



सत्यमेव जयते

**GOVERNMENT OF INDIA**

**LAW COMMISSION OF INDIA**

**Report No. 275**

**LEGAL FRAMEWORK: BCCI *vis-à-vis* RIGHT TO  
INFORMATION ACT, 2005**

**April, 2018**

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भारत का विधि आयोग  
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Ministry of Law & Justice  
Government of India

D.O. No.6(3)306/2016-LC(LS)

18 April 2018

Dear Shri Ravi Shankar Prasad Ji,

I have the pleasure in forwarding herewith **Report No.275** of the Law Commission of India titled "**Legal Framework: BCCI vis-à-vis Right to Information Act**" for consideration of the Government. This Report has been prepared pursuant to the directions issued by the Hon'ble Supreme Court of India, in the case of *Board of Control for Cricket v. Cricket Association of Bihar & Ors.*, (2015) 3 SCC 251. The Commission was asked to examine the issue as to whether the Board of Control for Cricket in India (BCCI) would be covered under the ambit of the Right to Information Act, 2005 (RTI Act), and if the answer is in the affirmative, make appropriate recommendations to the Government of India.

It is noteworthy that the Apex Court has held that BCCI discharges public functions monopolistic in nature with tacit approval of Central and State Governments. The scope of study of this Report, thus broadly included the following questions:

1. Whether BCCI would qualify to be a 'public authority' so as to fall under the purview of the RTI Act?
2. What would be the ambit of the terms 'substantially financed' and 'directly or indirectly' financed/funded mentioned in section 2(h)(d)(ii) of the RTI Act?
3. Whether tax exemptions to the tune of thousands of crores and provision of land at highly discounted rates/nominal value, by the Central and State Government, for the construction of cricket stadiums, amount to indirect 'substantial financing' by the Government?

The answers to these questions were explored perusing Parliamentary debates, case-law precedents, commentaries of eminent jurists and other aids of interpretation and construction. To put things in the right perspective, the Commission further delved into a brief history of the game of cricket, the BCCI, and, the need and consequent evolution of the RTI Act. A study of foreign jurisdictions in the context of right to information was also undertaken.

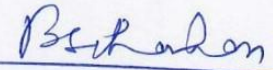


The Commission held consultations with various experts and stakeholders, including the Central Information Commission, on the subject. However, BCCI, despite the service of notice and reminders thereon, did not respond/participate.

The Commission acknowledges the excellent assistance provided by Shri Setu Gupta, Dr. Saumya Saxena and Ms. Oshin Belove in preparation of this Report.

*With warmest regards.*

Yours sincerely,



**[Dr. Justice B S Chauhan]**

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## Report No. 275

### LEGAL FRAMEWORK: BCCI *vis-à-vis* RIGHT TO INFORMATION ACT, 2005

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## **CHAPTER I**

### **BACKGROUND**

#### **A. A Brief History of Cricket in India**

1.1 As per the records, the game of cricket was first played in India as early as in 1721. The first club, i.e., the Calcutta Cricket Club, was established in 1792, on the site where Eden Gardens now stands, although its membership was restricted to Europeans only. Five years later, Bombay hosted the first match, wherein Indians commenced playing the game. At the end of the 18th century the Parsees took on the Eton Ramblers Cricket Club, and later in 1848, they formed the Orient Club.<sup>1</sup>

1.2 In 1889 an amateur English team travelled to India. They played almost exclusively European teams, and their one defeat came against the Parsees. In 1892, they returned and suffered two defeats in twenty games, again at the hands of the Parsees. In January 1893, a touring team led by Lord Hawke played against an All-India team, but the reality was that it was almost entirely made up of Europeans.<sup>2</sup>

1.3 Maharaja Ranjit Singhji popularly known as Maharaja Jam Saheb ('Ranji') ruled, from 1907 to 1933, an Indian Princely state, the State of Nawanagar in the Halar region (presently Gujarat), located on the southern shores of the Gulf of Kutch. His success in the game in England inspired other fellow princes in India and consequently, they sent for coaches from England and spent huge

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<sup>1</sup>Available at: <http://www.espnricinfo.com/india/content/story/261616.html> (last visited on 01-12-2017).

<sup>2</sup>Available at: <https://www.britannica.com/sports/cricket-sport> (last visited on 01-12-2017).

sums to ensure that they could boast of the best facilities. In 1907, the Hindus joined the Europeans and Parsees to make it a triangular competition and in 1912, the Mohammedans also started to participate. An All-India side toured England in 1911, under the captaincy of Maharaja of Patiala; and, by the late 1920s, the performance of this side against an MCC XI (Marylebone Cricket Club) led by Arthur Gilligan, led the ICC (International Cricket Council) to believe that the All-India side might be ready to make a Test match debut.<sup>3</sup>

1.4 One major hurdle in this regard was the absence of a central governing body regulating the game in India. This led to the creation of the BCCI in 1928. Thereafter, India made its first Test match debut in 1932 at Lord's under the captaincy of C.K. Nayudu. Ranji couldn't play for India, as in his time India didn't have a Test team. He had also dissuaded his nephew Duleep from playing for India. Many Indians had commented acerbically on Duleep's preference for England over India. Nawab Pataudi Senior at that time was playing for England and had scored a century against Australia. He showed his willingness to play for India which received an overwhelming support. On October 29, 1934, Nawab Pataudi was voted Captain of the Indian team to tour England in 1936.<sup>4</sup>

1.5 India registered its first Test victory against England in 1951-52, in Madras. Subsequently, in 1983, at Lord's Cricket Ground, India won its first Cricket World Cup (limited overs), and repeated the World Cup victory years later, in 2011 at Wankhede Stadium, Mumbai. In the Twenty20 format, India won the inaugural Twenty20 Cricket World Championship in 2007,

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<sup>3</sup>*Ibid.*

<sup>4</sup>Mihir Bose, *The Magic of Indian Cricket* 149, 152 (Routledge – Taylor and Francis Group, New York, 2006).



followed by the ICC Champions Trophy in 2013. By the end of twentieth century, India was ranked among the top-most cricket playing nations of the world, and continues to hold its place at the helm.

