Horizons of Section 2(h) of RTI Act, 2005 and an insight into the RTI Act

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Abstract

The RTI Act, 2005 aims at empowering the public and boost accountability and transparency among the Government authorities. There are, however, numerous challenges that the Act faces. One such challenge is the question of applicability of the RTI Act on various bodies/organs etc. The paper throws a light on some of these notable issues and action which was taken upon the same. It also touches upon the history of the Act from both world and India's perspective.

Introduction

The Old dictum says that 'let *people* have the truth and freedom to discuss it and all will go well'. It was after fifty-five years of 'We, the *People* of India' had given to ourselves the Constitution of India that the Right to Information Act, 2005 came to be enacted by the Parliament. The importance of RTI for participative democracy and transparency in the administrative set-up of the country cannot be overstated. It empowers the ordinary person in extremely significant ways and ensures that citizens are no longer just mere subjects to be governed. It sends part of the political power back to where it really belongs - amongst the *people* of this country. In words of Balakrishna J., "Aristotle said long ago that the object of State and society is to make it possible for individual to lead the highest life, that State and society are not ends in themselves and that they are to serve every individual and any decision which the State takes will affect the individual, and every individual, therefore, is entitled to an equal opportunity to share in making of the common decision which will ultimately affect him." Further remembering the wise words of the then Misra CJI; "Since time immemorial, the history of all civilised societies throughout the globe has been uncomfortably witnessing the struggle between secrecy and transparency. The roots are embedded in the human thinking which relate to various concepts, namely, private, personal and reserved. The philosophy of 'right to know' in a democracy has its own historicity. The cavil of the centuries titled more towards transparency and, rightly so, for such a right empowers the citizens and citizenry prowess, the most precious treasure in a democratic body polity." In the year 1597 Francis Bacon said, "information is the oxygen of democracy, it invigorates wherever it percolates." This oxygen like tool was perhaps firstly handed over to the citizens by the Swedes. The Swedish Parliament '*Rikstag'* is believed to be the first in the world which enacted law on right to information when it passed Freedom of Press Act way back in 1766. Right to Information was one of the things recognised by the United nations at it's very inception, vide General Assembly Resolution No. 59 at its 65th Plenary Meeting resolved on 14th December, 1946. The resolution declared, "*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the UN is consecrated."*[1]

The citizens' right to know the true facts about the administration of a country is one of the essential ingredients of a country and also for a democratic State. If there is an open government where there is full access to information regarding functioning of government then only the participants of democracy i.e. people can play an important role in the democracy.[2] A citizen cannot achieve knowledge unless he has certain basic freedoms such as freedom of thought, information, conscience, speech, expression, locomotion and so on and so forth.[3] The freedom of

[1] G.A. Res. 59, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/59(I).
[2] V.R., KRISHNA IYER, FREEDOM OF INFORMATION 86 (1990).

[3] A.B. SRIVASTAVA, RIGHT TO INFORMATION LAWS IN INDIA 11 (2006).

information as one of the members of the Constituent Assembly said, is one of the terms around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutional prevail.[4]
Article 19 of The Universal Declaration of Human Rights, 1948[5] proclaims;

"Everyone has the right to freedom of opinion and expression; it covers a wider area, this right includes freedom to hold opinions without interference and to seek and receive and imparts information and ideas through any media and regardless of frontiers"

Article 19(2) of the International Covenant on Civil & Political Rights (1966) states that;

"everyone shall have right to freedom of expression which includes freedom to seek, receive, and import information and ideas of all kinds regardless of frontiers, either orally or in writing, or in print, or in the form of art or through any other media."

In the Preamble of the Indian Constitution, the *people* of India resolve to secure to all citizens liberty of thought and expression.

It is worthy to quote The Federalist Paper No.21 wherein James Madison beautifully pens down that "the wealth of nations depends upon an infinite variety of causes." Amidst mentioning "soil, climate, the nature of the productions, the nature of the government," as some of the causes he further writes, "*the genius of the citizens, the degree of information they possess*".

