

Right to Information and Good Governance

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Lecture No. 65

RTI Act and Political Parties - II

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- **B. Performance of Public Duty**

- Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty.
- In spite of being non-governmental, they wield or directly or indirectly influence exercise of governmental power
- *Bangalore International Airport Limited v. Karnataka Information Commission* W.P. No.12076 of 2008 dated 9.2.2010 - for an authority to be a 'public authority' it must be an authority exercised or capable of being exercised for the benefit of the public. Need not be constituted by a statute.

- **C. Constitutional legal provisions vesting Political Parties with rights and liabilities**

- Party to be registered by ECI under section 29A of the Representation of People Act, 1951
- Political Party to submit report for each Financial Year to ECI in respect of contributions received.
- ECI allots election symbols to political parties under the Election Symbols(Reservation & Allotment) Order, 1968 and can suspend or withdraw recognition on violation of the Order
- Tenth Schedule, Party can have a Member of the House disqualified in certain circumstances



The second point that was raised by the complainants to persuade the central information commission to bring political parties within the purview of public authority, was that political parties performed public duty. In coming to the decision with respect to this convention that was raised by the complainant, the central information commission looked at the role that political parties played, and it observed that political parties are the life and blood of our polity.

It also quoted Harold Laski, the English political theorist and economist, that the life of the democratic state is built upon the party system. Elections are contested on a party basis, and political parties select some problems which are more urgent than others, and present the solutions to them which may or may not be acceptable to the citizens. The ruling party draws its development programs on the basis of its political agenda, and it is responsible for the growth and the development of the society and the nation.

Talking about the influence that political parties wield on the lives of citizens, the CIC observed that political parties affect citizens directly or indirectly, in every conceivable way, and they are continuously engaged in performing public duty. And this makes it extremely important for them to become more accountable to the people. Political parties are unique institutions of the modern constitutional state, and the CIC said that they derive this uniqueness from the fact that in spite of being non-governmental, they come to wield or directly or indirectly influence the exercise of governmental power.

In addition to this observation, the Central Information Commission also relied on one of the judgments of the Karnataka High Court, which was given in the case Bangalore International Airport limited versus Karnataka Information Commission. This case was decided in February 2010, and the Karnataka High Court had observed that a public authority may be described as a person or administrative body that is entrusted with the functions, to perform for the benefit of the public and not for private profit.

Not every person or body is expressly defined as a public authority or body. And the meaning of the term can vary according to the statutory context in which the term is used. But one of the distinguishing features that must be taken into account to judge, whether an authority is a public authority or not, is to see whether the authority is engaged in any kind of profit-making enterprise or exercise. If it is engaged in profit making, then in all likelihood, it is not a public authority.

Now, the court also noted that it is not incumbent or it is not necessary, that for a body to be a public body, it must always be constituted by a statute. For, an authority to be a public authority, the most important point is that has to be borne in mind is that, the authority exercises or is capable of exercising its functions for the benefit of the public. So, as long as it is functioning for the benefit of the public, it would be categorized as a public authority or a public body.

Now, after talking about how important the political parties are, in so far as performance of public duty is concerned and the amount of influence that they have on the general citizens of the country, the Central Information Commission started to talk about how important it is to ensure that the elections are conducted in a pure and fair manner. And in stating this, the CIC relied on the report, of the National Commission to review the working of the Constitution, which was submitted in March 2002.

In this Report, it had been recommended that political parties as well as individual candidates must be made subject, to a proper statutory audit of the amounts that they spent. In this report, one of the landmark decisions of the Supreme Court, Common Cause, Registered Society versus Union of India delivered in 1996, was also quoted where the Supreme Court had dealt with the income and expenditure which is incurred by political parties. And it had laid emphasis on transparency of election funding.

So, the CIC, again stressed on the fact that the people of India must know the sources of expenditure which are incurred by political parties and the candidates in the process of elections. And it also said that the different judicial pronouncements which have been given by the Supreme Court, as well as the High Court, they go on recommending about the higher level of transparency, which is completely important and non-negotiable in the functioning of political parties in general, and their funding in particular.

In this, while deciding this point, the Central Information Commission also relied on the preamble to the Constitution of India. And it stated that the preamble tries to secure for all its citizens justice, liberty, equality. And it tried to link the preamble of the Indian constitution to the preamble of the Right to Information Act, which also aims to promote these very principles in the form of transparency and accountability in the working of every public authority.

And it also aims to create an informed citizenry, and to contain corruption and hold the government and their instrumentalities accountable to the people who are being governed. So, the CIC says that, it is completely needless to say that political parties are very important political institutions, and they can play an extremely critical role in ensuring transparency in public life and it cannot be negated or there is no doubt about the fact that they perform public functions, which define the parameters of governance and socio-economic development in the country.

So, bearing in mind, the nature of the public functions that are performed by the political parties, the CIC, concluded that political parties are public authorities under section 2(h) of the Right to Information Act. The last point that the complainants have raised, was that there are certain legal and constitutional provisions which vest certain rights and responsibilities or rights and liabilities on political parties. And based on the different contentions and the different arguments which were raised, the CIC come or the CIC came to the conclusion that, political party is required to be registered by the Election Commission of India under Section 29A of the Representation of People Act, and therefore they are statutory bodies.

Secondly, under section 29C, of the Representation of People Act, political party is required to submit a report for each financial year to the Election Commission of India in respect of the contributions that it receives, which are in excess of 20,000 from any person, and also

contributions in excess of 20,000 which are received by the party from non-government companies.

Moreover, in exercise of the powers under Article 324, read with section 29A of the Representation of Peoples Act, and the Rules of The Conduct of Election Rules, of 1961, the Election Commission has issued election symbols reservation and allotment order of 1968, under which election symbols are allotted to the various political parties. At the same time, in addition to allotment of election symbols, the Election Commission also has the power to suspend or withdraw recognition of a recognized political party, if it violates any of the provisions of the election symbols order of 1968.

