

*POLITICAL PARTIES VIZ-A-VIZ RIGHT TO INFORMATION ACT, 2005 : A CRITICAL  
ANALYSIS*

**ABSTRACT**

The arrangement of administration on which all the SAARC countries are working is the model of democratic sovereignty. The SAARC Charter of Democracy revamps the advancement of equality of access at all levels of administration, along these lines building up under its domain the political parties. Different Access to Information Acts presented by SAARC countries are made for the residents of the nation to concentrate information about the authorities that fall under the ambit of public authorities to advance straightforwardness and responsibility.

The political parties are the associations that come into the force and run the legislature by administering elements of public power to some degree. The inquiry here emerges that the whether such parties are under the domain of such acts or not? In the year 2013, Indian Central Information Commission hosts decided that the political gatherings ought to be viewed as public authorities under RTI and should fall under the transparency law, in this way noting the offered conversation starter to some degree in its locale.

The inquiry additionally emerges on the funding and the monetary transactions made by the parties. A gathering in the wake of coming into influence can without much of a stretch abuse the administration assets and cash for their own particular advantages and are not responsible to any power. As recommended by Department of Personnel and Training of India, the political parties should fall under the ambit of Income Tax and they are obligated to unveil every one of their transactions. Along these lines, to stay away from such abuse of the power of the administration keep running by political parties, they ought to be announced as public authorities and ought to be requested that uncover every one of the transactions and funding done by them.

In the present paper the authors will dwell with the abuse of the force done by the parties, why they are bashful to fall under the ambit of Right to Information Act, 2005 and in particular, why they ought to be made at risk to fall under the ambit of said law.

**KEYWORDS:** Abuse of power, Democratic sovereignty, Monetary transactions, Political Parties, SAARC.

## INTRODUCTION

*In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption<sup>1</sup>.*

- Justice K. K. Mathew

A political party is basically a group of large number of people who come in conjunction to hold the power in the government by contesting and winning the elections. These political parties accord on some of the policies and programs which are prepared by them for the welfare of the society. But all the policies and programs established by them are in the furtherance of creating a political support for them by increasing their supporter's number. All the political parties in the world have some or the other commonalities. Some of them have same ideologies or the same party structure and on the other hand some are distinct from each other in paramount ways. The political parties can be further defined as a group of collocate voters introduces their candidates for holding public offices by contesting elections. Many political parties have their set goals and ideologies which form the basic structure of a party and which is also the reason for getting support from the people. Many of the parties change their ideologies with the vicissitude time and in accordance with the latest requirements of the people of the party. There are some parties who have drastically changed their ideologies as compared to the time at which they were created. The political parties have many sources to collect funding for the working and running of the party. Some of the main sources are funs given by the party members and other individuals. Political parties also receive corporate donations and some aiding is also given by governmental or public funds.

The commencement of Right to Information Act took in the year 2005 and it marked the dawn of a new era. The word information of the act is defined as any material which is present in any form is the information. Records, memos, documents, emails, contracts, papers, reports, sample audio and video visuals etc. all of these falls under the category of information. The information which is kept by the private bodies, is accessible for the public authorities at any time and this

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<sup>1</sup> Justice K. K. Mathew, *Supreme Court of India (State of UP v Raj Narain AIR 1975 SC 865.*

type of source of material also falls under the category of information.<sup>2</sup> The main and the basic objective of Introducing the Right to Information Act, 2005 is to certify the citizens in terms of information which they can gain regarding any public office. Another main motive of the act is to promote transparency and accountability in the functioning of the government which allows the normal citizens also to keep a check on the government and its working. The also ejects out the loop holes in the system and the corruption going on and in a literal sense makes the government work the people.<sup>3</sup> The Right to Information Act, 2005, accredits the citizens to seek and go through any information regarding any public office in the whole country. An individual can even monitor the work done by the government, keep records of it, check past records, extract notes, take copies of certified copies etc. But in context of the information which has to be given to the applicant is only restricted to what has already happened and the documents related to which are already available in the offices. The right to seek information can only be claimed by the citizens of India and it cannot be extracted by the organizations, corporate etc.

Undoubtedly, there are many provisions in the Income Tax Act and the Representation o People's Act which restrict the political parties to indulge themselves into the practice of corruption and frauds committed by the representatives. But even after these restrictions and walls created for them, these parties still somehow manages to get away with all the black money and their assets that they have created within their lifetime political carrier. Everybody is equal before the law, so what is the harm if these political parties are brought under the ambit of RTI ACT,2005 to assure more of transparency and accountability? In our country, a person is eligible for the government job after studying for 20 years and also has a fixed retirement age. Another question that arises is that why do these politicians do not retire? And why do they start receiving salaries and pensions soon after they take the charge of the post or are removed from the post? These are the few most astonishing questions that are supposed to be answered.

