

Transcript of Interactive session on the topic

'Political Parties as Public Authorities'

held on 15th June, 2013 in India International Centre, New Delhi.

Organiser: People For Nation (PFN)

(This document is in English and wherever the speakers used Hindi, it was translated into English.)

Manoj Agrawal (President, PFN): On the behalf of People For Nation, I welcome all the distinguished participants in this interactive session. I am honoured to be here with so many acclaimed and esteemed people on this platform. As you all know that this interactive session has been organised in the backdrop of the recent ruling of CIC whereby political parties have been declared as public authority. We at People For Nation have been organising many such events to discuss issues related to electoral reform. This initiative is a part of that effort.

PFN is an initiative by a group of concerned citizens geared to work in the areas of good governance and democracy in India. This group includes people from all walks of life, regions and backgrounds. The organisation is aimed to provide a platform for research, debate and dialogue on matters relevant to political, economical and social life of contemporary India and further to organise advocacy for alternatives emerging from such deliberations.

PFN is committed to work on different issues of national importance. However, to begin with we have taken up the issue of political reforms. Our understanding in this regard emanates from the fact that the most pressing need of our times is to bring about changes in the political processes in India. Electoral reforms are extremely important in a vibrant democracy as ours. People For Nation (PFN) is of firm belief that electoral reforms is a gateway for all other necessary reforms and is a progenitor when it comes to political reforms.

In our ongoing exercises we have organised a national seminar last year and we have been continuously organising fortnightly talks with people working in this field.

A very welcome initiative in the field of electoral reform came recently in this CIC ruling. I heartily congratulate all those people who have been working tirelessly to attain this objective. I am infact pleased to inform you that among those people, we have here today Prof. Jagdeep Chhokar and S.C. Agrawal ji with us. I would not elaborate much on the urgency of reforms of these kinds as it would be at the cost of reiterating obvious facts.

Among our other esteemed participants, we have here with us Subhash Kashyap ji who is as we all know, former General Secretary of Lok Sabha and renowned constitutional expert. Justice V.K. Gupta is on his way and he was former Chief Justice in Himachal Pradesh and Jharkhand High Courts. We have with us Prof. Jagdeep Chhokar who is founder member of ADR. Other than these our other guests B.V.Rao (Editor, Governance Now), Pankaj Sharma (National Secretary, Congress), Mukhtar Abbas Naqvi ji (Rajya Sabha MP and Vice President, BJP), Devendra Swaroop ji (Historian and Commentator), Jawaharlal Kaul ji (Senior Journalist), Prof. J.S. Rajput (who just informed me that due to health reasons he cannot attend our session today), Sandeep Mahapatra (Advocate, Delhi High Court), Wajahat Habibullah (Ex-Chief Information Commissioner and Chairperson of National Commission of Minorities), Vijay Bahadur Singh ji (BSP MP from Hamirpur), K.N. Govindacharya ji, S.C.Agrawal ji (Famous RTI activist and petitioner in this recent case in CIC), Hemant Sharma (India TV), Arif Mohammad Khan (Former Union Minister), Anjali Bharadwaj (from NCPRI), Abhay Kashyap (is an international business management and marketing consultant, computer software engineer and currently an advocate and honorary director of Rashtriya Jagriti Sansthan), Ram Bahadur Rai (Senior Journalist), Ashok Gadia (Educationist and Director of Mewar University) and Raj Kumar Bhatia (ex faculty of JNU and VP, International Cooperation Council). These are the people who are supposed to come for today's interactive session. Some of them have arrived and some are yet to come. They are on their way.

We sincerely hope that after this discussion we arrive on a consensus to have some sort of constructive plan of action for future so that we properly utilise the opportunities emanating from this major milestone in electoral reform. I now invite Subhash Kashyap ji to chair the proceedings of this interactive session.

Dr. Subhash Kashyap (Chair): Thank you Manoj ji. Dear distinguished friends...I see all are my good and old friends. A very hearty welcome. I think, as yet present, we are a small group now which has its advantages. We can talk freely, frankly and intimately. When Manoj ji asked me to come for this session, I had some hesitation. But then it was agreed that I will not speak and would chair the proceeding. In parliamentary tradition, the Chair does not speak (All laughing). I think the theme is open for debate. I think we can start in the order of our sitting.

Prof Jagdeep Chhokar: Let me begin with a respectful note of dissent sir. You started by saying that we are a small group which has its advantages that we can speak freely, frankly and intimately. And then you say that you will not speak. (All laughing). I note this as a contradiction sir and I would therefore request you to please speak. No one speak before you. You are the fountain head.

Dr. Subhash Kashyap (Chair): Chhokar ji, even otherwise, it is privilege of the chair to decide when to speak. (All laughing)

Prof Jagdeep Chhokar: Actually I don't know what to say. The order of the CIC is known. It simply says that 6 national political parties (names of which are given there) are public authorities under section 2 (h) of the RTI. So I have nothing to say. That order speaks for itself. I believe that the order is right because I argued for the order in the CIC. There are so many details about the order that can be discussed but obviously we are here till 1 o'clock. I think that if anybody has a doubt or objection about the order we can have a discussion.

Vijay Bahadur Singh: Can you please read the operative portion of the order?

Prof Jagdeep Chhokar: Yes certainly. The operative portion reads as: "The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act." Next para reads: "The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause."

These are the operative clauses.

Mukhtar Abbas Naqvi: I have seen all the grounds that you have mentioned. For example, expenditure, finances received by political parties etc. However, it is mandatory for all the political parties whether it is BJP or Congress or regional parties to give account of their finances and any individual can get this information from Election Commission (EC). It can be ascertained through RTI, however, EC's website is already having all the information and there is nothing that is hidden. The decision is very contradictory in itself. It is confusing about the kind of right to information that they want to give to the people.

When the political parties rejected it, many friends said that the political parties are afraid and they don't want to give information. It was ordered that every political party should appoint CPIO in 6 weeks. Now if political parties appoint CPIO in its office, it will receive 20-25 thousand applications every day. Of these 10000 may come from outside. 20000 would be filed from within inquiring as to why ticket was given to a particular individual, on what grounds, did he have any merit, why he was appointed as secretary or general secretary or was kept in national executive or why was he made national president. So to settle these 20000 applications we would have to keep more than 100-150 employees. It is not possible for the political parties.

You mentioned that political party is a public authority. One of the things that you mentioned refers to copies of the election manifesto. I must tell you that whenever any party goes for

election then it gives a copy of its election manifesto to Election Commission before making it public. Election Commission keeps that with itself and also publishes it on its website. Election manifesto is not hidden from someone. We, infact, want people to come and take it. We distribute it free of cost. As far as our party is concerned, we release it in every district as an event and tell people as to what we are promising and what our issues are.

Now you have mentioned that it needs to be ascertained that what promises have been fulfilled that were mentioned in the manifesto and whether they would be fulfilled or not. How can this be an RTI issue? Political parties furnish a list of things that it would try to fulfill in 5 years. After 5 years it is true that political parties are accountable to the public. The detail about the promises that were fulfilled or were not cannot be provided by the state or central government. Then it would require a central or state government to open a new department. That is not possible for the political parties. Every government department is covered under RTI and from them you have been taking information and would continue to do so in future.

Other than this you contend that political parties must keep receipts of donations received and expenditure incurred on various activities and should update information in this regard. All political parties give their account to income tax (IT) department and to Election Commission. You can visit EC's website and you would get account of every political party for the last 10 years. If someone doesn't want to visit the website, then they can approach EC with RTI and can get all this information. There is no confusion about this. This contradiction and overlapping as to who will ensure accountability of political parties: EC or CIC creates confusion.

