



Ensuring Accountability of the Political Parties through RTI

Ananya Sharma

Assistant Professor

Rajiv Gandhi National University of Law, Patiala, Punjab

Abstract

Man has been endowed with the curiosity to know. He seeks to know how things work. The Right to Know or to get **Information** is a quintessential right that man has been vested with. We live in a system of responsible government where the people have the prerogative to find out about their government's doings. The **government** acts as a guardian of the citizens. It endows them with certain rights and at the same time, entrusts upon them, their responsibilities as law-abiding citizens. However, sometimes these rights are breached and duties are not considered significant. That's when the Right to Information comes to play. It helps to expose the faults in the government's work. The implementation of the Right to Information Act is one of the most far-reaching achievements of our Country as it strengthened the pillars of our **democracy**. The Right to Information is a powerful weapon given by the government to the people and also a basic **human right**. This right ensures the dignity of the citizens by giving them access to information about the government work. Public institutions are made **accountable** through it. These try to check any disrespect of duties by the authorities and promote a system of open government. However, the Right to Information in India, more often than necessary is crowned with a lack of general public awareness, improper implementation and vested political interests that do not cater to public needs. Furthermore, the inclusion of the **political parties** within the Act has been on a confused stance. The leaders of the political parties when get elected form

the government and this affects the governance to a great extent. Nevertheless, Right to Information does have the potential to transform and press for a more open society through the use of practical innovations useful for our civil society that need to be followed on a right path.

Keywords: Information, Government, Democracy, Accountable, Human Right, Political Parties.

1. Introduction

The dawn of this century was marked with the birth of an effective information regime for the citizens. In modern times, information is imperative to sustain through life. Information makes people more aware of the things happening around them. The recent developments in the field of law have given people more and more opportunities to interact with their government and keep them accountable. The entire world has recognized the constitutional as well as the statutory right of the people to have access to information. In past years, the right to information has gained global importance. Right to Information is a fundamental right that aids in the material as well as the spiritual development of man. The constitutional freedoms guaranteed to us can be well exercised only with the help of a thoroughly established information system.

Constitution bestows the freedom of information upon its citizens. Right to information is given in public interest and presents the information regarding public authorities, government policies, information related to scientific and technical matters, electoral processes, etc. The right to information law aims at ensuring lucidity and openness in the work of the public authorities. It acts as an instrument that provides “opens doors” to the authorities and their work.

However, despite its widespread recognition, a certain aspect of this right has remained disputed to date, i.e., the inclusion of political parties within its framework. Political parties form the basis of any democratic society. They are the weighty elements that lay the foundation of the governance process, these leaders of the parties when elected, form the government. Hence, the selection of these leaders is imperative to the democratic process.

India is a country dominated by religion. People elect their leaders particularly based on their religious preferences. Not much heed is given to the antecedents of the leaders. Hence, it becomes exigent to know that the persons so elected must have clean motives.

Political Parties play up the competition among their rivals to achieve the desired vote-bank. Several tactics are used among like-minded people to engulf them into becoming a pawn for their benefit. Religion is the most dominating as well as a powerful factor that helps the parties in persuading people in its favour. Caste and religion-based strategies are used to enhance their reputation and gain voter trust. The political parties that stand for community causes attract the votes of that community.

Political parties are the institutions that develop the ideas and policies that regulate the people. They lie at the heart of any parliamentary democracy and commit to incorporating the will of the people into the policies. Hence, their establishment and functioning should uphold the democratic principles for transparency, accountability, and openness.

However, the working of political parties has been, nonetheless, capped with lack of ethics, non-disclosure of relevant information, misuse of power and the utilisation of public funds for personal purposes.

