

Right to Information and Good Governance

Doctor Sairam Bhatt

Professor of Law

Madhubanti Sadhya

National Law School of Indian University, Bengaluru

Lecture 64

RTI Act and Political Parties - I

Hello, I am Madhubanti Sadhya from the National Law School of India University Bangalore. And I will be discussing on the topic Right to Information Act and political parties. This is a part of the course on right to information being offered by the National Law School.

Now, the primary question that I would like to address through this topic is whether political parties come within the purview of the Right to Information Act, more specifically, whether they are public authorities under section 2(h). I would be adopting case law approach for the discussion and I will be talking about one of the landmark decisions of the central information commission, which addressed the same topic.

(Refer Slide Time: 1:12)

WHAT IS THE NEED FOR TRANSPARENCY IN POLITICAL PARTIES

- Political parties are essential institutions of democracy.
- Act as links between the citizens and the government.
- Political parties resist public scrutiny – on the ground that their smooth internal working will suffer
- Why do we need transparency?
 - They owe a duty to the people they represent.
 - Process determining the selection of candidates largely unknown
 - To ensure independence of parties from undue influence of big donors
 - "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented." (UN Human Rights Committee in General Comment No. 25, July 1996)



Now, when we talk about right to information and transparency in the working of the political party, the first question that needs to be addressed or answered is what is their role in the democracy and why do we need them to be transparent? Now, a democracy induces governments to be responsive to the preferences of the people who are the voters.

Political parties are essential institutions of democracy because in a democratized system, they act as the intermediary or the link between society and state and between the rulers and the ruled. And therefore, it is a given that parties must be accountable to the public at large. Why? Because they cater to people's demands on public matters. And they also mobilize political participation through their political campaigns and the different projects.

Now, there can be very little doubt about the importance of the participation of people in the working of the affairs of a true democracy. The right to vote, and to participate in the affairs of democracy becomes completely worthless, until and unless the citizens are well informed on all aspects of issues in respect of which they are called upon to express their views by casting their votes.

Now, the Supreme Court in a very famous case of Ministry of Information and Broadcasting versus the Cricket Association of Bengal had held that one sided information, disinformation, half-baked information and non-information, they are all equally responsible for creating an uninformed citizenry, which makes democracy nothing less than mockery.

Now, what has been the stance of political parties with regard to the increasing and the clamouring call for transparency in their workings? Now political parties have for long been resisting any kind of public scrutiny, while activists on the other hand have been demanding that there should be complete transparency in their financial and internal functioning. It is not that efforts have not been made. Several efforts have in fact been made to bring transparency in their functioning. But they have time and again denied information on the ground that their smooth internal working will suffer if they become very transparent.

Now in People's Union for Civil Liberties versus Union of India, which was delivered in the year 2003, this the decision in the (judge) in this case, the Supreme Court had held that Indian voters have a right under Article 19(1)(a) of the Constitution to obtain information about political candidates. Why is it so? Because in a democracy, it is the will of the people that is expressed in periodic elections.

And this makes it extremely necessary that basic information about candidates is readily available. Why? Because it enables voters to make an informed decision and it also allows for public debates on the merits and demerits of candidates. This also ensures that the freedom of

speech and expression is promoted and the integrity of the electoral process in a democracy is maintained.

Now, if we had to look at a few reasons just to why is there a need for transparency in the working of political parties, I can pinpoint 3 such reasons. First, they should be accountable to the people they represent, because the people vote and bring them to power on the basis of the (dem), on the basis of the promises that they make to the people, on the basis of the different development schemes or the different changes that they ensure would be brought about after they come into power.

Secondly, a very important question that remains outside the public domain is the process of determining the selection of candidates. So, that is why it is important to understand how do the different political parties function internally. Now, different parties adopt different approaches in the selection of candidates, and it is usually the senior figures in the party who come up with the candidates who should actually represent their party.