You have also mentioned that political parties take contributions from their elected representatives. Yes, they take it. They don't take it in a clandestine manner. Every political party takes such contributions and there is an account for that. This contribution is deducted from the pay of party's MP or MLA and goes to party's fund. I must inform you that even this information is given to EC and IT department. It is true that it is not compulsory for every elected representative to contribute to party's fund. As we have information, communist parties take away 60% of the pay of their representatives as they are small and need to operate at national level and they duly inform EC and IT department about it.

S.C Agrawal: You have missed certain points in between.

Mukhtar Abbas Naqvi: Okay, let me see. It has been questioned that whether political parties know that their MLAs or MPs are doing anything that involves corruption? If we know we will throw them out and would not ask you. (all laughing). If there is any such thing, all will come to know eventually. A RTI cannot help in this where we will reply that yes we know some corruption is going on inside.

Other than this in point 9 you said that 'if you provide the complete detail including the action taken by party against the representative involved in corruption'. It is a similar issue that I have replied to just now.

Yes we are committed to electoral reforms. We in 1999 and again in 2004 started the process of electoral reform. All of us here know that earlier we used to have 2 page form to contest election. We used to fill it near RO and give it to him. This completed our nomination process. Now the nomination form is of 100 pages where you fill your records pertaining to assets, liability and criminal antecedents if any. It is important to know that whatever affidavits you give, the copies of the same are there on EC's website. If you wish, you can take it from EC's website or through RTI. Now you cannot expect that every candidate or political party would collect all affidavits and distribute it to everyone and it would also not be authentic. We have given our suggestions regarding electoral reforms. We have also given the same in all party meeting and submitted it to the committee made for this. We have not released these suggestions in press or in public. It is because the committee is still to make any draft on it. When it does so, we will give any further suggestions that are required or we will discuss it. How can this come under RTI as to what suggestions we gave or not.

This is crux of the things. Therefore, I think that CIC and EC should decide among themselves that what part of accountability of political parties is with CIC and what part with EC. It is not possible to have accountability to both. See, RTI is a very good thing. I agree that there has been positive use of RTI as well. But nowadays it is being misused on a very large scale in terms of blackmailing. You can go to any district and will find 10-12 boards everywhere mentioning 'RTI Activist'. What they do is they dig information about DM, police, police stations etc. They take this information to DM and say that look we have this information and would release to press causing trouble to you and they blackmail them. This is going on a large scale and I don't know how public is being benefitted by them. Let me tell you by the way of example. Some RTI activist took this information from Lok Sabha as to how many MPs have made their relatives their private secretaries. My name was also published in that. One MP gets Rs. 30,000 as pay. In this 30000 he can keep 3 people. He divides this amount among three people who may be stationed at his constituency, his residence in Delhi or with him. If you need a good person for that you can't have them without paying Rs. 20,000-25,000. So somehow he/she manages. Coincidentally the name of person in my constituency mentions 'Abbas'. So he presumed that he is my relative. I told him that I will file a case against you and then he pleaded that he will correct it. So in this way half-cooked information is released in public and the image is tarnished that all of us are thieves.

This decision is landmark and I don't criticize it. But what will happen due to this is that we would we accused that see how all of them (the whole political community) got united against

it. Infact, there is nothing to get together. This all information is with you in public domain and there is nothing hidden. There is nothing new that CIC has discovered. Our party's view is that EC and CIC should decide among them as to who wants this whole information. But it is not possible for any political party to open a shop of information in their offices. This is just what we want to say. Otherwise it is ok and these kinds of activities should go on and there is nothing wrong in this.

Dr. Subhash Kashyap (Chair): Would you like to say anything Mr. Vijay Bahadur Singh?

Vijay Bahadur Singh: I totally agree with what my friend Mr. Abbas Naqvi just told. The sum and substance being: that the order that mentions that political parties must have CPIOs is totally impractical. For example, let us say that Naqvi sahab travels at booth level in a remote village. Someone may ask questions such as: whether you yourself provided expenses for travel or was it given by the party, how many people had tea with you, how many people came for the meeting, what expenses were incurred on the mikes, and the list would be thus unlimited and the purpose of this act would not be fulfilled but it would be abused. If you think that political parties are working in a hidden manner then I must tell you that as the coverage and reach of PAN and Income Tax has increased, everything is out in open. From PM to even a small MP who files his/her nominations, all have to file various affidavits. I have myself contested elections and had to take services of 2 chartered accountants for 15-20 days to file our income return and property details. The fear was that I may miss something by any chance. Even if an old vehicle is lying and has not been sold, it needs to be mentioned. All these documents are present when a candidate files his nomination. I seek apology from Kashyap sahab and Agrawal ji but I must mention that for last two decades a general perception has been created according to which the most corrupt thieves in India are the politicians. Everything is happening according to this feeling. Even judiciary assists in maintaining such perception. With regards to the concept of public authority, article 12 is very clear. But even the judges of Supreme Court took 10 years to declare their assets. How reluctant were they?

So questions like this as to whom tickets were given and who were denied are tough to answer. This would become an endless thing and that situation is yet to come. If you really want to investigate things for the sake of transparency, then what is your problem if you can ascertain documents from IT department which are already there in public domain? I must tell you that every MP files his IT returns and infact after every 3 months our returns go to RBI for scrutiny. The banks send them.

Let us see this in practice. Let us imagine that a party appoints a CPIO. It can't cope up with questions. The national parties like Congress and BJP would have to appoint atleast 200 CPIOs and then also it would not be possible. There are 600 districts in India and parties have their networks at every district level. From every district there are 5 MLAs or MPs. Now you can

imagine the expanse. So this won't be fulfilling much purpose. We are not opposed to it principally but we need to see how its practicability would be ensured. There are many cases in Supreme Court where it has been said that if something cannot be implemented, it would become utopian. If you doubt that I Vijay Bahadur Singh, an MP, has filed a wrong affidavit regarding his income then any activist can find it and no one can stop him. Therefore, this would lead to duplication of work.

Now slowly we are plugging all loopholes. Now we are supposed to furnish our PAN card if we want to deposit more than Rs. 20,000. IT department has software which would tell them at a click as to what refrigerator was purchased by this particular MP. So instead of diverting the energy by the social activities in a proper forum, you want to create or spoil the image of the political party or its members. Therefore, in my view it is not very practical. But I want to say this with a caveat that there is no intention of hiding anything. Especially any public person when he comes to public domain he very well knows that even his private life is public now. When Sonia ji was sick, there was a lot of hue and cry in whole India as to why they are not being informed about her. Is it possible in these times to do anything preventing the glare of media? The media is so active that recently they published a photograph of a *bakra* (goat) that came to the railway minister.

I won't take enough time. I fully endorse what Naqvi sahab said and this exercise seems to be in futility. There are other ways also to do this. Thank you.

Dr. Subhash Kashyap (Chair): Thank you Singh sahab. Kaul sahib, do you want to say anything? (Mr. Jawaharlal Kaul denies). Okay, then I will go round with the table. Okay Mr. Shah.

Mr. Shah: I don't wish to make any substantial comment now, but since the leaders of the two political parties have offered their comments, it would be worthwhile now if Prof. Chhokar intervenes at this point of time. Because they have already said that it's not possible and practical. What is that you wish to gain by the order that you have been able to secure?

Dr. Subhash Kashyap (Chair): Would you like to do it now? (asking Prof. Chhokar)

Prof Jagdeep Chhokar: I have no objection at all and I would be happy to do so. But if we go through it, there are more competent people to comment on it.