Corruption is a menace that raddles all the countries of the world. Rich or poor, big or small, all countries battle this unending problem. It cripples the working of the rule of law and weakens democracy. It is a blight that slopes in favour of the poor by sabotaging the funds meant for their development. It ruins the government's potential to provide them with necessities and fosters an uncaring attitude among the employees. It is the chief element of underperformance and the hurdle between the moral and economic development of any country. This omnipresent menace can be tackled only by regulating stringent transparency laws. Since in India, politics is considered as the head of corruption, so the need for the inclusion of political parties within the framework of transparency laws is incontestable.

The true colour and character of the representatives are revealed only after they get elected, it raises the importance of voters knowing the candidates they vote for.

In the court case, *Common Cause v. Union of India* and others¹, the Supreme Court took cognizance of the fact of ever-increasing corruption among the political parties. The Court

¹ (1996) 2 SCC 752.

observed that the political parties spend crores of rupees during election processes. But, when the money is accounted for, no one discloses its source. No proper accounts are maintained. The Court said that in a democracy, such blatant display of black money by the political parties violates the rule of law.”²

So, the Court reflected the need for probing the internal management of the political parties to make them answerable to the public.

2. Right to Know

Information is an antidote to corruption; It protects the rights and liberties of the people, encourages administrative discretion to proceed healthily, promotes public participation in the governance process whilst bringing awareness among the public about schemes of governance.

In the court case, *Union of India v. Association for Democratic Reform*³, the Court explained the importance of information and said that information is the key to power and fortune in a democracy. It has the potential to oust ignorance and plays a crucial role in every walk and sphere of life, including politics and democracy. It has the potential to bring a positive change in the democratic institutions and the governance of the country.

In this case, a petition was filed to ensure that the voters of the country remain informed about the candidates they vote for in the elections.⁴ The Court said that an informed electorate subserves the larger public interest. In the need for fair elections and a dialectical democracy, the political parties should be compelled to disclose information relating to their assets, antecedents as well as educational qualifications.⁵

However, it is pertinent to note that here public interest does not mean uncontrolled interference in the matters of political parties. Political parties cannot be forced to disclose any information which does not serve the public interest in any matter. Public interest does not imply the invasion of privacy of the political parties. Section 8(1)(j) of the Right to

² *Ibid.*

³ AIR 2001 Delhi 126.

⁴ *Ibid.*

⁵ *Ibid.*

Information Act warrants that invasion of privacy is justified only if it involves a larger public interest.⁶ In the court case, *Bihar Public Service Commissioner v. Saiyed Hussain Abbas Rizwi & Anr*⁷, the Court observed that public interest means something that warrants protection and recommendation, something in which everyone has a stake. Since the whole public has a stake in the governance process, the political parties must conform to it.

The preamble of the Right to Information Act recognizably states that the ‘public authorities’ fall within the ambit of the Act. The Act also sets out a specific time limit for responding to the information applied by the public authorities. Consequently, the Central Information Commission has also in its decision held that political parties come under the purview of the right to information. In its 2013 ruling⁸, the Central Information Commission declared that all political parties came under the expression ‘public authorities’ under the Right to Information Act. The central information commission’s decision lays a new path of developing an effective information regime. In pursuance of that decision, the parties were required to appoint their Public Information Officers and designate appellate authorities within six weeks. But, there has not been any follow-up of the judgment. Years have passed by but no such Public Information Officers have been appointed.

From its inception, the Act has been playing a key role in exposing the infidelities among the authorities and thereby fighting corruption and deceit. Right to information laws brings about accountability among government authorities. It seeks to create a cognition among the people about holding the government and its instrumentalities discernible to the governance process.

Contemporary societies are information societies, citizens seek information in all spheres of life. This demand has been so coherent that it is vehemently supported by the Supreme Court. As early as 1981, the Supreme Court recognized the right to information as a part of the right to know itself. Supreme Court of India has from time to time upheld the people’s right to information. In *S.P. Gupta v. Union of India*⁹, the Court stated regarding how important it was that the government’s actions must be known to the people and that corruption could be curbed only through the government’s accountability. In the court case, *Namit Sharma*

⁶ The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).