The Supreme Court of India vide its judgement in *Namit Sharma v. Union of India*[6] observes the following,

"In light of the law guaranteeing the right to information, the citizens have the fundamental right to know what the Government is doing in its name. The freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political growth. It is a safety valve. The Right to Information was harnessed as a tool for promoting development; strengthening the democratic governance and effective delivery of socio-economic services. Acquisition of information and knowledge and its application have intense and pervasive impact on the process of taking informed decision, resulting in overall productivity gains. It is also said that

[4] Justice A.H. Saikia, "The Right to Information Act, 2005- An Instrument to Strengthen Democracy" AIR2007 (Journal) p. 119.

[5] The Universal Declaration of Human Rights, 1948 is a declaration adopted by the United Nations General Assembly on 10th December, 1948 at Palais de Chaillot, Paris. The Declaration arose directly from the experience of the second world war and represents the first global expression of rights to which all human beings are inherently entitled.

[6] (2013) 1 SCC 745

information and knowledge are critical for realising all human aspirations such as improvement in the quality of life. Sharing of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender bias etc., have overtime, made significant contributions to the well being of poor people. It is also felt that this right and the laws relating thereto empower every citizen to take charge of his life and make proper choices on the basis of freely available information for effective participation in economic and political activities."

The court further writes;

"Despite the absence of any express mention of the word 'information' in our Constitution under Article 19(1)(a), this right has stood incorporated therein by the interpretative process by this Court laying the unequivocal statement of law by this Court that there was a definite right to information of the citizens of this country. Before the Supreme Court spelt out with clarity the right to information as a right inbuilt in the constitutional framework, there existed no provision giving this right in absolute terms or otherwise. Of course, one finds glimpses of the right to information of the citizens and obligations of the State to disclose such information in various other laws, for example, Sections 74 to 78 of the Indian Evidence Act, 1872 give right to a person to know about the contents of the public documents and the public officer is required to provide copies of such public documents to any person, who has the right to inspect them. Under Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974, every State is required to maintain a register of information on water pollution and it is further provided that so much of the register as relates to any outlet or effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises, as the case may be. Dr. J.N. Barowalia in 'Commentary on the Right to Information Act' (2006) has noted that the Report of the National Commission for Review of Working of Constitution under the Chairmanship of Justice M.N.Venkatachaliah, as he then was, recognised the right to information wherein it is provided that major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the process which virtually affects his interest. Government procedures and regulations shrouded in the veil of secrecy do not allow the litigants to know how their cases are being handled. They shy away from questioning the officers handling their cases because of the latter's snobbish attitude. Right to information should be guaranteed and needs to be given real substance. In this regard, the Government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded."

Justice Mathew in *State of Uttar Pradesh v. Raj Narain*[7] states 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. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security".*

Thomas Jefferson, noted American writer and a former President has supported the view that an informed citizenry is the bulwark of democracy and that informed citizenry forms a cornerstone of 'good governance'.[8]

The Supreme Court in the landmark case of *Bennett Coleman & Co. v Union of India*[9], observed that freedom of speech and expression under Article 19 (1)(a) impliedly includes freedom and right to information. It protects two kinds of interests, *viz,* person's freedom to express his views and opinions freely subject to reasonable restrictions and individual's social interest in knowing about the happenings around him and in the governance.[10]

Similarly, in the case of *Reliance PetroChemicals Ltd. v. Proprietors of India Express Newspaper (P) Ltd, Bombay*[11] *the Indian Supreme Court held that "*right to know" which may also be called "access to information" is an essential ingredient of a participatory democracy

[7] State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 (India), on 24th January, 1975.

[8] Anshu Jain, *Good Governance and Right to Information - A Perspective*, 54 JIL (2012), at 606.
[9] AIR 1973 SC 106.
[10] N.V.PARANJAPE, RIGHT TO INFORMATION LAW IN INDIA 4 (2014).
[11] AIR 1989 SC 190.