Lastly, the election, the chief, the Central Information Commission also noted, that the tenth schedule of the constitution, a political party has been given a lot of power. It can have a member of the house disqualified by recommending to the speaker, if certain circumstances are fulfilled. So, by looking at the different contentions, and the constitutional or statutory powers that the political parties bring rather the constitutional and the statutory powers that have been bestowed or which bring political parties within the ambit of section 2h, the CIC noted that, all these points in a very compelling way points towards the fact that, their character is that offer public authority that, is the political parties do have the character offer public authority.

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CIC's Ruling

- June 3rd, 2013 Full Bench declared INC, BJP, CPI (M), CPI, NCP and BSP as Public Authorities within the purview of the RTI Act.
- Parties directed the following
- **Setting up of CPIOs:** The Presidents, General/Secretaries of these Political Parties directed to designate CPIOs and Appellate Authorities in 6 weeks' time.
- **Voluntary Disclosure:** under 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.



After considering all the contentions raised by the complainants and making its own observations, the Full Bench of the Central Information Commission delivered a landmark judgment on third June, 2013 and declared the 6 political parties as public authorities, within the purview of the Right to Information Act. Accordingly, the political parties were directed to designate, Chief Public Information Officers and Appellate authorities at their headquarters within 6 weeks.

And the CPIOs who would be so appointed, were also required to respond to the RTI applications which were filed by the complainants in 4 weeks' time. In addition to this, they were also requested or they were directed to make voluntary disclosures under section 4(1) (b). So, the presidents and the general secretaries of the 6 political parties were directed to comply with the provisions of section 4(1) (b) of the Act by making voluntary disclosures, on 17 subjects which are mentioned in the clause.

Now, some of the particulars that section 4(1) (b) of the RTI Act requires any organization making Voluntary Disclosure include, particulars about the organization functions and duties, the

powers and duties of the officers and employees, the procedures that are followed in the decision-making process, including what are the channels of supervision and accountability. Then, in addition to this, it also requires financial information like the monthly remuneration which is received by each of its officers and employees, including the system of compensation which may be provided in its regulations.

The budget which is allocated to each of its agency, including particulars of plans, proposed expenditures and reports on disbursements made, then particulars of receipts of concessions or particulars of people who have received concessions permits or authorizations from the organization and in this case, the political parties and details of any kind of information that may be available or held by the party, and all of this reduced in electronic form.

So, I have just mentioned a few of the particulars that section 4(1) (b) includes, but the section in fact asks for 17 particulars to be disclosed, under the section for any organization that has been called to make voluntary disclosure.

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AFTERMATH OF THE JUDGEMENT

- Response of the Political Parties & the Bill to Amend the RTI Act in 2013
- Non-compliance hearing.
- The CIC sent a notice to the six political parties for a hearing on January, 2015, but hearing boycotted.
- March, 2015- CIC stated that the order of June 3rd 2013 is final and binding.
- May, 2015- PIL filed by ADR in the Supreme Court to bring the political parties within the ambit of the RTI



Now, the response that the political parties had to the decision of the Central Information Commission should not come as a surprise to any of us. Despite being institutions that are expected, to uphold the constitutional and legal framework, none of the political parties appealed against the decision of the CIC. Instead, there was a move to amend the Right to Information Act to keep political parties outside its purview.

The bill to amend the RTI Act, which was tabled in the monsoon session of 2013, witnessed strong opposition from civil society and was referred to Standing Committee. The committee in October 2013 agreed to the proposed amendment, and completely disregarded the public opinion which was vehemently against this amendment. But in the meantime, the bill lapsed and the CIC had to call for noncompliance hearing. After the passage of 17 months of the CICs order, none of the parties had complied with it.

So, the commission issued show cause notices to the political parties in November 2014. But all parties were absent from the hearing. And Mister Subash, Agarwal and ADR requested the CIC to impose penalties on the parties, under section 20 of the RTI act, and they also requested the CIC that they should be provided exemplary compensations under Section 90. Again, in January, 2015, the CIC sent a notice to the political parties for a hearing, but the parties were again missing, so they boycotted the hearing in unison, and the CIC had to reserve the order in the case.

In March, 2015, the CIC again issued a noncompliance order with respect to the political parties and stated that the order of third June 2013 is final and binding. In May, 2015, a PIL was filed by the Association for democratic reforms in the Supreme Court to bring the political parties within the ambit of the RTI Act.

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- April, 2019 - Ashwini Upadhyay, BJP leader and advocate filed a petition in the SC with a plea that the all political parties must come within the ambit of the RTI
- All registered and recognized political parties should be directed to appoint public information officer and appellate authority within 4 weeks and make disclosures in letter and spirit of the RTI Act.
- In April 2019 Supreme Court has issued a notice to the centre and the Election Commission (EC) to declare public authorities in order to make them transparent and accountable to the public.



In April, 2019, Ashwini Upadhyay, a BJP leader and advocate, filed a petition in the Supreme Court, and he requested that political parties who are registered under the representation of people act should be declared as public authorities under the RTI Act. His plea also included that all recognized and registered political parties should be directed to appoint Public Information Officers and appellate authority within four weeks, and they should make disclosures under the RTI Act.

And if they do not comply with the provisions of the Representation of People Act, the RTI Act, the Income Tax Act, the moral code of conduct and other election laws and rules, then they should be D recognized by the Election Commission of India. In April, 2019, the Supreme Court issued a notice to the Centre and the Election Commission to declare public authorities, that is to declare political parties as public authorities in order to make them more transparent and accountable to the public.