

APPLICATION OF RIGHT TO INFORMATION ACT, 2005 TO THE PRIVATE UNAIDED INSTITUTIONS – A CRITICAL COMMENT

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ABSTRACT

The Right to Information is a Corollary of Freedom of speech and expression guaranteed under Article 19 of the Indian Constitution. The Right to Information Act of 2005 guarantees access to information from any public authority within a specified time. The ultimate objective behind the enactment of Right to Information Act is to bring transparency in the governance and ensure corruption free, efficient, responsible and accountable government. It acts as a check on the government's decisions/functions and helps strengthening democracy. However, several governmental functions which are functions of public importance and considered to be welfare functions of state such as education, have been privatized in recent era. These functions though, being exercised mostly by the private bodies, are continued to be of public interest/importance and always regulated and controlled by the Govt. Nonetheless, the Right to Information Act did not cover these private bodies within its ambit and left them free to run as per the will of the management. The Chief Information Commission (CIC) attempted to interpret & correlate the term "information" in order to bring the Private Unaided Schools in its ambit. However, absence of express provision may be a hurdle in the exercise of Right to Information against the Private Unaided Schools. This paper is to examine the provisions of Right to Information Act and the decisions of CIC and the Higher Courts r relevant to Private Unaided Schools. This paper suggests some amendments in the Right to Information Act to this effect.

Keywords: Right to information and private unaided institutions, State functions of public importance and right to information, Transparency in private unaided bodies

INTRODUCTION

The right to know is a species of Freedom of speech and expression guaranteed under the Constitution of India and a necessary ingredient of participatory democracy.ⁱ The Parliament of India enacted the Right to Information Act, 2005 (hereinafter referred as ‘the Act’) so as to provide for an effective mechanism for the enforcement of the right to information. This Act is also aimed to promote transparency and accountability in the working of the public authorities by ensuring corruption free, efficient and accountable government. However, in the last a few decades some of the functions of state which are of great public importance and of public interest are being exercised by the private institutions. However, these private bodies are kept outside the purview of this Act. Although, the Chief Information Commission (CIC) attempted to interpret the term “information” so as to bring the Private Unaided Schools in its ambit, these efforts remain insufficient to protect the interests of common public because of inappropriate provisions of the Act. This paper examines the relevant provisions of the Act in the light of constitutional provisions and the decisions of CIC and other Court.

FREEDOM OF SPEECH AND EXPRESSION AND RIGHT TO KNOW UNDER THE CONSTITUTION

Freedom of speech and expression is one of the pillars of democratic state and it enhances accountability of government, ensures protection of public interest, fortifies public control on governmental action and ultimately strengthens democracy. The Constitution of India guarantees protection of freedom of speech and expression to all its citizens.ⁱⁱ However, enforcement of freedom of speech and expression is depending upon the exercise of right to know. Hence, right to know is a corollary and also a most fundamental requirement of freedom of speech & expression. Therefore, the Honorable Supreme Court in *State of U. P. v. Raj Narain & Ors* held that, “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. The 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. [--] The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”ⁱⁱⁱ Further, the Supreme Court of India in *R P*

Limited v. Indian Express Newspapers held that, “Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.”^{iv}

RIGHT TO INFORMATION – A STATUTORY RIGHT

The Parliament of India enacted the Right to Information Act, 2005 (herein after referred as the Act), to provide for effective access to information under the control of public authorities in order to bring transparency in the governance and ensure corruption free, efficient, responsible and accountable government. This Act secures the citizen’s right to access information from government, public authorities, and its agencies.^v

The term ‘Information’ includes 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.^{vi} Right to information under this Act not only covers access to the above documents but also includes the inspection of work, document, record and its certified copy.^{vii} The public authority is bound to provide such Information within 30 days from the date of request.^{viii}

The Act imposes a responsibility on public authority to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated. It also requires them to publish the particulars of its organization, functions and duties, the powers and duties of its officers and employees, the procedure followed in the decision making process, including channels of supervision and accountability, the norms set by it for the discharge of its functions, the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions, etc.^{ix}

The term ‘public authority’ means any authority or body or institution of self-government established or constituted by or under the Constitution or by any other law made by Parliament or State Legislature, and also includes anybody or non-governmental organization owned,

directly or indirectly controlled or substantially financed by the government.^x However, it is not clear which institutions come under the 'bodies controlled by the government'. For some of the bodies, the government exercises deep and pervasive control and interferes in day to day affairs of the authority and for others the governmental control is minimal and government lays down only policy or a framework and autonomy is conferred in rest of the area.

