

FAQs- Political Parties under RTI: Myths Busted

1. Question: If Political Parties are “private institutions”, then why should they come under RTI?

Answer: A body or an institution does not have to be a part of the government in order to come under the ambit of RTI. The RTI Act is applicable to those organizations that pass the test of section 2(h) of the Act, which defines the term “Public Authority”. The section 2(h) says that in addition to the government bodies, those organizations should also come under RTI that fulfil the eligibility of below mentioned 2(h)(d)(i) or 2(h)(d)(ii):

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;

Using this principle, a large number of private bodies (or non-governmental bodies) have already been declared as public authorities by Central Information Commission (CIC) and various State Information Commissions (SIC). Some of these bodies had also approached various courts challenging the decisions of CIC or SICs of being declared as “public authorities”, but those courts have upheld the decisions taken by the CIC and SICs.

A few examples of the non-governmental bodies that have been declared as Public authority and have been brought under RTI are *Indian Olympic Association, Sutlej Club Ludhiana, Christian Medical College and Hospital Ludhiana, Chandigarh Lawn Tennis Association (CLTA), Sanskriti School Delhi, St. Mary’s School Delhi, KRIBHCO, NCCF, NAFED, Population Services International* – these bodies have been declared as public authorities by either the decisions of CIC/SICs or judgements of various Courts

CIC in its 3rd June 2013 decision has ascertained that Political Parties are also Public Authorities because they fulfil the criteria defined in the RTI Act for a body to be declared as public authority and thus, have now come under RTI.

2. Question: If Political Parties are not government sector offices (i.e they are neither created by a notification nor by a government order) then why should they come under RTI?

Answer: As explained in the first question, it is an incorrect fact that only government sector offices are supposed to come under RTI Act. The RTI act has a definition of the term Public authority in section 2(h) and the provisions of the Act apply only and only on the identification of this Authority.

The applicability of RTI Act is based solely on this definition of public authority and CIC in its 3rd June, 2013 decision has ascertained that Political Parties are Public Authorities because they fulfil the criteria as set up in RTI Act. As a matter of fact there are already plethora of organisations and institutions that are strictly not governmental i.e. they are not set up by a statute or by constitution or by a legislation but they still come under the ambit of RTI because they fulfil the criteria of clause 2(h) (d) of the RTI Act.

3. Question: Are only those bodies or institutions supposed to come under the RTI that are established “by notification issued or order made by the Government” (i.e. are RTI clauses 2(h)d(i) & 2(h)d(ii) independent of 2(h)d?)

Answer: There are many court judgements that have cleared the confusion whether only those bodies or institutions can come under RTI (or can be adjudged as Public Authorities) that have been established either by a Government’s Notification or Order. This confusion emerges from the manner in which section 2(h)(d) of the RTI Act has been drafted, as can be noticed in Answer 1.

Courts have ruled in their judgments that for a body or institution to be a public authority and to come under RTI, there is no necessary condition for them to be established by a Government Order or Notification. For example in the case *Indian Olympic Association (IOA) vs Veeresh Malik & Ors*, the Delhi High Court Judge Justice Ravindra Bhatt has ruled that even a body like IOA that was never established by a government order or notification should be public authority because it’s substantial financed by government funds (*legally speaking- The Judge ruled that RTI clause 2(h)(d) and clauses 2(h)(d)(i) & 2(h)(d)(ii) are independent of each other and are not be read together*)

4. Question: Will Political Parties come under the control of Information Commissioners and Civil Servants and if that’s the case will it be detrimental to the India democracy?

Answer: If an organisation comes under RTI it does not mean that the organisation is under the control of the Information Commission. The Commission’s mandate is merely to ascertain that the RTI’s objectives and provisions are being met by the organisation and the rights of the seekers of the information are well taken care of.

Even the President’s Secretariats, Prime Minister’s Office and Secretariats of both the houses of Parliament are currently under the RTI. Therefore, being under the RTI does not imply that these highest institutions of our democracy are under the control of CIC.

Finally, everyone has to follow the laws of the land. RTI Act is just one of the many laws. The RTI Act has to be followed by everyone just in the same manner as everybody obeys the Income Tax Act, Foreign Exchange Regulation Act, Representation of People Act etc.

5. Question: Will Political Parties be infested by millions of RTI requests by manipulators?

Answer: This was also one of the primal fears of the opponents of RTI when the provisions of this law were publicly debated before this law came into being in 2005. However, nothing of the sorts has ever happened to any public authority.

