

REPORT NO.

66



सत्यमेव जयते

PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

SIXTY SIXTH REPORT

The Right to Information (Amendment) Bill, 2013

(Presented to the Rajya Sabha on 17th December, 2013)

(Laid on the Table of Lok Sabha on 17th December, 2013)



Rajya Sabha Secretariat, New Delhi
December, 2013/Agrahayana, 1935 (Saka)



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ACRONYMS

AICC	All India Congress Committee
AIR	All India Radio
BJP	Bharatiya Janata Party
BSP	Bahujan Samajwadi Party
CIC	Central Information Commission
CPIO	Central Public Information Officer
CPI(M)	Communist Party of India(Marxist)
CPI	Communist Party of India
DOPT	Department of Personnel and Training
DMDK	Desiya Murpokku Dravida Kazhagam
ECI	Election Commission of India
INC	Indian National Congress
IT	Information Technology
MLA	Member of Legislative Assembly
MP	Member of Parliament
NCP	Nationalist Congress Party
NGO	Non-Governmental Organisation
RTI	Right to Information

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2013)

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Ram Jethmalani
4. Shri Sanjiv Kumar
5. Shri Parimal Nathwani
6. Shri Ram Vilas Paswan
7. Shri Sukhendu Sekhar Roy
8. Shri Ramchandra Prasad Singh
9. Dr. Abhishek Manu Singhvi
10. Shri Bhupender Yadav

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri T. R. Baalu
13. Shri E.T. Mohammed Basheer
14. Shri N.S.V. Chitthan
15. Shri P.C. Gaddigoudar
16. Shri D.B. Chandre Gowda
17. Shri Shailendra Kumar
18. Shri Jitender Singh Malik
19. Shri Arjun Meghwal
20. Shri Pinaki Misra
21. Shri Abhijit Mukherjee
22. Shri S.S. Ramasubbu
23. Shri S. Semmalai
24. Shri S.D. "Shariq"
25. Smt. Meena Singh
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishore Taviad
28. Shri Suresh Kashinath Taware
29. Shri Madhusudan Yadav
30. Vacant
31. Vacant

SECRETARIAT

Shri Alok Kumar Chaterjee, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Assistant Director

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Sixty-sixth Report on the Right to Information (Amendment) Bill, 2013. The Bill seeks to amend the Right to Information Act, 2005. (**Annexure-A**)

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Lok Sabha on the 12th August, 2013 and pending therein, to this Committee on the 12th September, 2013 for examination and report.

3. Keeping in view the importance of the Bill, the Committee issued a press communiqué in national and local newspapers and dailies, to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. In response thereto, 39 memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee. The views/suggestions received by Committee in written memoranda alongwith comments of DoPT are at **Annexure-B**.

4. The Committee heard the presentation of the Secretary, Department of Personnel and Training on the provisions of the Bill in its meeting held on the 27th February, 2013. During its Study Visit to Chennai, Mumbai and Jaipur from 3rd to 10th October, 2013 the Committee interacted with the representatives of various Political Parties such as Nationalist Congress Party, Indian National Congress, All India Anna Dravida Munnetra Kazhagam, Dravida Munnetra Kazhagam, Communist Party of India, Bharatiya Janata Party, Bahujan Samaj Party, Communist Party of India (Marxist), Shivsena, Maharashtra Nav Nirman Sena, Samajwadi Party; representatives of NGOs such as Aruna Roy, Nikhil Dey and other stakeholders on the Bill. The Committee also heard, amongst others, Shri Jagdeep Chhokar, Shri Shekhar Singh, Shri Subash Chandra Agrawal; Shri Shailesh Gandhi, former CIC; Shri Nripendra Misra, Public Interest Litigation; on the 6th November, 2013 and Shri Nilotpal Basu, Communist Party of India(Marxist) on the 27th November, 2013 (detailed list at **Annexure-C**).

* Rajya Sabha Parliamentary Bulletin Part-II (No. 51260) dated the 12th September, 2013.

5. The Committee also sought the views of all National and State Political Parties on the Bill. Nationalist Congress Party, Communist Party of India, Indian National Congress, Communist Party of India(Marxist), Desiya Murpokku Dravida Kazhagam submitted their written comments thereon.