RTI Act, 2005

The Act has been put into effect with the object of open governance and a participative government which only shall fulfill the needs or assurance of the people as envisaged under the Constitution of India.[12] The Act intends that all citizens shall have the right to information. The Act provides that information includes any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, etc. The Act makes obligation on the public information officers to maintain, publish and furnish informations to citizens who desire to obtain. There is also a provision for *suo motu* disclosure. The Act has provision for constitution of Central Information Commission & State Information Commissions. The Act aims at the CPIO or SPIO on receipt of request for information, shall expeditiously as possible and in any case provide information within 30 days of receipt of request, either provide information on payment of such fee as may be prescribed or reject the request specifying reasons. Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. The Act also has exemplary clauses citing various grounds for the exemption from disclosure of information. The very enactments of this Act is to provide for setting out the practical regime of RTI 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. This Act is limited to 'public authority' *only,* which is defined in Section 2(h) of the Act. The term 'public authority' as defined in Section 2(h) of the RTI Act, 2005 means any authority, body or institution of Government established or constituted (a) by or under the Constitution of India; (b) by any other law made by Parliament; (c) by any law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any body owned, controlled or substantially financed by the Government or a non-Government organisation substantially financed directly or indirectly by funds provided by the appropriate Government.[13]

[12] *Bihar Public Service Commission v. State of Bihar,* (2009) 75 AIC 507 (Pat).
[13] 4 P.K.DAS, UNIVERSAL'S HANDBOOK ON THE RIGHT TO INFORMATION ACT 5 (2015)

Public Authority, it's horizon and boundaries

Is Bihar Public Service Commission a 'public authority' and thus is liable to furnish information under the RTI Act, 2005?

The Hon'ble Supreme Court in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Ors.*[14] while ruling BPSC as a public authority observes,

"Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression 'public authority' has been given an exhaustive definition under section 2(h) of the Act as the Legislature has used the word 'means' which is an expression of wide connotation. Thus, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section."

[14] [2013] 120 SCL197(SC)

In *Public Information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Ors. vs. Manohar Parrikar and Ors.*[15] one of the questions before the Hon'ble Bombay High Court was as follows;

Whether the Governor is a "public authority" within the meaning of section 2(h) of the RTI Act? and, whether by reason of being included in the definition of "competent authority" the Governor stands excluded from the definition of "public authority" under the RTI Act?

The two judge division bench while ruling that Governor is a 'public authority' observed the following;

"Under section 2(h) of the RTI Act, "public authority" includes any authority or body or institution of self-government established or constituted by or under the Constitution [see clause (a) of section 8(1)]. Undoubtedly, the post of President and that of the Governor is created by the Constitution. Article 52 of the Constitution says that there shall be a President of India. Article 153 of the Constitution says that there shall be a Governor for each State. When India was governed by the British, there was no post of the President. The Governor General and the Governors contemplated under the British Rule were different than the Governor of a State appointed under Article 153 of the Constitution. Posts of the President and the Governor are created by the Constitution."

Further citing another case the court observes;
"In Executive Committee of Vaish Degree College, Shamli and Others vs. Lakshmi Narain and Others, (1976) 2 SCC 58, the majority speaking through Fazal Ali, J. observed: "It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers." ***The President and the Governor owe their existence to the Constitution. It, therefore, cannot be doubted that the posts of the President and the Governor are created by or under the Constitution. Being so, the President and the Governor are clearly covered by clause (h) of the definition of the "public authority". It is true that the President and the Governor have been specifically included in the definition of "competent authority". But the mere fact that the President and the Governor are authorities mentioned in sub-clauses (iv) of section 2(e) of the RTI Act, would not exclude them from the definition of "public authority".*** *If any of the authorities mentioned in clauses (i) to (v) of section 2(e) which defines "competent authority" also fall within any of the clauses (a) to (d) of the definition of "public authority" those persons/authorities would both be the*

[15] AIR 2012 Bom 71

"competent authority" as well as the "public authority". The expressions "competent authority" and "public authority" are not mutually exclusive. The competent authorities and one or more of them may also be the public authorities. Similarly the public authorities or some of them, like the President and the Governor who are the "public authority", may also be the "competent authority". Overlapping is not prohibited either by the RTI Act or by any other law."

