

**SHOULD POLITICAL PARTIES COME WITHIN THE
AMBIT OF THE RIGHT TO INFORMATION ACT?**

CENTRAL INFORMATION COMMISSION

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ABSTRACT

The issue regarding political parties coming within the ambit of the Right to information (RTI) Act, 2005 has been a longstanding one where the political parties have resisted this move on the ground that they are not public authorities as per the RTI Act. On the other hand, civil society/activists have been demanding that there should be complete transparency in their activities. Various Commissions, including the Law Commission and Election Commission have recommended that political parties should adopt measures to promote transparency and accountability in their activities. The criticality of the role being played by the political parties in the democratic set up and the nature of duties performed by them are critical in ascertaining the nature of their activities and to analyse if they fall within the purview of Section 2(h) of the RTI Act, 2005.

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INTRODUCTION

The political parties coming within the ambit of the Right to Information Act 2005 (hereinafter referred as RTI Act) has been a longstanding issue under debate/discussion and has not been resolved till now. Political parties have opposed this move on the ground that they do not fall in the category of public authority as per the RTI Act. Major national parties including the Bhartiya Janata Party (BJP), the Indian National Congress (INC) and the Communist Party of India (CPI) have expressed their displeasure towards the RTI on grounds such as interference in internal affairs of parties. These national political parties have also been claiming that they are transparent as their finances are already in the public domain. Under the Income Tax Act, 1961 they have been submitting their income tax returns to the IT department and their contributions report – which only includes donations above Rs 20,000 – to the Election Commission of India as per the Income Tax Act, 1961.

The idea behind this move involves the criticality of the role being played by the Political Parties in our democratic set up and the nature of duties performed by them, which also point towards their public character, bringing them in the ambit of section 2(h) of the RTI Act.

The ideology behind enacting the RTI Act was to usher in transparency in the working of different Public Authorities and to impart depth to public responsive functioning of the Government and its various agencies. The impetus for operationalising the right to information, a fundamental (human) right that is enshrined as such in Article 19 of the Indian constitution, arose primarily out of the failure of the government to prevent corruption and to ensure effective and empathetic governance. Thus, it has become a significant tool to ensure transparency in most of the Government institutions that are working for the benefit of the people of the country. The concept of secrecy is detrimental to the foundation of democracy and according to the Woodrow Wilson, the 28th President of the United States of America, “I for one have the conviction that government ought to be all outside and not inside. I, for my part, believe that there ought to be no place where everything can be done that everyone does not know about. Everyone knows corruption thrives in secret places and avoids public places.”

Movements like the RTI try and make the system face up to its own contradictions and try to force the State to respond to the demands of the people. The political parties at this point of time are not accountable to anyone and they publish funding details as per their discretion. Bringing them within the ambit of the RTI Act will make them more accountable. Moreover, the Act also provides for ‘Suo motu’ disclosure where the parties will have to disclose various aspects of the functioning of their parties. The party information to be declared can include minutes of various meeting, information about the internal election processes etc.

The political parties have been very vocal about political parties not coming within the purview of RTI Act as they claim that it goes against the autonomy of the parties.¹ However, political parties act as a link between the citizens and the government and therefore it is a given that the parties must be accountable to the public at large. Political parties are the major stakeholders in democracy and they seek to undertake activities that are in the interest of the general public.

¹ Government of India’s counter affidavit before Supreme Court [2015] WP (C) No 333 of 2015.

NEXUS BETWEEN POLITICAL PARTIES AND RTI LAW

Political parties have constitutional and legal rights-and-duties on account of the following:

Political Parties are required to be registered with the Election Commission of India (ECI) under Section 29A of the Representation of the People Act, 1951. It is implied that political parties so registered must furnish information to the public under the right of information under Article 19(1)(a) of the Constitution of India. 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 the Representation of the People Act.²

The political parties also have a public character, which entails that they must pass the test of being declared a “public authority” under section 2(h) of the RTI Act. The section 2(h) states that in addition to the government bodies, those organizations should also come under RTI that fulfil the eligibility mentioned in 2(h)(d)(i)³ or 2(h)(d)(ii)⁴:

2(h) "public authority" means any authority or body or institution of self-government established or constituted—

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;