6. While considering the Bill, the Committee took note of the following documents/information placed before it :-

- (i) Background note on the Bill submitted by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions;
- (ii) Cabinet Note No. 1/13/2013-IR dated the 23rd July, 2013;
- (iii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Personnel and Training thereon;
- (iv) Reply furnished by the Department of Personnel and Training to questionnaire on the Bill;
- (v) Reply furnished by the Department of Legal Affairs to questionnaire on the Bill;
- (vi) Views expressed during the oral evidence tendered before the Committee by the stakeholders on the 6th and 27th November, 2013 and during its Study Visit;
- (vii) Comments furnished by various recognized Political Parties on the Bill; and
- (viii) Other research material/ documents related to the Bill.

7. The Committee adopted the Report in its meeting held on the 13th December, 2013.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
13 December, 2013

SHANTARAM NAIK
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

The Right to Information (Amendment) Bill, 2013 seeks to amend the Right to Information Act, 2005 in order to nullify order of full Bench of Central Information Commission (CIC) of 3rd June, 2013 (resting in File No. CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838) bringing six national political parties (AICC/INC, BJP, CPI(M), CPI, NCP and BSP) under the ambit of RTI Act by making liberal interpretation of the term 'public authority' mentioned under Section 2(h) of the RTI Act.

2. The Statement of Objects and Reasons appended to the Bill mentions that the political parties are not public authorities since they are neither established nor constituted by or under the Constitution or any other law made by Parliament. They are rather registered/recognized under the Representation of People Act, 1951 and Rules/Orders made or issued thereunder. Provisions of the Representation of People Act, 1951 as well as the Income Tax Act, 1961 deal with transparency in the financial aspects relating to the parties and their candidates. Declaring political parties as public authority under the RTI Act would hamper their smooth internal functioning; party rivals may misuse the provisions of the RTI Act adversely affecting the functioning of political parties. Moreover, the objective of the said Act is not to include political parties under its ambit. Since the decision of CIC is binding upon the parties in view of Section 19(7) of the RTI Act, the Statement of Objects and Reasons has also mentioned that aforesaid amendment to keep political parties out of ambit of the RTI Act will have retrospective effect from the date of decision of CIC, i.e., 3rd June, 2013.

3. While passing the order the full Bench of the Central Information Commission set aside its single Bench Order of 8th July, 2009 in complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 wherein

that Commission could not agree that political parties could fall within the definition of public authority as defined under Section 2 (h) of the RTI Act.

4. The CIC while arriving at its decision has primarily laid out following arguments:-

- i) Political parties can be said to have been constituted by their registration by Election Commission of India (ECI), a fact akin to establishment or constitution of a body or institution by an appropriate Government;
- ii) Substantial (indirect) financing of political parties by the Central Government in multiple ways which includes allotment of land in Delhi and State capitals, Government accommodation/bungalow on concessional rent in prime areas of Delhi, total exemption of their donation from income tax under Section 13 A of Income Tax Act, 1961, free air time on Doordarshan and All India Radio and free electoral rolls by Election Commission;
- iii) Performance of Public duties by the political parties. Being unique institution they wield controlling influence directly or indirectly on the exercise of Government power in spite of being non-governmental; and
- iv) Political parties enjoy constitutional and legal rights and liabilities.

5. The CIC has *inter-alia* directed six national political parties to designate Central Public Information Officers (CPIO) and the Appellate Authorities at the Head Quarters within six weeks period from the date of its order.

6. The Bill proposes insertion of an explanation to Section 2(h) of the Act to exclude all political parties both recognized and registered from

the ambit of public authority in relation to the RTI Act. The Department of Legal Affairs in its opinion through the reply to the questionnaire to the Committee has agreed that the ratio of the order of CIC dated the 3rd June, 2013 may be applicable to 1444 odd political parties including 52 national and state political parties, if criteria laid down by it is established in their case.

7. The Committee noted the justification to the proposed amendment given in the Cabinet Note No. 1/13/2013-IR dated the 23rd July, 2013 to annul erroneous decision arrived at by CIC by liberal interpretation of the term 'public authority' in relation to RTI Act:-

- Registration of political parties under Section 29 A of the RP Act, 1951 with Election Commission of India cannot be construed as akin to establishment or constitution of body or institution by an appropriate Government.
- Misuse of the Act by political rivals with malicious intention which may adversely affect smooth functioning of political parties which is neither the object of the Act nor was envisaged by Parliament under the Act.

Deposition of Secretary, DOPT

8. The Secretary, DOPT, which is nodal Ministry for the Act submitted that many non-Governmental organizations¹ have been declared as public authority in relation to RTI Act on the grounds of substantial financing by the appropriate Government, by the judiciary. He justified the amendment to the Act on the ground that possible political misuse of the Act by political rivals which would destabilize the political party which is not the objective of the Act. Existing provisions in the RP Act, 1951 and the Income Tax Act, 1961 ensure transparency in

¹ Indian Olympic Association, Chandigarh, Lawn Tennis Association, Chandigarh Club, India International Centre, Delhi Public School, Rohini

the financial aspects of political parties. He added that all information including financial information which are not exempted under Section 8 of the Act needed to be shared if the order of CIC is not nullified.