Mr. Shah: I think these two people would desert us soon.

Prof Jagdeep Chhokar: We can check with them if they would desert us soon (all laughing).

Mukhtar Abbas Naqvi (translated): I need to go somewhere but I would stay for some more time.

Prof Jagdeep Chhokar: Can we get Mr. Habibullah and Anjali before that?

Wajahat Habibullah: Thank you Chhokar ji. According to my experience I feel that whatever I just heard from these two leaders clarifies that this Act has not been understood properly. I will tell you why. What is information according to the Act? As they told that they would now have to answer difficult questions and we did not keep record of those and now we would have to. No, this is not the case. I would like to read in English as the Act with me here is in English.

(in English): This is section 2 (f). Information means any material in any form.

Interrupted by Mukhtar Abbas Naqvi: Sir, we are not discussing the Act here. Infact we are discussing about this recent order from CIC.

Prof Jagdeep Chhokar intervenes: He is just trying to tell you what information is actually. It is not about Act. That same section is quoted in the order of CIC about which we are talking.

Wajahat Habibullah: The order states that whatever information you have with you would disclose it and I am trying to tell you what information is. Information means any material in any form. So it means that information is that which you have kept in any form. This is according to the Act. If you don't have information in this form or manner, than it is not information as defined by the Act and you don't need to furnish it. Why so? It is because it should be a record according to the Act. What is record? Record includes any document, manuscript and file and it must be recorded. If there is no such thing, then it does not exist. So if someone seeks this information from you, you can tell him that we don't have this information. It is simple. Now, you say that we need to tell as to why we selected someone or how did we elect them. If you have kept a record for this about why someone elected and on what basis, then that has to be disclosed.

Vijay Bahadur Singh interrupts: This would be explained more clearly by Kashyap sahab that the origin of the term 'public authority' is from constitution by article 12. How a political party is a public authority?

Prof Jagdeep Chhokar intervenes: Sir, article 12 is about state. There is a difference between state and public authority.

Wajahat Habibullah: I am now telling you the definition of public authority according to the Act. It says 'by or under the constitution'. Political parties necessarily don't come under the ambit of 'by the constitution'. But political parties are recognised by Election Commission and EC is under the constitution. The second thing mentioned in the Act is: "by the notification issued or the order made by the appropriate government and includes any body owned, controlled or substantially financed or any non-government organisation substantially financed

directly or indirectly by the funds provided by the appropriate government". Now let us leave the Act and let us discuss about the practicality of this order. We can always have a discussion that whether exemption granted to you by IT department amounts to substantial financing or not. We can continue debating it for long. I myself, in 2009 passed an order in which I have said, "We cannot therefore say that political parties fall within the definition of public authority as defined in any of the clauses of section 2 (h) of the RTI Act. Therefore, we hold that both these complaints are inadmissible under the RTI Act." This same order has been cited in this recent order and it has been set aside. I have myself done it. But today I want to speak from the other side as to why I want to advise you that there is nothing to worry about this. I say this because; it is only those records that are available with you that are supposed to be declared by you.

Now, you raised a basic question: who are we supposed to report: the CIC or the EC? This same thing was raised by Nirmala ji in Big Fight program on NDTV. No, you don't need to report to CIC. You just need to report to CEC. Constitutionally CEC is the organisation to which you have to report. So you do not have to report at all to the CIC. Only thing is that the information that you are giving to the CEC or to the IT department has to be uploaded on your website. This is so that if anyone wants to get that information then instead of applying for it at various places, they can visit your website and get that information. This in my view is easy. When you are typing out something you can always scan it and put it on your website.

The other thing is about appointing CPIOs mentioned in the operational part of the order. According to the Act, you don't need to make separate CPIOs. In government also they are not forced to appoint separate CPIOs. They appoint already existing deputy or under secretaries as their CPIO. What is the responsibility of CPIO? CPIO just needs to make sure that all information is going on the website. He does not need to do it on his own. He is just supposed to supervise this process. This is an administrative process. Secondly, if anyone wants to get any information then it is the responsibility of CPIO to forward that requirement to the concerned person who has this information so that the person can give answer to that.

You would say that we will have to generate more information. There is no need to make create information. It is only the existing information that is to be disclosed. Now the question is of what sort of information you should keep and what not. I would like to read the Act here. Under section 8: "information which relates to personal information the disclosure of which has no relationship to any public activity or interest..." Under this privacy clause we took a decision on PM's relief fund that it is essentially a public authority but it is not necessary to disclose the identity of the donors or the amount contributed by them. So if someone doesn't want to disclose how much he/she has donated to your party then they have the permission to do so and say that this is private information and I don't want to disclose. Yes, but if EC has a direction that this needs to be disclosed then that direction would override this clause. So you

have greater protection of your information under this Act and therefore there is nothing to worry about. Section 8 (d) mentions: “information including commercial confidence, trade secrets or intellectual property the disclosure of which would harm the competitive position of a third party”. So if there is any information which would hamper the prospects of your party in elections then you cannot be forced to give that information. You can argue on the same lines that this would harm your interests. You can always tell that we can disclose this information after elections and not before it.

Mukhtar Abbas Naqvi: Wajahat sahab your argument is very good. I just need to point out few things. Your argument about political parties is that they can give information about things that they want or can deny it. For example, let us say that if we are having an internal meeting of our own. Now information would be sought regarding what we discussed in that meeting, what are the minutes and how much tea we consumed? Now you argue that under RTI Act we can deny giving such information. If we deny giving any information that would become news in the newspapers that BJP denied to give information.

Secondly, you say that political parties are also under the ambit of public authority. CIC was made by the act of parliament as a constitutional authority. You were its respected chairman and you have yourself ordered that political parties do not come under public authority. Now, from where does the CIC get its mandate to declare any system as public authority? CIC is not like Supreme Court. You cannot declare Subhash ji, for example, as public authority and say that it is final. I think that this is the main issue here. No one is afraid about all this. If you visit the website of our political party, then 90 percent of whatever Agrawal sahab has sought is there already. The rest 10% is on the website of EC. There is nothing in this that is hidden. And whatever political parties want to hide, you cannot take it even with the help of RTI. So whatever the parties can give under RTI is already there.

Wajahat Habibullah: If that is already there then you should not have any objections to it. Nirmala ji said the same thing that we only want to understand as to what we need to do. I have tried to clarify that you just need to upload information on your website which according to you is already being done. Then you just need to appoint a CPIO and you don't need to do anything extra. Now, about what newspapers would say about the kind of meetings you have, that is something that you have to decide. It is better that you disclose information rather than papers criticising you. It has happened many a times that media has come up with something due to misunderstanding which was not true. So it is your decision as to what you want to disclose and what not. However, I just want to tell that only that information needs to be disclosed that you have with you as of now and you are telling that it is there already. Then there is no reason for you to take troubles and be concerned.

I also want to clarify that CIC or the Act does not have a list of organisations detailing which of them are public authorities and which not. It just tells us what a public authority is and what is not. Now on that basis, CIC has reached a decision. I told you that I reached a different conclusion. Now this order has been passed by a full bench which has such powers. I gave this decision in single bench which can be overruled by full bench if there are facts that are missing. If you still think that it is wrong decision, a writ can be filed. There are no appeals against the order of CIC (it being supreme authority) but a writ can be filed under constitution in High Court and that can be done by you. I just want to tell you that there are many departments and corporations of this kind. For example, you know as to how much information was dug out from the Commonwealth Games Association and many people were also jailed due to it. They also insisted that they are private organisation but we ruled that they are not private organisation and come under section 2 (h). It was upheld by the Supreme Court. There are many such decisions. I can give you whole list of such organisations. For example, Bangalore Airport Authority, Krishak Samaj (a cooperative) etc.

