

## **Future Prospects of Right to Information Act in India**

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### **Abstract**

Till date political parties haven't done much to win the trust of masses and bring transparency in their functioning. It was after long resistance from their side information from income tax department regarding their income was given under chief information commissioner directions. Earlier they were even resisting this direction of Chief Information Commissioner (CIC). Similar disclosure pertaining to corruption charges were resisted by them it was only under the direction of Supreme Court they agreed to share this information. So whatever steps have been taken to ensure transparency in their functioning has received stiff opposition from their side. In recent years Right to information Act is being debated for wrong reasons. This act is being considered as one of the most empowering act in recent Indian history but due to CIC decision to bring political parties under the ambit of RTI and 2019 amendment to the act concerns have been raised on the future prospects of this act. In 2013 CIC directed six major political parties to appoint public information officer and appellate authority as they fall in the category of public authority under the RTI Act. Despite CIC order political parties haven't complied with this order and are of the view that CIC is wrong in terming them as political authority as they are not created by any act of Parliament. Secondly civil society and opposition parties have strong apprehension that 2019 amendment to RTI act is a big blow for the autonomy of this very institution and with it the independence of the institution has been seriously compromised. In this article we will try and discuss Right to information act and its future prospects in the light of above two developments.

RTI was enacted with an idea to bring out transparency in the system and to make public authorities directly accountable to people. Debate on bringing political parties under the ambit of RTI is going on since 29th October 2010 when Association for Democratic Reforms (ADR) sought information from major political parties under RTI. After this few parties refused to come under the ambit of this act and some didn't even respond to this RTI. As a result complaint was filed with CIC after which landmark judgment of 3rd June 2013 came whereby CIC directed six major political parties to appoint public information officer and declared them public authorities. After which the matter went to Supreme Court and is still pending. So till date despite so much effort political parties are not accountable to anyone and whatever little information we have about them is based on the information which they handover either to election commission or income tax department.<sup>1</sup>

CIC in its order 2013 said that political parties being public authority do come under RTI whereas political parties refute this claim and refused to comply with the order of CIC.<sup>2</sup> Now the most pertinent

Question which needs to be asked over here is that what is the scope of RTI and whether it includes political parties or not. Political parties are accountable to Election Commission as they are recognized and derecognized through it. They have to submit their income and expenditure report with income tax department. Judiciary also have a control over their functioning and above all voters have the right to choice whom to vote for. Since political parties are accountable to all these institutions then on what grounds they don't want to come under RTI. On this political parties are of the view that they are already under this act as all details regarding their funding and expenditure is with the income tax department and any citizen who wants to have any information regarding their funding can get it by filing an RTI with income tax department. Political parties don't want to directly come under the ambit of this as they believe that it will open Pandora's box where all kinds of absurd and irrelevant questions will be asked with malicious intent which will unnecessarily create lot of burden on them as well as on CIC and will also greatly impact their smooth functioning.<sup>3</sup> By doing this the whole ecosystem of RTI will get disturbed and CIC office will unnecessary be flooded with unnecessary malicious complaints. They believe that since all the information pertaining to them is either with Election Commission or with income tax department so if people are really interested to get those details they can easily get those information by filing a RTI under these institutions.

In order to enforce the order of CIC Supreme Court asked six national parties to respond on whether they come under RTI or not. In response to this political parties in court argued that they are not covered under RTI because as per the definition of public authority only those institutions are covered which are created through an act of Parliament since they are not created by any act of Parliament and the nature of their job is quite voluntary in nature due to which they cannot be termed as public authorities. If they are made to come under it their smooth functioning will get hampered as political opponents will use RTI with malicious intent which will unnecessarily overburden them and create hindrances in their smooth functioning.<sup>4</sup> While giving this argument these very political parties ignored that under the act itself any non-governmental organization substantially funded by government also gets covered in this definition of public authority. Going by this definition political parties are public authorities as they receive substantial amount of fund from the government eventhough it is indirect but still it gets covered under the category of substantial funded by the state. They receive full income tax exemption by virtue of that they virtually receive thirty five percent of funds from government which they otherwise have to give it to the government in the form of tax. Apart from that they receive various financial benefits such as buildings, plots for their offices, free airtime and many more concessions due to which they get substantial amount of funds from state.<sup>5</sup> They are the ones who exercise power of the state, and they are the ones who form government and run the state. These political parties are recognized and derecognized by the constitutional body i.e Election Commission and they have the power to disqualify their members under anti-defection law therefore there is no reason to believe that they are not public authorities.<sup>6</sup>