⁷ Civil Appeal No. 9052 of 2012.

⁸ *Mr. Subhash Chandra Agrawal v. Parliament of India*, CIC/SM/C/2011/001386 (India).

⁹ AIR 1982 SC 149.

*v. Union of India*¹⁰, “the Supreme Court led emphasis on the importance of freedom of information in a democracy, pondering upon the fact that ours is a Constitutional democracy, the Court reflected the importance of people knowing about the governmental affairs, since they have been elected by them to develop the policies and laws that further their good”¹¹. Through a plethora of judgments, the Supreme Court of India has held that Article 19 of the Indian Constitution provides the electors with a secured right to information. In *Union of India v. Association for Democratic Reforms*¹², it was held by the Supreme Court of India that “the right of the voter to know the antecedents of a candidate, including information about their monetary resources, criminal records, and educational qualifications, is part of the right to know, sheltered by Article 19(1)(a)”¹³.

The notion of keeping the parties under the right to information has gained relevance and achieved new dimensions with the growth of society and new developments in the area of law. Right to information prevents the misuse of discretion by the authorities and at the same time protects the rights and liberties of the people. It also increases awareness of the government's activities among the people and makes them more coherent. The right to information boosts individual and institutional answerability among government agencies.

3. Reasons for Bringing Political Parties under the Act

The following points highlight the need for bringing the political parties under the Act¹⁴

- Political Parties constantly raise funds from the public to perform public functions. Consequently, an obligation lies upon them to be answerable to the public with regard to their activities and the utilization of those funds.
- In a country like India, people elect parties rather than persons. They occupy a dominating position in our democracy.
- Keeping political parties out of the right to information act will allow other public institutions to squabble about being kept out of the act.

¹⁰ Writ Petition (Civil) No. 210 of 2012.

¹¹ *Ibid.*

¹² AIR 2001 Delhi 126.

¹³ *Ibid.*

¹⁴ *The Big Picture- Political Parties Under Rti*, (April 6, 2020, 10:00 AM), Available at: <https://www.insightsonindia.com/2019/07/04/rstv-the-big-picture-political-parties-under-rti/>.

- Political parties make millions of claims to the public before elections but it doesn't take much time for those promises to go down the drain. So, it becomes necessary to keep them accountable.
- Political parties also have several flats allotted to them by the government. This also makes their public authority and brings them under the purview of the right to information act.
- Section 29A of the Representation of People Act, 1951 requires the parties to adhere to the Constitution to seek registration under sub-section (7). Accordingly, the registered parties ought to provide information to the public under the right to information as the right to get information has been declared a part of the right to know under Article 19 of the Constitution.
- Keeping political parties outside the ambit of the Right to Information Act will give an arguable chance to other public institutions to be kept out of the act too because of inane applications, too many institutions working with doubtful motives and way too much paperwork involved.
- Political parties occupy a premier position in a democracy and since politics is considered as the crown of corruption in India, it is crucial to introduce economic transparency as well as accountability in their work.
- Even the Law Commission of India had suggested that a law was required that would discipline the process of conduct of elections and would regulate the formation and working as well as the income and expenditure of the parties.¹⁵

4. Law Commission on Electoral Reforms

The Law Commission has reviewed that since democracy and accountability form the base of our constitutional structure, political parties should also adhere to the same schemes since they form an integral part of our constitutional system. Political parties constitute the government and govern the country. So, it is necessary to introduce responsibility and answerability in their work. A political party that does not adhere to the basic principles of democracy in its work cannot be expected to adhere to them while governing the country.¹⁶

The Commission has further observed that in India there is no law or statute that makes it obligatory for the political parties to reveal the source of their funding and none that requires

¹⁵ Law Commission of India, "170th Report on Reform of Electoral Laws" (May, 1999).

