The Right to Information Act (Amendment) Bill, 2013 and Social Accountability

Discussions are made on social accountability and inclusive democracy through well informed participation and attempts are made for facilitating the ideals of transparency and inclusiveness. And yet the Jan Lok Pal Bill is still pending while provisions for curtailing the scope of an existing Act has been already made by putting across the Right to Information (Amendment) Bill, 2013, in a pace which is rarely seen otherwise, despite innumerable oppositions. The article attempts to look into the Right to Information(Amendment) Bill introduced in the parliament and its implication on the high ideal of inclusive democracy and social accountability which perhaps are the latest and trendiest of all political slogans. Before bringing forward a discussion on the implications of the proposed Bill, an understanding of the broader concept of social accountability will be important which is considered as one of the good governance mechanisms to ensure inclusive democracy.

Worldwide there is increasing recognition that citizen’s active involvement is imperative for enhancing democratic governance, improving service delivery, and fostering empowerment. "Demand for Good Governance" refers to the ability of citizens, civil society organizations and other non-state actors to hold the state accountable and make it responsive to their needs thereby highlighting the importance of Social Accountability in this context. UNDP defines Social Accountability as, ‘a form of accountability which emerges from actions by citizens and civil society organization (CSOs) aimed at holding the state to account, as well as efforts by government and other actors (media, private sector, donors) to support these actions.’

Thus, Social Accountability has the potential for ensuring a more effective policy process, increased transparency and ultimately good governance. To enhance social accountability, there are various mechanisms and tools; for example, strengthening access to information, strengthening independent media, or using specific tools, such as citizen report cards or citizen juries. However, it is ironical that though recent efforts have been taken to promote social accountability, simultaneously the existing mechanism is being weakened.
Access to information law is indeed one of the powerful tools of social accountability which has been enacted after much deliberation and over the past few years there has been a relentless effort towards recognizing the right to information as a fundamental human right for people in South Asia. In most countries, a right to/freedom of information legislation has come as a significant and hard won entitlement. Though there is still scope for improvement with regard to the impediments that these countries are facing at each stage of implementation of the RTI Act, there are plenty of examples on how the use of this Act has improved livelihoods by providing much needed information on entitlements, safety net programs, allocation to local governments and so on. It has enabled the citizens to become an active participant in discourses and praxis of governance, thus reiterating the role of information as a critical tenet of participatory democracy.

In India, after much deliberation, the Right to Information Act (RTI) was passed by the parliament on 15th June 2005, and came fully into force on 12 October 2005 to enable citizen’s to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The Preamble to the RTI Act acknowledges the fact that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to check corruption.

This act, despite certain flaws in its implementation, (especially related to the public authorities low response rate in making proactive disclosures as per Section 4, 1(b) of the Act) is one of the effective mechanisms of empowerment which when used leads to well-informed choices and perhaps a step closer to participatory democracy. Rather than strengthening the ways of its effective implementation, to the utter dismay of many, the RTI Amendment Bill has been introduced on 12 August 2013 in the Monsoon Session of the Parliament. This bill came as a response to the Central Information Commission (CIC)’s ruling which brought six political parties under the ambit of the Right to Information (RTI) by declaring them as public authorities.

In a landmark judgment, dated 3 June 2013, a full bench comprising of Chief Information Commissioner Shri Satyananda Mishra, Information Commissioners Shri. M.L. Sharma and Smt. Annapurna Dixit ruled, “...we hold that INC, BJP, CPI(M), CPI, NCP and BSP have been substantially financed by the Central Government under Section 2(h)(ii) of the RTI Act.
The criticality of the role being played by these 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).”

In this context it would be imperative to know in detail about the definition of Public Authority as spelt out in the RTI Act. Under Section 2(h) of the Act, “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 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.”

Based on the above mentioned points, the CIC judgement further mentions, “…The constitutional and legal provisions discussed herein above also point towards their character as public authorities.” This judgement was critically received by the political parties who unanimously put forward their opposition on it and dismissed it as a very flexible interpretation of the section. The RTI (Amendment) Bill, 2013 is aimed at redefining public authority or institution so that political parties are not defined as “public authorities” under the transparency law and are free from the clutches of the RTI Act.

The Bill proposed in the Lok Sabha proposes an amendment to Section 2 of the RTI Act. It states that in clause (h) in section 2 of the RTI Act, 2005, the following explanation shall be inserted which states that “authority or body or institution of self-government established or constituted by any other law made by Parliament” shall not include any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951.