It has been more than a decade since the Right to information Act came into existence. But still, it is not that effective as it was presumed to be. It is the high time that the act should be strengthen in terms of accountability and transparency in the governmental system. And if we really want to pursue it, the political parties should come under RTI so that the people of India

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<sup>2</sup> Guide on *THE right to Information act, 2005*, last seen 8.03.2016, <http://www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf>

<sup>3</sup> Guide for the information seekers under rti,2005, India.gov.in , <http://rti.india.gov.in/manual4.php>

can firstly choose the appropriate candidate for voting by going through their records and secondly they can also come to know about the work and the direction in which their party and the government is working.

### **CONSTITUTIONAL PERSPECTIVE OF RIGHT TO INFORMATION IN INDIA**

Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable. Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizenry oblivious of its rights. Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to the rescue of the 'little man' by bestowing upon him certain fundamental rights within Part III. These rights cannot be violated except the procedures laid down by the law, which are inconsonance with spirit of Constitution. Similarly, RTI is a right imbibed within Article 19(1) (a)<sup>4</sup>of the constitution.

The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). That is to say, it is implicitly imbibed within the constitutional framework. However, judiciary in several landmark cases has expressly held RTI as natural concomitant of Article 19 (1) (a). Let us now see some important cases which raised RTI to the status of a constitutional right because of the juristic interpretation of the learned judges.

Judicial activism has carved the sculpture out of Article 19 (1) (a) - which is the bedrock of democracy. Upon a thorough analysis it can be safely stated that direction towards the realization of RTI within the constitutional ambit incepted right from the verdict in Hamdard Dawakhana v. Union of India<sup>5</sup> Supreme Court for the first time declared RTI to be part of Article 19 (1) (a) in Bennett Coleman v. Union of India<sup>6</sup>, where it held Newsprint Control Order of 1972-1973 issued

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<sup>4</sup> *Protection of certain rights regarding freedom of speech, etc.- (1) All citizens shall have the right-(a) to freedom of speech and expression...*

<sup>5</sup> AIR 1960 SC 554

<sup>6</sup> AIR 1973 SC 106

under the Essential Commodities Act, 1955 to be ultra vires Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, “It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read.” Here what is referred as ‘right of the people to read’ refers to the right of the readers to get the information. The strongest exposition in this regard came from Justice K. K. Mathew in *State of U. P. v. Raj Narain*<sup>7</sup> who emphasized that in ‘government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, every thing that is done in a public way by the public functionaries.’ The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi’s election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing

### **RECENT INCIDENT**

Recently, a petition is filed by a nonprofit organization contending that political parties should be declared as public authorities so that they can also fall under the vast blanket of Right to Information Act, 2005. In a reply to this petition, the central government has argued that if “political parties are not public authorities as they are not set up under the Constitution or any law enacted by Parliament, so, they can’t be treated as an institution or establishment.

If political parties come under the RTI it will affect their smooth internal functioning and political rivals will file RTI applications with malicious intent”<sup>8</sup>. The second contention of the petition was that the court should ask all political parties to declare all donations below Rs 20,000.

The central government or more popularly known as Modi Government has recently filed an affidavit in the Supreme Court of India. The affidavit is backing up the political parties to not to make disclosure under the RTI Act, 2005. The government thinks that if this scheme is approved then the political parties will lose the trust they have made within the people. The arguments

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<sup>7</sup> AIR 1975 SC 885

<sup>8</sup> A Vaidyanathan, “ Political parties cannot be brought under RTI, Centre tells SC”, Last seen 10.06.2016, <http://www.ndtv.com/india-news/political-parties-must-not-be-brought-under-rti-centre-tells-supreme-court-1210446>

made by the government were rejected by the Central Information Commission (CIC) which ordered that political parties are amenable. Because of the reason that political parties do not come under the RTI Act, 2005, the right of people to make an informed choice is being violated. According to the Supreme Court judgment “right of people to know about criminal antecedents and other relevant particulars of candidates in fray, to enable an informed choice during elections, in my view squarely applies to political parties as well”<sup>9</sup>

The center also argued that the political parties are private bodies and they were wrongly classified as public authorities, so they can never be under the RTI Act, 2005. The Central Information Commission accepted that the political parties were in violation of its order and the commission said that “it was unable to impose any action against them, a move that the petitioners called an abdication of its responsibilities”.<sup>10</sup> Instead of challenging the order made by the Central Information Commission through legal procedures, the party in the power, that is the central government, scripted an amendment to RTI Act, to overcome the order made by the CIC.

