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The Ambit of Public Authorities under the Right to Information Act, 2005

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ABSTRACT

The French Philosopher Michel Foucault said that power is knowledge and knowledge comes from information. The RTI act is a tool to empower citizens. It was enacted in 2005 to promote accountability and transparency, and reduce Corruption. The Act empowers citizens to ask for information from the public authorities. Section 2(h) of the Act defines public authority. The paper tries to analyze the definition in section 2(h) with the help of judicial pronouncements. Then the author attempts to do a comparative study on the RTI laws concerning the ambit of public authorities. The laws in Asian countries like China and Nepal are compared with the Indian laws on information spread. Lastly, the paper critically analyses the lacuna in the law and how the ambit of public authorities still needs to grow.

Keywords: *Right to information, public authorities, Article 19(1)(a), Nepal, China.*

I. INTRODUCTION

A law is only as effective as its implementation. It is consequently essential to determine to whom a given legislation applies and against whom it can be enforced. In 2005, the government established the Right to Information Act. The RTI law is a commitment of a country towards good governance. Post 1995, there were only nineteen countries with RTI laws, but now there are hundred and fifteen countries with information laws. The RTI law in India recognizes the citizens right to know and empowers them to ask the government for information and hold them accountable.

Information can only be requested from "public authorities" coming under the statute. Public authorities are defined under S.2(h) of the Act. In order to determine the scope of the act, it is essential to know the ambit of public authorities.

Public Authorities are defined in two parts. The first part of the section includes all bodies made by the constitution or a central or state legislature. It is the only Act which can keep a check on the judiciary, as the Supreme Court and High Courts also come within the purview of public authorities. Institutions created by government bills are also public authorities[2]. Therefore, all

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[2] Saxena, Prabodh. "Public Authority and the RTI." *Economic and Political Weekly*, vol. 44, no. 16, 2009, pp. 13–16. *JSTOR*, http://www.jstor.org/stable/40279148.

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constitutional, statutory bodies, bodies created by government notifications and local self-government bodies are public authorities. The second part of the definition includes those institutions which are "*owned, controlled or substantially financed*" by government. This part is an inclusive definition, enlarging the ambit of the Act. The N.G.O.s, which are funded by government, also come under public authority. The paper will further analyze the definition with the help of judicial pronouncements. The paper will deal with comparative analysis of RTI laws with respect to public authorities in different Asian countries. Lastly, the author attempts to provide suggestions and discuss how the ambit of public authorities still needs to grow.

II. Judicial pronouncement

The courts, through multiple judgements, have tried to interpret S.2(h) of the R.T.I. act. The author shall now try to bring forth various court judgements to clearly understand the ambit of public authority.

(A) "State" and "Public Authority"

The ambit of "state" under A.12 is narrower than the ambit of public authorities. The court in "***M.P. Varghese v. Mahatma Gandhi University***[3]" observed that the ambit of section 2(h) cannot be restricted to the "state" under A.12. The "state" is only for the safeguard of Fundamental Rights but the public authorities under the R.T.I. act is intended to safeguard the citizens right to know under A.19 of the constitution. The court further said that all colleges which are funded

"*directly or indirectly*" by government will come under the definition of public authorities.

(B) "Defined" and "Includes"

In "***P. Kasilingam v. P.S.G College of Technology***[4]", it was determined that 'defined' in definition clause means particular thing, thigs or act; further if it mentions the word "includes" it basically widens the ambit of the section. The usage "means" and "includes" provides a unambiguous understanding to the interpretation of the section. In "***C.I.T. v. Taj Mahal Hotel***[5]" the court clarified that definition under S.2(h) illustrative and not exhaustive. The section mentions the word "includes" which calls for a liberal interpretation of the said section.

(C) "Controlled"

In "***Shaktipada Das v. Cotri co-operative Agriculture & Rural Department Bank ltd***." The

[3] M.P. Varghese v. Mahatma Gandhi University AIR 2007 Ker 230
[4] P. Kasilingam v. P.S.G College of Technology 1981 AIR 789
[5] CIT v. Taj Mahal Hotel (1971) 3 SCC 550

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court determined if the government has substantial control over the management, operation and functioning of the institution and can influence its management an decisions, then such body will come under public authority. If the control is pervasive then such bodies are public authorities. This is also known as the Pervasive Control Test.

(D) "**Substantially financed**"

The bodies which are substantially funded by government authorities are public authorities. The word substantial financing does not mean majority funding. It means that if the funding has substantial control over the function of the institution, then it will be considered as substantial funding. In "***Thalappalam Ser. Coop Bank Vs. State of Kerala***[6]" the court observed that co-operative societies will not come under public authorities unless they are substantially aided by the government. Court held that the term "substantially" is equivalent to "essentially" so if the fund is essential to the functioning of the body then it will come under section 2(h).

