

Right to Information and Good Governance

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Lecture 33

Public Authority-I

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Public Authority

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Dear friends, we will be taking a new module on Public Authority. As we know that it is important to look at to the Right to Information Act from an accountability perspective, from the perspective about what is the coverage of the Right to Information Act and who is obligated to provide this information. So, under this module you will find answers to the question who has the duty to provide information under the Right to Information Act.

As you know whenever a right is exercised either in the Constitution or through any Statute the right has to be respected by the duty performed by the other party and generally rights are exercise against the State or its entities as the case may be and when we say the State it means the Government. And hence if right to information is something that emanates from right to freedom of speech and expression then it is the duty of the state to protect, provide and facilitate that right.

And hence, right to know under Article 19(1)(a) was available against the government that is the state as the case may be. Now, in the Constitution we always look at the definition of state under Article-12 which is very pertinent to the application of part 3 that is the Fundamental Rights chapter in the Constitution of India and hence, all your fundamental rights and freedoms have to be exercised against a state.

Similarly, when the Right to Information Act 2005 was enacted, the biggest question that the law had to answer is, who should the citizens exercised this right against? You will notice that generally citizens can exercise their rights against, one public institutions or state institutions or against private bodies or private individuals.

Now, whenever a right is confirmed by a Statute which is a Parliament enacted law, the law can probably provide those rights either with the state or with non-state as well. However, the Right to Information Act, as it was envisaged and as it was enacted, it very clearly stated that this right of information shall be exercised only and only against those agencies that are public authority.

And hence if, we try and look at who is accountable and who should provide the information under the RTI Act then we have to understand which are those agencies that are accountable and for that understanding public authority becomes very-very relevant for the context in which we are discussing the right to information course.

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Public Authority

- Sec. 2(h) RTI Act 2005 defines Public Authority.
- Salient features of the definition:
 - This relation with the Central or State Government, establishment of institutions
 - The bodies created by an Act of Parliament, all statutory organizations and institutions
 - These authorities, bodies or institutions created by any mode like, by the Constitution
 - Certain institutions are created by any other law made by State Legislature
 - Institutions or bodies created by notification issued or order made by the appropriate Government
 - those institutions which are owned, controlled or substantially financed by the Government and non-Government organizations which are substantially financed or controlled, directly or indirectly by funds provided by the Government
- Definition is inclusive
- Importance of being a PA?
- Duties of PA under sec. 4: "every public authority shall pro-actively disclose information pertaining to it, and maintain its documents and records to facilitate the right to information under the Act".
- The Hindu Urban Cooperative Bank Limited and Ors. v. The State Information Commission Civil writ petition no. 19224 of 2006 laid down the possible test to determine a institution as a Public Authority
- J Ravindar Bhat in IOA case held that Sec. (h) recognizes that non-state actors may have responsibilities of disclosing information which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency, and makes democracy responsive and meaningful.



Now, you will notice that generally the law does provide for definitions of what a public authority is and the same definition is provided under Section 2(h) of the Right to Information Act. Now, if you look at Section 2(h) of the Right to Information Act it does give you what a public authority actually is and hence when somebody dissects the salient parts of this section which defines public authority, the salient features are somewhat like this.

First and the foremost that a public authority is, yes, obviously the Central government and the State government or those institutions that are established by the central and the state, correct. Second, a public authority is also such kind of authorities which are created by the act of the parliament. For example, the Information Commission under the Right to Information Act has been created by the RTI Act, it is an act of the parliament.

And hence, the information commission comes within the definition of public authority. So, all those bodies that are created by an act in the parliament they could be a Consumer Forum, they could be the Competition Commission of India, they could be any such bodies like the National Green Tribunal as the case may be. These bodies that are created by an act of the parliament or the Assembly as the case may be, we would say that they are all statutory organizations and institutions.

Because, they have been created by statute. they are also covered within the definition of

public authorities. Interestingly, all those authorities and bodies and institutions created by the Constitution are also covered under the definition of public authorities. Now, you will notice that when you look at these 3 parts you will clearly come to know that all ministries departments of the central and the state government be it the civil authorities of the defence authorities.

It could be universities, it could be the Reserve Bank of India, it could be the public sector banks, it could be government companies, all of these are generally created through some enactment or through some government recognitions and hence these are institutions that are covered within the definition of public authorities and they are amenable to the right to information law.

Also, certain institutions are created by the law of the State Legislatures. These could be certain trusts and boards that the state legislatures from time to time actually creates and hence those institutions that are created by state governments also covered under the definition of public authorities. There could be some institutions that are created by notifications or orders made by the appropriate government from time to time.

These institutions because they are created by delegated law that is made by the appropriate government are also covered within the definition of public authority. Most importantly, when you read Section 2(h) and probably this is where the most volatility is there is about those institutions that are owned by the government controlled or substantially financed by the government.

And interestingly the definition does not stop here. It also includes non-governmental organizations which are substantially financed or controlled by the government and this finance could either be direct or indirect funding by the government. And hence you will notice that Section 2(h) broadly puts in a lot of institutions within the scope of the definition of public authority and this very clearly brings in all levels of government.