THE RIGHT TO INFORMATION AND PRIVATE UNAIDED INSTITUTIONS

The citizens are conferred with the right to seek information from the public authorities or other bodies which are owned or established or controlled or substantially funded by the government.^{xi} However, the question remains is whether the private institution established by the non-governmental organizations not funded but partially controlled by the government & run by the private individuals are covered under the definition provided Section 2(h)? As the Act is not clear about applicability of right to information to these private institutions, the applications seeking information under the Act are denied. Consequently, the citizens, stakeholders, interested persons and even the students, employees or past employees are barred from exercising the right to information under the Act and the very crucial information closely related to them may not be available. Ultimately the decision to disclose such information is left at the mercy of the managers of private bodies.

The private bodies such as unaided private educational institutions, trusts, societies, etc. are registered under the law, for example under the Bombay Public Trust Act, 1950 and /or the Societies Registration Act, 1860 and these bodies have to submit annual audit reports and also change reports to the authorities under the above Acts. Their activities such as education, charity, health and other services are of great public importance/interest and mostly part of welfare functions of the state. Though, these bodies are established by private individuals and not funded by the state, they collect money from members of public in the form of membership fee, school fee, tuition fee, other fees, donations, etc and they deal with very crucial aspect of life, as like education, medical help, child care, etc. In fact, they share the functions of state while exercising such welfare functions, within the permitted parameters under the respective laws. Though, the control is general in nature, the private unaided educational institutions are regulated, controlled and supervised by the government under the relevant laws with respect to

infrastructure, qualifications of staff, terms and conditions of service, etc.^{xii} Whereas, the other institutions working in the field of health, child care and other fields have to comply with rules & regulations of safety, hygiene, sterilization, infrastructure, etc.^{xiii} The governmental control may vary from department to department, as per the need & nature of the function. The application of the Right to Information Act to such institutions is discussed in the following cases.

The Chief Information Commission in *Ms. Sadhana Dixit v. Directorate of Education, GNCTD, Delhi*,^{xiv} held that, “the Jindal Public School, whether it is a public authority or private body, has a duty under sections 4 and 8 of the Delhi Education Act 1973, to abide by the regulatory conditions of service, payment of salaries as prescribed, etc. for which the school has to maintain the records, which provide an inherent and implied right to information to their employees.” The same view has been reiterated by the Mumbai High Court in, *Kausa Education and Charitable Trust, Mumbai v. Maharashtra State Information Commission*.^{xv} These two decisions seem to have broadened the scope of the Act to include private unaided institutions within its purview. The CIC and Mumbai High Court have decided in favor of the power of Information Officer to direct the private schools to share the information which they are bound to provide under the law. The definition of ‘information’ under the Act includes information from any private bodies (third party information) to which the public authority is entitled to access, and therefore such information can be sought directly from the private bodies after the above decisions. It is clear from the above that, the Right to Information Act, 2005 is applicable to the private unaided institutions, however, the scope of the information which can be sought under the law is very narrow and limited only to the information which can be sought through the public authority which has power to seek such information from that private body, as a third party information.^{xvi} Therefore, the decision of CIC in *Sadhana Dixit* case or the decision of Mumbai High Court in *Kausa Education* case has in effect did not widened the scope of right to information however it has shortened the route of getting the same information, by allowing to seek the information which would have been received from public authorities related to third party, directly from the private body/institution. However, the other general information which the private institution is not required to submit to the public authority under the respective law cannot be sought even after the above decisions. Hence, the private institutions which are being run on the money collected from the public at large and working in the field of education, health, child care, orphan care, etc which are the fields of

grave public importance and part of the functions of a welfare state, left out of the purview of the Right to Information Act, 2005.