Vijay Bahadur Singh: I just need to clarify that we don't want to do anything 'close the chest'. We just contending that RTI activist must ask for all these things from EC where we are already submitting them. If there is anything that we have kept hidden, let the EC ask us and we will be answerable to it. Otherwise this would create unnecessary burden on us creating political misunderstandings. You ask 10 such weird questions and if we are not able to answer them it would be big news in newspapers and channels causing irreparable damage to us. It would be abused.

Wajahat Habibullah: I just want to clarify this. There are many such departments which cited similar problems. For example, UPSC resisted for many years to come under this Act and argued for exemption. They said that they would not be able to work. We conduct so many exams with so many centres and students. How can we give so much information? A decision was taken against them. They went till Supreme Court which dismissed their appeal. Now they don't have any complains and their work is going on perfectly fine. Army sent 5-6 Generals to us and discussed with us. They argued that how can we give all information. It would compromise national security. They doubted at that time but once it was implemented, they have now the best system to disburse information. You must not have heard any complain against army that any information was sought from them and they declined to give it.

Supreme Court decided that information must be given. But when it came to them they said that we are not covered under this. They also agreed. Therefore, it is my firm belief that you must try it and you will find that it is not so difficult to comply with it. Thank you.

Dr. Subhash Kashyap (Chair): I invite now Prof. Chhokar to express his views.

Prof. Jagdeep Chhokar: Naqvi sahab answered all the questions that were in the write up of Agrawal ji that 90% of the information is available and we would give the rest 10%. But sir as it is said: *'hai aur bhi jamaane mein gum mohabbat ke siva'*. So there are other people also apart from Subhash Agrawal ji. You mentioned how RTI is being misused and abused for blackmailing. If you want to give a hint by this that we are trying to blackmail you then we don't have the audacity to blackmail you. (All laughing)

This order of CIC neither gives CIC the right to ask for any information from the political parties, nor does it give this right solely to the activists. Infact, this order gives rights to a citizen. If a citizen wants to ask for information from you, he would do so. If a citizen asks for some information then I think that being a political party it is your responsibility to give such information to the citizen.

Secondly, you yourself said that it is not only the citizens who would ask for information, our workers would also ask for information. Now sir, if you don't want to give information even to your workers, then it is something to wonder about. Let us say that all activists are useless and anti-national and let us leave them aside. Citizens are unintelligent and dumb and let us also leave them out. Atleast give information to your workers. Now, I am going to say something harsh and please excuse me for that. The whole purpose of this is to get an opportunity to bring those reforms which even political parties want to bring about but all are helpless in doing anything in this regard because of the system that we have.

We only filed PIL to get that affidavit that was just mentioned by you (affidavit mentioning details of the contestants filed along with nomination papers). Indian government appealed against it. Since no one is here from Congress, I would like to remind you that NDA was in power at that time. Then when Supreme Court said that affidavit would be there, 21 parties held a meeting regarding that. RPA was even amended. We again went to Supreme Court and that amendment was annulled. So, it was not easy to get that affidavit and I am sure that this would also not be a smooth process. However, the purpose is not to criticise political parties and become fashionable, the purpose is to bring reforms in the political structure of our country. We think that those reforms can come by this way.

I can also present a list of things that are not on the website of EC, and IT department refuses to give them. That is why this process was initiated. We took the income tax returns of political parties in 2008 through RTI. We faced the same arguments there also. All political parties refused to give any such information. We were somehow able to get it. When we got that we thought our job is done. We found out that income declared (which has 100% exemption) by political parties. We tried to ascertain as to where this income comes from and we were advised to go to EC for that. EC said that under section 29 (c) of RPA we get a statement of donation from political parties and we would give it to you and we got that. We compared the

statement and total income and found out that statement accounted for only 20% of the total income. There was no trace of rest of the 80%! Therefore, sir, that information is not there. We understand that giving such information can be problematic for you but if we want to reform things then someone has to bear some of these troubles. So the purpose is to reform these things.

Vir Bahadur Singh ji mentioned that for last two decades there is a general perception of politicians being the most corrupt people India. Sir, these are your own words. Sir, I agree that this has become a prevalent view but we need to think why this has happened. 20 years is not a small time period. We have a big population and the number of activists is very low. Therefore, there must be some reason for this view to become prevalent. There is a saying in English that 'there is no smoke without fire'. So, to say that political parties are absolutely clean and these activists are the biggest anti-nationals is also wrong to say. I just want to request you that please think why this view is prevailing. There can be many reasons for that and everyone must correct what falls in their domain. We are trying to rectify things from our side; you should try to do it from your side. God willing, things would get back to the track. But it is wrong to say that it is not practical because this same excuse was also given by the bureaucracy when this law was being formulated. Infact, Supreme Court did something exemplary by appealing in High Court for this. (All laughing). But even Supreme Court heeded the line.

Naqvi sahab you mentioned about constitution a number of times. This law was made under the constitution only. You only made it. You asked as to who gave the right to CIC to declare anybody public authority. Sir, this right was given by the Act and the parliament. Now they have taken a decision according to their understanding that political parties are public authorities. In English we have something called 'straw man philosophy' wherein you make a straw man and direct all to hit it. Now, you mentioned numerous questions that people would ask from political parties. These all questions are being disclosed by the political parties themselves. Infact people didn't even imagine till now what to ask. Sir, those who want to ask would do so. You should reply to the worthy questions and whatever information you cannot disclose you can deny to do so under section 8.

After that you said that CIC is not Supreme Court. Yes, it is absolutely not. Ultimately Supreme Court will decide as to which question is right and which is not. So, there is a law in this country and this decision came under the boundaries of this law. If there is any problem according to you, you can file a writ in High Court and we will settle it there. I told this on a television channel that these decisions cannot be made in the debates of television channels. If these decisions are to be made, this would happen only at two venues: either in the Supreme Court or in citizen court/*janta durbar*. I think Wajahat Habibullah ji explained things very nicely that no sky would fall due to this decision. If all information is there already then what is the

problem in giving it? I am also actually very confused about this because when we started we never thought that it would become such a big issue. This is because political parties are essentially public. You said that you distribute your manifestos and want someone to take it. I read the manifestos by downloading it. So there is nothing to hide. Let me tell you frankly that this anxiety indicates that there is something to hide. This would actually encourage people to ask more questions. Therefore, my suggestion is that it should be treated for whatever it is worth. These 6 political parties under the law of land are public authorities as of today and every citizen is free to ask whatever question they want to ask under article 19 (1) (a). It is the right of a person to ask questions and it is the right of respondent to accept or deny to give any reply and whether the grounds of denying information is acceptable or not is to be decided by the Supreme Court ultimately. We are all under it and I am unable to understand why are we contesting on this. Thank you.

S.C. Agrawal: At the beginning I must tell you that I have written a letter again to all the parties in which I have offered them to invite me so that I can clear all their apprehensions regarding this Act. Many public authorities such as ministry of defence, railway ministry all used to call me when RTI Act was being implemented. When I speak there for an hour or so, all their fears disappear.

