

FINANCIAL DISCLOSURE OF POLITICAL PARTIES: A LEGAL OBLIGATION UNDER RIGHT TO INFORMATION ACT, 2005

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ABSTRACT

A democratic government should be transparent and accountable for the peaceful functioning of country. Political parties are the pillars of democratic government. The RTI Act was enacted to access the information from public entities. It is essential in the interest of public that political parties' finances should be included under the scope of the RTI Act for the purpose of disclosure of Funds raised and expenditure incurred both during election and other times to achieve an objective of free and fair election as highlighted under Article 324 concerning the disclosure of funds to observe transparency and accountability. The more the political parties are answerable, there are higher the chances that democracy is maintained. This paper aims to critically analyze the role of political parties in strengthening transparency and safeguarding democracy. The Judiciary has interpreted right to access to information, recognizing it as necessary for the functioning of a democratic country. Political Parties has to disclose their critical role in shaping governance and policy as political parties are often seen as quasi-public bodies. The Supreme Court have called political parties for their inclusion under the RTI to enhance financial transparency and accountability. Yet, political parties exempted and raising concerns over the disclosure of political funding and decision-making processes.

KEYWORDS: Political Parties, Right to Information, Transparent, Accountable.

INTRODUCTION

“Information is basic human right and the fundamental foundation for the formation of democratic institution.”

- **Nelson Mandela**

The RTI Act is a significant statute that enables citizens to get information possessed by governmental agencies. It is commonly viewed as an instrument to enhance openness, accountability, and effective governance in governmental operations. The preamble of RTI Act setup an objective to achieve an “informed citizen and to prevent corruption with view to hold government and their instrumentalities accountable”. The primary aim of RTI act is to secure openness in the governmental functions. To prevent the corruption in financial transactions and political funding, right to information should avail to the citizens. RTI Act was enforced to promote the accountability and transparency and hold the governments and their instrumentalities liable for the disclosure of information to general public. A government performs a legislative function therefore, it will be more important to ensure the transparency and accountability in policy making as well as financial disclosure. A democratic Government cannot make it through without transparency, citizens will only be able to feel transparency once they understand how the government operate. A democratic citizens should be well informed enough to reasonably influence choices that affect them. Furthermore, in such a society, the right to obtain information should be universally recognised, and it is a basic feature that stems from the very concept of democracy.

Research Questions

1. Why political parties shall be considered as State Instrumentalities under Article 12?

2. How the substantial and indirectly financing under RTI Act makes political parties to come within the ambit of public authorities?

Research Objectives

1. To study the concept of State Instrumentality and how it is applicable on political parties.
2. To explain the criteria of inclusion of private institutions under RTI Act.

Applicability of Article 12 & Section 2(h) on Private Institutions

This paper will analyse how does the transparency of political funding affect public trust in political parties. The RTI Act have significantly influenced citizen participation in decision making. (*Patel, 2022*) discussed that RTI Act confers onto citizens the entitlement to get governmental information. This motivates individuals to assume a more proactive role in governance, enabling them to hold public authorities accountable for their actions. RTI laws empower citizens to examine policies and choices, so fostering transparency in democratic processes and bolstering public faith in government.

Balanced Approach: Right to Privacy & Right to Know

The Constitutional scheme in India is 'Balancing of Rights' not the 'Demarcation of Rights'. There is no standard to watch which right can abridge and prevail other. There is no straitjacket formula to determine which right should cover under disclosure and non-disclosure as highlighted by (*Jaluka, 2016*). There should be circumstances depending on the substantial question of law and protection of public interest. There are conflicts lies with right to privacy and right to know. The equilibrium should be maintained. It is necessary to work in harmony and it is the duty of parliament to codify laws and regulations to promote harmonious construction of all laws simultaneously (*Golder, 2021*). Section 8 of RTI Act, provides for exceptions from disclosure of information. The personal information was exempted but there is lack of explanation that which type of personal information and up to what extent it should be exempted. There is no demarcation and boundary as discussed by author (*Chandra, 2023*).

Judicial Interpretation of 'Political Parties' as 'Public Authority'

As discussed by (*Jain, 2012*), when we refer Section 2(h)(d) and Section 2(h)(d)(i) & (ii) of the RTI Act; the word 'public authority' is defined as the body or authority or an institution established under the Constitution, Parliament or State Legislature. The institution or body which is substantially or indirectly financed or controlled by appropriate government. The word 'public authority' is very controversial.

(*Ganju, 2022*) discussed that all national political parties receiving indirect and substantial funds from central government. The nature of work and public character of political parties indicates them as public authority.

In (*Peoples Union for Civil Liberties v. Union of India, 2003*), the verdict held that right to information is a fundamental right of every citizen. The object of FOI Act to ensure the transparency and to access the information from public authorities. Therefore, the word 'public authority' must be interpreted widely to promote transparency. Government engaged in public welfare and are indirectly funded in the form of Tax Exemption under Income Tax Act, providing buildings of construction of their offices are considered to be substantially financed, the scheme of electoral bonds which is now declared as unconstitutional by the Honourable Supreme Court of India.

(*Indian Olympic Association v. Union of India, 2014*), Honble Supreme Court given the verdict that Indian Olympic association considered to be public entity as financed by Government, players were receiving the travel expenses and almost 85% of their living expenses. Further, (*170th Report of the Law Commission*) stated that "a political party which does not respect the integrity of

democratic principles in its internal workings for welfare of citizens then it cannot be expected to respect the fundamental principles in governance of the country. Government cannot be Arbitrary in the internal and external functioning. The issue lies in the fact that political parties perform the public functions and regulates the principles of democratic government but are not covered under the purview of 'public authority'.