¹⁶ *Ibid.*

them to disclose the manner of their spending. So, in such cases, income tax returns are the sole medium through which the citizens can get access to the specifics of their expenditure. There lies an indisputable public interest in learning as to how the funds generated through the medium of the public are utilized by the parties. It will in turn also help the citizens to make an informed choice about the political parties they vote for. From a democratic point of view, information is vital for ensuring maximum transparency in the organization of political parties.¹⁷ The secure way to establish that political parties come under the meaning of 'public authorities' under the context of the right to information act would be to look into their work. Since it is clear that political parties perform an abundance of public functions, they have to be indisputably considered as public authorities.

Definition of Public Authority:

The definition of the expression 'public authority' within the meaning of the right to information act has been an extremely controversial issue since its enactment. The criteria for the determination of public authority has been laid down under the Act. Section 2(h) defines public authorities as follows:

"Public authority means any authority or body or institution of self-government established or constituted by or under the Constitution; by any other law made by Parliament; by any other law made by State Legislature; by a notification issued or order made by the appropriate Government and includes those bodies owned, controlled or substantially financed; non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."¹⁸

Since the political parties are substantially financed by the government, they should be considered as a public authority within the meaning of the Act.

In *The Hindu Urban Cooperative Bank Limited v. The State Information Commission*¹⁹, the High Court while deciding certain writ petitions against the Central information

¹⁷ *Ibid.*

¹⁸ Cis-india.org. n.d. National IPR Policy Series: Who is a 'public authority' under the RTI Act? — The Centre for Internet and Society. [online] Available at: <<https://cis-india.org/a2k/blogs/national-ipr-policy-series-who-is-a-public-authority-under-rti-act>> [Accessed 29 January 2022].

¹⁹ Civil Writ Petition No.19481 of 2006.

commission/state information commission “held that if any person, or body, satisfies the following conditions then it would squarely fall within the ambit and scope of the definition of public authorities and would be legally required to impart the indicated information as envisaged under the right to information act.”²⁰

The conditions are as follows: “the institution cannot come into existence and function unless registered and regulated by the provisions of a legislation; or the State Government has some degree of control over it through the medium of Acts/Rules; or it is substantially financed by means of funds provided directly, or indirectly, by the appropriate Government; or the mandate and command of the provisions of the RTI Act along with its Preamble, aims, objects and regime extends to their public dealing; or the larger public interest and totality of the other facts and circumstances emanating from the records suggest that such information may be disclosed.”²¹

The Madras High Court in the case, *Tamil Nadu Newsprint & Papers Ltd v. State Information Commission*²² remarked that “forasmuch the basic need for an institution to be deemed a “public authority” under the right to information act is that the authority must be must substantially financed by the government and the government must exercise control over its affair”²³. It is not necessary that the government must be the key shareholder. The Court even reflected upon the fact that whether or not the government exercises such control is immaterial.

In the case, *Indian Olympic Association v. Veeresh Malik*²⁴, the Indian Olympic Association was held to be a “public authority”. The association received substantial funding by the government not only for the discharge of its functions but also for the construction of its building. The funding was so substantial that without it, the association would not have been able to perform its functions.

²⁰ Ibid.

²¹ Cis-india.org. n.d. National IPR Policy Series: Who is a 'public authority' under the RTI Act? — The Centre for Internet and Society. [online] Available at: <<https://cis-india.org/a2k/blogs/national-ipr-policy-series-who-is-a-public-authority-under-rti-act>> [Accessed 29 January 2022].

²² W.A.No.811 of 2008.

²³ Ibid.

²⁴ WP (C)No.876/2007.

In *Mrs. Navneet Kaur v. Electronics and Computer Software Export Promotion Council*²⁵, “it was held that the body in question would be a "public authority" if it had been substantially financed by the Government”²⁶.

