

RAJYA SABHA

STEP BY STEP SCHOOL YOUTH PARLIAMENT

RIGHT TO INFORMATION (AMENDMENT) BILL

Dear Members,

Welcome to the simulation of the Rajya Sabha at SBS Youth Parliament 2019. I write to you today to bring to your attention the need for a comprehensive debate on the Right to Information (Amendment) Bill. In order to hold our nation accountable to our people, it is necessary that we establish structures, platforms and policies of transparency. Empowering our citizens with the knowledge of what is happening in public offices will lead to an enhanced critical engagement towards the development of our nation. The people will be able to ask relevant questions about the functioning of government bodies, the implementation of policies, schemes, expenditures and so on. In an attempt to discuss the existing Right to Information Act, Rajya Sabha invites the members to initiate deliberations over the nature of amendments that can be made in the Act. This amendment bill addresses an important and a longstanding debate over whether to take political parties as public authorities or not. However, before we move to the key issues that the amendment bill is trying to raise, let us understand some important concepts.

IMPORTANT CONCEPTS:

1. What is a Bill?

When the legislature or lawmakers want to implement some actions or solutions to improve the conditions of the society, they discuss the issues in Parliament. They present their plans, their reports which recommend some of the steps to be taken. Members of both the Houses of the Parliament are required to document or write down these steps in detail in the form of a legislative proposal. This proposal is a document that helps lawmakers - Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) - to know each step and deliberate upon them before coming to a decision. Once it is in writing, it becomes transparent and clear to all and the members then decide whether to vote in favour of it or not after the deliberations. This draft legislative proposal is known as a **bill**.

Please note that we are at this stage in Rajya Sabha. However, we will be holding our discussions over the Right to Information (Amendment) Bill where we will be deliberating upon the amendments or changes that have been recommended to the already existing legislation.

2. What is an Act?

Our laws govern our lives in almost everything that we do. They shape the nature of our actions in both private and public spheres. Therefore, it is essential for us to be extremely sure of what policies are getting implemented and what is the nature of law getting enacted. These laws can determine the nature of the progress of society. Hence, for our discussions, it will be necessary for us to be aware of every part of the Bill. In order to do so, the procedure asks lawmakers to discuss a bill in both the houses – Lok Sabha and Rajya Sabha. Once a house discusses a bill, they move into voting to know how many of them wish to pass it or fail it. If there is a majority that says yes to a bill, then the bill is passed, and they send to the other house to discuss. Once both the houses pass the bill, then it becomes an **Act** which means it has become a law which can be implemented in the society.

3. What is an Amendment?

We all recognise that any society keeps changing. Some changes are rapid, and some are gradual. Some modifications are due to failures in implementation, and some modifications are due to a change in ideology. There can also be a possibility that both are required. Sometimes ideology requires changes in implementation and sometimes implementation changes can help in furthering or modifying an ideology at the national level. For instance, if the government decides to make the linkage of Aadhar Card mandatory for all financial transactions, it is through the implementation that an ideology of surveillance takes shape.

Similarly, if there is an ideological push due to the #Metoo campaign, then it compels the lawmakers to think about laws related to women's safety in workplaces. However, making new laws is a tedious process. Therefore, if there is scope for us to modify the existing law to a document that is more suitable to today's time, then we go for amendments. **Amendments** reflect the changes that we want to make in any existing law. They need to be passed by both the houses to ensure that they become the law which can be implemented.

RIGHT TO INFORMATION ACT (2005)

Right to Information (RTI) Act 2005 was prepared to bring information to the citizens. It makes it compulsory for the bureaucracy to provide citizens with a timely response about information related to public offices once the citizens put their requests forward. It was an initiative taken by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide an RTI Portal Gateway to the citizens for quick search of information on the details listed in the Act.

The law guarantees the citizen the right to have access to RTI related information published on the web by various Public Authorities under the government of India as well as the State Government.

The primary objective of the Right to Information Act is to empower the citizens. It promotes transparency and accountability in the working of the Government. This is achieved by giving us information. For example, if we have information regarding what our tax money is utilised for, where are the funds getting allocated in policies and schemes on the ground, then only we can assess if the government is engaging in corruption or not.

RTI Act has been crucial in exposing many implementation failures. It has also been used to derive as much evidence for certain critical decisions of public offices. Those who have actively and repeatedly used RTI, be it the media personnel, researchers, petitioners, argue that RTI has been the most useful in bringing attention to some covert scams that run in millions and billions. Its usage has affected voting patterns of the citizens. It is much easier now to know about what the what the public offices are doing. An informed or an empowered citizen is essential to keep a constant watch on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

RIGHT TO INFORMATION (Amendment) Bill

The Right to Information (Amendment) Bill was introduced in the Lok Sabha on August 12, 2013. The Bill amends the Right to Information Act, 2005 (RTI Act).