Political parties come under RTI as public authorities because apart from them CIC has declared other institutions receiving government subsidies as public institutions like hospitals, SGPC, schools, Indian Olympic committee, commonwealth games etc. Under different CIC orders these very institutions who receive direct or indirect funds from government were brought under RTI as public authorities.<sup>7</sup> As a counter to this argument political parties argue that if tax exemption and providing land at subsidized rate is the sole ground on which public authority definition is based then all those industries which receive tax exemption and get land at a subsidized price should also be brought under the ambit of RTI.<sup>8</sup> But there is a huge flaw in the argument put forward by political parties which is that you cannot compare

concessions given to political party with that of corporate because corporates don't run state they are not the ones who are directly involved in the functioning of government. Since political party wields political power they are the ones who contest election and on the basis of being a political party they are receiving government subsidy. Now since they are directly involved in the working of state and are working in political domain they only will get covered under the category of political authority not those industries which are getting subsidy or concessions from the state. Apart from this concessions are given by the state to industry in order to attract investment in their state which will eventually create employment and will lead to overall growth of the state. So it would be wrong to compare industrial subsidy with the subsidy given to political parties.

Another reason given by political parties for not coming under RTI is that it was never intended by them even when this act was being formulated. At the time when RTI Bill was being formulated this issue came before the committee but even at that point it was decided to keep political parties out its ambit.<sup>9</sup> It might be true that bringing political parties under RTI was not intended when it was being drafted but to say that it was dropped at that point on that very basis it should not be included now is no justification for this. Even though it was missing from original act but with changed scenario and on the demand of masses it could easily be included now. If the people want political parties to function in a transparent manner then it should be brought under RTI and political parties should voluntarily adopt this.

Political parties argue that they are indirectly covered under RTI as all the information related to political parties is there with the election commission and income tax department so if any citizens wants an information related to them they can easily get it by filing RTI with election commission and income tax department. But the fact is that all the information related to political parties is not with these agencies. They too have very little information. ADR in its report cites that in most cases 70 to 80 percent of political parties income come from undisclosed sources and in some cases 100 percent comes from undisclosed sources.<sup>10</sup> Apart from this citizens have a right to know who all are members of the party, who are the office bearers, under what democratic framework these parties functions and whether internal democracy exists within these parties or not. So apart from information pertaining to political parties funding citizens who vote for these parties have a right to know how democratically these parties function.

It is quite ironical that political parties want other state organs to come under RTI but they want themselves to be kept out of its ambit. In their campaigns political parties talk of good governance which is based on transparency and accountability but they themselves want to remain outside the system like RTI which actually intends to bring transparency and accountability in the system. They argue to bring state organs under RTI but those who control and occupy seats of power i.e. political parties should not come under its ambit which shows their malified intent. By keeping themselves out of RTI Act they are showing that transparency is good for other state actors but not good for political powers who wield power in the state.<sup>11</sup>

One of the major concern of political parties is that if they are brought under this then it will hamper their internal functioning as the opposition will use it as a tool to create disturbance by asking questions pertaining to their strategies decisions like basic on which tickets are being distributed, what is the eligibility criteria, how decision are taken on these issues etc. But even this concern of political parties is misplaced as there is ample space within RTI act section 8 to exempt all such information pertaining to

their strategies decisions. Under RTI what is expected off a political party is only that information which is documented or recorded. Under this act they are not supposed to create any new information they are just expected to give the information which is there with them and on top of that they can seek exemption under section 8 on matters related to their strategic interests and policies.<sup>12</sup>

Political parties believe that by coming under RTI will unnecessarily overburden their system as nothing of this happened in any other public institutions where as same concerns were being raised by these institutions during initial days of RTI act. Instead of refusing to come under it political parties should voluntarily come under RTI as it will strengthen citizen's belief and trust in them. Apart from this if they really want to reduce number of RTI applications they should go in for voluntary disclosure of information whereby everything pertaining to political party is put on party website. By doing this their system will never be overburden by RTI applications as everything is available on their Website.<sup>13</sup>

