statutory benefits, including tax exemptions under Section 13A of the Income Tax Act, 1961 and eligibility to contest elections under a recognized symbol.³²

Judicial decisions such as *Indian National Congress (I) v. Institute of Social Welfare* (2002) have clarified that

although the ECI has the power to register political parties, it does not possess inherent power to deregister them except under limited circumstances, such as fraud or violation of constitutional mandates. This reflects a statutory gap in regulatory control over parties once registered.³³

Thus, registration under the RPA, 1951 provides legal identity but does not amount to comprehensive regulation of internal party functioning.³⁴

Election Commission Rules and Compliance

The Election Commission of India derives its constitutional authority from Article 324 of the Constitution of India.³⁵ In addition to statutory powers under the RPA, 1951, the ECI issues directions, guidelines, and orders regulating political parties' conduct.

Recognition and Symbols

The recognition of political parties as "National" or "State" parties is governed by the Election Symbols (Reservation and Allotment) Order, 1968. Recognition is based on electoral performance criteria, including vote share and number of seats won in legislative bodies. Recognized parties are entitled to reserved election symbols and other privileges such as free broadcast time on state media.³⁶

Model Code of Conduct

The Model Code of Conduct (MCC), though not a statute, is enforced by the ECI during elections to ensure a level playing field. It regulates campaign methods, speeches, use of official machinery, and election manifestos. In *S. Subramaniam Balaji v. State of Tamil Nadu* (2013), the Supreme Court observed that although election manifestos are not strictly enforceable, the ECI may issue guidelines to ensure responsible conduct.³⁷

Internal Democracy and Reporting

The ECI requires political parties to submit periodic reports regarding organizational elections, audited financial statements, and changes in office-bearers. Non-compliance may result in suspension or withdrawal of recognition under the Symbols Order, though not necessarily deregistration.

³⁰ Representation of the People Act, 1951

³¹ Representation of the People Act, 1951, Section 29A

³² Section 13A of the Income Tax Act, 1961

³³ *Indian National Congress (I) v. Institute of Social Welfare* (2002)

³⁴ Representation of the People Act, 1951

³⁵ Article 324 of the Constitution of India.

³⁶ Election Symbols (Reservation and Allotment) Order, 1968.

³⁷ *S. Subramaniam Balaji v. State of Tamil Nadu* (2013)

Judicial pronouncements such as *Kanhiya Lal Omar v. R.K. Trivedi* (1985) have upheld the constitutional validity of the Symbols Order and affirmed the wide regulatory powers of the ECI in maintaining electoral discipline.³⁸

Legal Provisions on Funding, Expenditure, and Transparency

Financial regulation of political parties is primarily governed by the Representation of the People Act, 1951, the Income Tax Act, 1961, and amendments introduced through various Finance Acts.

Contributions and Disclosure

Sections 29B and 29C of the RPA, 1951 permit political parties to accept voluntary contributions from individuals and companies (other than government companies).³⁹

Parties are required to disclose contributions exceeding ₹20,000 to the ECI in an annual report. Failure to submit such reports may result in denial of tax benefits under Section 13A of the Income Tax Act.⁴⁰

The Companies Act, 2013 permits corporate contributions to political parties subject to board approval and disclosure in financial statements.⁴¹ However, amendments in 2017 removed the earlier cap of 7.5% of average net profits, leading to concerns about transparency.