(E) "**Directly or indirectly funded**"

The funding may not be from the consolidated fund of India. The funding can be direct by way of cash, grants etc. or indirect in kinds. The fund can be given by the government without mentioning its usage. In "***Veeresh Malik v. International Olympic Association***[7]", the I.O.A. was considered to be a public authority. Infrastructures like stadiums were constructed by the government and rented out to I.O.A. at a nominal rate of Re 1, this was considered to be indirect funding by the government.

Recently, the SC upheld the Delhi HC judgement and included the office of Chief Justice Of India under the public authorities. The independence of the judiciary cannot be ensured by denying information to the citizens. [8]

III. Comparative analysis

(A) China:

The freedom of information movement in China starts with anti-corruption movement and international organizations pushing for greater transparency. The Chinese legislation of Open Government Information Regulations [9]was adopted in 2007. The Regulation mentions that citizens can ask for information only if they have a special need of the information, like for

[6] Thalappalam Ser. Coop Bank Vs. State of Kerala (2013) 16 SCC 82
[7] Indian Olympic Assn. v. Veeresh Malik, 2010 SCC OnLine Del 35
[8] Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2020) 5 SCC 481
[9] Singh, Deepali, et al. "GOOD GOVERNANCE & IMPLEMENTATION IN ERA OF GLOBALIZATION." *The Indian Journal of Political Science*, vol. 70, no. 4, 2009, pp. 1109–20. *JSTOR*, http://www.jstor.org/stable/42744023.

production, scientific research or living. The prevailing notion among law academics is that the Rules do not require applicants to demonstrate their requirements (particularly as A. 20 does not urge citizens to offer justifications for their information requests). Yet, the General Office of State Council enforced this restriction, which was generally considered as exceeding its authority (even by judiciary). Hence, "proving exceptional requirements" is a by default regulation introduced to the Regulations by the General Office on their implementation. In 2008 and 2010, the Office issued two rules reaffirming that, the government can deny information if the citizens have no special need to ask for it.

The Right is restricted to citizens, legal entities, and other entities. The OGI Regulations only apply to the government and its agencies at the national and local levels. It is unclear if it is applicable to the court, the legislature, and the Chinese Communist Party. A. 36 and 37 in 2008, extended the scope to public companies responsible for public work The Rules define "government information" as information created or collected by administrative bodies during their activities and documented or stored in whatever form.

(B) Nepal:

The Nepalese Constitution of 1990 granted citizens the Right to request and access information from government institutions on any topic of public significance. This was reiterated in the 2007 Interim Constitution. A.27 grants citizens the freedom to ask information on topics of personal or public interest, unless the law protects the confidentiality of such information. The R.T.I. Act was approved in 2007. The Right to Information Rules were enacted in 2009, outlining the appeals process before the National Information Commission and governing its activities, organization, and operation[10].

Only citizens are permitted to seek information under the R.T.I. Act. It extends to all public agencies, including constitutionally mandated organizations, agencies providing public services, and entities sponsored or controlled by the government. It includes political parties and nongovernmental organizations supported by the Government of Nepal, foreign governments, or international bodies. The term "information" refers to any written document, material, or data pertaining to the functions, actions, or decisions of public concern carried out or to be carried out by public bodies.

(C) Comparing the law:

On comparing the Right to information laws in the three Asian countries, India, China and

[10] Abdul Jabbar Haque, *Right to Information in India: A Critical Appraisal*, 5 Indian J.L. & Just. 99,99 (2014).

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Nepal, it is found that the RTI laws in China are restrictive compared to the laws in India and Nepal. The State secrets Law of China has a wider ambit than their OGI regulations. Therefore, the ambit of the state secrets laws should be narrowed to promote greater information flow. In all three countries, the Right to information is only restricted to the citizens. The definition of public authority is also narrow in the countries. The Chinese rules are only extended to the government and its agencies at the national and local levels. The OGI rules do not make the Chinese Communist Party, legislature or the courts liable under the Right to information rules. Even in India, the extent of the term public authorities is narrow. Although it includes private bodies which are substantially funded by the government or engaged in public work under the ambit of public authority, it should specifically include private bodies which undertake public functions on behalf of the government. The scope of public authority is the widest in the R.T.I. law of Nepal. In Nepal, the rti law extends to all three organs- the judiciary, executive and legislature. The law also includes political parties and nongovernmental organizations supported by the Government of Nepal, foreign governments, or international bodies. In India, although the Information Commissioner order has directed six political parties under public authority, the political parties do not comply with the commission's orders. Therefore, in terms of the ambit of the public authorities, the 2009 Right to Information rules of the Nepal Government is the most progressive.