The political parties can be declared a public authority by either being directly or indirectly funded by the government. It is also seen that several non-governmental bodies that have been declared as Public authority and have been brought under RTI Act are Indian Olympic Association, Sutlej Club Ludhiana, Christian Medical College and Hospital Ludhiana, Chandigarh Lawn Tennis Association (CLTA), Sanskriti School Delhi, St. Mary’s School Delhi, KRIBHCO, NCCF, NAFED, Population Services International – these bodies have been declared as public authorities by either the decisions of CIC/SICs or judgements of various other Courts. In Central Information Commission’s order CIC/AT/A/2007/01029&01263-01270, dated 29.04.2008, it was held that even though political parties are non-governmental but they wield influence. The judgement stated, “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.”

² Petition filed by Association of democratic reforms in Supreme Court [2015].

³Right to Information Act 2005, s 2(h)(d)(i).

⁴Right to Information Act 2005, s 2(h)(d)(ii).

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. For example, in the case of Indian Olympic Association (IOA) vs Veeresh Malik & Ors⁵, the Delhi High Court Judge Justice Ravindra Bhatt has ruled that even a body like IOA that was never established by a government order or notification should be public authority because it is substantially financed by government funds. The Judge also ruled that RTI clause 2(h)(d) and clauses 2(h)(d)(i) & 2(h)(d)(ii) are independent of each other and are not to be read together and can be interpreted separately⁶.

The government funds the political parties directly and indirectly in the following ways⁷:

1. **Allotment of land in Delhi**: Indirect Financing of political parties by allotment of large tracts of land in prime areas of Delhi either, free of cost, or at concessional rates.
2. **Allotment of land in State Capitals**: Allotments of land to political parties in State Capitals as well.
3. **Accommodations/Bungalows at Concessional Rentals**: Directorate of Estate has allotted bungalows to political parties in Delhi at highly concessional rates; this is also a form of indirect financing of the Parties.
4. **Total Tax Exemption**: Central Government also provides to political parties' total exemption from the payment of income tax against the incomes of the parties under section 13 A of the Income Tax Act 1961. Income from donations/ income of electoral trust distributing its income/ contribution / surplus to political parties is also exempt under the Income Tax Act 1961(Section 13B) including any sum contributed by Indian company to any political party (Section 80 GGB). The following incomes derived by a political party are also not included in computing its total income.
 - a. Income chargeable under the head 'Income from House Property'
 - b. Income chargeable under the head 'Income from other sources'
 - c. Income by way of capital gains
 - d. Income by way of voluntary contribution from any person.

Also, vide Taxation Law (Amendment) Act 1978, indirect subsidy was given to political parties by not charging income tax on certain sources/ heads of income, which was later on further extended vide Finance Act, 2003. This step was taken to give financial assistance to political parties indirectly. While such incentive/ deductions are given to other entities only to promote certain socioeconomic objectives and not to give financial subsidy as such.

⁵ *Indian Olympic Association v Veeresh Malik & Ors.* [2010] WP(C) NO 870/2007.

⁶ Ibid

⁷ Political Parties under RTI: Myths Busted, [https://adrindia.org/sites/default/files/FAQ-%20RTI%20&%20Political%20Parties%20\(2\).pdf](https://adrindia.org/sites/default/files/FAQ-%20RTI%20&%20Political%20Parties%20(2).pdf) accessed on 19th May 2019.

Exemption to political parties is given without conditions while socio-economic incentives given in the income tax act are subject to fulfilment of certain conditions.⁸

5. **Free Airtime on Doordarshan & All India Radio:** During Lok Sabha Elections and State Assembly Elections, Political Parties are allotted airtime slots on Doordarshan and All India Radio absolutely free of any charge.

Thus, the State contributes in the working of all the political parties and its not restricted to only the national parties but applies to regional parties as well. Hence, by taking into consideration 2(h)(d)(1) and (2) we observe that non-government organisations will also fall within the ambit of the RTI if they are substantially funded by the appropriate government.

In most of the cases, the funding doesn't take place directly but rather indirectly through tax exemptions, providing the parties prime properties at subsidised rates and giving them free air time on Doordarshan and All India Radio. This means making use of the public resources and thus there needs to be accountability in the functioning of the political parties.

Public resources are being invested in these institutions as they are an integral stakeholder in the arena of democracy and they present to the citizens various options from which they can choose. Thus, the citizens have a right to know about the affairs of the political parties since these entities affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty.