The Court in *Olympics Association* case²⁷ held that since the term ‘substantially financed’ had not been defined under the right to information act, it becomes necessary in such cases to look into legislation that defines a relatable term. Here, the Court looked into Section 14(1) of CAG Act (Comptroller and Auditor General (Duties, Powers and Conditions of Services Act)), 1971 for defining the term "substantially financed", since CAG was responsible for conducting the audit of the Indian Olympic Association.

According to Section 14 of the Act, “when a body/authority receives any loan from the government of an amount not less than Rs 25 lakhs and the total amount of the loan granted is not less than 75% of the total outlay of that body, then that body could be considered as being substantially financed by the government”²⁸. Cash grants, reimbursements or the collateral meeting of the expenses of the body would amount to being substantially financed.²⁹

In the court case, *Mr Subhash Chandra Agrawal v. Parliament of India*³⁰, arguments were put forth that showcased the public nature of the political parties. It was contended that certain political parties had purchased land at discounted rates and hence it was wrong on their part to plead that they were not public authorities under RTIA. It was also argued that since political parties enjoyed constitutional status under the tenth schedule of the constitution since they had the power to disqualify any member on the ground of defection, they fall under the definition of ‘public authority’. Also, political parties claim an exemption under section 13A of the Income Tax Act.³¹ They also get an allotted time slot on All India Radio that too free of cost. All this amounts to the indirect financing of the parties by the government. The Election Commission of India allots election symbols to the political parties and since the Election Commission is an instrumentality of the State, the parties also become one.

²⁵ Appeal No. ICPB/A-8/CIC/2006.

²⁶ *Ibid.*

²⁷ *Supra* note 20.

²⁸ Right to Information Act. 14.

²⁹ *Supra* note 20.

³⁰ *Supra* note 9.

³¹ The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India)

Political Parties are distinctive elements of the modern constitutional State. These are public institutions that are essentially non-governmental. Their distinctiveness lies in the fact that even though they are non-governmental, they yield, either directly or indirectly, influence in the exercise of governmental power.

This connection between the government authority and the political parties has gained tremendous importance in the backdrop of the right to information act. It would be frivolous to argue that transparency which is good for all State organs would not be good for the political parties which command most of the State organs."³²

Political parties have a "*binding nexus with the populace.*"³³ They formulate the laws considering the needs and wishes of the people. They have to be responsive to their needs and have to find solutions to incessant problems they face every day. The crucial role performed by the political parties in the scheme of our country's constitution also puts forth their public character.

5. Substantial Financing

The term substantially financed has not been defined under the right to information act. Courts have from time to time given a different interpretation to the term 'substantially financed' depending upon the facts of different cases.

Definition of substantial:

The Black's Law Dictionary defines the word "substantial" as "of real worth and importance; of considerable value".³⁴ According to Shorter Oxford English Dictionary, "the word 'substantial' means of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough"³⁵. Therefore, we see that the word "substantial" does not imply "dominance" or "majority", but rather "importance" or "something of considerable value".

³² *Ms. Anumeha v. Income Tax*, Appeal No. CIC/AT/A/2007/01029 (India).

³³ *Supra* note 9.

³⁴ *D.A.V. College Trust and Managing v. Director of Public Instructions*, Civil Appeal No. 9828 Of 2013 (India).

³⁵ *Ibid.*

In the court case, *Shanmuga Rao v. Rajiv Gandhi Foundation*³⁶, the CIC considered the meaning of ‘substantially financed’. In this case, Rajiv Gandhi Foundation was receiving a 4% grant from the government. The CIC held that the same could not classify as the substantial funding of an institution.

However, in the court case, *DAV College Trust and Management Society v. Director of Public Institutions*³⁷, the court said that though “‘substantial’ means a large portion, the same does not necessarily have to mean a major portion or more than 50%”³⁸. The court explained by citing an example by saying that “if a hospital or any educational institution is allotted land by the government free of cost or even at discounted rates, the same could be treated as the substantial funding of that institution”³⁹. In this case, since the DAV college was receiving a grant from the government, it was considered as a public authority within the meaning of the right to information act.

