

From: Vishal Kudchadkar
Dt: September 27, 2013
Shri Shantaram Naik,
Chairman, Parliamentary Standing Committee.
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Sub.: RTI amendment Bill

Dear Sir,

I give the following submissions in the matter of the proposed amendment to the RTI Act.

At the outset, I highlight the fact that Lok Sabha, if it approves the RTI (Amendment) Bill, 2013, may end up contradicting itself. The RTI (Amendment) Bill, 2013 seeks to exempt the political parties from the definition of public authorities.

Political parties are 'associations of persons': Almost all political parties have publicly stated that they are voluntary associations of persons unlike public authorities established under the RTI Act. Here is a sample:

"Political parties are not public authorities. A political party is a voluntary association of persons. People can join or leave a party. We get elected. We are not appointed like officials." (Read Senior Supreme Court Advocate and Union Law Minister Mr. Kapil Sibal's quote at:

http://articles.timesofindia.indiatimes.com/2013-08-03/india/41032099_1_cic-order-rti-act-political-parties)

"Associations of persons" under the Lokpal and Lokayukta Bill, 2011: The Lokpal and Lokayukta Bill (LLB) which the Lok Sabha passed in December 2011, covers all **associations of persons** if they are **financed or aided by** the Central Government [See Clause 14(1)(g) and the Explanation and the *proviso* under it in the attached Bill]. The Lok Sabha agreed that all officers of **associations of persons** in this category will be treated as **public servants** for the purpose of inquiring into complaints under the *Prevention of Corruption Act, 1988* (PCA).

"Substantially financed" vs "financed and aided by the Government": When MPs representing political parties in the Lok Sabha approved the LLB **they accepted the principle** that being associations of persons if they are **financed or aided by the Government** they will be covered by this law and the PCA. Political parties do not dispute the fact that they receive free copies of electoral rolls, free time on radio and TV channels, land and buildings on lease for running their offices – all courtesy of the taxpayers' money- also known as public resources. How is this principle radically different from the principle- "substantially financed" through funds provided directly or indirectly by the Government" mentioned in the RTI Act?

"Financed and aided by the Government" vs "public donations": Political parties also argue that most of their finances come from big and small public donations. They claim that government support accounts for only a small portion of their finances and resources. A recent study of the financing of political parties published by the Association for Democratic Reforms also supports this factual position.

See: <http://adrindia.org/research-and-reports/political-party-watch> and

http://articles.timesofindia.indiatimes.com/2012-09-10/india/33736432_1_political-parties-regional-parties-donations

When it passed the LLB, the Lok Sabha also approved **a second principle**, namely, **any association of persons receiving public donations** will come under the jurisdiction of the Lokpal and **their officer bearers will be treated as 'public servants'** for the purpose of inquiring into complaints under the *Prevention of Corruption Act* [See clause 14(1)(h) and the underlying Explanation in the Bill]. They will have to provide the Lokpal with all information relating to any complaint against them for the purpose of conducting an inquiry. Again political parties match this criteria very well. So why do they shy away from giving information about themselves to people directly when they have no qualms receiving public donations of all sizes and amounts?

If these twin principles are good enough for the accountability of political parties, why are they not good enough for their transparency? By amending the RTI Act to keep political parties out of it, the Lok Sabha will end up contradicting itself twice over.

Second are my rebuttals to the Statement of Objects and Reasons which have been provided in the Bill:

1. Para 2 indicates that the decision of the CIC is not in consonance with the law.

This decision is one of the lengthiest decisions that has been delivered by the 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 in fact 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.

There can be a legitimate difference of opinion in interpreting the provisions of an Act. In that event, the proper course of action would be to challenge it in a writ. Many decisions of the CIC have been challenged and some have been quashed. Without giving the courts to rule on the issue, the Parliament is undermining the democratic process. An amendment would be required only if the Parliament believes that the CIC decision is unassailable under the law.

2. Para 3 states that there are enough regulatory provisions in the Representation of People's Act and the Income tax Act requiring adequate disclosures to the Election Commission and the Income Tax authorities.

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.

3. Para 4 :If RTI is applied to the political parties, their functioning will be seriously affected, since they do not have the capability of providing information to the RTI queries and this will damage democracy. Political rivals may misuse the RTI provisions.

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.

Small NGOs, and aided schools with budgets of less than 1 million rupees have been able to cope with RTI without being overwhelmed. For any party which contests just 10 to 20 seats in a State assembly election, the actual budget is over 100 million rupees. To claim that even a small regional party will find it difficult to cope with RTI queries does not appear to be a credible argument. As to the contention that rival parties will be able misuse RTI provisions, we can only state that no such 'misuse' has been reported in the last eight years in any organization which could seriously harm any public authority. Some inconvenience and embarrassment may occur but these would make them better.

Lastly, following are the rebuttals to the other issues raised by some of the political leaders are:

a) They will be questioned on why they chose a particular candidate for elections.

RTI requires only the records to be provided. It does not require queries to be answered beyond the records.

b) Political parties do not want to be answerable to multiple Commissions (Information and Election). Firstly, the answerability in RTI is to citizens of India, and that too only in terms of providing information on records. This Act has certain exemptions in Section 8 to ensure that no major harm can come to any public authority by disclosure of information. In the last eight years during which RTI has been implemented, there has been no instance of any organization having been put to great harm or being rendered dysfunctional. Certain arbitrary or corrupt actions may be uncovered and these should be corrected. If political parties say they do not wish to be accountable to citizens, this would be unacceptable.

I request a meeting with the Standing Committee to present my views and discuss them.

Yours truly,

A handwritten signature in black ink, appearing to read 'Vishal Kudchadkar', written in a cursive style.

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