Secondly, they said that they would get 20-25 thousand petitions at once. Once you accept this I will tell you a *gurumantra* whereby you would not receive even 100 petitions daily. Now, I come to the point which has been mentioned by everyone. It is a misconception that they would get accountable to the CIC. They would not be accountable to CIC but would be accountable to the public and their workers. Further, if they have any objection in being declared as public authority, the first thing their morality should tell them is to voluntarily surrender all government facility and prime land that they have got on such minimal rates.

Next thing is that section 8 (1) gives many facilities. Wajahat Habibullah ji has already mentioned the concept of technical competence in section 8 (1) (d). Other than this, there is section 8 (1) (e) and section 8 (1) (j) on fiduciary and personal relationship. There is this section 7 (9) whereby if someone is asking for weird information resulting in unnecessary burden on them, they can refuse to divulge any such detail on the ground that it is diverting their resources in a disproportionate way. Under section 4 (1) (b) they can make many disclosures on suo-motto basis which would end the need to file RTI petition.

They have many doubts regarding disclosure of the deliberations that they have. It has been clarified earlier also that RTI Act only provides that material which is on record. If their deliberations are audio recorded than they have to provide it and as far as I know, in no political party the deliberations are recorded.

Let me give you an example. The joint committee which was formed for the drafting of Lokpal Bill had all its deliberations audio recorded. Therefore, I got those without the interference of CIC and DoPT themselves handed it over to me. Another thing is that people would ask 'why'. See 'why' and reasoning is not allowed in RTI Act. RTI Act is very simple and you people only made it and there is no need to be afraid of it. The more you show transparency, the more you would be liked.

Both of you spoke at length on poll reforms. I asked EC that for how many years they have been writing for poll reforms. For the last 20 years the recommendations of EC for poll reforms were not followed. I wrote an article on that and sent it to leading personalities of this country. I also sent them to Wajahat Habibullah sahab and I think he liked them. He forwarded the copy of those reforms to 10 political parties. Yes, I have filed RTI now asking about the actions taken on my suggestions that Wajahat Habibullah ji has forwarded to you. So if they had done the poll reforms, I don't know about Jagdeep ji, atleast I would not have thought of filing RTI petition on them. Let me give you a simple example of poll reform. Section 49 (O) gives me the right of 'none to vote'. But that right is partial because my right is not secret. I have written a number of times to EC and government to bring it on EVM but they don't do it. If only this small thing is implemented, the candidates with criminal record and muscle men would be ousted leading to purity in poll system.

I have filed a petition on Rashtriya Janta Dal. It is by chance that one day I was passing through Kotla road I found a board in the name of 'Rabri Bhawan'. I have filed a petition that provide me the file noting as to how this building was named in such a manner. I did a web search on this and found out that a MLC of RJD objected to it and he was served show cause notice. Afterwards no action was taken on that show cause notice because it was expected that he would revolt. So I think that these kinds of petitions are not insensible.

Dr. Subhash Kashyap (Chair): Naqvi sahab do you want to say anything?

Mukhtar Abbas Naqvi: I would like to comment on what Jagdeep ji and Agrawal ji said. There is no one who is terrified of this. It is obvious that we are accountable to public. We are also aware of the fact that after every 5 years there are elections and people can throw us out. Our only objection/reservation is that we already give everything to EC and if it needs more information we will provide it to them. You should take information through EC by filing RTI there. But you insist on filing RTI directly in party office and you insist that we would be forced to give any such information in response to that. You said that we are hiding things from our workers. No, no one is hiding anything. We have thousands of units and elections are held in all of them every year. Now some people would lose and some would win and RTIs would be filed indicating that malpractices were committed. So the political parties would be burdened by the flood of such RTIs. Whatever gurumantra you have would not work. We would have to employ

more than 200 people to reply to all queries that we would get. RTIs have to be responded in time and if that is not done it is an offence.

It is good that you are running a movement for these things but I must say that there is general rise in the confidence of public towards political system and it is because of this that we are witnessing polling percentages as high as 80-85%. Earlier it was only 40-50% polling.

Anjali Bharadwaj: I have been hearing this debate for long which was more centred on law perspective. I want to put across citizens perspective. As far as a common citizen is concerned, we are only bothered about the rationale of Right to Information as to why that law was needed in first place. Most important thing in this context is that public should have the information regarding activities that are being done in the name of public interest. Now we can debate on what is public authority and what is not later because there is a law on that already. But if seen in most basic sense, we understand that political parties perform a very basic public function. The laws are made by political parties and we have now even schedule 10 which tells us that political parties have a very big role in determining the nature and scope of laws that are made. Political parties who form the government decide about development paradigm and development programs. It is according to the directions of political parties that the government is being run. Public policies that are being formulated have the origin in the ideologies of political parties. So if we look at it in a general sense without going into the details of it, then for people, political parties are playing a very fundamental public function due to which people want to know what political parties are doing.

Now, in this context you mentioned that you are already giving much information to EC and IT department and I fully agree to that. Under section 2 (f) we can already ask for information regarding you even if you are not a public authority by filing RTI with EC and IT department. One of the main issues in this is that there are certain very important information that we till today cannot access from ECI or IT department. I would present those before you and you can always argue that you don't think that they are proper to disclose and this in a way would lead to a purposeful debate.

Firstly, we all know political parties do not give any record for donations that are less than Rs.20,000. Now both Jagdeep ji and we have seen records and found out that many political parties say that they have not received any funds over and above Rs.20,000 or they have received very miniscule funds over this amount. So people want to know where the origin of those funds is. As of now, as far as I know we cannot get any such information from ECI but still people want to know. If the political parties claim to represent people and leave aside public authority, they can atleast be considered as public organisation then, what are the objections in this? We can discuss this.

Second issue is an issue which is beyond financial matters. Let us say that a political party claims that its two main issues are safety of women and criminalization and I vote for them on this basis. We really want people to vote on the performance of a candidate. However, if today we analyse the issues on which people vote, we will discover that performance of a candidate is probably the last thing on which voting happens. When people go out and vote they choose symbols of the political parties to vote. Therefore, I just want to put across a question regarding this: If a candidate has a track record that is exactly in contradiction with party's ideology then should a voter have this right to question political party as to why such thing happened? Since selection of candidates was mentioned here earlier, even without going into technicalities, should not people have this right to question their political parties regarding the grounds on which a candidate has been selected to contest?

Regarding electoral promises and manifesto, it is okay that after the end of tenure it is evident what promises were fulfilled and what not. However, should not people have the right to question why some promises were fulfilled and some not, why certain issues were prioritised over others, and what was the basis to do so? This is also a question that people want to be answered realistically from the political parties.

Regarding the issue of general perception raised by you whereby everyone is considering political class as corrupt, in my view, I and many other people whom I know, don't prescribe to such views. Infact we profess that the more specifics you answer, the more generalisations break down. If political parties try and answer questions raised by people this would help in breaking this general perception. The questions like where the conference was held, what were the booking charges and how many cups of tea were consumed; are questions that involve lesser interest. The larger issue of interest is: what was the outcome? Should people have this right to know from political parties that you collected so and so funds from people, you spent them on so and so heads, and beyond that what happened when you gathered to have a meeting. As a common citizen I contribute funds not for the expenses involved in the various activities, but it is for the sake of deliberations that take place in these meetings and the decisions taken.

I am sorry that I took a little more time but these are the things that form the principle basis in this recent issue. Thank you.

Mukhtar Abbas Naqvi: I just want to clear certain things about which you referred. Every political party has atleast two wings: parliamentary and legislative. So all elected representatives whether they are MPs or MLAs, they all come under the purview of RTI. We have no objection of you taking information on all the issues that you just mentioned. But we cannot do this from our office. You should place this demand before EC and let the EC take it from us. This is our only objection. In any way, whatever meetings we have, we are the first to

come out in press conference and give details about it as to what happened and what decision was taken. But we cannot tell about the conflict and confrontations that may have taken place there.

