

## TRANSPARENCY AND ACCOUNTABILITY OF POLITICAL PARTIES IN SAARC COUNTRIES

NIRU SHARAN<sup>1</sup> & RUDRESH RAJAN<sup>2</sup>

<sup>1</sup>Assistant Professor, Amity Law School, Noida, India

<sup>2</sup>B. Tech (Mechatronics), Pursuing-M.B.A. (BIMTECH) Gr Noida, India

### ABSTRACT

The Right to Information Act, 2005 (hereinafter referred to as the RTI Act) also known as the sunshine law, brought with itself, a promise of a new dawn for the Indian democracy. The Act claims to be devised to set out a practical regime of the Right to Information for citizens to secure access to information under the control of public authorities. Its intent being to usher in an era of transparency and accountability. Evidently the said Act has worked wonders, forming the basis for several public interest litigations; it has become a weapon for social change.

Not only India, but other SAARC countries have also recognized the freedom of information as a tool to empower its citizen, but the power of the same has not being utilized to its optimum, giving the nations an opportunity to both learn from each other's mistakes and to find inspiration in each other's success. Pakistan, being the first to issue an ordinance pertaining to same is an example of a wasted opportunity where the "Freedom of Information Ordinance, 2002" failed as a result of several national and administrative obstacles. There have been subsequent work including constitutional amendments and new legislations in Pakistan with respect to RTI, but the socio-political atmosphere seems to hinder the growth of the concept. Similarly, Sri Lanka, owing to its prolonged civil war has not been able to march forward with this idea, a strong bill is being worked on, but its fruition remains to be seen.

But inspiration can be drawn from Afghanistan, who has worked on establishing a RTI regime amidst all its difficulties. Maldives also became the 99th nation in the world to establish a RTI regime, followed by Bhutan which became the 100th nation to do so. Nepal also provides for Right to information and provides a positive example. The SAARC region, being in such close proximity is easily influenced by each other and decisions in one nation can have major effects on the entire region.

And thus, the question of keeping political parties outside the ambit of this historic Act, not only has the power to change the future political and academic discourse of India as a nation, but can be a defining moment for the future of the sub-continent where India has a well-recognized influence. Any decision will thus set a precedent that will transcend nation borders.

While the government and political parties stand in unison against The Central Information Commission's ruling opining that political parties come under the purview of RTI Act, several from the civil societies such as the Association for Democratic Reforms continue to fight the battle to bring political parties under the ambit of the Act. On one hand, the former believe that bringing the political parties under the Act would hamper their internal working and cause damage to the democracy and could in fact be used to harass political parties into inaction, on the other hand, the latter press that accountability is essential to ensure that the representatives of the masses function transparently and in turn to curb any

corrupt or undemocratic practices. So between this feud marked by amendments and public interest litigations by opposing groups, it is important that the good of the nation is given preference.

My paper would focus on the contemporary factors surrounding the debate of bringing political parties under the ambit of RTI Act. Taking into account, both the pros and cons of the situation, I would bring forth my opinion that not only political parties be brought under the RTI Act, but that the same should be done with utmost urgency. The paper with a holistic approach would consider the history of our nation, the status quo and the future, whilst also taking into account the SAARC region and the lessons learn from its contemporaries, so as to present a comprehensive study,

Drawing from empirical evaluations of the findings, my paper would chart out solutions and offer solutions to ensure that the political accountability and working of political parties are both safeguarded.

**KEYWORDS:** Political Parties, SAARC Countries, RTI Act

## **INTRODUCTION**

The Right to Information is fundamental to the Right to know and in turn Right to Freedom of Speech and Expression and the Right to Life and Liberty. Also known as the ‘Sunshine Laws’, statutes mandating the Right to Information ensure that, there is transparency and accountability in the working of the State. This Act is also essential to the effective working of a democracy as it provides an ever-important avenue of participation in the State’s working for the masses. Thus the public is able to connect better with the state and exercise their rights and duties more effectively.