The Central Information Commission in the year 2013 had ruled out in its landmark judgment that the political parties come under the ambit of Right to Information Act, 2005. The order said that “We have no hesitation in concluding that INC/AICC, BJP, CPI(M), CPI, NCP and BSP have been substantially financed by the Central government and, therefore, they are held to be public authorities under Section 2(h) of the RTI Act”.<sup>11</sup> Before rejecting the arguments made by the counsel of the political parties, CIC referred to a Supreme Court Judgement which stated that “the little man of this country would have the basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted”. The commission further held that “The criticality of the role being played by these political parties in our democratic set-up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of Section 2(h).

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<sup>9</sup> Gyanant Singh, “Modi Sarkar’s move to amend RTI to save political parties from is undemocratic”, last seen 10.06.2016, <http://www.dailyo.in/politics/rti-act-2005-modi-political-parties-election-commission-cic-br-ambekar-constitution/story/1/6149.html>

<sup>10</sup> Rukmini S., “CIC unable to make political parties comply with RTI”, Last seen 11.06.2016, <http://www.thehindu.com/news/national/cic-unable-to-make-political-parties-comply-with-rti/article7002835.ece>

<sup>11</sup> MOHAMMAD ALI, “Political parties come within ambit of RTI: CIC”, Last seen 12.03.2016, <http://www.thehindu.com/news/national/political-parties-come-within-ambit-of-rti-act-cic/article4778358.ece>

The constitutional and legal provisions discussed herein above also point towards their character as public authorities”.<sup>12</sup> In the year 2015, the CIC said that a huge time span of eighteen months have been passed since the commission made the judgment stating the political parties as the public authorities and these political parties were at that time ruled out to fall under the ambit of RTI Act. Shockingly, these political parties have not challenged the order of the commission in any of the court, or before the commission or not even in the parliament, instead they are continuing to not to follow the judgment given and have refused to comply with the judgement given. They are not even replying to the notices given to them and are not even appearing before the commission.

The commission has displayed its helplessness by showing that it is not able to force these six parties to fall under the concerned ambit and the commission further stated that “It is clear that the respondents have not implemented, as public authorities, the directions contained in the Commission’s order. In this light, the provisions for penalty and compensation were examined. It is felt that though the respondents have not taken any step towards compliance, the legal position is such that in this case imposition of penalty and award of compensation cannot be considered”.<sup>13</sup>

The commission even after declaring political parties as public authorities could not make them comply with the decision. This definitely highlights the gaps which are needed to be filled in the implementation process. Further, the commission has requested for a copy of the judgment delivered and has further requested that it should be sent to the department of personnel and training and said that “for taking action as deemed appropriate for addressing the legal gaps and issues that have come to light during the hearings”<sup>14</sup>

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<sup>12</sup> MOHAMMAD ALI, “Political parties come within ambit of RTI: CIC”, Last seen 12.03.2016, <http://www.thehindu.com/news/national/political-parties-come-within-ambit-of-rti-act-cic/article4778358.ece>

<sup>14</sup> Rukmini S., “CIC unable to make political parties comply with RTI”, Last seen 11.06.2016, <http://www.thehindu.com/news/national/cic-unable-to-make-political-parties-comply-with-rti/article7002835.ece>

## **RIGHT TO INFORMATION BILL (AMENDMENT) 2013**

In the year 2013, the ministry of Personnel and Training introduced the new Right to Information Bill (Amendment) 2013. The main objective of introducing the bill was to exclude the political parties from the definition of public authorities.