Prof. Jagdeep Chhokar: See, EC sent a written note to Law Ministry that there should be declaration of funds that are even below Rs. 20,000.

Arif Mohammad Khan: As of now there is no law for political parties and this is the main issue. (Prof Chokkar and Dr. Kashyap agreeing to it)

There are laws for even small NGOs but it is a pity that there is no such law for political parties.

(Mukhtar Abbas Naqvi leaves)

Sushant: The relevance of my question or remark would have been more if Mr. Naqvi was here but he just left. I wanted to thank both these leaders who could come for this session.

Vijay Bahadur Singh: I am not representing my party here and I am here on my own individual capacity.

Sushant: Okay Sir; let us call you as a representative from the political class. Although I had called the leaders of all 6 national parties, some of them denied our invitation request and some could not come even after their confirmations for the reasons best known to them. I faced troubles of inviting people mainly from the left parties. CPM plainly declined to attend this session and told us that their views on this order are there on their website and we can see that. I just wanted to present their views and wanted to ask whether the whole political class agrees to it or not. I am quoting this from their website and it reads as: "The party is only accountable to its membership." So my question was that whether a political party is 'only' accountable to its membership?

Secondly, I want to direct this question to Prof. Chhokar about one of their views. According to them (CPM website) and I quote: "bulk of the funding and finances of the parties do not come from the government or any state institution." Is it true? They have given this basis to oppose this order. I am not sure but is there any ruling from CIC that fixes a percent which would determine 'substantial funding'.

Prof. Jagdeep Chhokar: There are two issues here. First, regarding what percent it should be RTI Act says 'substantially funded by the appropriate government'. Now, there is no definition of substantial. CAG once gave the definition of substantial but it was overruled by Supreme Court. There are adequate Supreme Court judgments which say that substantial cannot be quantitatively determined. Further, they also say that quantitative assessment of substantiality

is neither necessary nor appropriate nor desirable. It is very clear. It is a test which has to be done on (as Kashyap ji says) facts and circumstances of each case.

Now let us come to second issue and that is the contention of CPI that they don't get any substantial funding from the government. Please quote again what have they mentioned.

Sushant: "The CIC order states that 6 national parties are substantially financed by the Central government and therefore they are held to be public authorities under the Act. This is untrue because the bulk of the funding and finances of the parties do not come from the government or any state institution. Infact the CPM does not accept funds from the corporate which is legally permissible."

Prof. Jagdeep Chhokar: First issue is that one sentence mentions government funding and the second refers to corporate funding. We can only argue if they stick to one thing. Secondly, if they agree to disclose what is their total funding then only we can tell how much they are taking from the government. Nobody is prepared to disclose their total funding. Total funding of every political party is a black box. I think I have answered both of your questions.

Arif Mohammad Khan: But Chokkar sahab if they are being funded by the government, whether they tell or not government will disclose it if a RTI is filed.

Prof. Jagdeep Chhokar: It took us two and a half years to present the data before CIC for only 6 national parties and that too only for Delhi. We had to contact Director of Estate and Income Tax department. But to dig out this information it took us two and a half years. I must also tell you that the CIC told us that we will crosscheck this information independently from Director of Estate. I told them that it would further take two and a half years for you to do so. They tried and this they have mentioned in their order that they asked but did not get any response from there. So sir it is also extremely difficult to take information from government through RTI.

Sandeep Mahapatra: There are certain observations that I would like to make regarding the judicial trend that I as a lawyer have seen. Our constitution evolved over the last sixty years. The scope and ambit of many fundamental rights were extended and interpreted in various manners. The trend now seems to be that the concept of public authority has been broadened by various High Courts and the Supreme Court. Mr. Kashyap would know this that 3 months back the Delhi High Court passed a judgment wherein a private broadcaster and a newspaper (I would not take the names) have been considered to be coming under the purview of Article 226. The point which I am trying to make is that the ambit of public authority is now being seen as whether or not that particular agency or party is doing any public function. In that particular case since the newspaper and broadcasting agency were doing some public function of providing news to the public at large, therefore the finding that was given by the High Court was that it would come under the ambit of Article 226.

Prof. Chhokar said that it is ultimately the Supreme Court that would decide whether or not anyone is under the purview of RTI. What I heard from Mr. Habibullah is that everything is already there and you just need to put it on your website and political parties can resort to section 8 if they don't want to disclose some information. If that is the case, political parties should not take this judgment as erroneous. In that regard I would like to know Prof. Chhokar's views regarding the limited interpretation of what Mr. Habibullah said.

Prof. Jagdeep Chokkar: Firstly, I don't hold a brief for Mr. Habibullah. I am just clarifying my position here because he and I have disagreed on many things although we are good friends. What he said was technically not wrong at all. All the CIC order says is that these 6 political parties are public authorities. Period. Now, it gives them all the rights and responsibilities and obligations of a public authority. Public authority is very much in its rights to invoke section 8. Since you are a lawyer you know that it can be done. That is why I said earlier that a citizen can ask any question to whomsoever he/she wants because of Article 19 (1) (a). The one who is being questioned has also the right of not replying to it under section 8. That is what we have been through in the case of IT returns of the political parties. The request for IT returns was made to CBDT. CBDT transferred it to 19 cities where the political parties claimed to be registered. So we received 19 rejections. We had to file 19 appeals to the first appellate authority. 19 appeals were rejected. Then we filed 19 appeals to the CIC and clubbed them into one. The IT department said that we consulted the political parties since it is third party information and they said it should not be given and therefore we are not giving it. We argued that although the person from whom the information is being sought is to be consulted under the RTI Act, the information officer has to apply his or her mind as to whether public interest overrides over private interest or vice-versa. It was done by the CIC and the IT returns were given. So a public authority is well within its rights to invoke section 8 but it ultimately for the CIC or SIC and ultimately for the Supreme Court to decide whether those reasons are applicable in that particular case or not. So Habibullah was not wrong at all. So section 8 is available if it is acceptable to be available by the appropriate authority.

Anjali Bharadwaj: Can I add something.

Dr. Subhash Kashyap (Chair): Please do so.

Anjali Bharadwaj: I totally agree with Mr. Chhokar. See, section 8 of the RTI Act like he is saying is there and anybody who is a public authority can use it. What Mr. Habibullah was saying was technically very correct position in my view that whatever records are there they have to be provided by public authority and they don't have to create records. While we can say all of these things to allay the fear of political parties, let us understand the CIC judgment and why it is a landmark judgment. The point is that how does accountability set in from transparency. It is the real question. The question really becomes that today somebody says that I gave a ticket to

X, Y or Z and denied it to A, B or C and say that it was done according to norm or rules of the party (which they are free to frame) which tells us not to record the process of our decision. Tomorrow somebody will actually take up that information and say that 'look we want you to record this process' and actually put a pressure for accountability for better record maintenance on the political party. I don't have the copy of RTI Act I am therefore forgetting the section. For example, every government authority also can start telling me that I have not kept this or that record. Will that be acceptable to me as a citizen? I will actually challenge it in the Information Commission and the Information Commission has the right to say that you need to maintain record in a particular manner because the norms of record keeping are to be reviewed, looked at and decided upon also by the Information Commission. So today for example, a political party might say that we do not keep records for donations below Rs. 20,000 because neither we are legally required to do so nor we have that kind of infrastructure. But eventually there will be two kinds of pressure that will build up. This might not happen immediately. One will be that people would themselves start saying that if a particular party has kept records why not you and why don't you keep it. Or they may allege that you are not being transparent. That is the kind of pressure that gets build up. The other is the Information Commission itself could very easily turn around and say that this record should be there with you as to how you make decisions.