Is Attorney General of India a 'public authority' under section 2(h) of the RTI Act, 2005?

In case of *Subhash Chandra Agrawal and Ors. Vs. Attorney General for India*[16] the full bench of the Central Information Commission consisting of Hon'ble Satyananda Mishra, Chief Information Commissioner, Hon'ble Annapurna Dixit and Hon'ble M.L. Sharma, Information Commissioners on 10.12.2012 discusses the aforementioned question.

The learned Attorney General of India is a standalone counsel of the Government and opines or appears in matters which are referred to him on behalf of the Government. **The Attorney General of India is a sui generic position under the Indian Constitution and does not perform any functions which alter the rights of others.** It is worth noting that the Attorney General also does NOT have any Secretariat like other Constitutional functionaries and is a single entity. For administrative convenience, the Ministry of Law renders him one Principal Private Secretary, one Stenographer and one Jamadar.

The Learned Attorney General gives opinions on the files which are referred to him and such files are men returned back without copies being kept with the Attorney General. Further, the Attorney General appears in matters in the Supreme Court which are marked to him by the Central Agency Section of Ministry of Law & Justice.

The Attorney General has no administrative control over any of the attached staff which is provided and paid for and under the administrative control of the Ministry of Law or over any of the other law officers like the Solicitor General or Additional Solicitor Generals. The allocation of work is done by the Ministry of Law directly or through the Central Agency Section, which is under the control of an Additional Secretary, Ministry of Law. Matters/opinions are routed from each Ministry to Ministry of Law and unless required by any statute or by the order of court, the Additional Secretary sends a docket [authorization letter, to any of the law officers, who independent of the Attorney General gives them opinion or represents the Union of India in the Courts.

The relationship of the Attorney General to the Government is that of a lawyer and the client. This fact is supported by judgement of the constitutional bench of the Hon'ble Supreme Court in *B.P. Singhal v. Union of India*[17], wherein it was held that there is a lawyer-client relationship between the Union of India and the Attorney General for India.

Similarly, in para 31 of *P.N. Doda v. P. Shiv Shanker*[18], it is observed by Hon'ble Supreme Court that the Attorney General for India, though unlike England, is not a member of the Cabinet yet is a friend of the court and in some respects acts as the friend, philosopher and guide of the court.

[16] *CIC/SM/C/2011/001542, CIC/SM/C/2012/000609 and CIC/SM/C/2011/001322*

[17] (2010) 6 SCC 331

[18] (1988) 3 SCC 167

These contentions clearly signify that rather than having any authoritative power the AGI and the GOI has mere lawyer-client relation.

Even if it is accepted that the Attorney General is a public authority, it can have severe practical problems as the Attorney General himself will have to be a CPIO as well as Appellate Authority as there is no Secretariat available with the Attorney General for India. Furthermore, the Attorney General does not report to any authority as is contemplated under section 25 of the RTI Act. The Attorney General for India cannot be said to be under the jurisdiction of any Ministry as is provided under section 25 of the RTI Act. Therefore, the position of Attorney General for India is a unique position under the Constitution of India and from the nature of functions which he performs, it cannot be said that he performing the functions of a 'public authority'.

It's worth noting the further argument of Ld. ASG; wherein it is his contention that Attorney General is the senior most lawyer of the Govt. of India and the advice rendered by him is protected in terms of section 126 to 129 of the Indian Evidence Act.