## **B. History of BCCI**

1.6 The process of creation of BCCI started with two members of the Calcutta Cricket Club being permitted by the Imperial Cricket Conference to attend the ICC meeting at Lord's on 31st of May and 28th of July 1926. The permission was initially granted upon a condition that an administrative body for the control of cricket in India would soon be formed.<sup>5</sup>

1.7 After the directive was issued by the ICC, a number of cricket bodies in India started interacting and discussing about the formation of a central cricket body in India. All the cricket associations of India agreed on the idea of a central administrative organization for the control of Cricket in India for improvement of the sport in the country.<sup>6</sup>

1.8 On November 27, 1927, a group of 45 people representing various cricket associations located in different parts of India got together at the Roshanara Club in Delhi to take some concrete initiatives towards the formation of such an association. A Board of Cricket Control was deemed essential to ensure the following:<sup>7</sup>

- Arrange and control inter-territorial, foreign and other cricket matches.

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<sup>5</sup>Available at:[http://www.cci.gov.in/sites/default/files/612010\\_0.pdf](http://www.cci.gov.in/sites/default/files/612010_0.pdf) (last visited on 06-01-2018).

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

- Make arrangements incidental to visits of teams to India, and to manage and control all-India representatives playing within and outside India.
- If necessary, to control and arrange all or any inter-territorial disputes.
- To settle disputes or differences between Associations affiliated to the Board and appeals referred to it by any such Associations.
- To adopt if desirable, all rules or amendments passed by the Marylebone Cricket Club.

1.9 Subsequently, in December of 1927, in a meeting at the Bombay Gymkhana, a unanimous decision was taken to form a 'Provisional' Board of Control to represent cricket in India. The plan was for this 'Provisional' Board to cease to function as soon as the eight territorial cricket associations were created; and, that the representatives of the eight associations would then come together to constitute the Board.

1.10 However, by late 1928, only six associations - Southern Punjab Cricket Association, Cricket Association of Bengal, Assam Cricket Association, Madras Cricket Association and Northern India Cricket Association - had been formed.<sup>8</sup>

1.11 The Provisional Board then met in Mumbai in December 1928, during the Quadrangular tournament to discuss the next course of action. It was at this meeting that the decision to form a proper board for control of cricket in India was taken, and subsequently, BCCI was established. Five months later after its

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<sup>8</sup>*Ibid.*

establishment, BCCI was admitted by the ICC as a 'Full Member' representing India.<sup>9</sup>

1.12 BCCI is registered as a society under the Tamil Nadu Societies Registration Act, 1975. It is headquartered in Mumbai, and is the central governing body regulating the game of cricket in India, *inter alia* selecting the national team for international cricket tournaments, as is done by other National Sports Federations for their respective sports.

### **C. Evolution of the Right to Information (RTI) in India**

1.13 James Madison, the late American President, once remarked,

*A popular Government, without popular information or the means for obtaining it, is but a Prologue to Farce or Tragedy or perhaps both. Knowledge will for ever govern ignorance and a people who meant to be their own governors must arm themselves with the power knowledge gives.*

1.14 This quote demonstrates exactly how crucial it is for the populace to be armed with tool of knowledge if they desire to be self-governed. The Supreme Court gave recognition to the citizen's right to information as part of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. This in-turn meant that right to information was subject to reasonable restrictions enunciated in Article 19(2) of the Constitution *viz* sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, contempt of court, defamation or incitement

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<sup>9</sup>Available at: <http://www.bcci.tv/about/2017/history> (last visited on 05-12-2017); Findings of the Director General, reported in *Sh. Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI)*, Case No.61/2010, decided by the Competition Commission of India, on 08-02-2013, available at: *supra* note 6.

to an offence. The Constitutional jurisprudence that led to the recognition of this right, is traced to the following catena of cases.

1.15 In the case of *Bennet Coleman & Co. v. Union of India*,<sup>10</sup> the Apex Court remarked:

*It is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views' and 'freedom of speech and expression' includes within its compass the right of all citizens to read and be informed.*

1.16 In the case of *State of Uttar Pradesh v. Raj Narain & Ors.*,<sup>11</sup> the respondent had asked for the documents pertaining to the security arrangements and the expenses incurred on the then Prime Minister. The Supreme Court while maintaining a fine balance between public security and public interest observed that while there are strong arguments for the former, the Executive cannot be given exclusive power to determine what matters may prejudice the latter. Once considerations of national security are concluded there are few matters that cannot be safely made publicly available. Justice K.K. Mathew, observed:

*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. 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...*

1.17 In the case of *S.P. Gupta v. Union of India*,<sup>12</sup> Justice Bhagwati, observed that an open Government directly emanates from the right to know which is implicit in the right of free speech and expression. Therefore, the disclosure of information in regard

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<sup>10</sup> AIR 1973 SC 106.