They are also unique institution because inspite of being non-governmental, they come to wield influence on the exercise of governmental power directly or indirectly. It would be odd to argue that transparency is good for all State organs but not so good for political parties, which, in reality, control all the vital organs of the State. The leaders of opposition parties also chair various parliamentary committees and this means that are also playing a part in the governance of the country. The parties do have an obligation towards its citizens to be transparent about the way they function.

INCOME AND EXPENDITURE OF THE PARTIES

Political parties rely heavily on donations for contesting elections and running their daily affairs. They receive huge sums of money in the form of donations and contributions from corporate, trusts and individuals. Section 29C of the Representation of People Act, 1951 mandates that political parties must submit their contribution details received in excess of Rs 20,000 from any person or a company to the ECI annually in order to enjoy a 100% tax exemption. Section 29C states:

29C. Declaration of donation received by the political parties. —

- (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following,

⁸ ibid

- namely: — (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;
- (2) (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

It is submitted that full details of all donors and their donations should be made available for public scrutiny under the RTI. It is noteworthy that the same is already in practice in various countries such as United Kingdom, Germany, United States of America, Australia, Japan, and Philippines.

The recent political funding reforms proposed in the Union Budget by the finance minister may not be adequate to tackle the real issue of bringing complete transparency in political funding through the RTI Act. While the common man is being asked to account for every penny, it is distressing to see how the funding for national political parties have gone unaccounted inspite of having declared an astounding total income of Rs 9278.3 crore between FY 2004-05 and FY 2014-15. Between FY 2004-05 and 2014-15, national political parties have received the highest amount worth Rs 4,453 crore from voluntary contributions/donations, which forms 48% of the total income of national political parties.⁹

National parties have provided some details of donors accounting for Rs 1,405 crore donations, which forms only 31.55% of the total income of political parties through voluntary contributions/donations. For the rest 68.45% amounting to Rs 3048 crore, they have evaded declaring any details, thereby exploiting the existing rule under section 29C of the Representation of the People Act, 1951, which exempts them from declaring any donations below Rs 20,000.¹⁰

The second highest source of income is ‘sale of coupon’ from which parties have received Rs 3161 crore, which forms 34% of the total income of national political parties. Sale of coupon is a system adopted by political parties for collecting funds by issuing coupons in lieu of receipts to donors for cash contributions. Moreover, these are cash donations which makes it all the more difficult to establish the identity of the donor. This implies that a lot of cash donations received remain unaccounted for in the books of accounts, as only those amounts would be recorded for which a receipt has been issued.

The unknown sources are the income that are declared in the IT returns but without giving a source of income for donations below Rs 20,000. For 11 years, between FY2004-05 and FY2014-15, national political parties have received 71% of their total income which is worth Rs 6612.42 crore¹¹ from sources that cannot be traced and are therefore unknown. On an

⁹Vaishali Rawat and Hemant Singh, “why there is an urgent need to bring political parties under the RTI Ambit” *The Wire*(7th Feb 2017) <https://thewire.in/politics/why-there-is-an-urgent-need-to-bring-political-parties-under-the-ambit-of-rti> accessed on 19th May 2019.

¹⁰ John Hudson, “The Most Expensive Elections in History by numbers,” *The Atlantic*, 6 November 2012.

¹¹ Devesh K. Pandey, “Rs. 150 crore, 2 lakh dhotis: why EC pulled the plug on polls in 2 TN constituencies,” *The Hindu*.

average, this comes to Rs 601.13 crore each year for six national parties collectively¹². This indicates that the parties are actually given a free reign to procure money for themselves and the people would not have any clue as to where it has come from or who has donated it.

Campaign Funding:

Corporates - Corporates have increased their control over the political arena by funding political parties and their election campaigns. It is apprehended that the corporates derive benefits when the party comes to power so it works like a *quid pro quo* arrangement between corporates and national parties. Corporate houses can make contributions to the political parties in two ways that is either by directly donating or through an electoral trust.

Electoral trusts – This is another way of disguising corporate influence because the contributions received by the trusts from companies and individuals cannot be linked to contributions distributed by the trust to political parties. This is because trusts aggregate contributions collected from donors to create a pool and then distribute it to selected political parties, therefore tracking becomes difficult.