Unfortunately, there is no uniformity in the selection process. More often than not, the selection is very ad hoc. And it results in a staggering number of candidates with questionable antecedents who are actually made to stand for the elections and people have no choice but to vote for them if they are in favour of one particular party coming to power.

Now, the third very important reason is to ensure transparency in political finance. Now to guarantee that independence of parties from any kind of undue influence of big donors, and to ensure that they compete on an equal footing, and that they practice transparency in political financing. It is very, very important that there is transparency in the way that the political parties are funded, and regulating party funding is a very necessary step towards this objective. Any policy in this regard should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

The United Nations Human Rights Committee in general Comment Number 25, which dealt with the right to participate in public affairs, voting rights, and the right to equal access to public service, adopted in 1996, as a part of the international standards for elections, had noted that the reasonable limitations on campaign expenditure may be justified, where this is necessary to ensure that the free choice of voters is not undermined, or the democratic

process distorted by the disproportionate expenditure on behalf of any candidate or party. So, the results of genuine elections should be respected and implemented. And transparency and accountability in political financing is integral to achieve such a framework.

(Refer Slide Time: 8:29)

- 255th Law Commission of India Report titled Electoral Reforms, the need for electoral finance reforms (March 2015)
 - Financial superiority results in electoral advantage or “winnability” factor
 - Parties with poor financial strength cannot compete on equal footing
 - Reduces the prevalence of black money, bribery
 - Elected officials face dangerous financial pressures as a result of quid pro quo
 - Parties become less accountable to voters if they are too closely tied to financiers



Now, in addition to the United Nations human rights comment, even closer home the 255th national Law Commission of India report, which was titled Electoral Reforms, spoke of the need for electoral finance reforms. This was in the month of March 2015. And the law commission report actually listed down five points why it is very, very important to bring about reforms in electoral finances. Now, what were these points raised?

First was financial superiority of any particular party results in electoral advantage or winnability factor, and therefore any richer candidate and parties have a better chance of winning the elections. Why is this, because with better finances, they are able to plan their campaigns better, they have a better outreach, they can reach out to the people more and therefore it gives them a winnability factor, or a relative advantage over the other parties.

The second point would be any individual or political party with poor financial strength is prevented from contesting elections on an equal footing. Now this point is also closely tied to the first point. Thirdly, openness and political finance reporting reduces the prevalence of black money, bribery, and crony capitalism in electoral politics. The fourth reason that the law commission gave was elected officials face dangerous financial pressures as a result of quid pro quo that transpires between big donors and parties or candidates.

Now, this makes it essential to reduce the space for policy capture. So, usually the big donors who fund the different activities of the political parties also expect something in return from

the candidate who actually comes in power with their help, if not direct their indirect help. The last reason that was cited was huge contributions, though legal can result in institutional corruption. And this institutional corruption can more often than not compromise the political morality norms of a republican democracy.

Now, candidates and parties become less and less accountable to voters, if they are very closely tied to their financiers, or even alter their views and convictions in a way that attracts most funding. So, if huge contributions are made, the parties and the candidates, what do they try to do? They try to shape their political manifestoes not in a way that will actually help the voters or that will help in advancing their interests, but to ensure that they get the maximum funds.

So therefore, they will shape or align their policies in a way that attracts maximum funds from the different funders. And they will also try to ensure that the interest of the funders are met. So therefore, it does lead to institutional corruption. In addition to these points, transparency and accountability in political funding, also helps to promote electoral participation of women and other marginalized groups given their unequal access to funds.

Now, because they are more prone to come out and vote for them, and they are more encouraged to vote. This also incentivizes compliance with political finance regulations of the country. And it also helps to (access) ensure that people get, people have access to information, and this helps voters to make an informed choice and maintain their trust in politics. Most importantly, adequate access to funding in the absence of any kind of obligation that needs to be met for this funding is crucial for the overall wellbeing of an electoral and democratic system.