Apart from their finances political parties Under RTI are supposed provide information related to their decision which they have taken in meeting, who all are members of the party, who all are office bearers, what decision have been taken by official of the party. As of now none of this is available in public domain and no party has shown the courage to voluntarily disclose it. Most political parties do not even abide by their constitution; they don't have any kind of democratic decision making process within their party. Under such circumstances citizens have the right to know how decisions are taken within the party, and how democratically a party functions. With all these information in hand citizens who are ultimately expected to vote for them will know how democratic principles are followed within different parties. In a democratic setup political parties act as a link between citizens and state. It is through them citizens' concerns get addressed. Just because they are the main linkage between the citizens and the state they should voluntarily come under the ambit of this transparency legislation i.e RTI. By doing this they will gain trust and confidence of the people which will ultimately legitimize their working in democratic setup.<sup>14</sup>

### **2019 RTI Amendment**

Under RTI citizens can demand information from government departments regarding their policies, programmes etc. With the coming up of this act real empowerment has ushered in our system whereby citizens have started demanding information pertaining to their entitlement under different government schemes. Through this act bureaucracy which earlier on was only answerable to political bosses is now made directly accountable to masses. If we try to find out that, in the last ten to fifteen years which act has empowered normal citizens then the answer would be social media and RTI. It is through them only voice has been given to local population. RTI is being handled by Chief Information Commission at the Central level and State Information Commission at the state level. Uptill now both CIC and SIC has performed an excellent job and no-one has questioned the integrity and impartiality of CIC and SIC.

First thing which we need to understand is that how system under RTI functions. Under RTI we have Central Information Commission (CIC) at the center level and State Information Commission (SIC) at the state level. In CIC we have one Chief Information Commissioner and maximum of ten Information Commissioners. Similarly in states we have one State Information Commissioner and maximum of ten Information Commissioners. They are appointed by President at the Central level and Governor at the state level. At the Central level names are recommended to President by a committee consisted of Prime

minister, leader of opposition and one cabinet minister. Similarly in states names to states information commission are suggested to governor by chief minister, leader of opposition and cabinet minister. So the system at the centre and state level is very fair as it has the representation of opposition at both center and state level.<sup>15</sup>

Both CIC and SIC help citizens in getting the required information from the institutions covered under RTI incase the information provided by a citizen is not being provided to him in the required time frame both by information officer and appellate level in the concerned institutions. CIC at the center and SIC at the state level direct the department to provide information to the concerned citizens. In cases where information is denied or partial or misleading information is provided to citizens. So these agencies are the one who finally come to the rescue of citizens in extracting information from the department. Now in order to maintain independence of these institutions they like Election Commission and judiciary they were provided with fixed tenure and fixed salary.<sup>16</sup>

### **Changes after RTI Amendment 2019**

Under RTI amendment 2019 few changes have been introduced in section 13 and 16 of the act. Section 13 deals with CIC whereas section 16 deals with SIC. Before amendment section 13 says that it will have one chief information commissioner and ten information commissioner and they will remain in office till the age of 65 or five years, whichever is earlier. This means that their tenure is fixed. Both chief information Commissioner and ten information commissioner will serve for five years and incase during their tenure of five year they turn 65 then they will retire at 65. Similarly under section 16 same principles applies to state information commissioner and information commissioners.<sup>17</sup>

Secondly under section 13 chief information commissioners at Centre salary will be equivalent to that of chief election commissioner and information commissioner salary will be equivalent to that of election commissioner. Under section 16 the salary of state information commissioner will be equivalent to that of election commissioner and information commissioner salary will be equivalent to that of chief secretary. This was the scenario before the 2019 amendment but after 2019 amendments to the RTI Act both under section 13 and section 16 the salary, tenure and terms of service will be determined by the Central government. After this amendment changes have been brought out in regard to the pension also. Earlier if the chief information officer or information commissioner were receiving pension from their previous job then they were paid salary after deducting previous job pension from it. Now after this amendment this clause has been removed. Now the Central government will decide whether pension from previous job will be included or excluded.<sup>18</sup>