The commission while dismissing the complainant's complain observes; *"In view of the above discussion, we hold that the office of Attorney General is sui generis. He is a standalone counsel of the Govt. of India. He renders legal advice to the Govt. of India which is not binding in nature.* ***He is not a public authority u/s. 2(h) of the RTI Act****."*[19]

Appellant filed an appeal against this order in the Delhi High Court. The learned Single Judge held that the office of Attorney General of India (AGI) is a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005. Further aggrieved by the order, Union of India filed an appeal which was taken up by the Division Bench of G. Rohini, C.J. and Jayant Nath, J. in the case of *Union of India vs. Subhash Chandra Aggarwal and Ors.*[20] The Delhi High Court while allowing the appeal observes that, *"looking at the object of the Act, it appears to us that it would not have envisaged encompassing an office like that of an AGI to be covered under Section 2(h) of the RTI Act."* Thus, AGI was adjudged not to be a 'public authority' and accordingly kept outside the purview of RTI Act, 2005.

[19] Subhash Chander Agrawal and Ors. vs. Attorney General for India (10.12.2012 - CIC)
[20] 2017IIIAD(Delhi)439

Whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (for short "the Societies Act") will fall within the definition of "public authority" Under Section 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act?

A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No. 23 of 2006 dated 01.06.2006, issued by the Registrar of the Co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for.

The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No. 1688 of 2009, with an earlier judgment of the Division Bench reported in *Thalapalam Service Co-operative Bank Ltd. v. Union of India*[21], wherein the Bench took the view that the question as to whether a co-operative society will fall Under Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

Hon'ble Supreme Court, in appeal to the full bench Kerela High Court decision, in *Thalappalam Ser. Coop. Bank Ltd. and Ors. vs. State of Kerala and Ors.*[22] observes the following;

"The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. The meanings of the expressions "means" and "includes" have been explained by this Court in *DDA v. Bhola Nath Sharma*[23] (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions."

Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

[21] AIR 2010 Ker 6
[22] (2013)16 SCC 82
[23] (2011) 2 SCC 54

(1) an authority or body or institution of self-government established by or under the Constitution,
(2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,
(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and
(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:
(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,
(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

The expression 'Appropriate Government' has also been defined Under Section 2(a) of the RTI Act, which reads as follows:

2(a). "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) by the Central Government or the Union territory administration, the Central Government;
(ii) by the State Government, the State Government.

The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, **a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority Under Section 2(h)(d)(i) or (ii).**

(a) Body owned by the appropriate government

A body owned by the appropriate government clearly falls Under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, **the societies in question are not owned by the appropriate government.**

(b) Body Controlled by the Appropriate Government

A body which is controlled by the appropriate government can fall under the definition of public authority Under Section 2(h)(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and "substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In *State of West Bengal and Anr. v. Nripendra Nath Bagchi*[24] while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal....

The above position has been reiterated by this Court in *Chief Justice of Andhra Pradesh and Ors. v. L.V.A. Dixitulu and Ors.*[25] Further, in *Corporation of the City of Nagpur Civil Lines, Nagpur and Anr. v. Ramchandra and Ors.*[26], while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, Supreme Court held as follows:

[24] AIR 1966 SC 447
[25] (1979) 2 SCC 34
[26] (1981) 2 SCC 714

“It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned....”

The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. **The court was of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature.** The mere 'supervision' or 'Regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. **Powers exercised by the Registrar of Cooperative Societies and Ors. under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled.** Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

SUBSTANTIALLY FINANCED

The words "substantially financed" have been used in Sections 2(h)(d)(i) and (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In *Palser v. Grimling*[27], while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, **the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.**

In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main;

[27] (1948) 1 All ER 1, 11 (HL)

in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.

Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" Under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority Under Section 2(h)(d)(i).

NON-GOVERNMENT ORGANISATIONS:

The term "Non-Government Organizations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. **Consequently, even private organizations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" Under Section 2(h)(d)(ii) of the Act.**

The Supreme Court therefore, held that the Cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined Under Section 2(h) of the RTI Act

Is National Stock Exchange of India Ltd. or any other Company which is recognized/established by notification/order issued by the appropriate Government a ' public authority ' within the meaning of Section 2(h) of Right to Information Act 2005?