Furthermore, these private institutions are not bound to publish the information which is compulsorily required to be published under section 4 of the Act. Therefore, there is a legislative lapse in the Right Information Act, 2005 which allows the private institutions to deny the crucial information about the use of fund collected from the public.

Hence, these bodies are left uncontrolled allowing them to deny the crucial information about the working of the institution, use of funds and also information related to or in the interest of stakeholders, employees or past employees, other interested persons, the students etc which is of public importance or public interest.

CONCLUSION

The Act of 2005 is not the original source of the right to information, however, the power to seek information emanates from the constitutional guarantee under Art 19 of the Constitution of India. Thus, the Right to Information is nothing but a Fundamental Right under the Constitution of India and the Act of 2005 merely provides a statutory procedure for exercise of such right.^{xvii} The implementation of the fundamental right under Article 19(1) (a) of the Constitution is not possible at the fullest extent unless these private institutions/bodies, though not fully controlled & substantially funded by the government, are brought under the purview of the Right Information Act, 2005. The financial aid or administrative control should not be the sole criteria for bringing in that private unaided bodies within the purview of the Act of 2005, rather the nature of its function and public importance attached to it should be the relevant factor in deciding enforcement of the right to information. In the recent trend of privatization, numerous functions of the state which are considered as welfare functions of state have been transferred to the private bodies and they enjoy all powers which the government would have entitled if not privatized, subject only to the limited governmental control. The era of private universities has well-grooved and such universities are conferred with full autonomy subject to minimum general control. As these universities are not funded by the state and completely run by the private players subject to minimal state control, may also enjoy similar freedom from right to information of citizens. This will discourage transparency, dismay the democratic way of functioning and destroy the very purpose of establishing such institutions. Therefore,

the legal provision under section 2 (h) of the Right Information Act, 2005 to the effect it denies right to information against private bodies exercising functions of public importance is against the purpose and spirit of Article 19(1) (a) of the Constitution of India. Therefore, in this regard, it is absolutely essential to amend Section 2(h) of the Right to Information Act, 2005 to the effect that, the Non-governmental bodies/private institutions exercising functions of public importance/interest are brought within the definition of Public Authority.

REFERENCES

- ⁱ *R P Limited v. Indian Express Newspapers*, AIR 1989 SC 190.
- ⁱⁱ See Article 19(1) (a) of the Constitution of India.
- ⁱⁱⁱ See 1975 AIR 865, 1975 SCR (3) 333, (1975) 4 SCC 428
- ^{iv} AIR 1989 SC 190
- ^v Section 3 of the Right to Information Act, 2005.
- ^{vi} See Section 2(f) of the Right to Information Act, 2005.
- ^{vii} See Section 2(j) of the Right to Information Act, 2005.
- ^{viii} See Section 7 of the Right to Information Act, 2005.
- ^{ix} See Section 4 of the Right to Information Act, 2005.
- ^x See Section 2(h) of the Right to Information Act, 2005.
- ^{xi} See Section 2(h) of the Right to Information Act, 2005.
- ^{xii} See Shruti Ambast, Akriti Gaur & Ajey Sangai, Regulation of Private Schools In India (Vidhi Centre for Legal Policy, 2017), available at http://vidhilegalpolicy.in/wp-content/uploads/2019/05/ReportonRegulationofPrivateSchools_Final.pdf See also Rules and Regulations of Educational Institutions https://shodhganga.inflibnet.ac.in/bitstream/10603/156652/8/08_chapter%202.pdf See for more details <http://www.bareactslive.com/MAH/mh831.htm>
- ^{xiii} See for details http://www.rfhha.org/index.php?option=com_content&view=article&id=1&Itemid=51
- ^{xiv} *Ms. Sadhana Dixit v. Directorate of Education, GNCTD, Delhi*, File No.CIC/AD/A/2013/000658-SA, decided on 29.05.2014.
- ^{xv} Writ Petition No. 3650 of 2012, decided on 08.01.2013.
- ^{xvi} See Section 11 of the Right to Information Act, 2005.
- ^{xvii} *Secretary General, Supreme Court of India v. Subhash Chandra Agarwal*, AIR 2010 Delhi 159