

Right to Information and Good Governance

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**Lecture 34**


**Public Authority-II**

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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 is 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.



In the Hindu Urban Bank Cooperative Limited versus the State Information Commission, a case that was decided in 2006. This case let down the possible test to determine the institution as a public authority. It is quite interesting to know that in early days the Punjab and Haryana high court in a civil writ petition that came before them had to decide whether the bank satisfies the condition laid down by the legislature in Section 2(h)

Interestingly the ambit of the definition of public authority under Section 2(h) is something that gives a lot of scope of judicial interpretation and intervention. What it said was very clear that for any institution to be legally brought under this definition it had to have the following test. First; that the institution cannot come into existence and function unless registered and regulated by the provisions of the legislation.

That means the institution owes its very existence and function to the creation of the legislature,

if it is does so then it is determined as the public authority. Second; that in some sense of control either state or the centre has some degree of control on that institution through any act or rule or any other meaning that the government may stipulate on time to time. Third; it must have some substantial financing provided directly or indirectly by the appropriate government.

Interestingly the court held that the mandate in the command of the provision of the RTI Act. Primarily the preamble, its aims and objectives extend the ambit and scope of the RTI to all such institutions that are having some public dealing or that are dealing with public finances and hence you will notice that wherever public institutions are to be brought within the accountability of the RTI Act, they even brought considering their functions considering their existence, considering probably the largest public interest that is required in terms of the accountability of the institutions for them to be determined as public authority. And hence you will notice that the test of the public authority is something that Section 2(h) gives scope to include as we go by and you will see in a number of cases how the courts have actually brought in lot of institutions which were earlier not so within the definition of public authority and within the accountability regime of Right to Information Act.

An observation of Justice Ravindra Bhatt in the Indian Olympic Association case is very pertinent you have to note. The judge in this case says that Section 2(h) recognizes even non-state actors. So, it is wide in scope and it is not a definition that covers state actors it also covers non-state actors and hence non-state actors may be responsible for disclosure of information which would be useful and necessary for the people that demand the accountability from such non-state organizations.

Non-state actors and organization also serve people, they also serve a public function and hence if they serve people and public functions. It is important for them to ensure transparency and accountability in their functioning and it is important that such institutions are brought within the definition of Right to Information Act as a public authority and the processes of empowerment of citizens is a continuous process and it must be meaningful and to make it continuous and meaningful I think institutions must voluntarily accept themselves to be public authorities.

Let us go further in trying to understand Section 2(h) as I told you the application, the scope of Section 2(h) is probably the most interesting one and the highest amount of judicial activism if I may say or judicial interpretation or even the intervention of the information commission or agencies to be declared as public authorities or not is something that has brought about a lot of dynamic reading to the right to information law

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### Establishment v/s funding: which test is more important under Sec. 2(h)



- In *Delhi Sikh Gurudwara Management Committee v/s Mohinder Singh Matharu*, the issue in the case was whether the Delhi Sikh Gurudwara Management Committee ('DSGMC') is a public authority within the meaning of Section 2(h) of the Right to Information Act? The Court held that 'The DSG Act is a law made by the Parliament. The DSGMC is a body constituted under Section 3 of the DSG Act. The DSGMC is not a body made under any law but a body made by a law. There is a distinction between the use of the words "by any law made by Parliament" and "by or under the Constitution". The Parliament has consciously not used the words "by or under" in sub-clause (b) of Section 2(h). In other words, once the body is established or constituted by the law made by Parliament, it would be a "public authority" under Section 2(h)(b).
- MANU/DE/2117/2010.



Interestingly when there is a conflict between an establishment versus funding, which test is more important? So, suppose I have to determine whether an institution is a public authority or not; should I first perceive and see whether it was established by the government or if it fails the establishment test can I apply the funding test and bring it within the domain of section 2(h)?

Interestingly we do not consider religious institutions as government institutions. In India there are lot of religious institutions that are functioning by and under the state. Sometimes a state takes over such religious institutions, sometimes probably they control the activities of these institutions as well. Now in the case of Delhi Sikh Gurudwara Management Committee versus Mohinder Singh it was a case that was decided in 2010 the issue before the court was whether this Management Committee, that is Gurudwara Management Committee is a public authority under the Right to Information Act. The Court held that the Delhi Sikh Gurudwara Act is a law made by the parliament. So, the parliament has created the Gurudwara, it has established the

Gurudwara and the committee was functioning within the purview of the law.