The Government enacted the RTI Act of 2005 for setting out a framework to ensure that transparency and accountability lead to more civic engagement and active participation of the

citizens in governance. The Central Information Commission held six political parties to be **public authorities** under the RTI Act and therefore subject to the transparency and information requirements under the Act.

The six political parties are namely the Indian National Congress (INC), Bharatiya Janata Party (BJP), Communist Party of India (Marxist), Communist Party of India (CPI), Nationalist Congress

The Central Information Commission has been constituted with effect from 12-10-2005 under the Right to Information Act, 2005. The jurisdiction of the Commission extends over all Central Public Authorities. It plays an important role in maintaining transparency in system of governance essential for healthy democracy.

The Commission has certain powers and functions mentioned in sections 18, 19, 20 and 25 of the RTI Act, 2005. These broadly relate to adjudication in second appeal for giving information; direction for record keeping, *suo moto* disclosures receiving and enquiring into a complaint on inability to file RTI etc.; imposition of penalties and Monitoring and Reporting including preparation of an Annual Report. The decisions of the Commission are final and binding.

Party (NCP) and Bahujan Samaj Party (BSP).

The Central Information Commission declared the six political parties as public authorities under section 2(h) of the Right to Information Act, 2005. Section 2(h) of the said act says:

(h) “public authority” means any authority or body or institution of self-government established or constitutes –

- 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;

The amendment bill has been introduced to remove political parties from the ambit of the definition of public authorities and therefore from the purview of the RTI Act. The amendment will apply retrospectively from June 3, 2013, when CIC took the decision.

KEY ISSUES OF THE RIGHT TO INFORMATION (AMENDMENT) BILL

The committee will discuss whether to consider political parties to be 'public authorities' or not under the Act. Here are some of the arguments presented in favour and against in considering political parties to be the public authorities:

Arguments in Favour of Considering Political Parties to be Public Authorities:

The Central Information Commission while deciding that political parties should be considered as public authorities laid down the following arguments:

1. Political parties can be said to have been constituted by their registration by Election Commission of India (ECI), a fact linked to the establishment of a body or institution by an appropriate government. The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India. The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies in India, and the offices of the President and Vice President in the country. Since ECI registers political parties, it can be considered as an establishment of a body by an appropriate government which is mentioned in the sub-section of 2(h)(d).
2. Political parties are substantially funded by the tax payer's money, and therefore, they should be declared as public authorities. Large amount of money is directly or indirectly financed by Central Government in multiple ways which include: (1) allotment of land in Delhi and State capitals, (2) Government accommodation/bungalow on concessional rent in prime areas of Delhi, (3) total exemption of their donation from income tax under section 13 A of Income Tax Act, 1961, (4) free air time on Doordarshan and All India Radio and (5) free electoral rolls by Election Commission. This is also applicable under sub-section 2(h)(d) of the definition of public authorities.
3. Performance of 'public duties' by the political parties. A political party is a unique institution which has a controlling influence directly or indirectly on the exercise of

government power despite being non-governmental. Even if a political party is not in power, it still can influence a few decisions. It can create pressure on the ruling government by using media and campaigns. It does so in the name of public interest, and therefore it is performing public duties which can make them qualify as public authorities.