In the court case, *Hindu Urban Cooperative Bank Ltd v. State Information Commission*⁴⁰, share capital contribution and subsidies were considered as substantially financing of an institution. Payments of grants for salaries of staff in educational institutions have also been held to be substantial financing. In some cases, the quantum of financing has also been considered to be determining substantial financing. Nonetheless, no uniform criteria have been established to determine the quantum of financing.

While interpreting the provisions of the right to information act and while deciding what is substantially financed, one has to keep in mind the provisions of the act. This act was enacted to bring transparency and integrity to public life. So, any public body that gets substantial aid from the government essentially for performing public functions, there are no reasons as to why any citizen cannot ask for information to find out whether his/her money which has been given to the institution or any other body is being used for the stipulated purpose or not.

³⁶ CIC/WB/C/2009/000424.

³⁷ *Supra* note 29.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Civil Writ Petition No.19224 of 2006.

In *Mr. Subhash Chandra Agrawal v. Parliament of India*⁴¹, the central information commission had to retreat its 2013 order because it was ignored by all the political parties. Section 19(7) of the right to information act makes the order passed by the commission binding. Even the Supreme Court in the case of *Namit Sharma v. Union of India*⁴² held that "an order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme Court in the exercise of the Court's jurisdiction under Article 226 and/or 32 of the Constitution, respectively." However, the decision to bring the parties under the confines of Right to Information has been opposed by the ruling government also. It is contended by the government that the decision of the central information commission to include political parties within its ambit is vain and that at the time of inception of the right to information act, it was never imagined that there would be too many frivolous applications. Also, "since the election commission of India continuously brings the information provided by the political parties in the public domain, there is no need to bring the parties under the right to information act"⁴³.

6. Conclusion

Right to Information has received colossal support from all sections of society as it helps to protect the civil rights and liberties of the people. Right to Information acts as a watchdog on the bureaucratic bodies. It keeps them under check, widens public participation in the governance process, intensifies electoral scrutiny and enables the civil society to press for procedural reforms. Right to Information encourages an informed citizenry that can make reasoned decisions, which is the bulwark of participative democracy. In a constitutional state like India, it is the judiciary that plays an active role in increasing public participation in the democratic process. Since corruption among the political parties can be curbed by ensuring effective transparency and openness in their work, the judiciary stepped up and brought political parties under the ambit of transparency laws. Opportunities to access information about the parties they vote for is a fundamental right of the people of the country. Bringing the institutions like the Ngo's, political parties, and certain private entities that are discharging public functions within the ambit of the right to information act is necessitated in the creation of an informed and active citizenry. However, the resistance of the political

⁴¹ CIC/CC/C/2015/000182.

⁴² WP(Civil) No. 210 of 2012.

⁴³Prasanna Mohanty, *Who is afraid of transparency in the functioning of our political parties*,(April 8, 2020, 10:00AM) <https://www.dailyo.in/election/controversies/electoral-bonds-supreme-court-rti-lok-sabha-elections-2019-election-commission-rti-general-elections-2019/story/1/30307.html>.

parties to reform and come under the Right to Information Act has created many problems like lack of informed voting, corruption, and criminality. In a democracy, knowledge is power. Knowledge enables the citizens to act against corruption and misappropriation of resources. A government can truly become a government 'of the people' only on acceptance by the people. To wriggle out the corruption that has been spreading among the institutions of democratic India like a plague, umpteen attempts have been made by the government in the form of legislation and establishment of institutions to tackle the menace of corruption, but not much has been achieved. The colonial legacy of secrecy in India has licensed the political parties to keep the general public away from its affairs, thereby hindering the progress of the nation. Therefore, a duty lies on the political parties to behave like the symbols of governance as they are and follow the mandate of the Right to Information Act.