

*THE RIGHT TO INFORMATION ACT*  
*AND*  
*PUBLIC AUTHORITIES*

Janapriya D

Neema Sheikh

9<sup>th</sup> sem, LL.B (Hons.) (5yr)

Kerala Law Academy Law College

## INTRODUCTION

There has been made a plethora of social legislations to curb out the social atrocities, out of which some could achieve the greater object for which the Act has been made. The Right to Information Act has been made to make available to the public various information which otherwise were being denied to them. This accounts to transparency in the administration which is the objective of this Golden Legislation.

The Right to Information Act, 2005 is a milestone in the progress of our country as a democracy. It marks a shift from the tendency of official secrets to an open government, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right to Information Act came up with high expectations and was very successful in its venture in portraying out the real endeavor of a social legislation. The Act made the authorities shudder a little even after their first “fight-back”. The whole concept of democracy had its value after the commencement of this act, such is the transparency it holds!

Citizens Right To Know is paramount. Only an informed citizenry can make the important decisions required of them in a democracy. No democratic government can survive without accountability and the basic postulate of accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government.

Participation in governance is at the heart of any successful democracy. One way of participating is by exercising the right to access information from bodies which spend public money or perform public services. Following the enactment of the *Right to Information Act 2005* (RTI Act) in May 2005, all citizens of India now have the right to access information. Making information available to citizens is simply a part of normal government functioning because the public have a right to know what public officials do with their money and in their name.

To date secrecy has characterized the functioning of all government bodies in India, but with the RTI Act, the tide has started to turn. Where the *Official Secret Act 1923* made the disclosure of information a punishable offence, the RTI Act now requires

openness in government. Giving out government held information to the public used to be a rare exception, usually at the whim of officers within a public authority, but now the RTI act gives all citizens the right to ask questions and demand answers. The act makes it much more difficult for officials to cover up their corrupt practices. Access to information will help expose poor policy-makers which will contribute to reviving the political, economic and social development of India.

## **Right to Information- A fundamental right?**

In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III.<sup>1</sup> The backdrop and legislative history leading to the Right To Information Act would show that the evolution of the right to information as a necessary concomitant of the right to freedom of speech has evolved and blossomed with the growth of the Judge-made law in the interpretation and conceptualization of the salutary vistas of Part III of the Constitution. The Right to Information Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognized under Article 19 of the Constitution. Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution.

The Constitution of India does not specifically mention the right to information, but it has long been recognized by the Supreme Court of India as a fundamental right necessary for democratic functioning. Specially, the Supreme Court has recognized the right to information as an integral part of the right to freedom of speech and expression guaranteed by the Constitution (Article 19) and a necessary part of the right to life (Article 21).<sup>2</sup>

In *State of U.P v. Raj Narain*<sup>3</sup> Mathew J. opined that:

“The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which would make one wary, when secrecy is claimed for transactions which can at any rate, have no repercussion on public security” and that “in a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.”

The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed

---

<sup>1</sup> *People's Union for Civil Liberties v. Union of India*, (2003)4 SCC 399.

<sup>2</sup> *Bennet Coleman & Co. v. Union of India*, AIR 1973 SC 783

<sup>3</sup> (1975)4 SCC 428.

under Article 19(i) (a)” and “therefore, disclosure of information in regard to the functioning of Government and secrecy and exception.<sup>4</sup>

The right to access information reflects the fact that government information belongs to the people, not the public body that holds it. Information is not “owned” by any department or by the government of the day. Rather, information is generated with public money by public servants, paid out of public funds and is held in trust for the people. This means you have the right to access information about governments’ action, decisions, policies, decision-making processes and even information held by private bodies or individuals in some cases.

It is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare and that like all other rights, even this right has recognized limitations and is, by no means, absolute.

The right to information is not absolute. Some information may be held back where giving out the information would harm key interests which need to be protected. Nonetheless the question will remain: is it the public interest to disclose information rather than withhold it?

### **Public Authority- Definition, and Its Interpretation**

A statute is best understood if we know the reasons for it and it is always safe to have an eye on the object and purpose of the statute, or the reason and spirit behind it.<sup>5</sup> Further the key to the opening of every law is the reason and the spirit of the law.<sup>6</sup>

The Right to Information Act makes it mandatory for the public authorities to provide information to the citizens on request. The Act and the rules thereof define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

---

<sup>4</sup> *S.P. Gupta v. Union of India*, (1981) Suppl. SCC 87

<sup>5</sup> *Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa*, (1987) 3 SCC 279.