Political parties fulfil the criteria and very standards of public authorities but they are not included under the said section. (***Right to Information Amendment Bill, 2013***) according to the said bill, political parties were removed from the ambit of 'public authority'. This was an arbitrarily dictatorship of government to escape from the ambit of RTI Act which violates and abridges the basic constitutional right of citizens.

Judicial Precedents

(***Indian Olympic Association v. Union of India, 2014***) it was discussed that Constitution of India provides right to secure liberty of thought and expressions as written in the preamble. The liberal passage to flow the information for democratic society is necessary as it is required for the society to grow and maintain accountability and transparency among the people (**Jowett**).

In (***Anjali Bhardwaj v. Union of India, 2019***), it was held by the Honble Supreme Court the RTI Act was enacted to serve the purpose of freedom of information. The essential component of good governance is a democracy and attainment of good governance.

In (***State of Uttar Pradesh v. Raj Narain, 1975***), observed that, the responsibility of government is to make accounts public except there can be some confidentiality. People in this country have a right to know about every public act. It was held that there is no necessary notification, order or ordinance is required to make a private entity to be public entity and come within the purview of RTI Act. In (***Subhash Chandra Agarwal v. Central Public Information Officer, Supreme Court of India, 2020***), it was held by the Honourable High Court, public authority under the RTI Act and assets should be subjected to access public information.

In (***M.P. Verghese v. Mahatma Gandhi University, 2007***), Court held that the word 'Public Authority' under RTI Act is used to safeguard the right to know and included all colleges which are funded by the government directly or indirectly.

In (***Anil Bairwal v. Parliament of India, 2011***), Central Information Commission highlighted the points; allotment of plots on concessional prices and tax exemption of political parties should be considered as substantially funding. Political parties enjoyed free taxation but any other non-governmental organization does not enjoy any financial aid.

In (***Association for Democratic Reform Vs. Union of India, 2024***), It was held that Central Information Commission (CIC) passed a judgment on the Indian Democratic System, CIC declared that political parties have public character as they perform public functions thereby protecting right to know and accountability. Section 2(h) of the RTI Act defined the word 'public authority' and provided the criteria to determine that whether the private institution should come under the said criteria. CIC declared political parties as public authority but the order was not obeyed and there has been no execution took place.

Role of RTI Act in promotion of open and transparent democratic country

Any person empowered to access information from public institutions helps to ensure the working in a transparent and accountable way. There are some major aspects of RTI are given by (***Sharma, 2021***) are as follows:

- Maximum Disclosure: There must be a disclosure of information subjected to exceptions which should be clearly defined.
- Obligation to publish: Political authorities should publish the information in public interest following rules of natural justice, without waiting for RTI to be filed.

- **Open Government:** Good Governance foster the cultural as well economic growth of a democratic country. A government should be open, accountable and transparent and promote citizenry- participation in decision making processes. The Governmental meetings should be open to public.
- **Limited scope of Exceptions:** It asserts that exception should be strictly limited, subject to Security of State and Sovereignty etc. Right to access information takes precedence over other interests, such as privacy.
- **Rapid and Fair services:** After requesting for RTI, the requests should process timely and should provide fair reasons behind any refusals and there should not be any excessive costs.

International perspective on Right to Information with reference to India

(Acharya, 2022) highlighted that Right to Information is a soul and essence. Article 10 of the ECHR 1948 guarantees freedom of expression. Article 19 of the UDHR guarantees that every person has right to freedom i.e. freedom of opinion and expression which means the information which should be received or impart from anyone. Likewise, ICCPR 1966 ensure every person can seek and impart information. The term 'right to information' is somewhere regarded as human right. In the First Session of UNGA 1946, adopted Resolution 59 which was regarded as "Freedom of information". After long awaited India came up with RTI Law. After passing the RTI Act, 2005 India become one of the 55 countries possess laws regarding right to information.

Sweden was the first country to enact RTI Laws in the year 1766. The main object to the enforcement was to inspect and access documents and government activities to enhance the transparency and to curb the corruption in democratic government. Political Parties in Sweden are not considered as public authorities like India, but there is Political Parties Financing Act which ensures the disclosure of finances especially state fundings (Sharma P. , 2020).

Suggestions

1. There should be balanced approach for privacy. Demarcation for the disclosure of information should be needed.
2. The political parties should be covered under RTI Act for the disclosure of financial status received from government, corporates and any person.
3. Parliamentarians are the law makers; they should implement strict laws for the regulation and disclosure of finances of candidates of each political party.
4. The policies should be enforced to regulate and curb corruptions done by political parties.
5. Election Commission should be provided with powers to impose strict penalties for the non-disclosure of finances.

Conclusion

The Right to Information (RTI) significantly influences government accountability, with far-reaching effects on transparency, citizen engagement in financial disclosures and democratic governance. The RTI Act serves as a legal framework that facilitates citizens' access to information possessed by public agencies. This empowerment has significantly influenced government accountability, as RTI legislation have enhanced transparency in governmental processes. RTI queries have proven pivotal in revealing corruption, maladministration, and the misappropriation of public monies. The disclosures have prompted legal proceedings, policy modifications, and a general enhancement in accountability.

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