<sup>11</sup> AIR 1975 SC 865.

<sup>12</sup> AIR 1982 SC 149.

to the functioning of the Government must be the rule and secrecy an exception.

1.18 In the case of *Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Ors.*,<sup>13</sup> the Apex Court held that:

*The freedom of speech and expression includes the right to acquire information and to disseminate it. Freedom of speech and expression is necessary for self-fulfilment. It enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy....the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained...True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues...One sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations...*

1.19 In the case of *Dinesh Trivedi, MP & Ors. v. Union of India & Ors.*,<sup>14</sup> while dealing with the Vohra Committee Report on the criminalisation of politics and of the nexus among criminals, politicians and bureaucrats in India, the Supreme Court observed:

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<sup>13</sup> AIR 1995 SC 1236.

<sup>14</sup> (1997) 4 SCC 306.

*In modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.*

1.20 The Court further stated that, though it is not advisable to make public the basis on which certain conclusions are arrived at in that report, the conclusion so reached, should be examined by a new body of institution. The Court added that, it is now recognised that while a public servant may be subject to a duty of confidentiality, this duty does not extend to remaining silent regarding corruption of other public servants. Society is entitled to know and public interest is better served if corruption or maladministration is exposed.<sup>15</sup>

1.21 In the case of *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India*,<sup>16</sup> while dealing with the right to information provided under section 33A of the Representation of the People Act, 1951, the Supreme Court held that right to information is a fundamental right and that this right, vested in a voter/citizen, is adequately safeguarded under the aforementioned provision of the said Act.

1.22 In the case of *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India*,<sup>17</sup> the Supreme Court made an observation that keeping with the spirit of the Universal Declaration of Human Rights, 1948 (UDHR), the Preamble of the Constitution embodies a solemn resolve of its people to secure, inter alia, to its citizens, liberty of thought and expression; The Court further observed:

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<sup>15</sup>*Ibid.*

<sup>16</sup>AIR 2003 SC 2363.

<sup>17</sup>AIR 2004 SC 1442.



*In pursuance of this supreme objective Article 19(1)(a) guarantees to the citizens, the right to “freedom of speech and expression” as one of the fundamental rights listed in Part III of the Constitution. These rights have been advisedly set out in broad terms leaving scope for expansion and adaptation, through interpretation, to the changing needs and evolving notions of a free society.*

1.23 The Court added that right to information is a facet of “freedom of speech and expression” as contained in Article 19(1)(a) and is thus indisputably a fundamental right.

1.24 A reading of these cases, among others, makes it clear that right to information is indisputably a corollary of freedom of speech and expression, and thereby a fundamental right guaranteed under Part III of the Constitution of India. Moreover, it is apparent that right to information has become an imperative in a democratic set-up such as that of India.

#### **(a) Right to Information Laws in States**

1.25 Prior to the ‘right to information’ debate at the national stage, there were several States which had proactively enacted their respective ‘right to information’ laws. Some of these State-made laws have been repealed by the State Governments in favour of the Central Act, while others continue to co-exist with the Central RTI Act, with supplemental rules regarding fees, appeals and other procedural requirements. Some of the prominent State made RTI laws are discussed below:

##### **1) Tamil Nadu**

1.26 Tamil Nadu was the first Indian State to enact its own right to information law in the form of Tamil Nadu Right to Information Act, 1997. Section 2(3) of the Act defines information as:

*‘Information’ includes copy of any document relating to the affairs of the State or any local or other authorities constituted under any [A]ct for the time being in force or a statutory authority or a company, corporation or a co-operative society or any organisation owned or controlled by the Government.*

1.27 It should be noted that this is an inclusive definition. The definition makes no mention of ‘funding’ provided by the Government, ‘substantial’ or otherwise. The Act does not provide for a judicial forum for hearing appeals and lays down that appeal can be made to the Government or such other authority as may be notified by the Government.<sup>18</sup>It contains twenty-one categories of information that are excluded from the purview of the Act, seriously dampening its effect. There is no provision providing for offences or penalty. The State Act runs concurrently with the Central Act. The State Government has constituted a State Information Commission and prescribed Rules for accessing information under the RTI Act 2005.

## **2) Goa**

1.28 Goa was the next State to have its own right to information legislation. The Goa Right to Information Act, 1997, in its long title emphasises the need for transparency in Governmental actions and to achieve this object, the consequent enablement of every citizen to get information from the Government.

1.29 Under section 2(c) of this Act, “information” has been defined to mean,

*any material or information relating to the affairs of the State or any local or other authorities constituted*

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<sup>18</sup> Section 4.

*under any enactment passed by the Legislative Assembly of Goa for the time being in force or a Statutory Authority or a Company, Corporation, Trust, Firm, Society or a Co-operative Society, or any Organisation **funded or controlled by the Government or executing any public work or service on behalf of or as authorised by the Government.***[emphasis added].

1.30 It should be noted that the Act does not use the word ‘substantially’ before the word funded. Additionally, any entity executing public work or service on behalf of or on authorisation of the Government would be liable to provide information under the Act. The words ‘public work or service’ as well as ‘authorised by the Government’ are not defined and are consequently, open to interpretation.