There are no existing guidelines on electoral trusts which were established before 2013. As a result, details of donors to six electoral trusts that had donated a total amount of Rs 112.5 crore to the national parties between FY 2004-05 and FY 2012-13, remain unknown, thereby leading to speculation about these donations as no transparency exists in the system. Around 40% of the total donations that are in the public domain are either from anonymous sources or have incomplete details.¹³

Foreign funding – The Foreign Contribution Regulation Act (FCRA), 1976, prohibited political parties from accepting contributions from foreign companies or companies in India controlled by foreign companies. Nevertheless, in violation of the law, a total of Rs 29.26 crore was in total accepted by BJP and Congress from such companies between FY 2003-04 and FY2011-12. In 2014, Delhi High Court gave a landmark judgement which stated that both BJP and Congress were guilty of violating FCRA norms, that were pertaining to violations only until 2009.¹⁴

Electoral Bonds – The Union Government in 2017 introduced the electoral bonds in the Union budget for clean money and it was believed that it would bring transparency into the system. The Finance Act, 2017 amended various laws, including the Representation of the People (RP) Act of 1951, the Income Tax Act, 1961 as well as the Companies Act, 2013. There were also changes in the Foreign Contribution (Regulation) Act of 2010.

The amendment to the Representation of the People Act, 1951 allows political parties to skip recording donations received by them through electoral bonds in their contribution

¹² Association for Democratic Reforms report, 8th January 2014.

¹³ *ibid*

¹⁴ *Association for Democratic Reforms v Union of India & Ors.* [2014] WP(C) 131/2013.

reports to the ECI. This move provides no way for Election Commission of India to ascertain whether the donations were received illegally by the political parties and coupled with the removal of the cap on foreign funding it prevents EC from having a check on the source of funding.

Therefore, an overhaul of the present system is required and if the political parties come within the ambit of the RTI then these discrepancies would be considerably reduced as all these records will have to be in public domain.

Timeline of action taken by different stakeholders for bringing Political Parties within the ambit of RTI

October 29th, 2010 - RTI was filed by Association for Democratic Reforms (ADR) which sought information on donations and contributions received by political parties. The CPI(M), INC and NCP refused to come under the RTI. BJP and BSP did not even bother to respond to the RTI Application but CPI furnished the information desired.

March 2011 - Complaint with the CIC filed on the basis of above replies. The matter was heard by the full bench of CIC on several occasions and finally pronounced its decision on June 3rd 2013.

June 3rd, 2013- Landmark judgement declared by full bench of the CIC which stated that political parties will come within the ambit of the RTI.

August 12th, 2013- The Right to Information (Amendment) Bill, 2013, was introduced in Lok Sabha.

September 12th, 2013- From Rajya Sabha Honourable Chairman referred the Bill to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice.

November 21st, 2014- Show-cause noticed issued to the Political Parties by the Commission on the Non-compliance of their 3rd June, 2013 order

November 28th, 2014 - Interim order by the Commission ordering Six Political Parties to appear before the Commission for the hearing dated 21st November,2014 but the political parties did not appear.

March 16th, 2015- CIC issued an order of non-compliance with respect of the political parties and stated that the order of June 3rd 2013 is final and binding.

May 19th, 2015- PIL filed by ADR in the Supreme Court to bring the political parties within the ambit of the RTI

July 22nd,2016- Complaint filed by R.K Jain and other petitions were also clubbed for hearing. The original bench constituted of three members which heard the matter for 5 months but then the Chief Information Commissioner, RK Mathur constituted a new bench comprising of himself and three other information commissioners. The hearing with the new bench was to start on 16th August 2017.

February 2017 – CPM moves the Supreme Court against the electoral bonds scheme introduced in the budget

March 2019 – the electoral bonds introduced by the BJP government came under fire and the matter is still pending in the Supreme court.

April 7th, 2019 – Ashwini Upadhyay, BJP leader and advocate filed a petition in the SC with a plea that the all political parties must come within the ambit of the RTI

THE TWO SIDES- FOR AND AGAINST

The two sides which constitute the ongoing debate regarding political parties coming within the ambit of the RTI are the different stakeholders affected on each side. The ones supporting this move are the activists who represent the citizens as well as some members of the political parties themselves who state that the political parties are part of a democratic set up, which implies that they need to comply with certain rules that ensures transparency and accountability.

