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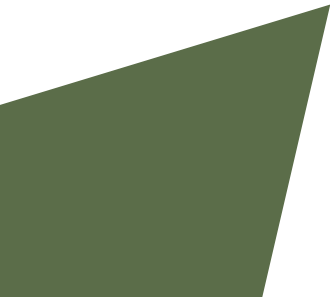
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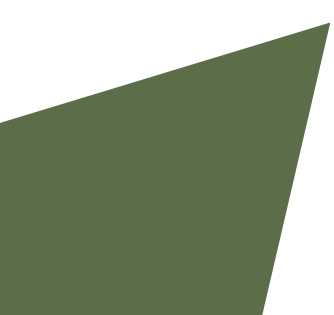
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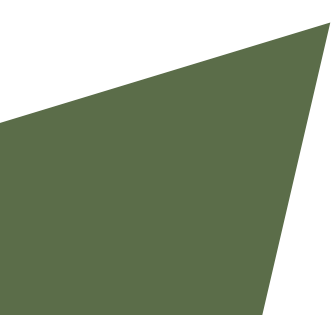
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RTI and Private bodies

Deborshi Sarkar

ABSTRACT

The Right to Information Act, 2005, since its inception has had a considerably narrow and constricted ambit of accessible information held by private bodies. As a result, private bodies have continually been taking defense under the narrow ambit of the act for non-disclosure of information. This has also elevated unethical practices including money laundering, corruption, unfair trade etc. In this situation it is necessary for the competent authorities to increase the ambit of the information legislation in order to include information held by private bodies under the ambit of accessible information. Through this article, the author has analyzed the scope of, The Right to Information Act, 2005 when the requested information to be accessed pertains to a private body. Thus, the article tries to examine the extent of access to information held by private bodies, allowed under the act. In the similar context, the article is also suggestive about the various inclusions in accessible information, that are identical under the information legislations of South Africa and Estonia and can be used by concerned authorities in order to increase the ambit of our information legislation resulting in, increased transparency and effective administration.

INTRODUCTION

In India the right to information has been impliedly granted to its citizens under Article 19(1)(a) of the Indian constitution, 1949 which states that all the citizens have the right to freedom of speech and expression.¹ In the landmark judgement of *The People's Union for Civil Liberties vs. The Union of India* (2004) 2 SCC 476², the apex court held that Right to Information is an important facet of the Right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Indian Constitution of India, 1949 thereby recognizing the Right to Information as a fundamental right. The Right to Information Act, 2005 aims at serving the purpose of protecting the fundamental right of Freedom of Speech and Expression granted to the citizens under Article 19(1)(a) of the Indian Constitution, 1949. The legislation aims at setting out the practical regime of right to information for the citizens of India. The legislation further ensures transparency and accountability in the working of every public authority, by securing the general public, access to information under the control of those public authorities. It is fair to consider that the legislation has a considerably wider scope and ambit in information pertaining to public/government authorities. With regards to information pertaining to private bodies, the act has comparatively constricted the access and has resulted in a narrow ambit. Thus, the author through this article has tried to analyze the scope of The Right to Information Act, 2005, when the information to be accessed by the general public, belongs to private bodies and has tried to elucidate the extent to which information pertaining private bodies can be accessed by the general public under this legislation. The author has also used this article as a tool to suggest measures in order to increase the ambit of the prevalent information legislation which would result in upliftment of transparency and effective administration.

ACCESS TO INFORMATION IN PRIVATE BODIES

Considering the constitutional right of freedom of information granted in by the constitution, the country has framed legislations governing the rights of citizens to access information pertaining to general public interest. The Right to Information Act, 2005 governs the access of public information held with public authorities and tries to promote transparency and accountability in the working of public authorities. The constitution of the Central Information Commission and the State Information Commission also finds its base under sections 12(2) and 15(2) of the Right to Information Act, 2005. The ambit of this legislation covering the access to information can be

¹ The Constitution of India, art. 19.

² *People's Union for Civil Liberties vs. The Union of India*, (2004) 2 SCC 476.

defined under the following provisions. The right to information under Section 2(j) of the act provides the citizen the right to access information held by or belonging to public authority and further gives leeway to inspect, note, extract, copy, sample of the material or document form of the information.³ The provision also allows information to be obtained in the form of diskettes, floppies, video cassettes etc. and in any other electronic form. The ambit of public authorities within which information can be accessed has been defined in Section 2(h) of the act as authorities or bodies formed under the constitution, by laws made by the parliament and State Legislatures and private bodies have not been included.⁴

This gives rise to the question that whether information belonging to private bodies can at all be accessed under RTI. It is evident that the right to information in India has a constricted and narrow scope pertaining to information contained with private bodies. The only scope of inclusion of private bodies under the ambit of this section is that, the private institutions must be owned, controlled or substantially financed directly or indirectly by funds provided by appropriate government. Appropriate government has been defined in Section 2(a) of the Act as public bodies receiving funds directly or indirectly from the Central, State Government or Union Territory administration. Further, in *M.P. Varghese vs Mahatma Gandhi University* AIR 2007 Ker 230, the Kerala High Court elaborated the meaning of public authorities and confirmed that private bodies receiving substantial funds from or being controlled by the State or Central government come under the ambit of public authorities and information being held by them can thus be accessed under the RTI Act.⁵ Further the court stated that when colleges are financed and controlled by the Government and Universities, they are privy to information relating to students and staff, fees paid by students, educational activities etc. This information does not have a private or sensitive characteristic and the public have a right of access to such information so as to ensure transparency in the conduct of the management of the colleges in which the public are vitally interested. Denial of such information would be against the very object of the statute. This decision of the Kerala High Court made it clear that the public has the right to access information and records being held by private bodies, (owned, controlled or financed by government bodies) in the various forms mentioned in Section 2(j) of the Act. Thus, information being held by state aided private institutions like colleges, hospitals etc. and other social institutions aided by the government would be accessible under the RTI, and would come under the ambit of Section 2(h) of the act.