This question was answered by The Delhi High Court in it's judgement in the case of, *National Stock Exchange of India Ltd. vs. Central Information Commission*[28]

National Stock Exchange of India Limited is a company limited, which were incorporated in Mumbai on 27-11-1992 It is, therefore, established and created by as a company on the said date under the provisions of the Companies Act, 1956. Incorporation of a company under the Companies Act, 1956 may or may not result in establishment or constitution of a 'body', ' authority ' or 'institution of self-government' by a notification or order passed' by the appropriate Government. It depends upon whether as a result of the order or notification by which a company was incorporated had the effect of Constituting or establishing an ' authority ', 'institution of self-government' or 'body'- as defined above. As per the Memorandum and Articles of Association of the petitioner the promoters and subscribers were public sector corporations or their representatives.

Memorandum and Articles of Association of the petitioner has been produced before me and placed on record. The petitioner, as per the Memorandum of Association, was incorporated with the main object to facilitate, promote, assess, regulate and manage in the public interest, dealings in securities of all kinds as defined under the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as 'Securities Act', for short) and all other instruments of any kind including money market instruments and to provide advanced and modern facilities for trading, clearing and settlement of securities in a transparent, fair and open manner. It was also incorporated to initiate, facilitate and undertake all such activities in relation to stock exchange, money markets, financial markets, securities markets, capital markets, etc. The third principal object is to support, develop, promote and maintain healthy market in the best interest of the investor and the general public and economy. The objects incidental and ancillary to attain the main objects read as under:

4. To apply for and obtain from the Government of India, recognition of the Exchange as a recognize stock exchange for the purpose of managing the business of purchase, sale, dealings and transactions in the securities within the meaning of the Securities Contracts (Regulations) Act, 1956 and the Rules made thereunder.

5. To frame and enforce Rules, Bye-laws, and Regulations regulating the mode and manner, the conditions subject to which the business on the Stock Exchange shall be transacted and the rules of conduct of the members of the Exchange, including all aspects relating to membership,

[28] [2010]100SCL464(Delhi)

trading, settlement, constitution of committees, delegation of authority and general diverse matters pertaining to the Exchange and also including code of conduct and business ethics for the members and from time to time, to am end or alter such rules, bye-laws and regulations or any of them and to make any new amended or additional rules, bye-laws or regulations for the purpose aforesaid.

6. To settle disputes and to decide all questions of trading methods, practices, usage, custom or courtesy in the conduct of trade and business at the National Stock Exchange.

7. To fix, charge, recover, receive security deposits, admission fee, fund subscriptions, subscription form members of the exchange or the company in terms of the Articles of Association and rules and bye-laws of the Exchange and also to fix, charge and recover deposits, margins, penalties, ad hoc levies and other charges.

8. To regulate and fix the scale of commission and brokerage and other charges to be charged by the members of the Exchange.

It is clear from the reading of the aforesaid objects that the petitioner was incorporated for the purpose of establishing a stock exchange for which it was necessary and required that they should be registered and/ or recognized under the Securities Act. It is only after the registration or recognition under the Securities Act that the petitioner could carry out any of the functions or objects for which it was incorporated.

Once a body or an institution has got its recognition/registration under the Securities Act, it can operate and function as a stock exchange and perform the said public functions. **Registration or recognition under Section 4(3) of the Securities Act by the Central Government has the effect of Constituting or establishing an ' authority ' or an 'institution of self-government' as defined above. Admittedly, in the present case, notification or an order under Section 4(3) of the Securities Act has been issued for recognition of the petitioner as a stock exchange.** The notification or an order under Section 4(3) of the Securities Act has the effect of creating an ' authority ' or an 'institution of self-government'. Incorporation of the petitioner as a Company may not establish or constitute an ' authority ' or an 'institute of self-government' but the notification/order under Section 4(3) of the Securities Act had the said effect. **Thus, first part of Section 2(h) of the Act is satisfied as the petitioner was 'established' or 'constituted' as an ' authority ' or 'institution of self-government' as a result of the notification/order under Section 4(3) of the Securities Act.**

Thus, the petitioner is an 'authority or an institution of the self-Government' established by a notification or an order passed by the Central Government and, therefore, is a "public authority".