The side opposing the move to bring the political parties within the ambit of the RTI constitute the political parties who think that being brought within the RTI would restrict the functioning of the parties and they vehemently oppose this move by stating that they are not public authorities. The political parties state that they are autonomous bodies who should not be treated like the government bodies which have to respond to the RTI's and do not come within the ambit of Section 2(h) of the RTI Act. One of the fears of the opponents of RTI when the provisions of this law were publicly debated before this law came into being in 2005 was that the public authorities are going to be flooded by RTI applications.

However, nothing of that sort happened to the public authorities which had come within the ambit of the RTI. So far as political parties are concerned, information in which most of the people will be interested will be about the issue of funding that political parties receive. 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 of information will invariably reduce the number of RTIs received by any organisation.

This will actually make the system transparent and robust as questions won't be raised with regard to source of funding since everything will be on the websites of the parties. It will also include the sources so this will clarify all doubts that citizens might have with regard to the legitimacy of where the money is coming from. Thus, the argument that the political parties will be flooded with large number of RTIs' that will hinder the work is not a maintainable since other public authorities are also able to handle the RTIs' received by them.

Political parties also state that the political rivals may also ask for information which is not really required and could be using the RTI tool with malicious intent resulting in the misuse of the Act. Another reason given by the political parties is that the information required is already on the website of the Election Commission so there is no need to include them in the ambit of the RTI.

The side which proposes this move has some important points viz., under Section 29A of the Representation of the People Act, 1951 all political parties must affirm their allegiance to the Constitution of India and such allegiance is made compulsory for the purpose of registration under sub-section (7) of Section 29A. Therefore, political parties so registered must furnish information to the public under the right of information under Article 19(1) (a) of the Constitution of India, since right of information has been held to be a part of freedom of speech and expression under Article 19(1)(a).

If political parties are kept out, it sets a precedent whereby other institutions can argue that they too be kept out of its purview because there are too many frivolous claims, too much paperwork and as a whole a burden for them. But this cannot be a legitimate reason for keeping the parties out of the purview of the RTI. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties which will further help in bringing forth a new system where the parties will have to be accountable for their actions in the long run.

Political parties are central to a democracy, which would imply that information needs to be voluntarily disclosed for the citizens to review as they have a right to know about the political party they are going to elect to power. Bringing them into the fold of the RTI will mean that they will have to disclose the information on their own which will help in bringing forth transparency for the voters who can ask for more information if they at any point feel that the required information is not being disclosed. One of the essential elements for bringing forth an RTI application is the public interest that it serves and the criticality of the role being played by these political parties in our democratic set up along with the nature of duties performed by them point towards their public character.

POLITICAL FUNDING: GLOBAL EXPERIENCES

In democracies around the world, monetary funding is a critical aspect of electoral politics. The standpoint with regard to political parties coming within the ambit of RTI are very different around the world but the common aspect with regard to political parties is that of transparency with regard to campaign finance or simply put funding for the political parties. In India, political parties seek donations from all possible sources which range from “legal” to “interested/illegal” money¹⁵. This has serious ramifications for the integrity of democracy as transparency does not exist, which is an essential constituent of democracy. An increasing number of countries, have taken the path of public subsidies, which are declared and direct funding of parties and their political activities that further aims to reduce the dependence on interested money, equalise political opportunity and bring greater transparency and accountability to democratic processes. By better targeting state subsidies, countries like Germany and the UK, for example, have made strides in reducing the role of “interested money” in elections and bringing visible transparency in their electoral politics.

The Union government has tried to introduce various policies which aim to keep a check on the financing that the parties procure. However, these fail to tackle the structural issues surrounding political finance in India. Huge amount of funds is being used to contest elections and the 16th Lok Sabha Election was the second most-expensive election after the 2012 US presidential elections. The figure was a mammoth INR 30,000 crore (approximately US\$5.5 billion).¹⁶ On an average each candidate fighting spent around INR 5–10 crore to run their campaign.

To reduce dependency on big money and to encourage participation from newer and aspiring politicians in the democratic process, many democracies have embraced broad-based reforms in political finance. Some democracies, for instance, have sought to establish strong disclosure norms, institutionalise contribution, spending limits, ban on corporate donation, campaign time limits, and other strategies. However, the most common electoral finance reform in many countries in the recent decades has been the introduction of a system of public funding of political parties, whether full or partial.