### **HIGHLIGHTS OF THE BILL**

1. “The Right to Information (Amendment) Bill, 2013 seeks to insert an explanation in Section 2 of the Act which states that any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951 will not be considered a public authority.
2. Referring to the CIC order of June, the bill also makes it clear that anything contained in any judgement, decree or order of any court or commission will not affect the status of political parties recognised under the Representation of the People Act.
3. With a view to remove the adverse effects of the Central Information Commission decision, the bill states that it is necessary to give retrospective effect to the proposed amendment.
4. The Statement of Objects and Reasons of the Bill, states that the government considers that the CIC has made a liberal interpretation of Section 2 (h) of the said (RTI) Act in its decision.
5. The Statement of Objects and Reasons of the Bill also points that there are already provisions in the RP Act as well as the Income Tax Act which deal with transparency in the financial aspects of political parties and their candidates.”<sup>15</sup>

The issues of amending the Right to Information Act, 2005 came into the spotlight when the order was passed by Central Information Commission which addressed the political parties as public authorities as they receive funds from the government. Shockingly, the party who introduced the RTI Act was giving the worst reactions and looked stunned with the order. The Bill which was tabled in the Lok Sabha proposed an amendment to Section 2 of the RTI Act

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<sup>15</sup> **Pulla Rao**, “The Right to Information (Amendment) Bill, 2013 Introduced in Lok Sabha”, Last seen 11.03.2016, <http://www.jagranjosh.com/current-affairs/the-right-to-information-amendment-bill-2013-introduced-in-lok-sabha-1376634722-1>



which clarifies that parties would not be treated as public authorities: “Authority or body or institution of self-government established or constituted by any law made by Parliament shall not include any association or body of individuals registered or recognised as a political party under the Representation of the People Act, 1951.”

The Bill also inserts a new Section 31 in the principal Act which says that the amendment will apply “notwithstanding anything contained in any judgment, decree or order of any court or commission..” and will prevail over “any other law for the time being in force.”<sup>16</sup>

### **CRITICAL ANALYSIS**

During the scrutinisation by the apex court the Union government responded that the parties should be kept outside the purview of Right to Information (RTI) as it can endanger their functioning and instead of good intention there exists scope for misuse by the political rivals to settle the score and to us this isn't looks convincing enough to agree that we should not put political parties under the ambit of RTI. And as claimed by many that they are having clean hands then why are they afraid about rivals misusing the Act. Ironically there aren't many politicians whether in coalition or in a single party who isn't corrupt or isn't into mal practices.

Once Farooq Abdullah in his speech did admit that politicians are mostly liars and do engage in malpractices and then they act hypocrite. This admittance of the through the statement can't be said to be any kind of exaggeration as the people in our country have seen ample scams and scandals and politicians being involved in it for their personal gains.

*Though* there are provisions existing to ensure accountability and transparency in the system and on the part of political parties as well by shying away from RTI shows us double standards of the political parties. And most importantly it tantamount to direct violation of article 14 of Indian Constitution in all respect and also raises a question with regards to the tussle between legislature and judiciary for supremacy thus hampering the fabric of democracy itself .

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<sup>16</sup> Vidya Subrahmanium, *First ever amendment to historic RTI Act tabled in Lok Sabha, Last seen 12.03.2016*, <http://www.thehindu.com/1news/national/firstever-amendment-to-historic-rti-act-tabled-in-lok-sabha/article5015695.ece>

Many organizations in face of political parties do promote anti-national activities and extension of RTI on these parties will keep the check upon the same. Because, ultimately it's the money which is of the general public thus its clearly in the public interest to maintain the transparency of transactions. Further the generation of black money due to loopholes present in current system raises an alarm that politicians which are ought to work for public and represent their electorate , are they really doing what they ought to ? Are they working for their personal gain? If yes, then its clear violation of the basic ideology of nation itself i.e. democracy upon which this nation stands.

### **CONCLUSION**

RTI Act, 2005 contains over-riding effect and contains the same with a reason. Having a purposive and literal reading of the same one can easily point out the same. This indicates that its application is in general to all except given exemptions. And the reasoning given by the parties time and again reiterating the same facts isn't convincing enough to put them under the head of exceptions as they don't provide us with the proper reasoning to do so. Thus, they should be kept and placed under the RTI.

Further to remove corruption and to enforce accountability, transparency and all the constitutional principles, there is an urgent requirement to put political parties under the ambit of provisions of RTI Act. The Law Commission in its 170th report had also made recommendation for transparency in functioning of political parties, especially on internal democracy, financial transparency and accountability in their working. Apprehension that political rivals might file RTI application with malicious intentions should not come in the way of politicians being made liable to scrutiny. Also, judgments from the apex court say the same thing that the system currently existing in our country needs the reforms in cases of accountability and transparency.

And as stated above it will bring the people and their representatives close enough so that the proper functioning in absence of all malpractices and already existing legislations like Income Tax Act etc. will take place and eventually the leaders will be more accountable and responsible towards their duties as representative and will pay more attention to it rather working for personal benefits.