Electoral Bonds Scheme

The Electoral Bonds Scheme, introduced in 2018, enabled anonymous donations through designated banks.⁴² In 2024, the Supreme Court in *Association for Democratic Reforms v. Union of India* declared the Electoral Bonds Scheme unconstitutional, holding that anonymity in political funding violates citizens' right to information under Article 19(1)(a). This judgment significantly strengthened transparency in political financing.⁴³

Expenditure Regulation

While expenditure limits apply primarily to individual candidates under the RPA, 1951, political parties

themselves are not subject to a statutory ceiling on overall campaign expenditure. This creates an asymmetry in regulation and has been a subject of academic criticism.⁴⁴

Transparency and Accountability

Political parties are required to maintain audited accounts and submit annual contribution reports to the ECI. However, in *Indian National Congress v. Central Information Commission* (2013), the Central Information Commission held that major political parties are "public authorities" under the RTI Act. Despite this ruling, political parties have resisted compliance, and legislative amendments have been proposed to exclude them from the RTI framework.⁴⁵ The regulatory structure thus reflects partial transparency, with persistent gaps in enforcement and oversight.

V. CHALLENGES AND ISSUES

Internal Democracy and Leadership Centralization

One of the persistent challenges facing political parties in India is the absence of robust internal democracy. Although parties are expected to function as democratic institutions within a constitutional democracy, their internal structures often remain centralized and personality-driven. The Election Commission of India requires parties to file their constitutions under Section 29A of the Representation of the People Act, 1951, but it does not effectively supervise internal elections or leadership transitions.⁴⁶ The Supreme Court in *Indian National Congress (I) v. Institute of Social Welfare* (2002) clarified that the Election Commission's power to register parties does not include an ongoing power to deregister them except under limited circumstances. This significantly restricts regulatory oversight over internal functioning.⁴⁷

Moreover, in *Kihoto Hollohan v. Zachillhu* (1992), while upholding the Tenth Schedule (anti-defection

³⁸ *Kanhiya Lal Omar v. R.K. Trivedi* (1985)

³⁹ Sections 29B and 29C of the Representation of People Act, 1951

⁴⁰ Section 13A of the Income Tax Act.

⁴¹ Companies Act, 2013, Section 182

⁴² Electoral Bonds Scheme, 2018

⁴³ *Association for Democratic Reforms v. Union of India*, 2024

⁴⁴ Representation of People Act, 1951

⁴⁵ Central Information Commission, Decision dated 3 June 2013 (Political Parties and RTI)

⁴⁶ The Election Commission of India

⁴⁷ *Indian National Congress (I) v. Institute of Social Welfare* (2002)

law), the Supreme Court indirectly strengthened party leadership by validating the authority of party whips, thereby increasing centralized control over legislators. Critics argue that this reduces deliberative autonomy and reinforces top-down leadership models.⁴⁸

Scholars have also observed the prevalence of dynastic politics and concentration of decision-making power within a small group of party elites. The absence of mandatory, transparent internal elections and independent auditing of party processes weakens accountability and democratic legitimacy.⁴⁹

Funding and Corruption Issues

Political financing remains one of the most contentious issues in India's party system. The legal framework permits donations under Section 29B and 29C of the Representation of the People Act, 1951, but transparency has been historically limited.⁵⁰

The introduction of Electoral Bonds under the Finance Act, 2017 was challenged for enabling anonymous corporate funding.⁵¹ In *Association for Democratic Reforms v. Union of India* (2024), the Supreme Court declared the Electoral Bond Scheme unconstitutional, holding that anonymous political funding violated the voter's right to information under Article 19(1)(a) of the Constitution. The Court emphasized transparency as a core democratic value.⁵²

Earlier, in *Union of India v. Association for Democratic Reforms* (2002), the Supreme Court mandated disclosure of candidates' criminal records, assets, and liabilities, reinforcing electoral transparency.⁵³

Despite these judicial interventions, concerns persist regarding corporate influence, quid pro quo arrangements, and the lack of effective auditing mechanisms. Reports of the Comptroller and Auditor General of India do not extend to auditing political party accounts, leaving a regulatory vacuum.⁵⁴ The Law Commission (255th Report, 2015) recommended greater financial transparency, including partial state funding and stricter disclosure norms.⁵⁵

Judicial and Administrative Limitations

Judicial and administrative institutions face structural limitations in regulating political parties. While courts have expanded transparency and accountability through constitutional interpretation, they remain cautious about entering the "political thicket."