Also, undoubtedly the nature of information in which most of the people will be interested in will actually be about the issue of funding that Political Parties receive. This information regarding Parties' finance, and other type of information in which people express tremendous interest, should be put on the Parties' websites as recommended in section 4 (1)(b) of the RTI Act. This voluntary disclosure of information will invariably reduce the number of RTIs received by any organisation.

Moreover, the section 4(2) of RTI Act reads as follows- *"It shall be a constant endeavour of every public authority to take steps to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."*

6. Question: Will RTI Act be misused and specific questions pertaining to the internal meetings and strategy of the Political Parties be asked under the garb of RTIs?

Answer: Firstly, since Political Parties are taking decisions that are of public importance and welfare, they shouldn't have any objection in making most of their records public.

Secondly, the RTI Act has enough built in protection in the form of the section 8- **"Exemption from disclosure of information"**. This section 8 lists several grounds under which a public authority can deny a permission that is sought by an RTI request. Ofcourse, while denying the information the authority will have to mention specifically the reasons (or grounds mentioned in Section 8) under which a particular RTI request is dismissed by them.

For example: It has been mentioned in section 8(j) of RTI Act that the information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of privacy can be denied to any person.

7. Question: If Political Parties are already transparent and answerable to the Election Commission of India and Income Tax Dept, then why should they come under RTI?

Answer: Currently, Political Parties reveal only limited amount of information both in their submissions to ECI and Income Tax Department. They file details of donations received by them

annually to the ECI. But these donations are only those that are in excess of Rs. 20,000. Donations less than Rs. 20,000 are not reported and Political Parties exploit this loop hole. There are parties that do not declare any donation above Rs 20,000 even though their income is in hundreds of crores of rupees

Similarly, in their Income Tax Returns, the Political Parties don't divulge many details of the sources of incomes.

Also, Political Parties put out only very limited information regarding their internal functioning details such as *total number of members of the Party, internal elections in the Party, details about the office bearers, criteria to induct members*. All this information is about the issues that people want to know about and RTI will bring this in public domain.

8. Question: If tax-exemption is made the ground of ascertaining that who will come under RTI then a whole lot of companies and individual should also come under RTI?

Answer: There are already a lot of NGOs, trusts, cooperative societies, schools, hospitals, sports bodies etc which get the direct or indirect benefits from the government and are under the ambit of RTI.

Political Parties get most favourable exemptions when compared with other organisations. Also, Political Parties have not been brought under RTI solely because they get tax exemptions. In addition to the tax exemption and other direct and indirect means of funding by the government, their nature of work is purely for public good. Also, another argument considered by the CIC before giving the decision is that the Parties wield immense power to control the government and the vital state organs. For example by using whip they can force their members to vote in a certain way in the Parliament and State Assemblies and also they can disqualify those elected representative who belong to their Parties. It is inconceivable that a transparency act that applies on all branches of the government will not apply to the institutions that form and control the government.

Also, the tax-exemptions given to certain NGOs, Societies, Trusts, and Companies etc. are given under highly strict conditions laid down in the Income Tax Act which they must comply with. The exemptions are given to these organisations only if they pursue the objectives outlined in their respective charters.

On the other hand, the tax exemption given to the Political Parties is complete, the only condition being that they must annually report to the Election Commission of India with the details of all the contributors who contribute the sum of Rs. 20,000 or more to the Political Party concerned. Thus, the Political Parties enjoy an almost unfettered exemption from payment of income tax, a benefit not enjoyed by any other charitable or non-profit non-governmental organisation.

9. Question: As Political Parties are saying, is it true that the implementation of RTI Act will not be feasible with regard to their functioning since they don't maintain many records?

Answer: Political Parties are the most important organ of the state and like any other state department they should also develop systems and processes to document their proceedings. Political Parties perform various important functions in a democracy and they should function in a systematic manner. Having said that, RTI act will only be applicable on information/records that are maintained by the Public Authority. RTI Act does not force a public authority to create information which does not exist.

10. Question: Are Political Parties directly or indirectly financed by the Government resources?

Answer: The 3rd June 2013 decision by CIC has clearly laid out the exact nature of funding received by the Political Parties by the government in various direct and indirect ways. Some of these are:

- i. **Allotment of land in Delhi:** Indirect Financing of Political Parties by Allotment of large tracts of land to them in prime areas of Delhi either, free of cost, or at concessional rates.
- ii. **Allotment of land in State Capitals:** Allotments of land to Political Parties in State Capitals as well
- iii. **Accommodations/Bungalows at Concessional Rentals:** Directorate of Estate has allotted Bungalows to Political Parties in Delhi at highly concessional rates; this is also a form of indirect financing of the Parties.
- iv. **Total Tax Exemption:** Central Government also provides to Political Parties total exemption from the payment of income tax against the incomes of the Parties (under section 13 A of the Income Tax Act)
- v. **Free Airtime on Doordarshan & All India Radio:** During Lok Sabha Elections and State Assembly Elections, Political Parties are allotted airtime slots on Doordarshan and All India Radio absolutely free of any charge

11. Question: Will Political Parties being under RTI going to solve the fundamental problems surrounding the campaign financing?