1.31 Section 2(d) defines the ‘Right to Information’ while section 3 guarantees this right.<sup>19</sup> Section 5 of this Act provides for a few categories of information excluded from the purview of right to information viz matters relating to sovereignty and integrity of India or security of State, trade and commercial secrets, personal information etc. Reasons for denial of information are to be recorded in writing. Section 6 of the Act further provides that if any person is aggrieved by an order of the Competent Authority as to the refusal of any information, they can appeal to the Administrative Tribunal, constituted under the Goa Administrative Tribunal Act.

1.32 This Act runs concurrently with the Central RTI Act.

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<sup>19</sup> Section 2(d) – “Right to Information means the Right to access to information and includes the inspection of works, documents, records, taking notes and extracts and obtaining certified copies of documents or records, or taking samples of material.”

Section 3 - “Right to Information- Subject to the provisions of this Act, every citizen shall have right to obtain information from a Competent Authority.”

### 3) Madhya Pradesh

1.33 The State passed the Right to Information Bill in March 1998, but the Presidential assent was refused and so the Bill did not come into force. However, Executive Orders on the Right to Information are operational in nearly fifty departments.<sup>20</sup>

1.34 While the Executive Orders were operational, the State Assembly enacted the *Madhya Pradesh Jankari Ki Swatantrata Adhiniyam*, 2002 (The “MP Act”), on January 24, 2003, which received the assent of the Governor and on January 31, 2003 it was published in the Official Gazette. On passing of the Central Act, in exercise of the powers conferred by section 27, the State Government issued Madhya Pradesh Right to Information (Fees and Appeal) Rules, 2005..

1.35 Section 2(b) of the MP Act defines ‘public body’ to mean “(i) all offices of the State Government, (ii) all local authorities and statutory authorities constituted under any Act of the State Legislature for the time being in force and all Companies. Corporations and Cooperative Societies in which not less than fifty one percent of the paid-up share capital is held by the State Government.” The definition enumerates eight exclusions as well.<sup>21</sup> It can be observed that the definition is exhaustive.

1.36 Section 4 of the MP Act lists seven categories of information, which are outside its scope. Section 6 provides that

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<sup>20</sup>Available at: <http://www.humanrightsinitiative.org/content/state-level-rti-madhya-pradesh> (last visited on 21-12-2017)

<sup>21</sup> “(i) Offices of the Central Governor [*sic* – Government] situated in Madhya Pradesh, (ii) any establishment of the Armed forces or Central para Military forces in the state of Madhya Pradesh, (iii) corporations owned by the Central Government, (iv) religious organisations, (v) the Madhya Pradesh Vidhan Sabha, (vi) the High Court of Madhya Pradesh and other Courts of Law including Tribunals, and other Organisations which have the Status of Courts and whose proceedings are deemed to be judicial proceedings, (vii) the Secretariat of the Governor of Madhya Pradesh, (viii) the office of the Lokayukt.”

the designated officer may also reject a request for supply of information on seven additional grounds (information sought is too general in nature, is already available publicly, relates to 'secret' or 'confidential matters', is vague etc.).

1.37 Section 7 provides for procedures for an appeal to the State Government or an appellate authority appointed by the State Government. Section 8 provides that if the designated officer fails to supply the desired information when the appellate authority has directed him to do so, a penalty maybe imposed on him.

#### **4) Rajasthan**

1.38 The Legislative Assembly passed the Rajasthan Right to Information Act, 2000. The Act defines 'public body' in section 2(iv) as:

- (a) offices of all local bodies and other authorities constituted under any enactment of the Rajasthan State Legislature for the time being in force; or*
- (b) any other statutory authority constituted by the State Government under any law for the time being in force; or*
- (c) a Government Company/ corporation incorporated under the Companies Act 1956 (Central Act No. 1 of 1956) in which not less than fifty-one percent of the paid-up share capital is held by the State Government or a trust established by the State Government under any law for the time being in force and controlled by it; or*
- (d) **a Society or a Co-operative Society or any other organisation established under any law for the time-being in force, by the State Government and directly controlled or funded by it**[emphasis added]; or*
- (e) **any other body, which may be receiving substantial financial assistance from the State Government, as may be specified by***

*notification in the Official Gazette for the purposes of this Act [emphasis added];*

1.39 It should be noted here that this Act, even though predating the Central Act by five years, talks about the financial linkage of a body or entity with the Government. Meaning thereby, that if a body or entity is connected in such a manner, it would be deemed to be a public body.

1.40 Section 5 of the Act provides for ten categories of information, which are not covered under the ‘right’ to information guaranteed in section 3 of the Act. Sections 6 and 7 deal with appeals. Under these sections one internal appeal and one appeal to an independent body are provided for.

1.41 Section 12-A of the Act deals with *suo moto* disclosure of the information by the State Government and public bodies as it may consider appropriate in public interest.

1.42 Here too, the State Act runs concurrently with the Central Act.

## **5) Karnataka**

1.43 Karnataka Right to Information Act, 2000 (now repealed) received the assent of the Governor on the December 10, 2000. Section 2(b) of this Act defined “information” to mean information relating to any matter in respect of the affairs of the administration or decisions of a public authority. Section 4(2) of the Act contained eight sub-clauses dealing with exemptions from disclosable category of information. This Act also contained a penalty clause and provided for an appeal to an independent tribunal.