Public financing of elections and parties (and in some cases, candidates) is a recent development in most democracies, although the concept is over a century old. Incidentally, the Latin American countries were the first to introduce state subsidies for political parties. It was Uruguay that introduced state subsidies in 1920s, which was later borrowed by Costa Rica and Argentina. Now, more than seven Latin American democracies have state funding.

Germany introduced state funding in the 1950s, a model that has now been copied by many democracies including the UK and France. In the case of the US, public financing

¹⁵ Niranjan Sahoo, Towards Public Financing of Elections and Political Parties in India: Lessons from Global Experiences (2017) <https://www.orfonline.org/research/towards-public-financing-elections-political-parties-india-lessons-global-experiences/> accessed on 21st May, 2019.

¹⁶ John Hudson, “The Most Expensive Elections in History by numbers,” *The Atlantic*, 6 November 2012.

of political parties took shape during the tenure of President John F. Kennedy in 1960s. Public funding of the presidential general election was formally introduced in 1966, and after the Watergate scandal, the concept gained serious traction in the US. In short, public financing of political parties and elections seems to be the most common reform across the world. As many as 116 countries (68 percent) have introduced direct public funding to political parties. A majority of European countries (86 percent) provide state subsidies to political parties, with Germany and the UK being the leading examples.¹⁷

In Canada, public funding was introduced along with stringent regulations, including spending ceilings and tax incentives for smaller contributions. While tax incentives for corporate donations was unsuccessful in India, tax incentives for small contributions may enable parties to generate more income from such contributions and reduce their reliance on corporate donations.

The original theoretical justification of political finance regulation, especially the public funding proposal, is based on the normative goal of “equalising influence,” an effort that goes on to ensure that certain powerful groups or individuals do not exercise undue influence in electoral processes. According to its proponents, political equality propagates the concept of “equal political influence,” meaning no citizen should have more power over the political process than other citizens. This implies that wealth or money should not translate into more control over the political process, or conversely, poverty should not severely diminish one’s political power. The principle of “one person, one vote” is a natural expression of the belief in the intrinsic equality of citizens.

In addition to this, there is the public-interest argument in favour of campaign finance regulation and public financing of elections: they benefit democracy and serve public interest. The public-interest rationale has its roots in John Locke’s *Second Treatise of Government* (1689). In it, Locke argued, “When we say that public office is a public trust with fiduciary obligations, we mean that elected representatives assume the role of trustees, with the duty of acting for the sole benefit of the citizens who elected them. And that, in turn, means they must not allow their decisions to be influenced by anything other than the welfare of the citizenry they have undertaken to serve.”

India’s political finance regime is under great stress for various reasons, but most significantly due to rising election expenses. Since there is limited internal democracy in the political parties, we see that the funds are also controlled by few and they take the responsibility to disburse the funds in a manner, which suits their own political agenda. This would imply that non transparency brings forth various problems which can be solved if the political parties are able to come within the ambit of the RTI as the transparency will start somewhere. There is implicit public funding of political parties when the state provides them tax exemptions as well as official party headquarters at prime locations in various states etc.

¹⁷ Magnus Ohman, *Political Finance Regulations around the World: An Overview of the International IDEA Database*, (Stockholm: International IDEA, 2012).

The US system of funding candidates for intra-party election is a successful method of tackling the problem. Therefore, to overcome the lack of competition in determining candidates, it is necessary to promote intra-party democracy via public funding. One of the suggestions made in this regard is to route subventions directly to local, constituency-level units of party organisations on the basis of their performance in the election. The benefits of this would include reducing the dependence on corporate donations and on party head offices, and it may lead to increased democratisation of the party. One problem with such an approach, however, is that the funding would be in terms of a post-election reimbursement.

Many committees appointed by successive governments in the last two decades have discussed various proposals of direct state funding of parties and elections. The report by the Law Commission (2015), which dealt with public funding issues, have argued against full state funding. Their rationale has been that the prevailing economic conditions and development needs make it infeasible to fund a large democracy. Instead, they have argued for partial subsidies in kind. On the other hand, the Law Commission Report (1999), Venkatachaliah Committee Report (2002) have insisted that regulatory frameworks dealing with transparency, disclosure, auditing and submission of accounts and internal democracy of parties must precede any attempt at complete state funding.

