

## Are political parties “Public Authority”?



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A frequently asked question about RTI law relates to the meaning of the term “authority”. As the Act empowers citizens to query public authorities on matters that concern or aggrieve them, there is an obvious need to understand the concept of authority under the Act.

In popular parlance, “public authority” generally means government offices. Under the RTI Act that meaning has been extended to include some non-governmental authorities as well. In Section 2 (b) of the Act, “authority” has been defined to include: “any organisation *constituted in accordance with the Constitution of the People’s Republic of Bangladesh*”; “any *statutory body or institution established by or under any Act*”; “any *private organisation or institution run by government financing or with aid in grant from the government fund*”; “any *private organisation or institution run by foreign aid in grant*”; “any organisation or institution *that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organisation or institution*”. [Italics added]

In short, any organisation/institution spending public money falls within the definition. Thus, all bodies belonging to three branches of the government – the executive, legislature and judiciary – are covered by the Act. All government ministries and offices related to them including Prime Minister’s office, President’s office, judiciary and Parliament, are covered. NGOs receiving government (public) funds or foreign donations are equally included. To know if an office is bound by RTI, a simple test is to ask whether it is a constitutional body, a statutory body, or a private organisation receiving government or foreign funds.

All such bodies, except some, are obliged to respond to citizens' RTI queries, on the way they work, abide by the laws, rules and policies or simply provide any information they possess, which are not exempt. This has been discussed in last month's column.

As in any other law, there are, of course, problems of interpretation. This was famously illustrated in a case relating to political parties in India, as highlighted below. Questions relating to applicability of the law to purely private bodies are also germane.

Though the question of political parties has not arisen directly in Bangladesh yet, it was indirectly raised in a case which has gone through the entire RTI process and is presently awaiting hearing in the High Court on a writ petition. The petition was filed following a decision of the Information Commission which aggrieved the complainants. [Complaint Case nos. 97/2013 and 57/2014 at <http://www.infocom.gov.bd/>]

Since the RTI Acts of Bangladesh and India are similar, the Indian case will be illustrative for Bangladesh. Indian RTI Act 2005, under section 2(h), provides for inclusion, as “public authority”, of: “non-Government organisation *substantially financed directly or indirectly* by funds provided by the appropriate Government”. Section 2(b) of the Bangladesh Act says almost the same except it does not contain the qualifier “substantially” before the word “financed”. Otherwise, the key element of government financing is the same.

The Indian case began with RTI applications, dating back to 2010 and 2011, by two Indian activists. They asked six national political parties of India for information relating to their election manifestoes, promises fulfilled, receipts and payments, sources of fund etc. The response of the political parties can be understood from the fact that the matter had to go through the entire RTI process a number of times for more than five years, including various hearings at the Central Information Commission, without resolution yet.

The contested issue was the joint position of political parties claiming they are not covered by RTI as they are private associations of individual citizens. The applicants on the other hand argued, *inter alia*, that since political parties in India are provided with large tracts of land in prime areas of the capital, to build office premises at nominal cost, enjoy huge tax exemptions, issued with costly electoral rolls free of charge etc., they fulfil the criteria of being “substantially financed” by the Government. Other arguments included that as key players in the governance of the country they are bound by transparency and accountability regimes. Examples from other countries were cited.

A full bench of the CIC of India considered the arguments in a landmark decision in June 2013. It had “no hesitation in concluding that (the political parties) have been substantially financed by the Central Government and, therefore, they are held to be public authorities under Section 2(h) of the RTI Act.” It further added that “the role played by (political parties) in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h)”.

The political parties rejected the decision and, in an unusual show of unity, closed ranks with the Government and moved for an amendment to the law to exempt political parties from RTI altogether. This was vehemently resisted by the civil society, stalling the bill permanently.

Subsequently, another RTI intervention in early 2015 by the same applicants to enforce the 2013 CIC decision, led the latter to reiterate its position and lament its inability to enforce implementation of the decision because of lacunae in the law. Following this, in July 2015, the Supreme Court of India in response to a PIL filed by a lawyer on behalf of an Indian NGO, asked the Central Government, the Election Commission and the six national parties concerned why they should not be considered as public authorities, accountable and transparent. Short of an amendment, therefore, the Indian political parties are clearly in. [See: Decision no. CIC/SM/C/2011/001386 & 000838 under Decision of CIC > Full Bench Decision at <http://cic.gov.in>.]

The above is an example of interpreting the law to argue inclusion of a body. There are, however, other ways of using RTI against purely private entities. This is usually done through identifying their links with other included authorities like the government. For example, a person who was aggrieved by stale food served in a restaurant, which is privately owned, had asked to see the food inspector's report on the restaurant from the Food Ministry. A Dhaka University student, dissatisfied with sloppy road construction in his locality, asked for a copy of the contract that was awarded by a concerned government body. The road was re-carpeted by the contractor when he was shown that his work did not meet agreed specifications. In India, a RTI activist, angered by frequent road accidents and unable to pursue bus owners, asked Mumbai Police department for information on how many accidents took place in a given period in a particular neighbourhood, how many arrests were made and what actions taken. He learnt that most drivers went free after bribing. The media publicity that followed raised a hue and cry. It is no small matter for individual citizens to combat public harm, caused by any authority, by using RTI in so many different and clever ways. If others did the same, what an outcome that would be for society as a whole!

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