Answer: RTI Act is not an answer to all the problems that plague our electoral and political system. However, if implemented properly, it can slowly move the Political Parties towards more accountability through transparency. In conjunction with other instruments like stricter tax laws, robust accounting standards, vigilant measures of the ECI, RTI will also contribute to address various problems in our electoral system.

12. Question: Why CIC has now ruled that Political Parties should be under RTI when an earlier CIC ruling had already denied bringing Political Parties under RTI?

Answer: The earlier order was given by a Single Bench of the CIC in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002. The applicant had neither appeared in front of the CIC nor had he supplied to the commission any evidence of direct or indirect funding of the

Political Parties by the Government. It was argued primarily on an earlier order of the CIC which had made the income tax details of the Political Parties public.

However, after considering the merits of the present complaint and matters of complex law, a Full Bench has set aside the earlier orders and held that AICC/INC, BJP, CPI, CPI (M), NCP and BSP are Public Authorities and come under RTI under section 2(h) of the RTI Act.

13. Question: A whole lot of companies like Media Houses, Schools, NGOs, societies also get land from Government on concessional rates, should they also come under the RTI?

Answer: The CIC decision of 3rd June 2013 has primarily laid out arguments of three fundamental natures, in arriving at the decision:

- Substantial financing by Government
- Political Parties perform Public Duty
- Political Parties have Constitutional and Legal rights-and-liabilities

Therefore, Political Parties have been not been brought under RTI merely on the basis that either they get tax exemptions or get free land from government.

Also the NGOs, Societies etc who get Government Aid are already under RTI. Many of them have been brought under the RTI by the rulings of State/Central Information Commissions. A few example of these bodies that have been brought under RTI are- *Indian Olympic Association, Sutlej Club Ludhiana, Christian Medical College and Hospital Ludhiana, Chandigarh Lawn Tennis Association (CLTA), Sanskriti School Delhi, St. Mary's School Delhi, KRIBHCO, NCCF, NAFED, Population Services International*

14. Question: Is this CIC decision based on non-credible grounds?

Answer: This decision is one of the lengthiest decisions that has ever been delivered by full bench of CIC. The decision has examined all the issues from many angles.

Not only has the CIC analysed the arguments presented by the Political Parties during the hearings, the Commission has also taken inputs from Election Commission and Income Tax Department. The Election Commission has infact categorically stated that it has no objections if Political Parties are brought under RTI. The CIC has reached the conclusion only after considering all the issues and thus this decision is based on solid credible grounds.

15. Question: Will the RTI Act strengthen Political Parties or will it cause chaos in them?

Answer: Several bodies have had these fears when they were brought under RTI. However, in all cases these fears and concerns have turned out to be unfounded. Over a period of time, the bodies that came under RTI have emerged stronger and have won the trust of the people because of the manner in which transparency has increased in their way of functioning. The same effect will also be seen in Political Parties.

At present, when a number of corruption scams are coming to light in the wake of RTI, the functioning of the Political Parties continue to be like a black box. There are too many questions about the source of funds being raised by the Political Parties. Also, how the Political Parties operate inside is a puzzle. What is the criteria for selecting candidates, do the parties know that a candidate applying for a party ticket has criminal cases against him, how much the parties spend on election campaigning, inner party elections, properties allotted to the parties – nothing is transparent. Even the information about their office bearers is not readily available. The more the citizens come to know about the functioning of the Political Parties, the more they will trust the Political Parties.

In the current environment, people want to participate more in the political processes. They do not want their role to be limited to just the act of voting to elect their MP or MLA . They want to know more about their elected representatives and the various policies of the Political Party before they vote. If Political Parties start putting various information sets on their websites as a part of voluntary disclosure requirements of RTI Act, it will engage people more. This will lead to a more informed citizenry and strengthen the democratic processes.

Therefore, it is a great opportunity for the Political Parties to embrace the idea of coming under RTI.

16. Question: What can I do as a citizen of India to exercise my right to seek information from Political Parties?

Answer: I can seek information regarding my favourite Political Party or any other Party on several dimensions such as finances, election expenses, whether the Parties check potential candidates for serious criminal records or not, whether they hold elections for their office bearers and if so, how many votes each of the office bearers got when they got elected etc.

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