If the concept of state funding is introduced then it would imply that the state would be providing the resources to the political parties. This would simplify the system as the resources would be regulated and equalised which would create transparency. This can also mean that the State is a Public Authority and when it disburses funds which are collected from the public then it will have to disclose each and every amount spent.

The lack of expenditure ceilings for parties and others in support of candidates [prior to The Election and Other Related Laws (Amendments), 2003] and extremely low limits for election spending by candidates thereafter have resulted in frequent evasion of the regulations. For an ideal set up there needs to be a balance between state funding as well as a ceiling for the amount of corporate funding which will be allowed for each party at the state and central level. the country has made public funds the main source of income of the parties by imposing regulations on spending, mandating transparency and imposing bans on corporate donations. It is pertinent to combine public funding with spending ceilings and limiting, if not banning, corporate money in elections.

To sum up, evidence from global experiences clearly indicate that the public funding option cannot be a panacea for all the ills of a political finance regime. At best, it provides mixed results and greatly varies across countries. While it has shown plenty of promise in some democracies, it has failed in others. From the various observations, however, it is clear that to ensure that public funding is effective, a country must adopt a two-pronged approach: reducing the dependency on corporate/private money (by strict limits, strong regulations, disclosures) and infusing white money through state funding or incentivising various other funding options including tax-free donations or loans.

THE NEXT STEP

The next step in the chain is going to be the implementation of what has been conceptualised for the last couple of years and it is debatable as to who needs to implement it. This move can take place in two ways – one can be when the political parties themselves take the initiative to willingly comply with the order of the Central Information Commission dated June 3, 2013 or the Supreme court will have to give the final orders to bring the political parties within the ambit of the RTI.

The CIC gave its final order on June 3, 2013 which had declared six national political parties, namely the INC, BJP, CPI(M), CPI, NCP and BSP to be “public authorities” under Section 2(h) of the RTI Act, on a complaint filed by ADR and Mr. Agrawal but none of the parties complied with the order. The Commission’s order is binding as per Section 19(7) of the RTI act. The Supreme Court in the case of Namit Sharma vs Union of India held, “An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme Court in exercise of the Court’s jurisdiction under Article 226 and/or 32 of the Constitution, respectively.”

The Respondents have not questioned the order of 03.06.2013 before any court. Not only is the order legally correct, it is convincing from the standpoint of the aims and objectives espoused by the RTI Act with reference to transparency, accountability and access to information. No competent court has intervened in the matter. The political parties did not wish to be seen as barriers to accountability, hence did not question the Commission’s order in any higher court. The RTI (Amendment) Bill, 2013 seeking to keep political parties outside the purview of the RTI Act, was also allowed to lapse. There is no judicial or legislative intervention impacting the order. The crux is that the order of 03.06.2013 is valid, binding and final.

This particular judgement outlined what the jurisdiction of the commission was and till what extent could it give its orders. The Commission’s powers and functions are defined in chapter V of the RTI Act. There could be many situations requiring the Commission to step in, e.g., grievances against the CPIO for being evasive or delaying information. In this particular case it was seen that the political parties had not complied with the orders of the CIC as no CPIO’s were appointed and no replies were given to the RTI’s filed.

The Commission, having declared the respondents to be public authorities, is unable to get them to function so. This unusual case of wilful noncompliance highlights the need to identify the legal gaps and lacunae in the implementation mechanism.

This showed that the Commission was unable to make the parties comply with the orders that they had given and the petitioners then had to file a complaint in the Supreme Court. The petitioners through instant writ petition were seeking greater transparency and accountability in the functioning of all recognized national and regional political parties in the country. The case was between Association for Democratic Reforms and Subhash Chandra Agarwal vs Union of India and others which wanted the Supreme Court to enforce the particular judgement of the CIC but in response to this the government filed a counter affidavit which stated reasons as to why the political parties should not be seen as public authorities. The affidavit stated that the Commission had taken a very liberal stand with regard to the interpretation of “Public

authorities” and the interpretation with respect to including political parties in that ambit is not what the scope of the act originally was.

The matter is still pending in the Supreme Court and the court may try to combine all the cases which are related to political parties coming within the ambit of the RTI as all of them are fundamentally related to one another.