The Right to Information Act, 2005 (hereinafter referred to as the RTI Act) gave way to a new way of democratic functioning in India. The Act was devised with an aim to set out a practical regime of the Right to Information for citizens to secure access to information under the control of public authorities and intended to bring about transparency and accountability. The Indian RTI Act not only provided the much needed transparency and accountability in the working of the various departments but it fueled a revolution in the country and gave ammunition to several public interest litigations. It has empowered several other organizations too fighting the evils like corruption, nepotism etc.

However, even though the Indian RTI Act is revolutionary in every sense, the country was not the first in the sub-continent to enact the said law, nor is it alone in this regards. But being one of the most influential powers of the sub-continent, the legislative changes and developments of India tend to leave a huge impact on the rest of the region as well. Thus, the entire region closely follows every development that is brought forward in India; similarly India also continuously takes inspiration from the rest of the world with respect to its legislative growth. And though most countries in this globalized world learn from each other’s mistakes and successes, the same is even more relevant in the case of the SAARC countries given the close relationship between the countries’ culture, history, demographic and polity.

The first country to take up the issue of the accessibility of Information was in fact Pakistan which brought in an ordinance dealing with the right of its masses to stay informed and ensured its functionaries’ accountability though the “Freedom of Information Ordinance, 2002”. However, the said ordinance failed to bring about any results as it was barred from effectively functioning due to the several national and administrative obstacles coupled with both state and anti-state entities fighting tirelessly against any effort by the law to bring democratic or legislative reforms. The nation has tried striving back and there has been a lot of work in the sphere which includes both new statutory provisions coupled with constitutional amendments. However, given the condition of Pakistan’s socio-political atmosphere and the weak

government, the future of the said law seems bleak. The state of affairs in Pakistan gives a valuable lesson to the rest of the region including India, proving that more than any legislative stipulations, what matters is the conviction in the State machinery to ensure the effective implementation of the laws, otherwise they remain constricted to the papers and no real change is brought.

A similar lesson in the State's stability can be learnt from Sri Lanka, whose efforts to bring about the right to information to its masses was slowed down due to the prolonged civil war. The country has a strong bill in the process; but only after its fruition can one ascertain whether it is a success or a failure.

But there are several very inspiring countries when it comes to RTI, such as Afghanistan, who has worked tirelessly towards championing for the cause of RTI amidst its unbelievable difficulties. Maldives being the 99<sup>th</sup> nation and Bhutan being the 100<sup>th</sup> nation in the world to establish Right to Information are also success stories of the region's cause for Right to Information. India's close neighbor Nepal also has been very assertive when it comes to providing the Right to Information. The implementation of RTI regimes in itself a huge proof of how the geographical proximity and other similarities of these nations have a major effect on the legislative efforts towards Right to Information in the entire region.

Keeping the above mentioned in mind, we realize that the question of covering Political Parties into the ambit of the Right to Information has importance not only within the country's territorial limits but in the entire region which so closely follows each other's legislative progress. Thus this question has the potential to be a defining moment for the future of the entire sub-continent where India always has had the history of having a fairly well-recognized influence over the area, and any decision will be a precedent transcending national borders.

There are voices both for and against the inclusion of political parties under the Right to Information. Political Parties, even those who take the credit for bringing Right to Information as their biggest political victories state that the transparency should not be extended to their doors. The affidavit filed by the parties in respect to this, strongly opposes the inclusion of Political Parties. In a maiden step to ensure accountability the Supreme Court of India asked six major national parties which included the two biggest parties, Bhartiya Janta Party and the Congress, to come forth and explain their funds with clearance and the reason behind their hesitation in disclosing the complete details of their income, expenditure, donations, funding, including donor details, to the public under the Right to Information Act and therefore explain to the bench led by by Chief Justice of India H.L. Dattu within six weeks. They were asked to give their reasons and to file their responses on why they should not be declared as "public authorities" under the Right to Information Act 2005, making them liable to disclose their financial assets to the public.

The affidavit filed by the parties in this behalf whilst reasoning against their inclusion into Right to Information Act, 2005 stated that "Political rivals with malicious intentions" could file RTI applications and adversely affects the parties' "political functioning." Thus the reasoning implied is that such inclusion would hamper the effective democratic process and in turn hurt the functioning of the Political Parties. Even more importantly, their duty to represent the people which according to the parties require a certain degree of freedom and the attacks on such freedom by the RTI Act along with the fear of defamation would restrain them from effectively exercising these rights and duties.