(Refer Slide Time: 13:10)

HOW DID THE STRUGGLE TO BRING POLITICAL PARTIES UNDER RTI ACT BEGIN?



- Association for Democratic Reforms and S.C. Aggarwal in 2011 sought information from Presidents/Secretaries of the INC and BJP through RTI application which included:
 - Copies of Election Manifestoes by BJP for Lok Sabha elections in the years it formed NDA government with Shri Atal Bihari Vajpayee as Prime Minister
 - Outline of receipts by BJP in last two years separately for each year.
 - Outline of payments made by BJP in last three years separately for each year.
 - Is it compulsory for every BJP legislature either at Centre or in States or in civic bodies etc to contribute towards party funds?
- Both parties denied information on the ground that they did not fall under the purview of the RTI Act since they were not "public authorities"



Now, let us look at how the struggle to bring political parties within the purview of the Right to Information Act began. In fact, this has been a long-standing struggle with the Chief Information Commission and the Election Commission of India recommending to that effect, and they have for long been advocating that political parties should be brought within the ambit of the RTI act.

But there are a few notable names who added momentum to this struggle. And I would like to talk about three such names. First is an organization that is the Association for Democratic Reforms. It is an Indian nonpartisan non-governmental organization founded in 1999, which works in the area of electoral and political reforms. The two other names would be of Mr. S.C. Aggarwal and Mr. Anil Bairwal, both of whom were RTI activists.

Now in 2011, ADR and S.C. Aggarwal sought some information from the president and secretaries of the Indian National Congress, and the Bhartiya Janata Party by filing an RTI application. Now, what did they want to find out through their application? Firstly, they were looking for copies of election manifestoes by BJP for Lok Sabha elections in the year that it formed the NDA government with the Atal Bihari Vajpayee as the Prime Minister.

The second question was whether all promises made in the election manifestoes were fulfilled by BJP after it formed the government. And if the promises were not fulfilled, what are the promises that had remained unfulfilled after BJP came to power? They also wanted to find out about the receipts, separately by cash, online, check whichever mode of payment was


used by BJP in the last 2 years, and separately for each year, for which updated account information may be available.

Similarly, outline payments, outline of payments which were made by BJP in the last 3 years in separately for each year. Now, they also wanted to find out whether it was compulsory for every BJP legislature, either at the centre or in the state or in civic bodies to contribute towards party funds. And if it is compulsory, they asked for the complete and detailed information, including the names of the defaulters, who had defaulted in making contributions to party funds in the last 3 years.

They also wanted to know whether BJP was aware of any of its legislators, both at centre and state, civic body member etcetera. who may be involved in corrupt or other mal practices in the last 3 years. And if so, complete details of such officials or such members were asked to be provided included, including action which may have been taken against such persons.

And ADR and Subhash Aggarwal also wanted to find out through their RTI application, whether BJP had suggested any proposals to the Union Government or the Election Commission towards electoral reforms. And if yes, they wanted complete details of the same, including any reply that they may have received from the Union Government or the Election Commission. Unfortunately, the parties were denied any information on the ground that they did not fall under the purview of the Right to Information Act, since they were not public authorities.

(Refer Slide Time: 17:06)

- 
- Complainant Anil Bairwal, in his RTI application dated 29.10.2010 had sought information from 6 political parties INC/AICC, BJP, NCP, CPI(M), CPI and BSP
 - Sources of the 10 maximum voluntary contributions received by your party from Financial Year 2004-05 to Financial Year 2009-10?
 - modes of these donations, amount and Financial Years in which contributions were made
 - Sources/Names of all Voluntary Contributors along with their addresses who have made single contributions of more than Rs. 1 lakh
 - Some parties responded they were not public authorities, CPI gave response and others chose not to respond
 - Both parties filed complaint before CIC contending Political Parties, were beneficiaries of the Government, and fell under Section 2(h) of the RTI Act
 - Both cases heard together by Full Bench CIC - common issue relating to the disclosure of the accounts and funding of Political Parties



Now, this is quite similar to the case of Anil Bairwal. Now, Anil Bairwal through his RTI application, which was filed in October 2010 had sought information from six political parties. That was the Indian National Congress, BJP, NCP, CPIM, CPI and BSP and what was the information that he had sought through his RTI application? Firstly, sources of the 10 maximum voluntary contributions that he may have received, that the parties may have received from the financial year 2004-5 to the financial year 2009-10.