<sup>6</sup> *Brett v. Brett*, 162 ER 456.

The Right to Information Act has been enacted to provide for setting out the practical regime of right to information for citizens 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 which are considered vital to the functioning of a democracy and also to remove corruption. The long title of the Act highlights the need for a liberal interpretation of the provisions.

The Right to Information Act covers all the 3 organs: executive, legislature and the judiciary apart from certain private organizations. This act revolves around the fulcrum of public authority

Whereas there is a clear understanding that all Citizens can avail of the Right to Information, there is some lack of clarity about which institutions have been mandated to give information by the Right to Information Act.

The RTI act lays down that all **‘public authorities’** have to provide information to the Citizen. Public authority has been defined by Section 2 (h) of the act as follows: 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 order made by the appropriate Government, and includes any--
  - (i) body owned, controlled or substantially financed;
  - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”

To understand the ambit of the word ‘public authority’ as is defined under S.2(h), the definition of appropriate Government in S.2(a) can be used as a key. S.2 (a) makes it clear that if a public authority is established, constituted, owned, controlled or substantially financed by the funds provided directly or indirectly by the State

Government, it shall be the appropriate Government in relation to that public authority.

The definition of S.2 (h) has 2 parts:

- (1) Any authority/body/institution of self Government. The establishment or constitution can be under the constitution, under an Act of Parliament, under an Act of the State Legislature, or by a notification or order issued or made by the State Government.
- (2) The second part clarifies that a body owned or controlled or substantially financed by the funds provided by the State Government directly or indirectly or non-government organizations substantially financed directly or indirectly will come under the definition of public authority.

Public authority has been defined in its ambit various constitutional bodies, statutory bodies or notified bodies covering not only Government owned, controlled or substantially financed bodies but also non-government organizations substantially financed by the Government, may be directly or indirectly.

In case of any non-governmental organization, which are substantially financed directly or indirectly by funds provided by the appropriate government then such organizations are also included in the definition of public authority.

In the case of *P. Kasilingam v. P.S.G College of Technology*<sup>7</sup> it has been held that when the definition clause states that the word 'defined' means a particular thing, things or act; and thereafter goes on to state that it 'includes' any other, or further, things or acts, it enlarges the scope of the things or acts defined, by employing the inclusive part of that definition. The context in which the words 'means' and 'includes' are used would give the definite clue to the manner in which a particular definition has to be construed. A statute

The provision uses the word 'includes' in clause (d), which clearly indicates that the definition is illustrative and not exhaustive. According to well settled principles of judicial interpretation where the word 'defined' is declared to include certain things, the definition is to be taken as prima facie extensive. The judgment of the Hon'ble Supreme Court in the case of *CIT v Taj Mahal Hotel* is relevant in this regard. The observations

---

<sup>7</sup> AIR 1995 SC 1395

made in this case are:  
“...the word includes is often used in interpretation clauses in order to enlarge the meaning of the words or phrases accruing in the body of the statute”  
Therefore, when the word ‘includes’ is used, those words n phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those words which the interpretation declares that they shall include.

The Court has also ruled in the *Co-operative Societies Case* that the term "**funds provided by the appropriate Government**" had to be interpreted in the widest sense as:

".....is not necessarily providing funds from what belong to the appropriate Government, either exclusively or otherwise, but also those provisions which come through the machinery of the appropriate Government, including by allocation or provision of funds with either the concurrence or clearance of the appropriate Government. This view emanates on a plain reading of the provision under consideration, having regard to the object sought to be achieved by the RTI Act and in this view, the said provision has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the societies through the appropriate Government or with its concurrence or clearance. If the legislative intention were not so, it was unnecessary to state in the RTI Act ". . . . . substantially financed . . . . . by funds provided by . . . . .". It would have been sufficient to state ". . . . . substantially financed by. . . . .". The use of the words "by funds provided by" enlarges and dilates the scope of the words "substantially financed" in that provision....."

The court also interpreted the word "**substantial**", as used in Sec 2(h) of the RTI Act:

"...The word "substantial" has no fixed meaning. For the purpose of a legislation, it ought to be understood definitely by construing its context. Unless such definiteness is provided, it may be susceptible to criticism even on the basis of Article 14 of the Constitution.....essentially advises that the provision under consideration has to be looked into from the angle of the purpose of the legislation in hand and the objects sought to be achieved thereby, that is, with a purposive approach. What is intended is the protection of the larger public interests as also private interests. The fundamental purpose



is to provide transparency, to contain corruption and to prompt accountability. Taken in that context, funds which the Government deal with, are public funds. They essentially belong to the Sovereign, "We, the People". The collective national interest of the citizenry is always against pilferage of national wealth. This includes the need to ensure complete protection of public funds. In this view of the matter, wherever funds, including all types of public funding, are provided, the word "substantial" has to be understood in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefit flows to the societies in the form of share capital contribution or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc. amount to substantial finance by funds provided by the appropriate Government, for the purpose of Section 2(h) of the RTI Act."