Is BCCI a 'public authority' within the meaning of Section 2(h) of Right to Information Act 2005?

This issue was taken up in the matter of *Smt. Geeta Rani Appellant v. CPIO, M/o Youth Affairs & Sports Respondent*[29] before the Hon'ble Central Information Commission. The appellant sought information about provision/ guidelines under which the BCCI has been representing India and selecting players for the country and that, how can BCCI (a Pvt. Association) represent our country in the National/ International cricket tournament. The CPIO replied on 14.12.2017 that the information is not available with the undersigned CPIO and BCCI has not been declared as Public Authority, hence RTI Application could not be transferred to BCCI.

The Hon'be Supreme court considered the role and nature of functions being discharged by BBCI in *Board of Control for Cricket in India and Another Vs. Netaji Cricket Club and Others*[30] wherein the Court observed that **"the Board's control over the sport of cricket was deep and pervasive and that it exercised enormous public functions which made it obligatory for the board to follow the doctrine of 'fairness and good faith' "**.

In the said judgment, the Hon'ble Supreme Court observed that:
"The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same. ... ... **As a member of ICC it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international for a. It exercises total control over the players, umpires and other officers.** The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. I**ts control over the sport of competitive cricket is deep pervasive and complete.**
In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. **It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards."**

[29] CIC/MOYAS/A/2018/123236

[30] 2005(4) SCC 741

In the case of *Zee Tele Films Limited and Another Vs. Union of India and Others*[31] , though the Hon'ble Supreme Court held that the BCCI could not be brought within the expression 'State' appearing in Article 12 of the Constitution, it held that the **BCCI 'was discharging some duties like the selection of Indian Cricket team, controlling the activities of the players which activities were akin to the public duties of state functions, so that if there is any breach of a constitutional or a statutory obligation or the rights of other citizens, the aggrieved party shall be entitled to seek redress under the ordinary law or by way of a Writ Petition under Article 226 of the Constitution.**

Government of India has allowed the BCCI to select the national team which is then recognized by all concerned and applauded by the entire nation including at times by the highest dignitaries, and those distinguishing themselves in the international arena are conferred highest civilian awards like, the Bharat Ratna, Padam Vibhushan, etc., apart from sporting awards instituted by the Government. Any organization or entity that has such pervasive control over the game and its affair and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity'. **The functions of the Board are clearly public functions, which till such time the state intervenes to take over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law take over or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature for public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable to the standards generally applicable to judicial review of state action.**

Having regard to the above observations and the ratio decidendi of the Hon'ble Supreme Court that the BCCI is amenable to the writ jurisdiction of the High Courts under Article 226 of the Constitution because it is performing important public functions which the governments themselves should ordinarily perform and undertake, there is no reason, in my view, not to treat the BCCI as an instrumentality of the government and declare it as a public authority within the meaning of section 2(h) of the RTI Act, 2005.

The observation of the Hon'ble Supreme Court in the case of *Sukhdev and Others, etc. Vs. Bhagatram Sardar Singh Raghuvanshi and Another, etc.*[32] , in para 97, also supports my above view: **'if a given function is of such public importance and so closely related to governmental functions to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action'.** The Court further observed in para 102 in Sukhdev's case (supra) that 'Institutions engaged in

[31] 2005 (4) SCC 649
[32] 1975 (1) SCC 421

matters of high public interests or performing public functions are by virtue of the nature of the function performed government agencies'.

The LCI in its 275th report stated that non-consideration of the role played by the BCCI as monopolistic in regulation of the game of cricket has resulted in the board "flying under the radar of public scrutiny, encouraged an environment of opacity and non-accountability". In the absence of effective self regulation and non-applicability of public law to scrutinize and review the functioning of the sports body, the necessity of public scrutiny arose and only way for that is through RTI Act.