### **Justification given by government**

The minister concerned while introducing these amendments justified them by citing few anomalies in the original act. He was of the view that the original act was drafted in haste due to which there exist few anomalies in the act and in order to remove those anomalies they are bringing these changes to the act. Like in the original act no such provision were made to introduce changes in the act. It was for this reason section 27 of the act was amended to introduce changes.<sup>19</sup> Minister believes that by bringing these changes they will be able to remove anomalies which will provide institutional strength to the system of RTI in India. In response to opposition concerns that by bringing these changes autonomy of the institution will be severely compromised he cites that it is an enabling legislation and there is no

truth in opposition claim that it will compromise the autonomy of the institution no changes have been made to section 12(4) of the act which provides autonomy to the institution. Since the very section dealing with autonomy remains untouched so the question or concern over autonomy of this institution cannot emerge.<sup>20</sup> In his address before Parliament he cites three sections where changes are being introduced i.e section 13, 16 and 27. Section 27 is being amended because without amending it no changes can be introduced in RTI act. While justifying changes under section 13 and 16 in regard to salary, tenure and service conditions of chief information commissioner and information commissioner he cited one anomaly in the original act where chief information commissioner is made equivalent to chief election commissioner which in turn is equivalent to judge of supreme Court. He believes that how can chief information commissioner be equivalent to judge of Supreme Court because the verdict passed by CIC can be challenged in high court. So according to the minister how is this possible that a decision of position which is equivalent to that of Supreme Court judge be challenged in a lower court i.e. high court.<sup>21</sup> So in order to remove this anomaly they have left it to the Centre to decide the pay, term and service conditions of chief information commissioner, state information commissioner and other information commissioners. Secondly drawing equivalence between constitutional and statutory body is wrong.<sup>22</sup> How can CIC which is a statutory body which is created by an act of Parliament equal to election commission which is a constitutional body under clause (1) of the article 324.<sup>23</sup>

There are few apprehensions which the opposition and civil society organizations have against these changes. Firstly they believe that with these amendments neutrality and autonomy of the institution of RTI will be severely compromised. They believe that how can you expect an institution to function in a neutral way where the salary and tenure of that institution is with central government. If the institution try to go against their wishes then they can easily regulate it by curtailing its tenure or salary. In such a situation one cannot expect that institution will ensure swift release of that data of government which portrays them in bad light or that data which can tarnish the image of Central government. Apart from this civil society organizations and opposition have a strong feeling that these very amendments will create an environment wherein CIC and SIC will tend to please the Central government so that they can get high salary or in order to draw double benefit of both salary and pension as with these amendments the clause under which salary was given to them after deducting pension from previous job has been removed. Now it is upto the Central government to decide whether to deduct that amount from their salary or not so this very measure can be used by Central government to allure CIC and SIC and make them work according to their wishes. So opposition believes that by bringing in such changes the whole credibility of the system will get severely compromised.

Amendments to RTI act have features which goes against the very basic features of federalism. Under these amendments the power to decide salary allowance and term of service came directly under the control of Central government. By doing this Central government has increased its control over SIC whose salary will be paid from consolidated fund of state government but it will be decided by the Central government.<sup>24</sup> Government terming equivalence between statutory and constitutional bodies as wrong fails to explain why national green tribunal and national human rights commission members are treated at par with supreme Court judges. Both of these agencies come under the category of statutory bodies as they are created by an act of Parliament.<sup>25</sup>

RTI was enacted with an idea to bring out transparency in the system and to make public authorities directly accountable to people. In a democratic setup political parties act as a link between

citizens and state. It is through them citizens' concerns get addressed. Just because they are the main linkage between the citizens and the state they should voluntarily come under the ambit of this transparency legislation i.e. RTI. By doing this they will gain trust and confidence of the people which will ultimately legitimize their working in democratic setup. Political parties believe that by coming under RTI will unnecessarily overburden them is a bit misplaced as nothing of this happened in any other public institutions where similar concerns were being raised by these institutions during initial days of RTI act. Instead of refusing to come under it political parties should voluntarily come under RTI as it will strengthen citizen's belief and trust in them. Apart from this if they really want to reduce number of RTI applications they should go in for voluntary disclosure of information whereby everything pertaining to political party is put on party website. By doing this their system will never be overburdened by RTI applications as everything will be available on their Website.

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RTI act is one of the most empowering acts through which ordinary citizens got the right to question governmental authorities. It was through this act citizens' right to participation and freedom of speech became meaningful. This is one of the most important acts which helped India to streamline its administration on the lines of good governance. Government by amending this act without giving any credible reasons have created apprehensions in the mind of common citizen about the independence of the institution which helped them unearth different scams. Opposition along with different civil society organisations believe that now RTI is going to be a toothless act and as an institution it has lost its independence and will now function as any other department of Central government which is only answerable to the centre.

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