Ofcourse as things stand today, the technical position is absolutely correct that whatever is there in records you need to give and nothing beyond that. But the ramifications of the CIC order are actually moving the whole process towards greater transparency and hence accountability. I think that some of the concerns which are being raised in that sense are genuine because at the moment the system which is in place in political parties is not probably geared up for some of this. But like everybody has been saying that was true of the government after 60 years of operating in a non-RTI regime. That is true of the judiciary as well and it would be true for political parties for a while and it would take some time to put those systems in place. But I think that there is really no rationale to oppose it in a sense to say that we cannot agree with you that you need to have such information regarding the candidates that we have chosen to contest. This should not be the case because finally they are claiming to represent the public and because of the various exemptions that they are getting.

The other thing that I also wanted to point out was regarding the practicability. When the government says it would involve so much expenditure to appoint PIO to give information, we always argue that even if you put aside 1% of total expenditure that you incur for transparency and accountability it is worth it. I am just going to take up one of the points mentioned by Mr. Agrawal that if political parties don't want to be under the purview of RTI, they should voluntary surrender all government funding that they get. Infact I would say that if they can justify that to become transparent we need some more funds (for example, where we take

1500 crores from government we want 5 crores more) than I think nobody would have any objection on that. People might say that to appoint CPIOs and for record keeping if you need more money then have it. Actually it is information in public interest and directly relates to everything that is happening for a common person in this country that people are interested in seeking. Thank you.

Sandeep Mahapatra: The point which you made about the possibility of CIC asking the political parties to maintain records in a particular manner is very pertinent and that forms the basis of the replies given by Mr. Naqvi and Mr. Singh. It is for the CIC and ECI to come to a common middle ground. Even though we can discuss it at length there are two points. Number one: the perception that has been developed around the CIC order is not a positive perception. Number two: the views of the political parties seems to be that it would be misused by our political opponents and therefore it would not be proper. So when the political parties are saying that this can be misused the apprehension seems to be on the political decision making process and it would finally have implications on the internal democracy in the party set up. EC functioning in this regard is also important. So if we link up this whole thing, there seems to be a plausible ground that there is a need that ECI and CIC being statutory constitutional bodies to come together and find a common ground may be with the aid and help of the political parties and civil society. So, if all the stakeholders agree that it needs to be done than we should have a wider debate on this rather than compartmentalising the whole issue between political parties (who think the Act may be misused) and RTI activists (by any means I will have my information). As a lawyer I would say that the interplay between the statutory functions and powers vested in the ECI and the powers that have been vested in the CIC must be looked upon carefully and we should have a larger debate on this.

Professor Jagdeep Chokkar: I would like to mention a couple of things. One of the questions asked earlier was that one of the parties mentioned that we are only answerable to our members and not to anybody else. I am nobody to tell political parties about things that they should do and things that they should not. But I think that if they are only answerable to primary members they are missing out on the citizens and voters of this country. No political party I think can get elected only by the votes of their primary members.

Secondly, it is regarding what Anjali has said that if the political parties want more money to be transparent it can be given. I am sure it can be given but I am in principle against giving even a penny to political parties until they come clean about their total finances.

The point is that the financial affair is not the only reason why they have been declared public authorities. They have declared public authorities on three grounds: one of them is substantial public funding. The other is that they are the creatures of the constitution. You cannot be a political party unless you are registered by the ECI under section 29 A of RPA. So you are a

creature of the RPA. Thirdly, they perform a public function as Anjali very eloquently has said. So there are 3 reasons and not only one.

Thirdly, when you say that the CEC and the CIC have to sit together and figure out, as a junior lawyer (since I have been lawyer only for 6 years), I beg to disagree sir because ECI has constitutional authority under article 324 which it is fully competent to exercise. The CIC is a creature of the RTI Act. Their fields of operation are independent. The order of the CIC has bearing on many many things. CIC cannot sit with every person or organisation who is concerned with its decisions and reach to a conclusion. CIC has just said that they are public authorities. It is a simple and straightforward decision. Now it has ramifications for IT department also. Then you will say that let IT department also sit with the CIC. Let media also sit with the CIC. It is not going to work that way. Each constitutional or statutory authority operates in its own sphere and others have to take appropriate action accordingly. Yes, there should be a larger debate and Anjali said very rightly that this has many ramifications. However, the debate can only proceed when there is an intention to debate. When you say that a negative perception has been created that is what I find objectionable and that is why the tone of my voice is becoming a little harsh. Creating a negative perception is a complete disservice to the cause of democracy. Political parties in the times to come cannot remain as opaque as they are today. This country will not stand for this may be 20 or 50 years hence. We need to bring atleast some transparency. The question of fighting it is okay and I mean the game goes on. But according to me this is necessary and in my view political parties would get benefitted in this. Mr. Naqvi infact told that our own workers would file RTI. It is not wrong to say that because for the first 5 years when the RTI appeals came to CIC, 60% of them belonged to government employees. Government servants were using RTI, leave the citizens aside. I don't want to be cliché but it is an idea whose time has come. Sir, it is a way out to rectify the general perception that has been formed in last 20 years (addressing to Vir Bahadur Singh). It is an opportunity to do so and it needs to be done.

Dr. Subhash Kashyap (Chair): Justice Gupta do you want to say something.

Justice V.K. Gupta: Good afternoon everybody. I am suffering from two disabilities. One, I have come very late. So I don't know what all has been spoken on the subject but from the tone and tenor of the two speakers whom I just heard, it appears that the debate has been very meaningful even though may be agitated. Secondly, I was out of the country for 3 weeks and I came only yesterday. So only yesterday I found out that the CIC has issued this order. I have not had the advantage of reading the order even though RTI has been one of my small subjects. Only after I could read the order as a student of law I could comment on the merits of the order. But 2-3 minutes I will take for expressing my views.

Firstly, transparency has to be there in the functioning of the political parties and especially in the management of their finances. It becomes more important when everybody in the country knows that the funding of the political parties is anything but transparent. The source of funding is very much questionable and it is known to everybody. The only issue is rule of law must be followed. How to do it? It can be done by the intervention of the EC which is a constitutional body and which is entrusted with the task of conducting the elections and the political parties are the main players in the game of elections. In my humble view, perhaps the EC is a very eminently suited institution to deal with any issue related to political parties. There is a small correction that I would like to make. Political parties are not the creation of only the statute, they are the creation of the constitution as well because under article 19 every citizen has a right to form an association and setting up a political party is an exercise of that fundamental right as well amongst other things. So as the creation of the exercise of the fundamental right they owe their responsibilities to the nation at large and to the people of this country. That is all. Thank you very much.

Dr. Subhash Kashyap (Chair): Is any other person who wants to speak?

Arif Mohammad Khan: Right now as Justice Gupta has said that they are creation of the constitution, this is the only creation of the constitution which is not regulated by any law. The constitutional provision surely is there but there is no law in the statute books which regulate the functioning of political parties. It is okay that through this RTI we are trying to bring in some sense of accountability but this in my view will not happen unless we address the basic question as to why political parties are the only exception for which there is no law to regulate them. Especially if we view it in the context of the other amendment which has been done in the constitution that is anti-defection where the leadership of the each party has been given almost total authority over the conduct of the members who are elected. But that member cannot question the party as to the basis on which some directive is given to the member. Even the conduct of the members outside the party has been covered under the ambit of the law.