But the question then arises is whether such line of reasoning is enough to exempt the Political Parties from the RTI Act. The proponents of inclusion of political party's state that the same reasoning could be resorted to by every other

institution as people with “malicious intentions” can file RTI applications about all the other institutions that come under its purview anyway. Why should political parties be afforded a higher degree of protective cover? People with “malicious intentions” file FIRs and frivolous lawsuits all the time which result in unsuspecting citizens finding themselves in lock-up for a Face book post about Azam Khan or forwarding a cartoon making fun of Mamata Banerjee. What makes Political Parties special?

RTI activists such as Aruna Roy and Nikhil Dey believe that the parties can oppose being brought under RTI on technical grounds but are being deliberately blind to the larger spirit of RTI. It is about transparency and accountability. The parties, no matter how they dress up their objections, are basically arguing for opacity for themselves and transparency for others. They put it rather well when they say, ““The representatives of the people, have made it clear that they do not want to be answerable to the people. By removing themselves completely from the purview of the transparency law, they are preventing any obligation they might have to directly answer any query from the citizens on any issue.”

The resistance towards inclusion of them into RTI Act clarifies that the so-called righteous and pious talks by politicians where they condemn the influence of money is nothing but hollow talk. If the parties are so reluctant in sharing their own financial dealings, then it is impossible to give any credit to their claims when they talk about their dedication towards cleaning the system.

The said thought process if given any credit could give rise to a chain effect and more and more institutions could take it as a precedent to opt out of the Right to Information thus making the entire spirit of RTI redundant and futile. If the courts, CBI and then eventually Political Parties are kept outside the ambit of the Right to Information, then the exemption list grows more potent than the law of Right to Information itself. Thus this precedent would be dangerous whereby other institutions could claim the same immunity stating that they too be kept out of its purview because there are too many frivolous claims, too much paperwork, too many NGOs with suspect motivations and so on and so forth.

The truth is that nobody in power would want to come under the ambit of the Right to Information but it is important because the larger consensus is that it is important for the entirety of the democratic process, even if it brings more complexities for those in power. As long as almost everyone feels the pain, The Right to Information works, the democratic gain compensating for the shared pain. As soon as more and more institutions opt out of it, it starts falling apart.

While the government and political parties stand in unison against The Central Information Commission’s ruling opining that political parties come under the purview of RTI Act, several from the civil societies such as the Association for Democratic Reforms continue to fight the battle to bring political parties under the ambit of the Act. On one hand, the former believe that bringing the political parties under the Act would hamper their internal working and cause damage to the democracy and could in fact be used to harass political parties into inaction, on the other hand, the latter press that accountability is essential to ensure that the representatives of the masses function transparently and in turn to curb any corrupt or undemocratic practices. So between this feud marked by amendments and public interest litigations by opposing groups, it is important that the good of the nation is given preference.

Thus it is necessary that the political parties stand up together for this cause and give up their selfish vested interests. The vexatious litigations would not stand the test of judiciary and thus be weeded through the given process, thus there is no valid reason to fear the same. The inclusion of the political parties would in fact give the voters the much

needed assurance about the sincerity of their political representatives. . The present opportunity and its timing can be used to augur the much-needed change. If it is merely used to remove the irritant called RTI, it will show that self-preservation is more important to political parties than bringing transparency into their financial dealings. When half the countries in the world have a strict code and laws on political finance, insist on full public disclosure and impose ceilings on party election expenditure, should the Indian voter be forced to accept any less? When the model code of conduct for elections could be evolved so successfully simply through consensus, why not a model code for political finance?

## CONCLUSIONS

The entire debate can be concluded with the simple logic, that:

If the political parties have nothing to hide, why not come clean in entirety? And if they do have things they would rather not show, the need of their inclusion into The Right to Information Act, 2005 becomes even more important for the democracy on the nation and the region in total.