The political parties have been reluctant to include themselves within the ambit of the RTI as they very fundamentally oppose the move. This was also seen when the political parties introduced an amendment bill which had proposed to remove political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act. The Statement of Objects and Reasons of the Bill states that there are already provisions in the Representation of People Act, 1951 as well as in the Income Tax Act, 1961 which deal with transparency in the financial aspects of political parties and their candidates. It also adds that declaring a political party as public authority under the RTI Act would hamper its internal functioning and political rivals could misuse the provisions of the RTI Act, thus affecting the functioning of political parties. But no further action was taken and the bill lapsed as the respondents did not pursue any legislative action to insulate the parties from information-disclosure to avoid giving the impression of being opposed to transparency.

But the political parties don't have a plan to willingly disclose information or even come within the ambit of RTI. For enforcement, Supreme Court will have to declare in its order and unless that doesn't happen until then the political parties will have a free reign over them not being included within the RTI.

This highlights the limited ambit of the quasi-judicial body that is the Central Information Commission, which derives its powers from the RTI Act as the Commission was also constituted by the Act. A quasi-judicial body is a non-judicial body which can interpret law. It is an entity such as an arbitrator or tribunal board, generally of a public administrative agency, which has powers and procedures resembling those of a court. However, their powers are usually limited to a very specific area of expertise and authority and in this case the Central Information Commission's powers are restricted with regard to imposition of punishment in the case of non-compliance. In the case of *Delhi Development Authority vs Central Information Commission*¹⁸, the Delhi High court disapproved the CIC's claim that in addition to awarding compensation to complainants, it could impose costs as it deemed fit on authorities who illegally denied information.

The Act gives limited power to the Commission to only impose certain kind of penalties that can be imposed on the CPIO's for non-compliance and the powers which they have is not extensive which means that they can issue orders which can reprimand certain public authorities, issue show cause notices and impose fines. In the case of *G. Basavaraju v. Arundhati and Anr*¹⁹, the Karnataka High Court stated that Section 20 of the RTI Act, 2005

¹⁸ *Delhi Development Authority v Central Information Commission* [2010] WP (C) 12714/2009.

¹⁹ *G. Basavaraju v. Arundhati and Anr* ILR 2009 KAR 1053.

confers the Commission with the power to impose penalties by way of levy of fine and statutory right to recommend to the government for disciplinary action against the said CPIO, itself has the necessary power/ provisions in the form of provisions of Contempt of Courts Act. The Act can either be amended to extend its ambit as whole or to wait for the decision of the Supreme Court, the only authority who has the final say in this matter being the higher authority after the commission for RTI related matters.

CONCLUSION

The matter of political parties coming within the ambit of the RTI Act needs to be decided in the near future as it directly affects the democracy which this country prides itself over. Democracy needs transparency and accountability, which can only come when the key stakeholder viz., the political parties are also transparent about their activities.

The Union government introduced electoral bonds, which they thought would clean the electoral funding process but the electoral bond scheme of 2018 falls short of expectations as it enables companies, including trusts with foreign donations to contribute with the protection of anonymity and without restriction, to political parties. Enabling and facilitating funding through a scheme such as the electoral bond scheme is indeed innovative. However, the conspicuous absence of disclosures and enforcement of transparency leaves a gaping hole in checks and balances.

India needs to learn from other countries who have taken conscious steps to move towards a set up where they are transparent about the parties' campaign funding as that is the main concern of the citizens. The system without any exemptions would not work so there needs to be a well thought out plan which would take into consideration the needs of the parties also. The system needs to be well equipped in a manner that can take into account the needs of the different stakeholders and if they can come to a compromise with regard to certain things then it could work out.

The RTI can be a game changer for the transparency of the political parties where they will have to declare certain aspects of their working, which till now have been non-transparent. We can move towards this by learning from other countries and adopting certain aspects which are better suited for our country. The main focus should be making funding, public information so that questions that are raised are answered without actually having to file an RTI as the parties would have already practiced *Suo motu* disclosure. The political parties form a key component of the political system and the democratic set up and thus the parties have an obligation to be active participants. The political parties need to dispense away with the view that RTI will hamper their functioning. In fact, RTI will help them in embracing transparent practices and removing ambiguities that people may harbour with regard to functioning of the political parties.

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