

POLITICAL PARTIES UNDER RTI ACT

How did the struggle to bring political parties under RTI begin?

Association for Democratic Reforms (ADR) had filed an application under the Right to Information Act (RTI) to all national parties in 2010 requesting information about the '10 maximum voluntary contributions' received by them in the past five years, but none of the political parties came forward to reveal that information. While the INC replied promptly saying it did not fall under the purview of the RTI Act, BJP did not even bother to reply.

Following which ADR filed a complaint and Subhash Agarwal (RTI activist) filed a petition with the CIC. The case was contested for the next three years.

The CIC order.

Finally a full bench of the CIC delivered a landmark judgment on June 3rd, 2013 declaring INC, BJP, CPI (M), CPI, NCP and BSP as Public Authorities within the purview of the RTI Act. Accordingly, these political parties were directed to designate Chief Public Information Officers (CPIOs) and the Appellate Authorities at their headquarters in six weeks' time. The CPIOs so appointed were required to respond to the RTI applications extracted in the CIC's order in four weeks' time.

Response of the Political Parties & the Bill to Amend the RTI Act.

Political parties, despite being institutions that uphold the constitutional and legal framework, did not appeal to the court. Instead, there was a move to amend the RTI Act to keep the political parties out of its purview.

The Bill to amend the RTI Act, which was to be tabled in the monsoon session 2013 of the last Lok Sabha, witnessed strong opposition from the civil society and was referred to a Standing Committee. The Committee, in October 2013, agreed to the proposed Amendment, notwithstanding the public opinion. In the meantime, the Bill to amend the RTI Act has lapsed.

Non-compliance hearing.

After passage of 17 months of the CIC's order, none of the six political parties has complied with the CIC's order. The commission issued show-cause notices to the political parties for non-compliance hearing on November 21, 2014. But all the parties were conspicuously absent from the hearing.

The co-petitioners in the case Mr. Subhash Aggarwal and ADR requested the CIC to impose penalties on these parties (under Section 20 of the RTI Act). Both the petitioners also held in their respective prayers before the bench of CIC that they should be provided exemplary compensations (under Section 19 of RTI Act).

Order Reserved.

The CIC yet again sent a notice to the six political parties for a hearing on January 7, 2015, but all of these parties unitedly boycotted the hearing.

The CIC has reserved the order in the case.

Salient Features of June 3rd, 2013, CIC Judgment

*** Political Parties are Substantially Financed by the Central Government:** INC, BJP, CPI (M), CPI, NCP and BSP have been substantially financed by the Central Government and hence considered public authority under Section 2(h) (ii) of the RTI Act. Besides, they are also allotted land in Delhi and other state capitals, accommodations and bungalows are provided on concessional rates and they also enjoy total tax exemption against the incomes under Section 13 A of the Income Tax Act.

*** Public Character:** The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of Section 2(h).

Elections are contested on party basis and Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty. They are also unique because in spite of being non-governmental, they come to wield directly or indirectly influence on the exercise of governmental power. It would be odd to argue that transparency is good for all State organs but not so good for Parties, which, in reality, control all the vital organs of the State.

Preamble of RTI Act: The preamble of RTI Act aims to create an 'informed citizenry and to contain corruption & hold government and their instrumentalities accountable to the governed.

*** Constitutional/Legal Provisions:** Political Parties have constitutional and legal rights-and-liabilities because of the following:

Political Parties are required to be registered with ECI under Section 29A of the R.P. Act, 1951 – a Central Legislation. ECI calls for details of expenses made by Political Parties in the elections. Contributions of the value of Rs. 20,000/- and above are required to be intimated to ECI under section 29C of R.P.A.

ECI is vested with the superintendence, direction and control of elections under Article 324 of the Constitution and can also suspend or withdraw recognition of a political party.

Political Parties can recommend disqualification of Members of the House in certain contingencies under the Tenth Schedule

'Exemption from disclosure of information'

The Section 8 of the RTI Act, 'Exemption from disclosure of information,' lists several grounds under which a Public Authority can deny permission that is sought by an RTI request. For eg:

- (a) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India.
- (b) Information which has been expressly forbidden to be published by any court of law.
- (c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.
- (d) Information received in confidence from foreign government.
- (e) Information, the disclosure of which would endanger the life or physical safety of any person or enforcement or security purposes.
- (f) Information which would impede the process of investigation or apprehension or prosecution of offenders.
- (g) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
- (h) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest.

FAQs- Political Parties under RTI: Myths Busted

Q: If Political Parties are "private institutions," then why should they come under RTI?

