

OPINION

Let's All Come To The Party

Transparency promotes democracy, more the reason for political parties to come under RTI Act's purview

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There was great public outrage when legislators in Mumbai beat up an assistant police inspector because he stopped an MLA's car for speeding on the Bandra-Worli sealink. The sentiment was: What arrogance! How can lawmakers have so little respect for the laws they themselves made? However, the amendment in Parliament aimed at removing political parties from the purview of the RTI Act—after six political parties had been ordered by a statutory authority, the Central Information Commission (CIC), to appoint public information officers—makes the arrogance of the Maharashtra legislators seem insignificant. Now think what the MPs are telling the legislators in Maharashtra. If someone dares to stop you because you were speeding and breaking a law (that you yourself had enacted), it is not enough to just thrash them. You should immediately come back and amend the law, specifying that all legislators (and former legislators, and would-be legislators) are allowed to break the law, while all others must obey it.

The 'intent' of the RTI Act

The Indian RTI Act, in keeping with global best practices, intends to give the public access to at least four types of information—relating to the allocation and use of public resources; relating to any authority set up, owned or controlled by the government; pertaining to any statutory monitoring or regulatory obligations of the government; and, finally, information which is in the larger public interest to disclose, even where some harm might accrue, as long as the public interest in disclosure outweighs the harm to the protected interests.

Therefore, any organisation that holds in its possession any of these four types of information is 'intended' to be covered by the RTI Act. Clearly, political parties are a 'twice-born' in this category, for not only do they use public resources but they also hold much information that would be in great public interest if disclosed.

The CIC, in its order, has already listed the extensive benefits parties get from the public exchequer in the form of tax exemptions, subsidised land etc amounting to millions of rupees. Apart from that, every year they collect vast amounts of funds directly from the people on the understanding that they would fulfil the promises listed out in their manifestos and/or in other public pronouncements.

Clearly, millions of anonymous Indians give their hard-earned money to political parties mainly in the belief that these parties will live up to their promises of delivering a better life for them. Therefore, they have a right to know what the political parties, to whom they give their money (and their votes and hopes), are doing—what principles they are keeping in mind while taking policy decisions, supporting or opposing bills in Parliament, or while selecting candidates for various elections. Given the fact that in India most people vote for parties rather than individuals, can any information be more critical than all this for ensuring that our democracy really functions and that people elect the party that is closest to their aspirations?

The 'Official' Justification

The RTI Amendment Bill lists three substantive justifications for excluding political parties from the rti's purview.

First, it is argued that "there are already provisions in the Representation of the People (RP) Act, 1951, as well as in the Income Tax Act, 1961, which deals with transparency in the financial aspects of political parties and their candidates". It is correct that certain types of

financial information is reported by political parties to the Election Commission (EC) and to the income-tax (I-T) department under the RP and I-T Acts, which theoretically citizens can access under Section 2(F) of the RTI Act. However, clearly these kind of pro-forma disclosures are inadequate.

In 2010-11, just the six national parties listed by the CIC had a combined declared income of Rs 700 crore. A significant proportion of this income was from donations by the public, and only 10 per cent of these donations were reported to be in amounts greater than Rs 20,000. The remaining 90 per cent were reportedly received in denominations smaller than Rs 20,000. Under the current I-T Act, parties do not have to declare the sources of donations under Rs 20,000 and therefore information on the sources of these donations cannot be obtained from the I-T department or the EC. These 'anonymous' donations could very well be large donations made by industrialists, corporates and rich individuals, which are 'broken down' and shown as multiple small donations.

Also, as far as the EC goes, only the declared expenses of each candidate at the time of elections are passed on to them. Yet everyone knows that these are, in most cases, only a small proportion of the actual expenses. Of relevance here is the recent reported statement of MP Gopinath Munde, who admitted spending 20 times more than the allowed limit on his elections. If he is a typical case, as is likely, the EC can only provide us with details of five per cent of the actual expenditure.

A hundred thousand signatures were appended to just one of the petitions sent to the PM. One poster read: 'the RTI is mending our constitution, please do not amend it.'

Of course, it would be ideal if laws like the RP and I-T Acts could be amended to ensure that all relevant information is maintained and submitted to the appropriate authorities who make it available to the people. Given that both these laws have far more stringent penalties for denial or falsification of information than the RTI Act, such a system would serve the ends of political transparency much more effectively. However the moot point is, if it is not possible to get political parties to respect the orders of the CIC to provide information under the RTI Act, getting them to agree to pass such sweeping amendments to the RP Act, I-T Act and other existing laws would be virtually impossible.

The second justification is that declaring "a political party as public authority under the RTI Act would hamper its smooth internal working". But parties are essentially bureaucracies with hierarchies, functionaries, assets, duties and responsibilities. The requirement that they function transparently would automatically force the party functionaries to more closely adhere to the prescribed rules and processes, and to take decisions on a basis that is not only fair but also appears to be fair. If the world over transparency has been recognised as significantly improving the functioning of bureaucracies, then why does that not apply to political bureaucracies?

Besides, it is well recognised that transparency promotes democracy. Surely it will be a positive outcome if political parties, which are at the heart of our democracy, become more democratic in their own functioning.

Finally, the third justification for ethical delinquency—that "political rivals may misuse the provisions of the RTI Act, thereby adversely affecting the functioning of the political parties"—is the most mysterious. If rival parties file a large number of RTI applications, the receiving party can also reciprocate. The concern of parties that political rivals might use the RTI Act to access records that prove illegal dealings would be valid only if parties were maintaining records of their illegal dealings. If they indeed are maintaining such records, then the RTI Act is the least of their worries, for they might get away by denying the existence of such records if any RTI request came, especially as the RTI Act does not give powers of raids, searches and seizures. On the other hand, the I-T Act and the Indian Penal Code, among others, give

such powers, and 'political rivals', rather than misusing the RTI Act, would much more likely use these other laws to expose them.

The quest continues

There is a clear and urgent need for greater transparency in the functioning of political parties. Recent months have witnessed a strong public demand to not amend the RTI Act and to hold wide consultations on any proposed amendments. At last count, over a hundred thousand signatures had been appended to just one of the many letters and petitions asking the prime minister to desist from amending the RTI Act. One poster read: 'The RTI is mending our democracy, please do not amend it!'

On September 5, 2013, sensing the mood of the nation, in a welcome development, the political establishment referred the RTI Amendment Bill to a parliamentary standing committee. The standing committee could potentially provide a platform to balance the legitimate concerns of political parties, related to disclosing information that would harm their competitive and strategic interests, with the urgent need for transparency in the functioning of political parties.

In the meantime, in the absence of any court granting a stay order, the CIC ruling is in force. The six national political parties must immediately comply with the orders of the CIC and put in place mechanisms to provide information to citizens under the RTI Act.

(The authors are RTI activists.)

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