³ Right to Information Act, 2005, (Act 22 of 2005), s. 2(j).

⁴ Right to Information Act, 2005, (Act 22 of 2005), s. 2(h).

⁵ *M.P. Varghese vs Mahatma Gandhi University*, AIR 2007 Ker 230.

Information being held by private bodies may also be accessed under RTI in certain scenario. The possibility of this claim finds its roots in Section 2(f) of the RTI Act, 2005. The provision defines information to be any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.⁶ This states that any general information or record that public authorities possess or can access from private bodies also come under the ambit of accessible information by the public. This includes information pertaining to private bodies, e.g. audit reports etc., being held by public regulatory bodies under which they are registered. Thus, access to routine information about private banks being held with RBI can be accessed through the RBI and similarly, information on telecom companies such as Bharti Airtel, the largest mobile telephony firm, could be accessed through the Telecom Regulatory Authority of India. This rule was further upheld in *Sarabjit Roy V. Delhi Electricity Regulatory Commission*, New Delhi Public Authority. The Delhi High Court in this landmark judgement allowed the Appellant Petitioner's claim of information under Section 7(1) of the Act and stated that DISCOMs are privatised bodies regulated under the Delhi Regulatory Electricity Commission, thereby DREC has the right under Section 2(f) of the RTI to provide information accessible by them to the public. The court also held that as DISCOMs received finances emanating from the government which was more than 50% of the equity participation and it can thus be considered that information can be accessed from DISCOMs as they form Public Authority under Section 2(h) of the RTI Act which covers right of public to access information from any non-governmental body substantially financed by an appropriate government. Central Information Commission also reaffirmed that privatized public utility companies continue to be within the RTI Act.

Section 4(1)(b), inter alia states that information in the form of documents, records, manuals being held by the public authorities are accessible under the right to information in India.⁷ This provision can also be used in order to access information pertaining to private bodies, being possessed by public bodies in various Private Public Partnerships (PPPs). In this case only the information or records that are accessible by the public bodies in the partnership, can be accessed by making an application under the RTI to the public partner. Further the disclosure of information pertaining to public as well as private bodies are exposed to certain restrictions in accordance to the constitutional practice of reasonable restrictions. Section 8 of the RTI Act, 2005 states that

⁶ Right to Information Act, 2005, (Act 22 of 2005), s. 2(f).

⁷ Right to Information Act, 2005, (Act 22 of 2005), s. 4(1).

exemptions can be practiced on disclosure of information in order to maintain pervasive culture of secrecy including state and trade secrets, maintain the sovereignty and integrity of India with foreign countries etc. Also, information contained with the Official Secrets Act, 1923 cannot be accessible by the general public.⁸

SUGGESTIVE MEASURES

A more flexible role should be played by the Right to Information Act, 2005, pertaining to information belonging to private bodies. The legislation must extend its ambit of accessible information and cover legal persons in private law and natural persons, if the persons perform public duties pursuant to law. In this context references can be drawn from various information acts all around the world like The Promotion of Access to Information Act (PAIA), 2000 in South Africa and The Public Information Act, 2001 in Estonia etc, having with a wider scope of accessible information. Similarly, in India too, accessible information must include both public and private entities performing duties pursuant to law including health care, education, social etc. and other public services with regard to information concerning their performance of duties. Thereby, public can seek access to information pertaining to various records being held by private schools, hospitals etc., if the applicant feels that these private entities have not performed their duties in a proper manner. This may include applications being filed when private authorities have breached their performance obligations or engaged in unethical means like money laundering, corruption etc.

Thus, the Right to Information Act, 2005 must act as tool for promoting transparency and effective administration. For serving the same purpose, the ambit of the act covering information must include any record belonging to private or public bodies, notwithstanding their time period of coming into existence. Thus, requestors can ask any information belonging to records from any previous year which needs to be accessed for public interest/general welfare and government must not be allowed to take time barred plea as a defence. Citizens must be provided the leeway to access any information belonging to private authorities, the access of which is important for the citizens to protect their rights. In order to uplift transparency in private bodies, automatic availability and publication of certain private records through voluntary disclosure by the holders of information must be facilitated and promoted. Private bodies must periodically submit certain descriptions to the concerned ministry, containing details like the private records that would be accessible by the public by filing an application under the RTI. Further, in case of commencement

⁸ Right to Information Act, 2005, (Act 22 of 2005), s. 8.

of a private body, the head of the private body must compile and make available a manual containing routine information like, types of goods, description of subjects on which the body holds records etc. and sufficient details in order to facilitate a request to access information. Concerned public bodies must reply to the application seeking information, within a specific mentioned time period, based on the amount of information in consideration.

CONCLUSION

The Right to information Act must aim to ensure that every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society. The access of information must create opportunities for the citizens to monitor the performance of public duties and thus protect the fundamental rights granted to the citizens under Article 19(1) of the constitution. Every citizen should be granted the right to access any information held by any person in the country including private bodies, when it is necessary for the citizens to protect and exercise rights granted to them. Concerned public bodies must understand that access to information is necessary for effective administration and increased transparency.