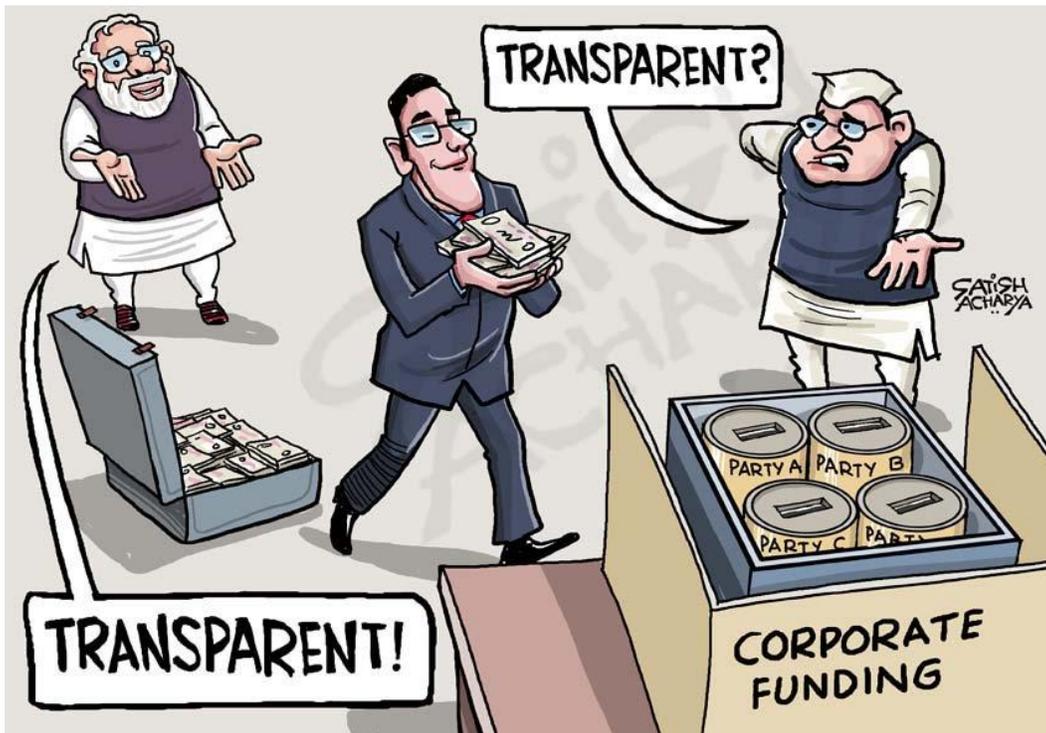


4. Political parties enjoy constitutional and legal right and liabilities.

Shri S.C. Agrawal gave the following reasons for considering political parties as public authorities under section 2(h) of the RTI Act:

1. The Political Parties hold constitutional status and wield constitutional powers under the Tenth Schedule of the Constitution in as much as they have the power to –
 - a. Disqualify legislators from Parliament and State Assemblies;
 - b. Bind legislators in their speeches and voting inside the house;
 - c. Decide what laws are made;

- d. Decide whether any government remains in power or which government should come to power;
 - e. Decide public policies that affect the lives of millions of people.
2. As per Article 102 (2) of the Constitution, a person can be disqualified from being a member of either House of Parliament under the Tenth Schedule and that a similar provision exists for the State Legislators under Article 191(2) of the Constitution. Furthermore, if a member of a House belonging to a political party vote or abstains from voting in the House contrary to the directions issued by the political party, he is liable to be disqualified from being a Member of the House
 3. The political parties have been given statutory status under Section 29 A of the Representation of the People Act, 1951. They are required to bear true faith and allegiance to the Constitution of India as by law established.
 4. The political parties give tickets to the candidates, and the people vote on party symbols and, therefore, the political parties are essential instrumentalities of democratic governance.