All those bodies created by the legislature, both in the state or the central, all those bodies that are owned by the government or controlled by the government as the case may be and yes this clearly does not exclude those organizations that are publicly funded. They may not be created by the state but if they are funded by the state they are within the domain of the public authorities.

Why those institutions that are funded by the state are brought within the definition of public authority and accountability under RTI Act? For the simple reason is that when public money is being utilized by such organizations, accountability and the RTI is paramount and hence even those entities that are not created by the parliament, by the government, by the statute, by the constitution but if, they are funded then they are covered in the Right to Information Act.

Now, interestingly kindly note the definition under Section 2(h) is not an exhaustive one, it does not close the bracket and say yes this is all that can be brought within RTI Act. I think it is an inclusive definition. And I think the interpretation of this provision is very-very important to know which agencies can be brought on a later stage if, they are not done so currently.

Now, the importance of a public authority is from the fact that Section-4 of the Right to Information Act does state very importantly what are the functions of public authorities. Among those functions of the public authority is 1; that they have to appoint a public information officer who will liaison with the citizens on the right to information law, 2; it is the duty of the public authority to proactively Suo-Moto disclosure, you know, many information, without it being asked for and hence they should believe in the transparency rule, they should believe in providing the information without it being asked for.

And they have to apply the RTI Act in their day-to-day functioning and hence you will notice that the importance of the public authority is based on the fact that here is an institution that can be held accountable under the Right to Information Act and citizens can apply and seek

that kind of information from them as well.

You will notice that, it is the duty of every public authority under Section-4 to proactively disclose information pertaining to it maintain its documents and records to facilitate the right to information and hence you will notice that if an agency is a public authority then squarely it is covered under the RTI act and it is obligated under the RTI act.

And if it does not fulfil those obligations that can be a penalty, that can be imposed on the concerned inversion as the case may be or the public information officer who is deemed by law to have provided this information under Section-20 of the Right to Information Act. So, it is very important for organizations who are not sure whether they are public authority or not to know it as soon as possible so that there is no violation that is attracted so to such public authorities as well. Now, at this point of time it is important for us to understand that when we say that there are public authorities that are established by the state or the central government you will notice they are established, some of these organizations can be constituted by the law.

Like we say the information commission is constituted by law, some of them would be established by law, some of them would be owned by the government, some entities can may not be owned but may be controlled by law and some agencies could be substantially financed by the law.

So, I think a public authority may either fulfil any of these tests. First; it should either be established by the government or constituted by the government, when I say constituted the members of a board are constituted by the government, the government has the power to make appointments or nominations with so that could be what constituted would mean apart from what is established or the institution could be owned by the government or it could be controlled by the government or substantially financed by the government.

Now, in any of these cases institutions can be held to be public authority. So, let us take some

instances or example on the kind of words that are used in Section-2(h). What are the kind of words that are used in Section 2(h)? Established, constituted, owned, controlled and substantially financed. Now, I think some of these institutions are clearly public authorities. So, let us name them so that it is easy for us to understand, appreciate and know how does Section 2(h) apply.

The election commission of India, is a public authority. The public service commissions in state and central are also public authorities, we may want to know whether the Supreme Court and the High Court are public authorities or not, whether the office of the Chief Minister or the Prime Minister is a public authority or not, we would also want to know whether the comptroller and auditor general of India is a public authority or not.

Many of us would be looking at certain statutory organizations and institutions that are created by the act of the parliament. What are these? Probably it could be the Reserve Bank of India, it could be the University Grants Commission, it could be certain central universities, it could be say the Banking Service Commission, the Telecom regulatory Authority of India, so on and so forth.

So, any of these institutions when you view or when you perceive, you will clearly know that these are institutions that come within the definition of Section 2(h) and hence are held accountable under the Right to Information Act, there are certain institutions that are created by the state legislators as I told you in the past so, some of these examples can be the state universities they are the best examples of institutions created by the law, by the state legislators.

It could be any public institutions or public university that has been brought into existence through an act of the state assembly. There are state housing boards that are created by the state legislatures, state electricity board, municipal corporations interestingly improvement trusts, developmental authorities and certain state government companies. There are many state government companies that the state has owned or created as the case may be through

an act of parliament.

Notification is also one way of creating institutions and authorities and you will notice that you know that there could be a control or controller of certifying authorities under say the Information Technology Act. So, these are institutions that give you certain certifications as the case may be and they are created by a notification which is under a substantive law.

So, I think that could be just one example that I can recollect of institutions that are created by certain notifications as well. Then you know see the best of part of the definition of public authority is that anything that the government does through its function as a government public institution such kind of bodies they may not necessarily be incorporated or they may not be necessarily created through a registration process.

But, even boards and trusts that the government brings into existence or certain committees that have been formed for effective implementations can be constituted as a public authority as well. So, the scope of who can be brought within the ambit of the Right to Information Act, who is accountable under the Right to Information Act, who has the duty to provide the said information, I think is pretty wide.