In *Rameshwar Prasad v. Union of India* (2006), the Supreme Court reiterated that judicial review applies even in politically sensitive matters, yet practical enforcement against parties remains limited.⁵⁶ Similarly, the Election Commission's powers are largely supervisory and procedural; it lacks authority to enforce internal democracy or impose stringent penalties beyond derecognition in extreme cases.

The anti-defection mechanism under the Tenth Schedule vests adjudicatory power in the Speaker, often a member of the ruling party, leading to allegations of partisan bias. Although judicial review is available (as affirmed in *Kihoto Hollohan*), delays in adjudication dilute the effectiveness of remedies.

Further, there is no comprehensive legislation governing internal party governance, financial accountability, or leadership selection. The constitutional silence on political parties—despite their centrality to democratic functioning—creates a normative gap. Articles 19(1)(c) and 324 provide indirect recognition, but do not establish a detailed regulatory framework.⁵⁷

VI. COMPARATIVE PERSPECTIVES

Political Party Regulation in the USA, UK and Germany etc.

A comparative study of political party regulation reveals differing constitutional philosophies and regulatory mechanisms in mature democracies such as the United States and the United Kingdom.

United States

In the United States, political parties operate within a constitutional framework that strongly protects freedom of association under the First Amendment. The regulation of campaign finance and party

⁴⁸ *Kihoto Hollohan v. Zachillhu* (1992)

⁴⁹ Law Commission of India, 170th Report, 1999

⁵⁰ Section 29B and 29C of the Representation of the People Act, 1951

⁵¹ Finance Act, 2017

⁵² *Association for Democratic Reforms v. Union of India* (2024)

⁵³ *Union of India v. Association for Democratic Reforms* (2002)

⁵⁴ Reports of the Comptroller and Auditor General of India

⁵⁵ The Law Commission (255th Report, 2015)

⁵⁶ *Rameshwar Prasad v. Union of India* (2006)

⁵⁷ Constitution Of India Articles 19(1)(c) and 324

activities is primarily governed by the Federal Election Campaign Act (FECA), 1971, and overseen by the Federal Election Commission.⁵⁸

The Supreme Court of the United States has consistently emphasized political speech as a core constitutional value. In *Buckley v. Valeo* (1976), the Court held that expenditure limits infringe upon free speech, although contribution limits may be justified to prevent corruption.⁵⁹ Later, *Citizens United v. Federal Election Commission* (2010) invalidated restrictions on independent political expenditures by corporations and unions, reinforcing a deregulatory approach grounded in free speech principles.⁶⁰

Unlike India, the U.S. does not constitutionally recognize political parties. Regulation focuses more on campaign finance transparency and electoral conduct rather than internal party democracy. Primary elections, however, serve as a mechanism to decentralize candidate selection and enhance participatory democracy.⁶¹

United Kingdom

The United Kingdom adopts a more statutory and centralized regulatory framework. Political parties are regulated under the Political Parties, Elections and Referendums Act (PPERA), 2000. The Electoral Commission supervises party registration, monitors donations and expenditures, and has authority to impose civil sanctions for non-compliance.⁶²

Party funding transparency is a key feature of the UK model. Donations above specified thresholds must be reported, and foreign donations are restricted. The UK framework mandates detailed financial disclosures and provides enforcement mechanisms that are comparatively stronger than those in India.

