

UNIT-1
“Public Authority”
B.Com LI.B 8 Sem

The Act states that every public authority shall designate, within one hundred days of the enactment of the Right to Information Act, at each sub-divisional level Assistant Public Information Officer. The RTI Act gives us the right to access to information held by “public authorities”.

Public authorities means and includes are:

- (1) any authority or body or institution of self government constituted under the Constitution of India.
- (2) Any authority or body established by an Act of Parliament

3) Any authority or body established by an Act of State legislature.

(4) Any authority or body constituted by notification or order made by the government both Central and State which also includes the bodies owned, controlled and “substantially financed by the government.

Even the non-governmental organizations which were substantially financed either directly or indirectly by the government were also brought under the sweeping definition of public authority.

The Article 12 of Constitution of India defines the term “State” as used in different Articles of Part III of Constitution. It says that unless the context otherwise required, the term State includes the following.

- (1) The government and Parliament of India i.e. Executive and Legislature of Union.
- (2) The government and legislature of each state i.e., executive and legislatures of States.
- (3) All local or other authorities within the territory of India.
- (4) All local or other authorities under the control of Govt. of India.

The word “Public Authority” has a wider space in contrast to the definition of State under Article 12 of Constitution of India. The Supreme Court interpreted the word “other authorities” in a number of cases. The development of law as to other authorities must be traced through the following four cases (i) **Electricity Board Rajasthan v Mohan Lal, decided by a bench of five judges** (ii) **Sukhdev Singh v Bhagatram, decided by bench of five judges** (iii) **R D Shetty v International Air Port Authority, decided by a bench of three judges and** (iv) **Ajay Hasia v Khalid Murjib ,decided by a bench of five judges.** In holding that the *Rajasthan State Electricity Board fell within the definition of State in Article 12, the majority adopted*

the test that a statutory authority would be within the meaning of other authorities, if it has been invested with statutory power to issue binding directions to the parties, the disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law.

In Sukhdev's case the Supreme Court considered its earlier decision on the meaning of the word authorities in Article 12. The question arose in these appeals in which dismissed employees claimed re-instatement respectively from Oil and Natural Gas Commission (ONGC), Life Insurance Corporation (LIC) and Industrial Finance Corporation (IFC) which were incorporated under ONGC Act, 1959, the LTC Act 1956 and IFC Act, 1948. As to whether the three Corporations were other authorities the Supreme Court held. "For the foregoing reason we hold that the rules and regulations framed by the ONGC, LIC and IFC have the force of law. The employees of these statutory bodies have a statutory provision. By way of abundant caution we State that these employees and not servants of the union or State. These statutory bodies are "Authorities within the meaning of Article 12."

Bhagwati J. formulated the relevant test for determining whether a corporation was an agency or instrumentality of the government in *Hasia's* case as follows:—

“One thing is clear that if the entire share capital of the corporation is held by the government, it would go a long way towards indicating that the corporation an instrumentality or agency of the government (b) Where the financial assistances of the State is so much “as to meet almost (the) entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character (c) it may also be a relevant factor whether the corporation enjoys monopoly status which is the (SIC) State conferred or State protected (d) existence of the deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (e) if the functions of the corporation are of

public importance and clearly related to government function, it would be relevant factor in classifying the corporation as an instrumentality or agency of the government

(f) especially, if a department or government is transferred to a corporation., it would be a strong factor supportive of their inference of the corporation being an instrumentality or agency of the government.”

Applying the test laid down in Hasia's Case for determining that a body or authority was an instrumentality or agency of the State, it was held that Indian Statistical Institute, The Bihar State Electricity Board and the Project and Equipment Corporation of India were agencies or instrumentalities of the State and were other authorities within the meaning of Article 12.

In Hemant Goswami Vs Administrator, U.T., Chandigarh, there can be little doubt about the fact that the Administrator is an authority established under Article 239 of the Constitution, occupied by an official with an assignment, and therefore an office. It matters little whether that authority exercises any duty or not. Even if he does not head a particular body or sit in a room or building where people work at desk, he still occupies a formal position of responsibility. Under the circumstances there can be little doubt about the fact that the Administrator is a public authority and, under sec. 5(1) was required within 100 days of the enactment of this Act to designate a Public Information Officer.

In M.C. Mehta v Union of India the important question which was raised before the Court was whether a private corporation fell within the ambit of Article 12 was not finally decided by the Court, but it stressed the need to do so in future.

Section 21 of I.P.C. defines public servant exhaustively. Chapter X of I.P.C. comprising sections 161 to 171 deals with offence by a relating public servant. Section 2(c) of Prevention of Corruption Act, 1988 defines the term. The aforesaid Act defines public duty as a duty in the discharge of which, the State, the public or community at large has an interest.”

Therefore, Public Authority means all Government institutions and all authorities set up under the Constitution and the law and also institutions set up by notification issued by the Government in exercise of their executive power, or owned or financed or controlled by the Governments. Thus, it is mandatory for all those institutions to receive requests for information and make information available to the citizens in the manner requested. University is a public authority. Further, under section 4(1) (a) and (b) of the Act, every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act.

They are also supposed to 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; and publish within one hundred and twenty days from the enactment of this Act i.e. on or before 12th day of October 2005. Unfortunately, it has been observed that most of the public authorities have not yet complied with this provision. Hence the people in general have to face a lot of difficulty in obtaining the information that would have been automatically available to them if the public authorities had complied with this provision.

Accordingly all NGOs, societies, professional institutions, educational institutions, co-operatives, etc. which draw grant-in-aid, subsidy of any other form of financial support from the Central or State Government are required to abide by the RTI Act. There could be different views on what is meant by “substantial financing”

and many such organizations may try to argue that RTI Act does not cover them. In cases of dispute, CIC/SICs would be the competent authority to decide.

There is a need for educating the beneficiaries of these non-Government bodies regarding RTI Act, so that they can derive full benefit of public money being spent for their benefit through such institutions and demand efficiency and improved management. This seems to be very vast and unexplored area.