1.44 This Act was repealed on October 17, 2005 by an Ordinance. The State Government is implementing the RTI Act 2005. The Government has also issued the Karnataka Right to Information Rules 2005 modelled on the Central Government's Rules.

## **6) Maharashtra**

1.45 The Maharashtra Right to Information Act, 2000 (repealed by Right to Information Ordinance, 2002) had only nine sections. Section 3(2) of the said Act provided for twenty-two categories of information not required to be disclosed in line with the Tamil Nadu Act.<sup>22</sup>Section 2(3) of the Act defined 'information' to include "a copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act for the time being in force or a statutory authority or a company, corporation or a co-operative society or any organization, owned or controlled by the Government."

1.46 It may be noted that **no criterion for financial linkage, to determine the relationship between the State and private entities**, was mentioned in the aforesaid definition. [emphasis added]This Act neither had any provisions for providing information proactively nor any penalties for withholding information.

1.47 In 2002, the State Government passed Maharashtra Right to Information Act, 2002, after persistent efforts of a campaign headed by social activist Shri Anna Hazare. However, after the coming into force of the Central RTI Act, the Government repealed

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<sup>22</sup> Section 3(2).

the Maharashtra Right to Information Act, 2002, by the Maharashtra Right to Information (Repeal) Act, 2005.

1.48 The Government then issued the Right to Information Rules, 2005, in exercise of the powers conferred on the State Governments under section 27(2) of RTI Act 2005, providing for the appeals procedure, payment of fees along with other procedural details.

## **7) Delhi**

1.49 In 1999-2000, a Working Group suggested for having a legislation along the lines of the Goa Act.<sup>23</sup> Thereafter, the Legislative Assembly of the National Capital Territory of Delhi passed the Delhi Right to Information Act in 2001. Section 2(4) of this Act defines ‘information’ to mean:

*“any material or information relating to the affairs of the National Capital Territory of Delhi except matters with respect to entries 1,2 and 18 of the State List and entries 64, 65 and 66 of that list in so far as they relate to the said entries 1,2 and 18 embodied in the Seventh Schedule of the Constitution.”*

1.50 Section 2(7) defines ‘public authority’ as

*“any authority or body established or constituted (a) by or under the Constitution, (b) by any law made by the Government and includes any other body owned, controlled or **substantially financed by funds provided directly or indirectly by the Government**[emphasis added].”*

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<sup>23</sup>Available at: <http://www.humanrightsinitiative.org/content/state-level-rti-delhi> (last visited on 06-01-2018).

1.51 Section 6 of the Act contains standard exclusions from disclosable category of information and provides for a procedure for filing of appeals, under section 7.

1.52 The Act runs concurrently with the Central RTI Act.

### **8) Uttar Pradesh**

1.53 Uttar Pradesh Government issued Executive Orders establishing a 'Code of Practice on Access to Information' on April 3, 2000. However, after the passing of the Central RTI Act, the State Government started implementing the Central Act. The State Government then issued the Uttar Pradesh Right to Information (Regulation of Fees and Costs) Rules, 2006, and the Uttar Pradesh State Information Commission (Appeal Procedure) Rules, 2006; but in 2016, both these rules were superseded and replaced by the Uttar Pradesh Right to Information Rules, 2015.

### **9) Jammu and Kashmir**

1.54 In Jammu and Kashmir, the Jammu and Kashmir Right to Information Act, 2003 (notified in the Government Gazette on 7 January 2004), was replaced by the Jammu and Kashmir Right to Information Act, 2009, which received the Governor's assent on March 20, 2009. The State Government also published the Jammu and Kashmir Right to Information Rules, 2009 on July 20, 2009.

1.55 Due to the special constitutional status of the State, the Central Act is not applicable here, however, the definitions of the

terms “information”<sup>24</sup> and “public authority”<sup>25</sup> are akin to the Central Act.

### **10) Assam**

1.56 The Assam Right to Information Act, 2001, received the assent of the Governor on May 1, 2002 and was notified on May 7, 2002. The term ‘information’ is defined under section 2(c) of the Act to mean and include “information relating to any matter in respect of the affairs of the administration or decisions of the State Government or a Public Authority.” However, the definition excludes “any such information the publication of which has been prohibited by any law for the time being in force or by any notification issued by the State Government from time to time under this Act.”

1.57 Section 2(e) of the Act gives a detailed definition of “public authority”. It provides:

*Public Authority means and includes the officer of-*

*(i) all local bodies and other authorities constituted by the State Government under any law for the time being in force; or*

*(ii) a Government Company or corporation incorporated under the Companies Act 1956 in which not less than fifty one percent of the paid up share capital is held by the State Government, or other State Government undertakings, organizations or institutions financed either wholly or partly and owned, or controlled by the State Government or any other company, corporation, undertaking or institution in which the State Government stands guarantor in respect of any loan or financial advance availed of by such company corporation, institution, organization or undertaking, as the case may be; or*

*(iii) a co-operative society or any other society, a*

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<sup>24</sup> Section 2(d).

<sup>25</sup> Section 2(f).