The Act must be interpreted so as to bring within its purview all institutions or bodies whose functioning is of importance to the citizens. **Any authority which uses public money, no matter how less the amount, should be made accountable to the public.** For this the wordings of the section are to be liberally interpreted, keeping in mind the object sought to be achieved.

The scope of the Act is much wider in its applicability than getting confined to Governments and their instrumentalities and that the Act is intended to harmonize the conflict between the right of citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. Considering the definition of 'public authority', it has been held that in terms of Section 3 and 4, the public authorities are obliged to supply information.

### **Public authority- Its scope and ambit**

In order to decide the institutions which comes under the scope of 'Public Authority' under the Act, the definition of "Public Authority" needs to be interpreted and the actual object of the act need to be studied. The court has interpreted the definition of the same in a plethora of cases. But there are still a great number of institutions and authorities

which are not included in the Acts purview even though public money is being utilized for their own benefit.

From the preamble of the Act it is *prima facie* clear that the scope of the Act is much wider in its applicability than getting confined to Governments and their instrumentalities and that Act is intended to harmonize the conflict between the right of the citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. Even the preamble states that the Act is intended to provide the practical regime of right to information in order to promote transparency and accountability in the working of every public authority.

- **Private bodies**

It is commonly accepted that private bodies, such as companies, should be subject to stringent regulation in certain of their activities. They do not have total freedom to behave in a way that threatens the environment or public health or welfare. Extending the scope of freedom of information to cover these aspects of the behavior of private bodies is simply asserting that these institutions have an obligation to the public in general.

Every private organizations has to comply with some or the other Law of the Land. These are implemented by agencies of the Government organizations, called as Public Authorities. Under the Laws, these government organizations have or can obtain some or the other information of private bodies. A citizen can demand such information of private bodies from these government organizations.

- **Temples**

In the case of *P.K Jagadeesan v. The Commissioner & Ors.*<sup>8</sup> the dispute was whether private temples come under the purview of public authority under the Right to Information Act. IT has been decided by the honorable court that:

“Though the Hindu Religious and Charitable Endowments Act, 1951, exercises certain powers over the temples, the temples continued to be private temples with power to appoint members of the staff, administer its properties, conduct religious festivals etc. It therefore, does not fall under within the expression “public authority” as it is defined under **S. 2(h)** of the Act. The temple has its own finances, and no finance is collected either from the Government or anybody. On a mere look on the definition of the

---

<sup>8</sup> W.P. (C) NO. 30771 OF 2008

expression “public authority”, it is absolutely clear that a temple of the nature administered as said will not be a public authority. The trustee, therefore has no obligation under **S.4** of the Act to maintain records under it or to pass on information as required under the provisions of the Act. Any action against this would result in the patent violation of the freedom to administer the temples in accordance with the religious beliefs and places fetters on the powers of the hereditary trustee under **Articles 24** and **25** of the Constitution of India”.

The practice now followed in public temples is that the application is forwarded to the concerned temple authority and the information furnished is being given to the applicant. This cause unnecessary delay and even non-disclosure of information. Therefore, in public interest and to achieve transparency in the administrative matters of public temples, it is highly essential that the concerned temple authority shall be designed as State Public Information Officer.

- **Private and Aided institutions**

With the advent of a plethora of private institutions in the educational field, the dispute arising is whether these institutions come under the purview of public authority under the Right to Information Act.

The various high courts in the country have many a time declared and reiterated that aided educational institutions are public authorities for the purpose of the RTI Act.<sup>9</sup>

Much has been done to interpret the section defining the public authority under the RTI Act. The Legislature has the power to define a word even artificially, when the statute says that a word or phrase shall ‘mean’ a particular thing, certain things or act that definition is a hard and fast one and no other meaning can be assigned to the expression than is put down in that definition. That definition is an explicit statement of the full connotation of a term. Such a definition is prima facie restrictive and exhaustive. This principle is well-settled by precedents.

The court has in many circumstances interpreted S. 2(h) to decide whether a particular body comes under the purview of the Act.