Stand of Recognized Political Parties

9. All six national political parties except CPI which were respondent to the CIC order of 3rd June, 2013 were categorical in their assertion that political parties are not public authority in relation to RTI Act. The Committee sought views of all recognized national and state parties on the proposed legislation. Till date INC, NCP, CPI, CPI(M) and Desiya Murpokku Dravida Kazhagam (DMDK) have submitted their views which are in support of proposed amendment. However, the BJD through its Member in the Committee, has categorically asserted that his party firmly opposes the proposed amendment and fully supports the spirit and tenor of the CIC order.

10. By and large, the political parties are in favour of transparency in their financial matter in larger public interest, which according to them, already exists.

Views of Civil Society

11. The Committee gathers from the evidence submitted to the Committee that the larger view of the civil society is in opposition to the proposed amendment to RTI Act. They are of the view that information relating to financial matter of political parties need to be shared with public as bulk financing to political parties is under Rs.20,000 which is not reported to Election Commission of India and Income Tax Authorities and is therefore unaccounted for. Some of the political parties have reportedly been in receipt of contributions from foreign sources in

contravention of Section 29B of the RP Act, 1951 and corresponding provision in the Foreign Contribution (Regulation) Act, 2010. While one Section is for transparency in functioning of political parties and sharing of information relating to selection/rejection of the candidates, election strategies, etc. in addition to information relating to financing of parties for the sake of good governance and electoral reforms, the other section is interested only with the information relating to financing of political parties. However, all of them suggested to the committee that amendment to RTI Act is unnecessary as inbuilt provisions to give exemption to the information of competitive nature is provided under Section 8 of the Act. They were of the view that the information which political parties have reasons to believe to affect its internal functioning can be sought to be exempted. All of them have requested to the Committee to recommend to Government to withdraw the Bill in larger public interest.

Opinion of Attorney General

12. Attorney General for India in his deposition has offered following opinion:-

- Proposed amendment to RTI Act excluding Political Parties from the definition of public authority may not withstand constitutional challenge as it is creating a class within a class without having any consideration to the principle of intelligible differentia having reasonable nexus with objective of the Act (promotion of transparency and accountability).
- Political Parties are foundation of democracy and need to be given sufficient protection from malicious and motivated

application for which safeguards already exist under Section 8 of the Act.

Instrumentality of Government vis-a-vis instrumentality of State

13. Representatives of some political parties submitted that political parties are neither instrumentality of Government nor funded by the Government, therefore, they cannot be treated as public authorities in relation to RTI Act. The Committee noted that preamble to the RTI Act clearly mentions that Government and its instrumentalities are accountable to the governed for the sake of transparency and accountability under RTI Act. Department of Legal Affairs in their replies to the questionnaire have stated that instrumentality or agency of the Government is not restricted to entities created under or by statute. A body upon which the Government has merely regulatory control could be instrument of Government if that body is substantially financed by the appropriate Government either by direct or indirect manner. The judgement of Supreme Court in the *Thalappalam Service Cooperative Bank Ltd. Vs. State of Kerala* delivered on 7th October, 2013, may be referred to wherein even private organizations (NGOs) which are substantially financed by the appropriate Government in direct or indirect manner are also instrument of Government and public authorities in relation to RTI Act in view of Section 2(h)(ii) of the Act. All bodies having deep and pervasive control of Government are instrumentalities of State. Both instrumentalities of State and Government are public authorities in relation to RTI Act.

Substantially financed by Appropriate Government

14. Department of Legal Affairs in their reply to the questionnaire have submitted to the Committee that funding from Consolidated Fund of India / State is not the sole criterion to determine whether the body is

substantially financed. Even financing in indirect manner i.e. grant of plot of land at concessional rate, tax exemption are also other criteria to declare a body as instrument of Government in relation to RTI Act.

15. It is clarified to the Committee that political parties are voluntarily association of individuals. However, those cannot be construed as constituted or established under the law unless and until they are registered under the Act(s) of Parliament/State Legislature. The Department of Legal Affairs have submitted that there is no legal bar to any association of individuals without being registered with ECI to contest election. Registration with Election Commission would enable political parties to get the benefit of Part IVA of the Representation of People Act i.e. getting contribution in terms of Section 29 B of the RP Act, 1951.