Judicial oversight in the UK remains limited due to parliamentary sovereignty, but administrative regulation is robust. The absence of a written constitution does not prevent statutory clarity in party governance, which is detailed and compliance-oriented.⁶³

⁵⁸ Federal Election Campaign Act (FECA), 1971

⁵⁹ *Buckley v. Valeo* (1976)

⁶⁰ *Citizens United v. Federal Election Commission* (2010)

⁶¹ Issacharoff, *American Constitutional Law*; Pildes, 2014

Germany

Germany provides an example of constitutional recognition of political parties. Article 21 of the Basic Law expressly acknowledges their role and requires internal democracy. The Federal Constitutional Court of Germany has authority to declare parties unconstitutional if they threaten the democratic order.⁶⁴

In *National Democratic Party of Germany Case* (2017), the Court refused to ban the NPD despite its extremist ideology, holding that it lacked the capacity to undermine democracy. This illustrates a careful balance between democratic protection and political pluralism.⁶⁵

Lessons and Best Practices Applicable to India

A comparative assessment suggests several reforms that may strengthen India's political party framework: **Statutory Framework for Internal Democracy:**

Germany's constitutional mandate for internal democracy offers a model for India. A statutory requirement for periodic, transparent internal elections—supervised or audited by the Election Commission of India—could reduce leadership centralization and dynastic control.

Enhanced Financial Transparency:

The UK's disclosure-oriented model demonstrates the value of real-time reporting and enforceable sanctions. India could adopt stricter reporting standards, independent audits, and clearer penalties for non-compliance, as suggested by the Law Commission of India (255th Report, 2015).⁶⁶

Independent Oversight with Sanctioning Powers:

Unlike the limited powers currently exercised by Indian authorities, the UK Electoral Commission has authority to impose fines. Strengthening the regulatory capacity of the Election Commission through legislative amendment may improve compliance and accountability.

Balancing Free Speech and Anti-Corruption Norms:

⁶² Political Parties, Elections and Referendums Act (PPERA), 2000

⁶³ Political Parties Elections and Referendums Act, 2000; Electoral Commission Reports

⁶⁴ Article 21 of the Basic Law

⁶⁵ *National Democratic Party of Germany Case* (2017)

⁶⁶ Law Commission of India (255th Report, 2015)

The U.S. jurisprudence highlights the tension between political speech and anti-corruption regulation. India must ensure that reforms—especially in campaign finance—strike a constitutionally proportionate balance between Article 19 freedoms and electoral integrity.

Constitutional Recognition and Clarity:

Germany’s explicit constitutional recognition of parties provides normative clarity. India’s Constitution indirectly refers to parties through Articles 19(1)(c), 102, 191, and the Tenth Schedule, but lacks a comprehensive framework. A carefully drafted constitutional or statutory provision defining party obligations could fill this normative gap without undermining political pluralism.⁶⁷

VII. POLICY AND LEGAL RECOMMENDATIONS

A critical analysis of the constitutional and legal position of political parties in India reveals structural and regulatory gaps. While parties are central to democratic governance, their regulation remains fragmented under the Constitution of India and the Representation of the People Act, 1951 (RPA). The following reforms are recommended:

Statutory Recognition of Internal Democracy:

A dedicated legislation should mandate periodic internal elections, transparent membership processes, and publicly available party constitutions. Although the Election Commission of India registers parties under Section 29A of the RPA, it lacks explicit authority to enforce internal democratic functioning.⁶⁸

Legislative empowerment of the Commission—subject to judicial review—would enhance accountability. The Law Commission of India (170th Report, 1999; 255th Report, 2015) has similarly emphasized intra-party democracy.⁶⁹

Strengthening Financial Transparency and Accountability:

Following the Supreme Court’s emphasis on transparency in *Union of India v. Association for Democratic Reforms* (2002) and the Electoral Bonds judgment in *Association for Democratic Reforms v. Union of India* (2024), comprehensive disclosure norms must be codified. Mandatory real-time reporting of donations above a threshold, independent auditing of party accounts, and publication of annual financial statements should be introduced.⁷⁰

Independent Oversight and Graded Sanctions:

The regulatory framework should provide graded penalties for non-compliance—ranging from fines and suspension of recognition to withdrawal of electoral symbols in extreme cases. Comparative experience from the United Kingdom under the Political Parties, Elections and Referendums Act, 2000 supports a sanction-based compliance mechanism.⁷¹

Reform of the Anti-Defection Mechanism:

The Tenth Schedule has strengthened party discipline but also centralized leadership control. In *Kihoto Hollohan v. Zachillhu* (1992), the Supreme Court upheld the law but allowed judicial review. A time-bound decision-making process and transfer of adjudicatory power from the Speaker to an independent tribunal may ensure impartiality.⁷²

Limited State Funding of Elections:

To reduce undue corporate influence, partial state funding—linked to vote share and compliance standards—may be considered, as suggested by the Law Commission (255th Report, 2015). Such funding must be accompanied by strict expenditure ceilings and disclosure obligations.⁷³

VIII. PROPOSED BILL

Title: Political Parties (Regulation and Democratic Functioning) Bill, 2026

Objective: To provide a comprehensive statutory framework governing registration, internal

⁶⁷ Constitution Of India - Articles 19(1)(c), 102, 191, and the Tenth Schedule

⁶⁸ Section 29A of the Representative of People Act, 1951

⁶⁹ The Law Commission of India (170th Report, 1999; 255th Report, 2015)

⁷⁰ *Union of India v. Association for Democratic Reforms* (2002) and the Electoral Bonds judgment in

Association for Democratic Reforms v. Union of India (2024)

⁷¹ United Kingdom under the Political Parties, Elections and Referendums Act, 2000

⁷² *Kihoto Hollohan v. Zachillhu* (1992)

⁷³ Law Commission (255th Report, 2015)

democracy, financial accountability, and transparency of political parties in India.

Provisions:

Mandatory Internal Elections:

Political parties shall conduct organizational elections at fixed intervals under rules notified to the Election Commission.

Financial Disclosure:

Real-time digital disclosure of contributions above a prescribed limit.

Annual audited accounts certified by independent chartered accountants.

Public availability of financial statements on official websites.

Oversight Authority:

The Election Commission of India shall be empowered to inspect records, order audits, and impose civil penalties, subject to appeal before the High Court.

Code of Democratic Governance:

Parties shall adopt internal codes ensuring non-discrimination, transparent candidate selection, and grievance redress mechanisms.

Adjudication of Defection Cases:

Establishment of an independent “Political Ethics Tribunal” to decide matters under the Tenth Schedule within a prescribed time frame.

Compliance-Linked Benefits:

Tax exemptions and electoral symbol recognition shall be contingent upon compliance with statutory requirements.

Expected Outcome

The proposed reforms are expected to:

Enhance transparency and public trust in political institutions.

Reduce corruption and opaque funding practices.

Encourage participatory decision-making within parties.

Balance party discipline with representative autonomy.

Strengthen constitutional democracy by aligning party functioning with the spirit of Articles 19(1)(a), 19(1)(c), and 324 of the Constitution.

Over time, these measures would foster institutional stability and reduce the gap between constitutional ideals and political practice.

IX. CONCLUSION

Political parties occupy a central yet paradoxical position in India’s constitutional framework. Although not explicitly recognized in the Constitution, they are indispensable to representative democracy. Judicial interventions—such as *Union of India v. Association for Democratic Reforms* (2002), *Kihoto Hollohan v. Zachillhu* (1992), and *Association for Democratic Reforms v. Union of India* (2024)—have incrementally expanded transparency and accountability. However, structural reform requires legislative initiative rather than piecemeal judicial correction.⁷⁴

Comparative constitutional practice demonstrates that democratic consolidation depends upon regulating parties without stifling pluralism. A balanced statutory framework—ensuring internal democracy, financial transparency, and independent oversight—would reconcile freedom of association with constitutional accountability.

In conclusion, reforming the legal position of political parties is not merely a matter of electoral management; it is essential for safeguarding constitutional morality, equality, and democratic legitimacy in India.

⁷⁴ *Union of India v. Association for Democratic Reforms* (2002), *Kihoto Hollohan v. Zachillhu*

(1992), and *Association for Democratic Reforms v. Union of India* (2024)