A: A body or an institution does not have to be a part of the government in order to come under the ambit of RTI. The RTI Act is applicable to those organizations that pass the test of Section 2(h) of the Act, which defines the term "Public Authority". The Section 2(h) says that in addition to the government bodies, those organizations should also come under RTI that fulfil the eligibility mentioned in 2(h)(d)(i) or 2(h)(d)(ii). (Refer to the box)

Q: If Political Parties are not government sector offices (i.e. they are neither created by a notification nor by a government order) then why should they come under RTI?

A: As explained in the first question, it is an incorrect fact that only government sector offices are supposed to come under RTI Act. The RTI act has a definition of the term Public authority in Section 2(h) and the provisions of the Act apply only on the identification of this Authority. The applicability of RTI Act is based solely on this definition of public authority and CIC in its 3rd June, 2013 decision has ascertained that Political Parties are Public Authorities because they fulfil the criteria as set up in RTI Act.

Q: Are only those bodies or institutions supposed to come under the RTI that are established "by notification issued or order made by the Government" (i.e. are RTI clauses 2(h)(d)(i) & 2(h)(d)(ii) independent of 2(h)(d)?)

A: There are many court judgements that have cleared the confusion whether only those bodies or institutions can come under RTI (or can be adjudged as Public Authorities) that have been established either by a Government's Notification or Order. This confusion emerges from the manner in which Section 2(h)(d) of the RTI Act has been drafted, as can be noticed in Ans. 1. Courts have ruled in their judgments that for a body or institution to be a public authority and to come under RTI, there is no necessary condition for them to be established by a Government Order or Notification. The RTI clause 2(h)(d) and clauses 2(h)(d)(i) & 2(h)(d)(ii) are independent of each other and are not be read together.)

Q: Will Political Parties come under the control of Information Commissioners and Civil Servants and if that's the case will it be detrimental to the India democracy?

A: If an organisation comes under RTI it does not mean that the organisation is under the control of the Information Commission. The Commission's mandate is merely to ascertain that the RTI's objectives and provisions are being met by the organisation and the rights of the seekers of the information are well taken care of. Even the President's Secretariats, Prime Minister's Office and Secretariats of both the houses of Parliament are currently under the RTI.

Q: Will Political Parties be infested by millions of RTI requests by manipulators?

A: The nature of information in which most of the people will be interested in will be about the funding that Political Parties. This information regarding Parties' finance, and other type of information in which people express tremendous interest, should be put on the Parties' websites as recommended in Section 4 (1)(b) of the RTI Act. This voluntary disclosure will reduce the number of RTIs filed.

What Does 'Public Authority' Mean?

2(h) "Public Authority" means any authority or body or institution of self-government established or constituted:

- (a) By or under the Constitution;
- (b) By any other law made by Parliament;
- (c) By any other law made by State Legislature;
- (d) By notification issued or order made by the appropriate Government, and includes any –

- (i) Body owned, controlled or substantially financed;
- (ii) Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

Q: Will RTI Act be misused and specific questions pertaining to the internal meetings and strategy of the Political Parties be asked under the garb of RTIs?

A: Firstly, since Political Parties are taking decisions that are of public importance and welfare, they shouldn't have any objection in making most of their records public. Secondly, the RTI Act has enough built in protection in the form of the Section 8 - "Exemption from disclosure of information".

Q: If Political Parties are already transparent and answerable to the ECI and IT Dept, then why should they come under RTI?

A: Currently, Political Parties reveal only limited amount of information both in their submissions to ECI and IT Dept. They file details of donations of Rs 20,000 and above received by them annually to the ECI. Donations less than Rs. 20,000 are not reported and Political Parties exploit this loop hole. Similarly, in their IT Returns, the Parties don't divulge many details of the sources of incomes. Also, Political Parties put out only very limited information regarding their internal functioning details such as total number of members of the Party, internal elections in the Party, details about the office bearers, criteria to induct members. All this information is about the issues that people want to obtain under the RTI Act.

Q: If tax-exemption is made the ground of ascertaining who will come under RTI, then a whole lot of companies and individual should also come under RTI?

A: There are already a lot of NGOs, trusts, cooperative societies, schools, hospitals, sports bodies etc which get the direct or indirect benefits from the government and are under the ambit of RTI. Political Parties get most favourable exemptions when compared with other organisations. Also, Political Parties have not been brought under RTI solely because they get tax exemptions. In addition to the tax exemption and other direct and indirect means of funding by the government, their nature of work is purely for public good.

Also, Parties wield immense power to control the government and vital state organs. Thus a transparency act that applies on all branches of the government should also apply to the institutions that form and control the government.

Q: The implementation of RTI Act will not be feasible as Political Parties do not maintain many records?

A: Political Parties are the most important organ of the state and like any other department they should also develop systems and processes to document their proceedings. Political Parties perform various important functions in a democracy and they should function in a systematic manner.