16. The Committee also noted that following provisions in other existing laws ensure adequate transparency in respect of financial matters of political parties and their candidates which have been stressed as grounds for not bringing political parties under RTI Act

- Declaration of contribution received in excess of Rs.20,000/- from any individual and non governmental companies to Election Commission which that Commission put on its website (Section 29C of the RP Act, 1951, read with Rule 85B of the Conduct of Election Rules, 1961).
- Declaration of assets and liabilities by elected candidates for a House of Parliament (Section 75A of the RP Act, 1951)
- Maintenance of correct account of election expenditure of the candidate (Section 77 of the RP Act, 1951)

- Lodging of account of election expenses by the candidate with District Election Officer (Section 78 of the RP Act, 1951)
- Disqualification of the candidate for failing to lodge election expenses by Election Commission (Section 10A of the RP Act, 1951)
- Penalty for filing false affidavit (Section 125A of the RP Act, 1951)
- Direction from Election Commission of India to political parties to submit their accounts within 90 days after general election in case of Lok Sabha and 75 days in case of Assembly elections (last issued on 21st January, 2013)
- Inspection of accounts of candidate of political party and obtaining the same from ECI on payment of nominal charges (Section 88 of the RP Act, 1951)
- Declaration of assets and liabilities to the Ethics Committee of House by the Members of Parliament

Recommendation / Observations of Committee

17. The Committee observes that the aspects of transparency of the financial matters of the political parties are fully covered under the laws and mechanisms as referred to above.

18. The Committee understands that none of the six political parties, who happened to be respondent to CIC Order of 3rd June, 2013, challenged the order in the higher judiciary. That was an option with those political parties, which they did not exercise, as the instant case is a case of misinterpretation of a clear provision of law.

19. The present amendment has been brought by the Government with a view to resolve the issue whether political parties are public authorities or not by specifically excluding them from the RTI Act so as to completely avoid the scope of ambiguity. The Committee considers that proposed amendment is a right step to address the issue once for all. Committee, therefore, recommends for passing of the Bill.

20. In the course of deliberations, the Committee's attention was drawn to the sustainability of legislation in the court of law. In this connection, Committee noted the suggestions made by Attorney General of India vis-a-vis Law Secretary. The Attorney General of India was apprehensive that this law would not sustain the test of judicial scrutiny as it was creating a class within a class without having any consideration to the principle of intelligible differentia having reasonable nexus with objective of the Act, whereas the Law Secretary was of the view that it was quite sustainable since Parliament has legislative competence to override the CIC decision. The Committee, however, subscribes to the opinion expressed by the Law Secretary.

21. The Committee is of the strong view that laws should not be laid down through a process of misinterpretation of clear provisions of law.

Minutes of Dissent submitted by Ms. Anu Aga :

I consider political parties to be public authorities because they get substantive financial funding from the Government of India. For example:

- Allotment of land in prime areas of the national and state capitals at subsidised rates.
- Allotment of bungalows at highly subsidized rates.

- Free airtime on Doordarshan and All India Radio during Lok Sabha and State Assembly elections.
- Tax exemption on donations.

2. Political parties compete in elections to receive a mandate from the public to form the Government and therefore they are very different from ordinary NGOs or media houses or indeed any other private associations.

It is in the public interest that Political Parties disclose information about themselves to citizens because parties are the most essential ingredient for the functioning of our democracy-they perform a public duty, they have a public function and they have a legal basis.

3. There is concern among the Political Parties that if they come under the RTI Act their rivals will use RTI applications to get critical information and their strategies. However, under the Section 8(1) (d), there is no obligation for any public authority to give to a citizen "information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party".

To further safeguard this concern, the Supreme Court or Central Information Commission itself could issue a clarification with special reference to exempting a political party from voluntary disclosure on matters that give its rivals/competitors information about its strategies.

4. There is currently very little transparency about the financial affairs of political parties. They are only required to submit expense reports to the Election Commission during elections, and income tax statements to the tax authorities. But more than 80% of their income is from "unknown" sources, as was revealed in a recent RTI application. Their tax exempt status is contingent on their filing tax returns. But non-filing

attracts no penalty, nor recovery of taxes. The Election Commission can register, but not de-register or penalize parties in any way. So it is very important that their finances be disclosed via RTI framework.

Most importantly if political parties are to play a critical role in improving governance, they themselves must submit to higher standards of transparency and accountability. It is of utmost importance that financing and expenses of parties be completely transparent.

Sd/-

(Anu Aga)
Member, Rajya Sabha