Second, what were the mode of these donations, whether they were made in cheque, cash, demand draft, etcetera. The amount for these donations and the financial years in which these contributions were made. And they also wanted to know about the names of sources of all voluntary contributors, along with their addresses, who had made single contributions of more than 1 lakh rupees.

Now, in response to the RTI application, some parties did file their response. But what was the response? The response was that they are not public authorities under the RTI act, and hence, they do not fall within the jurisdiction of the RTI Act. CPI thankfully gave response, but others chose not to respond.

Now, the case was contested for the next 3 years and came before the Chief Information Commission. And both parties filed a complaint before the CIC contending that political parties were beneficiaries of the government. And they fell under section 2 h of the RTI Act. In both the complaints, since the common issue was relating to the disclosure of accounts and funding of the political parties, the CIC decided to dispose of the matter through common order.

(Refer Slide Time: 19:18)

HIGHLIGHTS OF THE CIC DECISION



- Full Bench of CIC gave decision on 3rd June, 2013
- Whether political parties are public authority under Sec. 2(h)?
 - "public authority" means any authority or body or institution of self government established or constituted—
 - (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State Legislature;
 - (d) by notification issued or order made by the appropriate Government,
 - and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government
- Does not fall under Sec. 2(h)(a),(b) or (c)
- state funding which is not "insubstantial" of to bring political parties within the ambit of Sec. 2(h)(ii)



The complaint made by Subhash Aggarwal and Anil Bairwal, were jointly heard by the Central Information Commission and the full bench of the Information Commission gave its decision on 3rd June 2013. As I had already mentioned, the primary contention of the complainants was that political parties come within the purview of the term, public authority, and therefore they are amenable to the jurisdiction of the Right to Information Act, and they must entertain complaints or sorry, they must entertain RTI applications and file responses to the questions that the RTI applicants seek.

Now, to substantiate this argument the complainants had given 3 reasons, I will come to those reasons a little later, but before that, let us discuss how public authority has been defined under the RTI Act. As per section 2 h public authority is any authority, body or institution of self-government, which is established or constituted; a - by or under the Constitution, b - by any other law made by Parliament, c - by any other law made by state legislature, or d - by notification issued or order made by appropriate government.

Public Authority also includes anybody owned, controlled or substantially financed by the appropriate government or non-government organization substantially financed directly or indirectly by funds provided by the appropriate government. Now, the CIC noted that clauses a, b and c clearly do not apply to political parties.

But as far as clause d is concerned, that is establishment of a body by notification or order made by appropriate government, the CIC held that at least in spirit political parties can be said to have been constituted by their registration by the Election Commission of India. So,

which is similar to the establishment of constitution of a body or institution by an appropriate government.

Now, coming to clause 2 of section 2(h), the CIC held that according to this provision, any non-governmental organization which is substantially financed directly or indirectly by funds of the appropriate government would become a public authority for the purpose of the RTI act. Now, the term 'substantial' or the expression 'substantial' has not been defined in the RTI Act, but in a number of decisions, the superior courts have held that the state funding that substantial sorry substantial funding or financing need not be majority financing.

What is necessary is there must be evidence of state funding, which is not in substantial of such non-governmental bodies to bring them within the ambit of this particular provision, that is section 2(h)(2). So, what is important is the non-governmental organization must not be the recipient of majority financing from the government. But as long as the funds that it has received is not insubstantial, they would fall within the purview of section 2(h)(2).