IV. CRITICAL ANALYSIS

The court in "***S. P Gupta v. President of India and Ors***[11].", discussed that a key element of an open government is the direct flow of information between the government authorities and the citizens. The Right to know is a part of free speech under A.19(1)(a). The norm is dissemination of information and the exception should be secrecy. The court should be responsible towards narrowing down the area of secrecy. But the new trend in India is that the courts are denying information unless public interest is shown. The citizens need not give any reason to file a R.T.I. application. The court in a case denied information about a Public servant regarding his service career on grounds of personal information as defined in clause (j) of Section 8(1) of the R.T.I. Act. [12] The judgement fails to take into account that an act of public servant comes under public matters. However, this judgement is followed in many judgements recently.

The purpose behind the RTI Act is to promote good governance. The aim is to keep the citizens aware about government functions so that they can keep the government accountable. But the

[11] SP Gupta v. Union of India, 1981 Supp SCC 87
[12] Girish Ramchandra Deshpande Vs. Central Information Commission & Ors. (2013) 1 SCC 212

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RTI act lacks enforcement mechanisms. Section 2(h) defines public authorities but the government authorities take advantage of the ambiguity of the section and deny the citizens their Right to information. The government denies the accountability of the PM CARES fund under R.T.I. The government asserts that the fund is supported by voluntary donations and that the money contributed by citizens is not utilized to finance government initiatives. It might be contended against the government that four ex officio cabinet ministers administer the fund. This fund's ex-officio chairman is the prime minister. The Prime Minister is a member of the fund in his official role, not as an individual. Even after such strong contentions of the fund falling under the ambit of public authorities, the government still gets away with its liability. Therefore, the citizens have to approach the Supreme Court as its last resort to make the government authorities comply. The matter is still pending before the supreme court. [13]

The Act lacks efficient enforcement mechanisms. There is no sanction mechanism for the non-compliance of the information commission's orders. The Information Commission in 2013 had declared six national parties under public authority[14]. The order is binding as per S.19(7) of the rti Act. But none of the parties till date has complied with the order, nor have they questioned it before any higher court.

V. Conclusion & suggestions

A project by Access Info Europe and the Centre for Law and Democracy rated India's R.T.I. laws to be the 6th best in the world. It is considered to be a very well-drafted act. The use of the term "includes" in S.2(h) of the Act calls for a liberal interpretation of the statute. It indicates the drafter's intention behind the legislation was to widen the ambit of the public authorities. The Right to information rules of Nepal gives a wide ambit to the public authorities. All the three wings- executive, judiciary and legislature are included within its ambit, even the political parties are not spared. Including political parties within RTI will help reduce corruption and increase transparency.

Although the RTI Act in India calls for a wide interpretation, the non-compliance of the government authorities has narrowed the ambit. The lack of enforcement mechanism of the R.T.I. act makes it a key hindrance to the effective implementation of the Act. The judgement [15]of the Delhi High Court disapproving the C.I.C.'s claim to award compensation to the complainant and impose cost on the authorities for non-compliance should be turned down.

[13] Samyak Gangwal v. CPIO, PMO (2021) scc online del 1739
[14] Anil Bairwal v. Parliament of India, File No. CIC/SM/C/2011/001386 dated 3-6-2013
[15] Delhi Development Authority v Central Information Commission, WP (C) 12714/2009

The duties of the public authority should be enforced sternly. The authorities covered by the Act should provide information upon request, but they should also be required to publish and distribute records of wide public interest. In addition, every public entity should create an electronic database including their records for wide distribution and disseminate specific categories of information proactively, so that individuals have minimal recourse to officially seek information.

Also, public authorities should review received applications and identify areas for improvement and budgetary needs. This would aid in fulfilling infrastructure demands, so satisfying the Act's obligations. The public agencies providing information should categorize requests and complaints received under the Right to Information Act so that it is easier to provide responses. Prepare distinct sections according to a given topic. The categorization technique must be determined properly. They should also assist to raise awareness about the rights of the general people to get information on the functioning and activities of the government.

Therefore, to conclude the RTI act should have stronger enforcement mechanisms to strengthen the information laws in the country. The intention of the legislation was to widen the ambit of the public authorities, but the recent trend clearly shows that it is still a far-fetched reality for the country.

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