The Bill also mentions that after section 31 of the principal Act, the following section (i.e. section 32) shall be inserted which states that “Notwithstanding anything contained in any judgment, decree or order of any court or commission, the provisions of this Act, as amended by the Right to Information (Amendment) Act, 2013, shall have effect and shall be deemed
always to have effect, in the case of any association or body of individuals registered or recognised as a political party under the Representation of the People Act, 1951 or any other law for the time being in force and the rules made or notifications issued there under.”

The Amendment Bill if passed will only dilute the power of RTI and is an undesirable move as parties must be open about how they conduct their affairs and the RTI Act enables this. It is indeed one of those certain very rare, mutually benefiting situations where political parties enter into a symbiotic relationship and put forward their unity which is rare to find in many other relevant matters. In such a situation the progress of such initiations is smooth and rapid. Though various parties have different reasons for opposing the CIC’s June 3rd ruling, the parties have joined the band-wagon to keep themselves entirely out of the purview of the RTI Act, the common underlying theme is that functioning of political parties in a democracy cannot be equated with government and other state-run institutions. The diverse parties’ common argument to stay out of the ambit of the RTI law is that information is regularly supplied to the Chief Election Commissioner and income tax authorities and those wanting details about their income and expenditure can take them from the Election Commission (EC) and income tax (I-T) authorities. But how can we ignore the nexus that most parties have with the EC and I-T authorities? And, why can’t they make the same information available to the public if they are already doing it with the EC and I-T authorities?

Despite all the excuses coming from different political parties one cannot do away with the fact that the move to create a special exemption for political parties from the transparency law of the country violates the very principle of equality. The citizens do have the right to know about political parties which are run on the money donated by the public. So, the amendment curtailing the right to know is unconstitutional and cannot be taken without discussing it with the public and taking its consent. This amendment is nowhere near to any form of good governance that political parties preach. Moreover, the bill aims at nullifying the Central Information Commission’s order declaring six political parties as “public authorities” which is undesirable. As per the mandates of the bill whenever the act takes final shape it will have retrospective effect from June 3 (date on which CIC gave the verdict). This reflects the extent to which the political parties want to safeguard their functioning and they made it clear that RTI inquires cannot be sought even for the time gap between the CICs verdict and passing of the bill (if so).
Despite the unity of all the political parties in this matter the civil society, through its various mechanisms, is trying to reach to the public to voice against such an initiative which shall curtail their freedom in seeking information related to political parties which perhaps is most important in a time where certain politicians have attained a new identity by their infamous association with several scams. Keeping the political parties out of the ambit will promote secrecy and not transparency which goes against the spirit of RTI Act. Massive awareness programme has been upshot through newspapers and other social networking websites to voice against the bill.

The National Campaign for People's Right to Information (NCPRI)\(^v\) has demanded that the bill be subject to public consultation and debate, as assured by the government to Parliament in 2009. At the very minimum, the bill must be referred to a Parliamentary Standing Committee in order to provide a platform for people to put forth their point of view. They are strongly against the arbitrary introduction of this bill without taking peoples consent. Members of Parliament should represent the voice of people; however this bill represents the dissent of people and not consent.

In a situation where the political parties had objections to the order of the CIC, ideally, the appropriate response would have been to challenge the order in court. In the past, the government and other organizations have often challenged CIC judgements in the court. Rather than taking statutory measure to challenge the particular verdict, the political parties intend to change the law itself, thus, the intent of the bill is highly questionable. This only goes to show that when political parties themselves are subject to the transparency law, they are willing to go to the extent of amending this landmark legislation to ensure that they are not open to public scrutiny under the Act. And this unity appears to have provided the government with an opportunity to wash down the transparency law.

One should not forget that the RTI Act aims to create an ‘informed citizenry’ and to curb corruption and to hold government and their instrumentalities accountable to the governed. Needless to say, political parties are important institutions and can play a crucial role in heralding transparency in public life and insulating them from RTI goes against the very definition of the Act. In a country when we want to promote social accountability, efforts should be made to come up with more innovative tools to ensure it rather than
devising ingenious techniques to ensure a Right and then limit it by doing away with the core ideology behind it.

To strengthen the “demand side” of good governance which entails strengthening the voice and capacity of citizens to directly demand greater accountability and responsiveness from public officials and service providers, political parties should not be shielded but should be made more responsive, responsible and accountable. This vision will only be a blurred one if the bill is approved. And as Shailesh Gandhivi (a former commissioner at the central information commission) mentions that it should not be forgotten that over a period of time, it is only transparency that builds trust in institutions. And in a time when political parties by and large are perceived poorly by public at large, RTI will definitely be instrumental in improving these organizations by exposing the wrong doers.
Notes