*trust or any other organization or institution established under any law for the time being in force by the State Government and directly controlled or funded by it; or*

*(iv) any body, authority, institution, organization, agency or instrumentally including the District Rural Development Agencies, funded either wholly or partly by the State Government; and,*

*(v) any other body, authority institution or organization receiving substantial financial assistance from the State Government as may be notified by the State Government from time to time for the purposes of this Act;*

1.58 Certain exceptions to ‘Public Authority’ are also provided in the aforesaid definition.<sup>26</sup>The State Act runs concurrently with the Central Act, and soon after the passing of the Central Act, the State Government started implementing the latter as well. The State Government issued Assam Right to Information Fee Rules, 2005 in the exercise of powers conferred by the Central Act.

### **(b) RTI Movement – social and national milieu**

1.59 The beginning of RTI movement in India at the grassroot level can be attributed to the persistent efforts of organisations such as *Mazdoor Kisan Shakti Sangathan* (MKSS). Talking specifically about MKSS, formed in 1990, its vigorous efforts in the area of minimum wages, right to information in rural Rajasthan, and other forms of human rights related activities, mobilised the Government of Rajasthan to ultimately enact the

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<sup>26</sup> “(i) the offices of the Central Government; (ii) any establishment of the armed forces or central para-military forces; (iii) any body or corporation owned or controlled by the Central Government; (iv) the High Court of Assam and other [C]ourts of Law including the Tribunals and other organization which has the status of a Court whose proceedings are deemed to be the judicial proceedings; (v) the Secretariat of the Government of Assam; (vi) the Secretariat of the Assam Legislative Assembly and (vii) any office, body or authority as may be notified by the State Government.”

Rajasthan Right to Information Act, 1999 which came into force in June 2000.

1.60 The burgeoning demand for right to information led by civil society organisations coupled with the demand for repeal of the Official Secrets Act, 1923, could not be ignored by the decision-makers. Consequently, the first major draft legislation was circulated by the Press Council of India in 1996. This draft legislation affirmed the right of every citizen to information from any public body, and that 'public body' included not only the State as defined under Article 12 of the Constitution but also all undertakings, non-statutory authorities, companies, corporations, societies, trust-firms or cooperative societies owned or controlled by private individuals and institutions whose activities affect the public interest, effectively bringing both, the corporate sector and the NGOs within the purview of the proposed legislation.<sup>27</sup>

1.61 The Government of India, subsequently, constituted a Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Sri H.D. Shourie. The Working Group was asked to examine the feasibility and the need for having a full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive governance and also examine the framework of rules with reference to the Civil Services (Conduct) Rules and Manual of Office Procedure. The Working Group submitted its report in May 1997 along with a draft Freedom of Information Bill. The draft Bill enabled the authorities to withhold such information, the disclosure of which would not subserve any public interest. It further narrowed the definition of

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<sup>27</sup>Sudhir Naib, *The Right to Information Act, 2005 – A Handbook* 24-26 (Oxford University Press, New Delhi, 2011).



public authority by excluding private sector and those NGOs that were not substantially funded or controlled by the Government, watering down quite a few of the positive aspects of the draft circulated by the Press Council of India.<sup>28</sup> After deliberations, the Freedom of Information Act, 2002 was passed by the Parliament, which received the assent of the President in 2003. However, since this Act was never notified in the Official Gazette, it could not be enforced. In retrospect, it was realised that this Act could not have fulfilled the aspirations of the public.

1.62 The National Commission to Review the Working of the Constitution (NCRWC), under the Chairmanship of former Chief Justice of India, Justice M.N. Venkatchaliah, submitted its report dated 31<sup>st</sup> March 2002. It identified the right to information as a fundamental right, and also stated that the major assumption behind a new style of governance is the citizen's access to information. The Report added that, much of the common man's distress and helplessness could be traced to lack of his access to information and knowledge of the decision-making processes. It was further stated that the Government must assume a major responsibility and mobilise skills to ensure flow of information to the citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory, minimising manipulative and dilatory tactics of the *babudom*, and most importantly putting a considerable check on graft and corruption.<sup>29</sup>

1.63 The **Common Minimum Programme** of the UPA Government promised to make a law on right to information that

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<sup>28</sup>*Id.* at 26.

<sup>29</sup>The Report of NCRWC, referred in J.N. Barowalia, *Commentary on the Right to Information Act, 2005* 8 (Universal Law Publishing Co., New Delhi, 3<sup>rd</sup> edn., 2012).

would be more progressive, participatory and meaningful. The Government set up a National Advisory Council which suggested significant amendments to the Freedom of Information Act which prompted the repeal of this Act and the drafting of the Right to Information Bill *de novo*. The RTI Bill was tabled before the Lok Sabha on 23<sup>rd</sup> December 2004 but was later on referred to the Parliamentary Standing Committee. The final Report of the Standing Committee was tabled before the Lok Sabha on March 21, 2005.<sup>30</sup> The Bill was passed by both Houses of the Parliament in May 2005 and received assent of the President on 15<sup>th</sup> June 2005. The RTI Act came into force on 12<sup>th</sup> October 2005 with the issuance of notification and its publication in the Official Gazette.

1.64 It has been aptly remarked that, law is a regulator of human conduct.<sup>31</sup> However, no law can effectively serve its purpose unless it is accepted by the society and has an equally effective enforcement mechanism backing it up. Acceptance by the society automatically follows when the conduct of the decision-makers themselves reflects integrity, transparency and accountability in actions affecting public interest.