To be precise the committee was functioning under Section 3 of the DSG Act. The DSGMC is not a body made under any law but a body made by a law. So that is the distinction, I mean look at the words that are used in Section 2(h) 'by any law made by the parliament or by or under the constitution'.

So here you we will clearly see that if a committee is constituted under an act and the committee is functioning for fulfilling the mandate of the act such committees that are formed and such committees that enable the functioning of law are declared as public authorities under Section 2(h) and hence while we say that some of these may not have statutory establishment, some of these may not have statutory establishment in terms of creation, registration or incorporation nevertheless their functioning is within that body created by the parliament and hence they are accountable under the Right to Information Act.

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## PA



- *Whether LIC Housing Finance Ltd is a PA? Shri Nisar Ahmed Shaikh and Ors . v. LIC Housing Finance Limited.* It was held that LIC is a body established, constituted, owned and controlled by Central Government. Further, LIC is a public authority having been constituted by an Act of Parliament. And, since the Chairman and Managing Director for both LIC and LICHL is the same, and since LIC has 40.497% of the shares of LICHL, LICHL would be regarded as a "public authority" for the purposes of the RTI Act.
- *Whether LIC Mutual Fund is a PA?* CIC had further stated that the practice of funding and general control over the affairs and functions of the LIC Mutual Fund by the Central Government is nothing but a manner of indirect funding, and hence LIC Mutual Fund would qualify as a "public authority" under the RTI Act.
- *Whether Private Aided school of a PA? Dhara Singh Girls High School v. State of Uttar Pradesh*
- *Whether a school that received grants at the initial stage of establishment, though not later, is a PA? Manju S. Kumar v. Sanskriti School, New Delhi, CIC/OK/C/2006/129 dated 23rd January, 2007*
- *Whether the Computer Software Export Promotion Council is a PA? Navneet Kaur v. CPIO, Dept of Information Technology as well as Electronics & Computer Software Export Promotion Council, ICPB/A-B/CIC/2006 dated 22nd March, 2006*



Let us take a glance of certain cases on determinations of public authorities and these are some fantastic cases in which either the information commission or the high court as the case may be have intervened and made certain declarations that are relevant in the context of the fact that you are trying to suggest what are the accountability of these institutions vis-a-vis Right to

Information Act.

First among is a very interesting case from the Life Insurance Corporation of India. Now the Life Insurance Corporation of India has been created by an Act and you will notice that the Life Insurance Corporation is a body that is accountable as a public authority.

However, the Life Insurance Corporation of India over the time has created other organizations like the Life Insurance Housing Finance Limited or probably the life insurance Mutual Fund. So LIC has expanded its operations LIC has expanded its business and after the, having expanded it has created numerous other bodies, it has contributed to the creation of such bodies. Now you will notice that when a question arises housing finance limited of LIC is a public authority?

In this case of Nisar Ahmed versus LIC Housing Finance Limited the issue was very clearly in terms of whether LIC is a body established constituted by the Central Government? The answer is yes. Further if LIC is a public authority which has been created by the government and such an authority creates another body, this is like A has created B and B creates C.

In those circumstances the question of whether C is a public authority or not will depend upon what is the control, what is ownership and what is finance of the government in such as agencies that are created by the parliament. In this case interestingly, in the LIC Housing Finance case, the chairman and managing director of LIC was also chairman and the manager director of Housing Finance. And the Housing Finance it had Life Insurance Corporation has nearly 40 percent share-holding and when it had 40 percent share-holding when the title of such a Housing Finance as LIC when the Chairman and the Managing Director are the same and Life Insurance Corporation of India probably dominates the board of directors, dominates the functions, dominates the objectives of the Housing Finance in those circumstances you know it was not difficult for the commission to hold that LIC Housing Finance is a public authority.

So parliament creates LIC through an Act. LIC creates Housing Finance. So Housing Finance is it public authority or not? I think the commission was very clear. The commission said it is a public authority. Interestingly LIC comes up with the Mutual Fund and it says that because it has

created a mutual fund, the mutual fund is a separate agency and it is accountable under the RTI Act is what LIC claimed.

Unfortunately, The Central Information Commission in this case said that it is not practical for LIC to take such defences, it is not right for the LIC to take such defences as well because finally Mutual Fund is funded in terms of design, it is controlled by LIC. The affairs and the functions of mutual fund are done by those officers who works for the Life Insurance Corporation and hence this mutual fund was nothing new and It was the matter of indirect funding that LIC wanted to bring to its existence and hence you will notice that LIC Mutual Fund was qualified as a public authority under the Right to Information Act.