---

<sup>9</sup> *D.A.V College of Trust and Management Society v. Director of Public Instruction*, AIR 2008 P&H 117  
See also *Principa, M.D.S.D.G College, Ambala City v. State Information Commissioner, Haryana*, AIR 2008 P&H 101; *Dhara Singh Girls High School, Ghaziabad v. State of U.P.*, AIR 2008 All 92.

The Kerala High Court has given an unambiguous and concluding decision in this matter. The court after considering the definition of the 'public authority' in Section 2(h), it has been laid down that on the basis of the undisputed facts regarding the control and funding of the aided private colleges after the introduction of the Direct Payment Scheme, such an institution falls within the definition of the term 'public authority, notwithstanding whether it may, or not, be 'State' within Article 12 of the Constitution. It was specifically held that the definition of 'State' under Article 12, which definition primarily governs the enforcement of fundamental rights.

The court cited various reasons for including private colleges under the purview of the Act. Private colleges are public authorities because it is a body which is controlled by the State Government in relation to various other aspects, predominantly the financial aspect. The huge funding that is extended by the State Government and by the University Grants Commission through through the State Government and the Universities are regulated and controlled by the State Government. The Government controls the utility of the huge funds provided by it. The admission of students, teachers are all being done according to the rules mentioned under different legislations in relation to the Universities. Furthermore all the retrial benefits are also paid from the exchequer. Therefore, in the light of the aforementioned reasons it has been held that an aided private college is a body controlled and substantially financed, directly or indirectly, by funds provided by the Government.

Holding that the act is intended at achieving the object of providing an effective framework for effectuating the right to information recognized under Article 19 of the Constitution, it has been held that private colleges in the State of Kerala fall within the term 'public authority' in the RTI Act.

Thus in short public authority includes any authority or body which we consider as Government in common parlance- all Ministries and their departments, Municipal Bodies, Panchayats, which also includes Courts, Universities, UPSC, Public Sector Undertakings like Nationalised Banks, LIC, and UTI amongst others are all public authorities for the purpose of the Act.

All Stock Exchanges and SEBI are Public authorities and subject to Right to Information. The issue of coverage of Stock exchanges has been settled in a well reasoned order by a full bench decision of the Central Commission in appeal 2006/00684 & CIC/AT/A/2007/00106.

It is worth remembering that establishments of the Parliament, Legislatures, Judiciary, President and the Governors have also been brought under the surveillance of the Common Citizen.

Subclause d (i), and (ii) together mean any non-government organisations which are substantially owned, controlled or financed directly or indirectly by the Government would be covered.

Thus aided schools and colleges are Public Authorities, as also any trusts or NGOs which have significant Government nominees; or Companies where the Government either owns substantial stake, or has given substantial finance, are directly covered under the RTI Act. Substantial finance must take into account tax-incentives, subsidies and other concessions as well. Thus every institution which is owned by the Government is clearly covered. By any norms, whenever over 50% of the investment in a body belongs with any entity, it is said to be owned by that entity. Since bodies owned by Government have been mentioned separately, the words 'controlled' and 'substantially financed' will have to be assigned some meaning not covered by ownership. **Thus it is evident that the intention of the Parliament is to extend the scope of the right to other organisations,** which are not owned by it. No words in an Act can be considered to be superfluous, unless the contradiction is so much as to render a significant part meaningless or they violate the preamble.

## **SUMMARY AND CONCLUSION**

The key approach and philosophy of the RTI act appears to be that since the State acts on behalf of the Citizens, wherever the State gives money, the Citizen has a right to know. At times it has been argued that to be a Public authority, a body must meet the criterion of being a 'State' against which a writ is maintainable. If the intention of the Parliament was to restrict the right to bodies which are the 'State', it would have said so, since the concept is well established. The term 'Public Authority' is broader and more generic than the word 'State' under Article 12 of the Constitution. Hence the intention of the Parliament was clearly based on giving the Citizens,- its masters,- the right to information over all entities owned by them, as well as where their money is being invested or spent

As is already mentioned the scope of public authorities is really wide and can be stretched to any extent as per the judicial interpretations. The sole object of the Act will only be fulfilled when the ambit of public authority is increased. Along with the governmental institutions private institutions are accountable under the Act if ever there involves any amount of public money or if the administration is done according to the rules made by the legislations.

The Act can be called as one of the successful piece of legislation and was able to shake the rigid democracy in an amicable manner. The whole concept of democracy has been given its complete meaning by the enactment of this Act. It truly holds up all the constitutional principles.