(Refer Slide Time: 23:08)

- Grounds raised by complainants: Three
 - **A. Indirect substantial financing by the Central Government**
 - Large tracts of land in Delhi allotted to various Political Parties free of cost or concessional rates and accommodation in Delhi to various Political Parties on rental basis at concessional rates
 - Central Government has allotted houses on rental basis at concessional rates.
 - Granted total tax exemption under section 13A of the Income Tax Act
 - Indirectly financed by States by way of free air time on All India Radio and Doordarshan of India during the elections
 - Delhi High Court in judgment dated 7.1.2010 in *Indian Olympic Association v. Naveen Malik and Ors.* - 'Public Authority' has to be interpreted liberally and not restrictively. 'majority' test is not appropriate



Now, the complainants had put forward or adduced three principal grounds to persuade the commission to hold that political parties are public authorities. And the first was that political parties receive indirect substantial financing from the central government. Second, they perform public duty and third, constitutional legal provisions vest political parties with certain rights and liabilities and all these factors make them public authorities under the RTI Act.

Now, coming to the question of the financial aspects which were raised, the Central Information Commission, after noting all the arguments which were raised by the complainants observed that the land and development office of the Ministry of Urban Development had allotted large tracts of land in Delhi to various political parties either free of cost or at concessional rates. The lease rent which were being charged from the parties did not reflect the true value of these properties.

Secondly, it also came to the attention of the CIC that the director of states under the Ministry of Urban Development had allotted accommodation to various political parties in Delhi on rental basis at a concessional rate. And again, the rents which were being charged were grossly inadequate. Third, the political parties had been claiming, and they had also been granted total tax exemptions under Section 13 A of the Income Tax Act for all their income.

And the state had also been indirectly financing political parties by way of free air time on All India Radio and Doordarshan of India during elections. In addition to these observations,

the CIC also relied on Delhi High Court's Judgment, which was rendered in January 2010. In the case of Indian Olympic Association verses Veeresh Malik.

In this case, the Delhi High Court had dealt in detail with the meaning of the term public authority. And the court had held that public authority has to be interpreted liberally and not restrictively. When the question of substantial financing came to the picture, the Delhi High Court held that majority test is not appropriate to decide whether or not an organization is substantially financed directly or indirectly by the government. Financing in percentage terms in relation to the total budget of the body is not important.

What amounts to substantial financing can never be a strait jacket formula of universal application. And the court held that each case has to be examined on the basis of its own facts. It also observed that it is not material that the percentage of the funding that the body receives is not majority funding, or that the body is an impermanent one.

Similarly, the fact that the institution or organization is not controlled, and is autonomous is also irrelevant. The concept of non-government organization by itself means that it is independent of any manner of government control in its establishment or management. The fact that the organization does not perform or pre-dominantly performs public duties to may not be material, so long as the object for the funding, the object for which the funding is received is achieving a felt need of a section of the public or to secure larger societal goals.

So as long as the funding is concerned, this organization which is being financed, may just be a tool or a vehicle for the executive government's policy fulfilment plans. So, the test is whether or not a private entity qualifies to be a public authority, substantial financing does not mean majority financing. What is important to be seen is that the funding by the appropriate government is achieving a felt need of a section of the public or it tries to secure larger societal goals.

So, taking all of this into consideration, the CIC noted that large tracts of land in prime areas of Delhi had been placed at the disposal of political parties at exceptionally low rates. Same was the case with the government accommodations which were given to them at hugely cheap rates, which according to the CIC, was nothing but bestowing financial benefits.

In addition to this income tax exemptions, and the free time which were being given to them at AIR and Doordarshan at the time of election was also nothing but substantially contributing to the financing of the political parties by the central government. Because if they have not been so financed, or if they had not been given these exemptions, they would have to pay for all of this from their own pockets. Therefore, the CIC had no hesitation in concluding that the six parties had been substantially financed by the central government, and therefore they had to be held as public authorities under section 2(h) of the RTI Act.