1.65 The onus of protecting this interest ultimately rests on the shoulders of the Government whose duty it is, to look after the welfare of the people. Where a society has chosen democracy over any other form of governance it is evident that the citizens want transparency in the conduct of those who are in a position to affect their interests. Such citizens may at any given point in time call upon the stakeholders to be accountable for their actions and in that scenario the Government of those elected from among the citizenry itself has few options except to come up with a

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<sup>30</sup> Sri Suresh Pachouri, Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Parliamentary Affairs; Lok Sabha Debate on Right to Information Bill, 10<sup>th</sup> May 2005 at 351.

<sup>31</sup> J.N. Barowalia, *supra* note 30 at 5.

mechanism to accommodate that demand. It can be clearly observed from the perusal of the slew of Supreme Court decisions as well as from the genesis and evolution of the RTI Act, 2005, that the right of the populace to know and be informed has been considered to be a sacrosanct right for the smooth working of democracy in India.

## CHAPTER II

### REFERENCE TO COMMISSION AND REPORTS OF VARIOUS COMMITTEES

2.1 The Supreme Court, in the *Cricket Association of Bihar* case, made reference to the Law Commission of India to examine the issue of bringing BCCI under the purview of the RTI Act, 2005 and make pertinent recommendations to the Government.

2.2 It is trite that the right to information has been considered as a sine qua non to the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. There have been quite a few Commissions and Committees that have made valuable suggestions with regard to a better translation of this right within the framework of the Constitution itself as well as in independent statutes.

2.3 In this regard, the Report of National Commission to Review the Working of the Constitution, 2002 (NCRWC) merits foremost attention.

#### **A. NCRWC Report, 2002<sup>32</sup>**

2.4 Under Chapter 3 of this Report, certain amendments to fundamental rights were suggested.

2.5 Regarding the definition of 'State' it was averred that –

Fundamental rights guaranteed by the Constitution are, in the absence of specific constitutional provisions, mainly enforceable against 'the State'. The definition of 'the State' in Article 12 being an 'inclusive' one, courts have ruled that where there is pervasive or predominant governmental control or significant involvement in its activity, such bodies, entities

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<sup>32</sup>Vide the Report of NCRWC under the Chairmanship of Justice M.N. Venkatachaliah, 31-03-2002.

and organizations fall within the definition of ‘the State’.

It is recommended that in Article 12 of the Constitution, the following Explanation should be added: -

Explanation – In this Article, the expression “other authorities” shall include any person in relation to such of its functions which are of a public nature.

2.6 It was further recommended that Article 19(1)(a) must be amended to expressly include the freedom of press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It was also proposed to amend Article 19(2) adding a further restriction on disclosure of information received in confidence except if required in public interest.

2.7 NCRWC recommended that Articles 19(1)(a) and 19(2) be amended to read as follows:

*Art. 19(1) All citizens shall have the right -*

*(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas.*

*19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.*

2.8 As can be observed, the NCRWC advised to include within the scope of other authorities – any person in relation to such of its functions which are of a public nature, thus expanding the ambit of application of Article 19(1)(a), and simultaneously making the right to information enforceable against such bodies whose functions are in the nature of public functions.

### **B. 179<sup>th</sup> Report of the Law Commission of India, 2001<sup>33</sup>**

2.9 Chapter IV of this Report dealt with aspects related to right to information as included within the scope of right to freedom of speech and expression. The Report discussed several cases which reaffirmed that the right to information is a fundamental right under the Constitution.

2.10 It should be noted that the timing of submission of this Report coincided with the time when there was mobilisation of thought and resources regarding the Freedom of Information Bill, 2000.

### **C. Report of the Pranab Mukherjee Committee, 2001**

2.11 A Parliamentary Standing Committee on Home Affairs, known as the Pranab Mukherjee Committee, 2001, was appointed to review and examine the Freedom of Information Bill, 2000.

2.12 The Committee heard the representatives of Commonwealth Human Rights Initiative (CHRI), Dr. Madhav

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<sup>33</sup> Under the chairmanship of Justice B.P. Jeevan Reddy, submitted on 14-12-2001.



Godbole, former Union Home Secretary, Shri A.G. Noorani, Senior Advocate and Prof. Manubhai Shah, Managing Trustee, Consumer Education and Research Society (CERS), in its meeting held on 24 January 2001. On 8 February 2001, it heard the representatives of the Mazdoor Kisan Shakti Sangathan and Justice P.B. Sawant, Chairman, Press Council of India. In addition to this, the Committee received written suggestions from Shri B.G. Deshmukh, former Cabinet Secretary. These individuals and organisations put forward several suggestions and amendments. The Committee forwarded the views of these experts/organisations to the Ministry of Personnel, Public Grievances and Pensions for its comments. The Committee itself was of the view that many of these important suggestions were not covered in the Bill, and that the Government should consider and incorporate them to make the Bill more comprehensive.<sup>34</sup>

#### **D. Report of the Working Group for Drafting of the National Sports Development Bill 2013**

2.13 To look into the issue of transparency and good governance in National Sports Federations (NSFs), Ministry of Sports established a working group under the chairmanship of Justice (Retd.) Mukul Mudgal. The group also comprised of various sports administrators, legal experts, and eminent sportspersons like Abhinav Bindra and former India hockey skipper Viren Rasquinha. The group prepared and submitted a draft bill titled the 'National Sports Development Bill, 2013' to the Ministry in the July 2013.