There is one more comment which I would like to make is that when you say that they are only accountable to the members and you make this point that they cannot be elected by the members alone, that is a universal truth and everybody knows it. It is not that I am not in agreement with other attempts that are being made to bring some sense of accountability but this cannot become very effective unless there is a law on the statute book which regulates political parties. If we have laws for the NGOs, corporations and private limited companies, why there is no law for the political parties. That is a question which should be addressed. Thank you.

Prof. Jagdeep Chhokar: One of the reasons cited in this order is also the anti-defection Act in schedule 10 that they exercise that right. Secondly, I would like to inform you sir that we have a

draft bill for regulating the functioning of political parties which has been prepared by a committee headed by none other than Justice Venkatachalliah. We have been taking it across the country for last two years talking to all kinds of people including political parties. Unfortunately there are no takers for it but we will continue to do that. I totally agree with you sir that there has to be a legislation and Dr. Kashyap has also said this repeatedly.

S.C. Agrawal: I have spoken already but you were not there. Our constitution makers made this system on the basis of for the people, by the people and of the people. But it unfortunately has been changed to for the politicians, by the politicians and of the politicians. I will give you a small example. Madan Lal Khurana used to contest from Delhi. He used to contest both for Lok Sabha and Vidhan Sabha. He used to say that if BJP comes in majority then I will retain my Legislative Assembly membership to be the Chief Minister and if majority cannot be attained then I would prefer Lok Sabha. When one person can represent only one constituency then, why for his personal ambitions we should spend so much on mid-term elections? This is just a small example which calls for poll reforms. Due to one controversial vote of Giridhar Gomang, Vajpayee government fell. Country has to undergo costly mid-term elections. Can't we have this small reform? As soon as a parliamentarian becomes a member in state assembly his membership should be cancelled automatically and vice-versa. It is small reforms like these for EC has been writing for the last 20 years but no one is doing it. If these poll reforms were done, I would not have filed RTI.

Dr. Subhash Kashyap (Chair): We have to conclude now after Anjali ji is finished with something that she wants to say.

Anjali Bharadwaj: Actually the whole discussion really is that do we agree that political parties are performing a public role and therefore should be accountable to people. If we agree that yes that is true and I have not heard anything from the political parties where they disagree to this, then there are only two ways under the RTI Act where the information can be sought by them. One is section 2 (f) wherein for the time being whatever laws are there under that the information that we want, we can take it from ECI or IT department where political parties submit their information. The other way is to declare them public authorities which they have been on the basis of substantial financing and so on.

Now the question is: what is the sort of information that we are not able to get under section 2 (f)? There are many such things that are not available with ECI such as the details of funds that are below Rs. 20,000. One thing is that we are saying that a law be made under which these political parties are regulated and unfortunately our experience is that whether it is Lokpal or any other law dealing with political class, it involves a long process and a long period of time to bring it. So if we can get that information under RTI and there is a proper rationale for that we should go ahead with that. Thank you.

Manoj Agrawal: I would request Subhash ji to please speak for even 5 minutes to conclude this topic of discussion.

Subhash Kashyap: First of all I would like to say that we had very useful, valuable and if I may say so educative debate of the subject. I think we are all grateful to those who have contributed to the deliberations. Shri Manoj Agrawal would move a formal vote of thanks but before that I have been asked to say a few words.

I would like to make 2-3 brief submissions. Firstly, while there is much that can be said and should be said in favour of the decision of the Information Commission, I think the political parties also have genuine difficulties in accepting it and implementing it. So we should appreciate the difficulties of the political parties also. So far as political parties are concerned, with due deference to the political parties and to my friends Jagdeep ji and Subhash ji here, I must flag the point that it is unfortunately a fact which the political parties can also not deny that right now we are in a situation where there is a tremendous disconnect between the political parties, political leadership, politicians; and the people. Rightly or wrongly a general impression has been created that the political parties are not transparent, they are not doing their jobs and that they are not performing public service as they are ought to for which may be the urban middle class or some of us may be more responsible. I think that this situation is dangerous for democracy. If the elected representatives of the people lose the respect of the people then democracy cannot survive for long. So I think that some internal introspection by the political party leaderships is necessary to think as to why such a situation has come because democracy functions through the political parties. I think some introspection is necessary and some remedial action is called for to restore the political parties and public leadership to a stage where they are respected by the people as people working in the service of the people.

Secondly, the point that I would like to mention has already been mentioned by Arif bhai and Jagdeep ji also mentioned that they have a bill ready. The fundamental problem is that there is no law for political parties. For some IT department tried to bring them under their net, but the fact remains that there is no law for political parties. The constitution does provide you the fundamental right to association under which you form political parties, but there is no law for the registration or recognition of political parties. What the ECI does under the RP Act is for the very limited purpose of allocation of symbols. Recognition is for the very limited purpose of allocation of symbols and registration is for very limited purpose of allowing you to contest elections as a political party. How many of us know that there are more than 1300 political parties registered with the EC. Today we are in a position where only national parties have been covered but what is the justification that all these 1300 parties would not be covered and required to appoint CPIOs and so on? Many of those parties may be fake but that is another matter. The point is unless you have a law for regulating the registration and functioning of

political parties, nothing else will follow. I think that the fundamental problem is there. The companies have to be registered in the Company law, societies and NGOs have to be registered under the Registration of Societies Act or under the Company law section 25 and so on. But for political parties you do not have to be registered under any law as I said that EC clauses are for very limited purposes. So there must be a law for political parties and unless we have that neither internal democracy can be regulated nor can you regulate the funds. The law should provide for the political parties maintaining proper accounts and those accounts should be audited. The audited accounts should be available for public scrutiny. I think that will cover most of the things and that is fundamental. Merely filing an RTI application will not result in much because what you get will be trash. If the accounts have not been kept properly, if they have not been audited, if some political party contends that we do not get more than Rs. 20,000 donation and it is our devotees who give us benami donations then, how are you going to regulate it? So the source of this funding and the expenditure must be accounted for and it should be properly audited and then no RTI application would be necessary.

Thirdly, unless you have a law for political parties, as at present, you can never get correct information. Why so? It is because today for organising any political event or for any political activity or to form and run any political party or to contest any election, you need tonnes of money. Where does that come from? Please try and answer this. A much respected leader who is now a member told me that why do we talk on electoral reforms; he had to spent 5 crores to get ticket and another 6-7 crores to contest. Now he says that he first needs to get 15 crores to contest again in the next elections. So we need to answer this first as to from where this amount of money would come. No one wants to part away with their hard earned-white-tax paid money to be given to the politicians. So the account that you keep is just for the sake of it. You cannot keep account of the real money that comes in. The situation that we are in today, the politics of this country cannot be run on the basis of white money. So first we need to make law on political parties, provide for avenues from where they would get money, settle their legitimate sources and then only you can probably get right information if you file RTI.

I could have said one or two things more but I think we don't have much time for that so I request Manoj ji to give his vote of thanks. Thank you.

Manoj Agrawal: We are very short of time now. I would like to thank you all who could come for this session on such short notice. I would like to thank Abhay Kashyap ji who helped us in booking IIC and I am also thankful to the staff of IIC who ensured smooth conduct of this event. The most pleasing thing is that we have invited 20 dignitaries for this session and of that 17 could turn up. I would again like to thank all the discussants and audience for their active participation in this interactive session. I would now like to invite all of you for lunch.