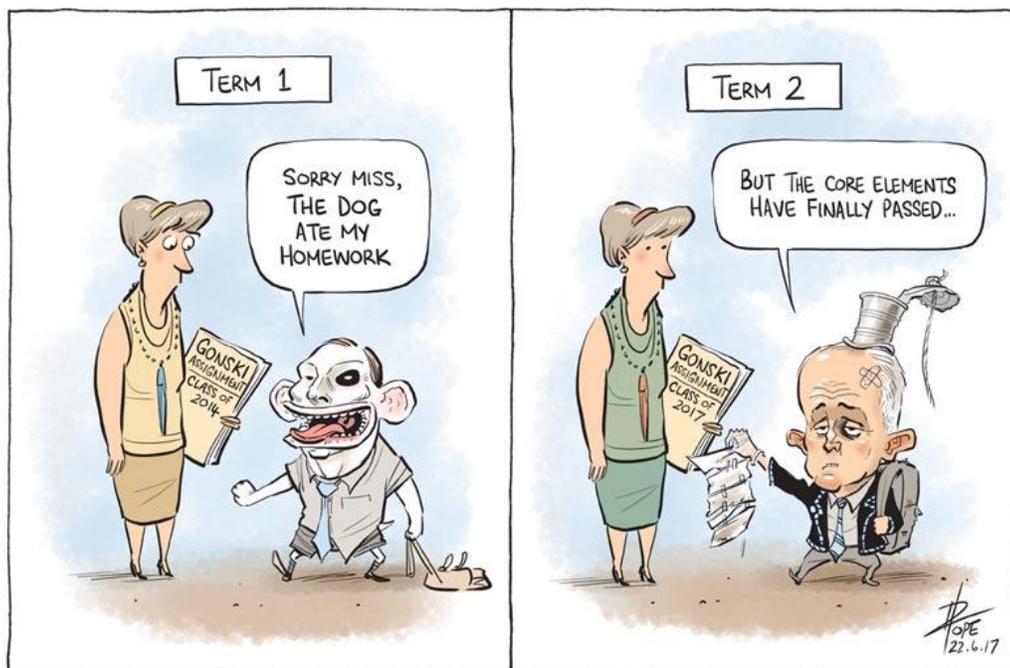


The broader view of the civil society has been that the political parties should be considered as public authorities. If political parties come into the purview of the RTI Act, then the public can also know the functioning of the political parties, and sharing of information relating to selection/rejection of the candidates, election strategies, etc. in addition to information relating to financing of parties for the sake of good governance and electoral reforms. Through other Acts, the public does not get access to such information.

Arguments Against Considering Political Parties to be Public Authorities:

The following are the arguments that explain why political parties should not be considered as public authorities:

1. The objective of the amendment Bill mentions that the political parties are not public authorities since they are neither established nor constituted by or under the Constitution or any other law made by Parliament. They are instead registered/recognised under the Representation of People Act, 1951 and Rules/Orders made or issued thereunder. This cannot be construed as a link to establishment of a body or institution by an appropriate Government, as held by the CIC.



2. Another argument is that section 2(h) of the Act does not provide for conditions such as the performance of public duty or constitution/legal provisions vesting any authority or body with rights or liabilities that make such authority or body as a public authority for the RTI Act.
3. People argue that declaring a political party as a public authority under the RTI Act would hamper its smooth internal functioning and political rivals could misuse the provisions of the RTI Act, thus affecting the functioning of political parties. For example, rivals might file RTI applications with malicious intent to the CPIOs of the political parties which can destabilise the political party which is not the objective of the Act.

Attorney General argues in the response to the 3rd point just mentioned above that political parties form the foundation of democracy and need to be given sufficient protection from malicious and motivated application for which safeguards already exist under **Section 8 of the RTI Act**. Under the Section 8(1) (d), there is no obligation for any public authority to give to a citizen "information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party".

4. It has been observed that there are already provisions in the Representation of the People Act, 1951 as well as in the Income-tax Act, 1961 which deals with the transparency in the financial aspects of political parties and their candidates. Citizens have access to all relevant information regarding their candidature to understand if they want to vote for them or not.
5. Representatives of some political parties submitted that political parties are not funded by the government and therefore cannot be treated as public authorities in relation to the RTI Act. For example, those who get such benefits are elected members to the Houses. So the question is should we impose this Act for those in power at a particular time or the political parties as a whole.
6. The Department of Legal Affairs in its opinion held that the CIC order of 3 June 2013 may apply to 1444 odd political parties including 52 national and state political parties if the criteria laid down by it is well established. This means that if we consider those six political

parties to be the public authorities, then 1444 political parties on which this criterion applies should also be considered as public authorities and that can be a slippery slope. If only these six would be recognised, then it will be unfair to these political parties as other political parties would be taking actions scot free.



DECISION OF THE STANDING COMMITTEE:

The Amendment has been brought by the Government to resolve the scope of ambiguity in relation to the political parties and the RTI. The Committee considers that the proposed amendment is the right step to address the issue. The Standing Committee, therefore, recommends for passing the Bill to remove political parties from the definition of public authorities. In this proceeding, only Anu Aga shared her disagreement and wrote her reasons for the same in the report.

ISSUES TO CONSIDER

1. Whether to consider political parties as public authorities or not?
2. Should only six political parties be considered as public authorities or should we consider devising a criterion for the same?

3. Is Representation of the People Act, 1951 and the Income-tax Act, 1961 sufficient for the citizens to actively seek transparency in governance or do they need some separate provisions for the political parties?
4. Do citizens need the Right to Information Act only for those who are the elected/nominated members of the Houses or should the Act be making all members of a political party accountable?

Essential Links for Further Reading:

<https://www.prsindia.org/billtrack/the-right-to-information-amendment-bill-2013-2854>

https://www.prsindia.org/sites/default/files/bill_files/SC_Report_-RTI_%28A%29_Bill.pdf

http://documents.doptcirculares.nic.in/D2/D02rti/1_13_2013-IR.pdf

<https://adrindia.org/sites/default/files/Why%20political%20parties%20should%20be%20made%20public%20authorities.pdf>

https://www.prsindia.org/sites/default/files/bill_files/RTI_%28A%29_Bill%2C_2013.pdf

<https://rti.gov.in/rti-act.pdf>

Please feel free to reach out in case there are any queries. Looking forward to a productive debate!

Regards

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