The CIC further ruled;

In view of the above the Commission exercising its power under RTI Act, 2005 as interpreted by the Honorable Supreme Court in Tallapallam Bank case, considering the substantive issues concerning the nature and functioning of BCCI, based on observations of the Honorable Supreme Court and recommendations of the Law Commission of India, hereby holds the BCCI as the public authority under RTI Act.

It shall be noted that **The Hon'ble Madras High Court on 9th November 2018 stayed the operation of the aforementioned order** passed by the Central Information Commission (CIC) on October 1 holding the Board of Control for Cricket in India (BCCI) to be a 'public authority' which was bound to disclose information under the Right to Information (RTI) Act of 2005. Justice Pushpa Sathyanarayana granted the interim stay after senior counsel P.R. Raman, representing the BCCI, brought it to her notice that the CIC should not have passed such an order when the High Court was seized of a case filed in 2013 questioning the applicability of the RTI Act to the BCCI. Thus presently the case is sub-judice and as of now BCCI is NOT a public authority.

Is IDBI Mutual Fund Trustee Company Limited a 'public authority' under Section 2(h) of RTI Act, 2005?

This question is pending before The Hon'ble Central Information Commission in the matter of, *Vijay Trimbak Gokhale v. CPIO: IDBI M.F. Trustee Co. Ltd., Mumbai*[33]. The complainant claims that IDBI M.F. Trustee Co. Ltd., is a public authority under the RTI Act on two counts, viz., (i) it is a government company and, therefore, a public authority U/s 2(h)(d) & (i) of the RTI Act, (ii) which is substantially financed directly or indirectly by funds provided by the appropriate government, and (iii) it is constituted by a law made by the Parliament and is, therefore, a public authority under Section 2(h) & (b) of the RTI Act. Whereas, the respondent contends that IDBI M.F. Trustee Co. Ltd. is a company within the meaning of Companies Act, 2013 and is incorporated and registered under the Companies Act, 1956. Moreover, the company is not substantially funded by the government nor does it receive any grant or donation from it. Further it was submitted by the respondent that IDBI MFT has not been established/constituted under any Central/State Govt. law or by a notification/order issued by the appropriate Govt. and that IDBI MFT acts as a trustee to IDBI Mutual Fund and performs a supervisory role over the operations of IDBI Asset Management Ltd. Hence, it is not a 'public authority' under Section2(h) of the RTI Act and the Act is not applicable to the Company.

The respondent in interim hearing dated 12/11/2018 sought some more time to make detailed submissions regarding the extent of ownership and control of the Government of India over the IDBI MFT as well as the composition of the Board of Trustees of IDBI Mutual Fund Trustee Company Ltd. The matter shall be heard further on 30/01/2019.

[33]CIC/IDBIL/C/2017/141126

Conclusion

Right to Information Act, 2005 is one of the most important acts of the country. It came into existence with the sole aim of empowering the public. Thus, unless a company/body is not declared as 'public authority' under Section 2(h) of the RTI Act, 2005, and it safely takes the cover of being private or not getting financed by Government, the sole aim of public empowerment cannot be fulfilled. In numerous cases as discussed above, like the BCCI case the effect of falling under definition of 'public authority' is huge. Falling under Section 2(h) will directly make it accountable to the people of India and force it to be transparent. Thus Section 2(h) has a pivotal role in fulfilling the ideals of a true democratic State and upholding the RTI movement. Even though it is merely a 73 words section but undoubtedly it forms the very heart and soul of the whole RTI Act, 2005. I certainly hope that as many organisations/companies as possible, which do fall under this section, be declared 'public authority' at the earliest henceforth furthering the transparency movement. It is only then that the common man will get empowered and if this common man gets empowered then the ultimate goal of fine governance is achieved. Concluding, I shall recall the wise words of James Madison, as he writes in The Federalist No. 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The RTI Act thrives to prevent this very tyrannical situation.