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<sup>34</sup> Report of the Department-Related Parliamentary Standing Committee on Home Affairs, *Seventy-Eighth Report on Freedom of Information Bill, 2000*, presented before the Rajya Sabha on 25th July, 2001, laid on the table of the Lok Sabha on 25th July, 2001, available at: [http://164.100.47.5/rs/book2/reports/home\\_aff/78threport.htm](http://164.100.47.5/rs/book2/reports/home_aff/78threport.htm) (last visited on 04-01-2018).

2.14 This draft Bill made various suggestions including setting up of an Appellate Sports Tribunal and a Sports Election Commission; however, noteworthy from the context of this Report was the proposed Chapter IX ‘Applicability of Right to Information Act, 2005’; which *inter alia* provided for all the National Sports Federations to be deemed to be public authorities under section 2(h) of RTI Act, 2005, requiring them to perform their duties and discharge their functions in terms of the said Act.

### **E. Lodha Committee Report, 2016<sup>35</sup>**

2.15 It is true that there exist measures to ensure a certain level of transparency and accountability in the functioning of societies in India, but then these measures have proved to be inadequate to effectively combat corruption and other irregularities that have made their way into the mode of operation of these societies. Taking this into consideration the Supreme Court appointed a Committee comprising of Justice R.M.Lodha, former Chief Justice of India, Justice Ashok Bhan, Justice R.V.Raveendran, former Judges of the Supreme Court. This Committee was mandated *inter alia* to examine and make suitable recommendations to the BCCI for reforms in its practices and procedures and necessary amendments in the Memorandum of Association and Rules & Regulations.

2.16 The Committee prepared and distributed a questionnaire containing a hundred and thirty-five questions under eight different heads such as organisation, structure and leadership; audit, accounts and finances; oversight and transparency etc. The Committee also conducted over thirty-five days of sittings in

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<sup>35</sup> Report of the Supreme Court Committee on Reforms in Cricket (also known as the ‘Lodha Committee Report’), *available at*: [http://www.gujaratcricketassociation.com/file-manager/lodha/Lodha\\_Committee\\_Report.pdf](http://www.gujaratcricketassociation.com/file-manager/lodha/Lodha_Committee_Report.pdf) (last visited on 08-12-2017).

Mumbai, Bangalore, Chennai, Kolkata, Hyderabad and New Delhi interacting with seventy-four persons around India including Former Captains, International and First-Class Players, Coaches, Managers, Administrators, Journalists, Talent scouts, Authors, Lawyers, Club Owners, Selectors and also a former Chief Justice of a High Court. Additionally, the Committee extensively examined media reports, documentaries, other published material, draft legislation, books and articles, alongwith several “unsolicited (but always welcome) missives from cricket fans, local experts and administrators about how maladministration is rife in all parts of the country.”

2.17 The Committee made the following key recommendations:

- The Legislature must “seriously consider” bringing BCCI under the purview of the RTI Act.
- There should be a Steering Committee headed by former Home Secretary G.K. Pillai with former national cricketers, Mohinder Amarnath, Diana Edulji and Anil Kumble as members.
- The term of an office bearer of BCCI shall not be of more than 3 years.
- An office bearer can have a maximum of three terms in all.
- No office bearer shall have consecutive terms. There shall be a cooling-off period at the end of each term.
- There should be a separate governing body for the IPL.
- Players and BCCI officials should disclose their assets to the Board as a measure to ensure they do not bet.
- In the interest of democratic representations of states, it proposed ‘One State – One Member – One Vote’. Also, no proxy voting of individuals should be permitted.
- No BCCI office-bearer should be Minister or government servant.

2.18 The Lodha Committee was aware that its recommendations would most likely invoke varied responses from stakeholders, but it believed that, with the Supreme Court of India feeling need to step-in to restore the game of cricket in India to its pristine glory, stern steps recommended by the Committee were inevitable.

2.19 Thus, it can be seen that the issues revolving around the right to information, lack of transparency and accountability within various sectors of public importance, have been discussed time and again. The legal status of the bodies representing these sectors has been a moot question. Consequently, invoking the writ jurisdiction of the Supreme Court and the High Courts, in the matter concerning actions of these bodies or inactions thereof, has become the order of the day.

## CHAPTER III

### CONCEPT OF STATE UNDER ARTICLE 12 OF THE CONSTITUTION

3.1 Article 12 of the Constitution of India over the decades, been the subject matter of great interpretational exercise. There have been many deliberations on the scope and extent of the term ‘State’ defined in this Article.

3.2 The Article reads as follows:

*In this [P]art, unless the context otherwise requires, ‘the State’ includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

3.3 This definition was initially considered as exhaustive and limited to authorities stipulated under this Article and those that could be read *ejusdem generis*. Till the year 1967, the Courts had taken the view that even statutory bodies, Universities, Selection Committees for admissions to Government Colleges were not “other authorities” for the purpose of this Article.

3.4 However, this position changed when a Constitution Bench of the Supreme Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal*,<sup>36</sup>(*Rajasthan State Electricity Board* case) interpreted the term ‘other authorities’ to include all Constitutional and Statutory bodies on whom powers were conferred by law and it was held that it is not at all material that some of the powers

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<sup>36</sup> AIR 1967 SC 1857.

conferred were for the purpose of carrying on activities that were commercial in nature.

3.5 Even after this new, expanded scope of the term 'other authorities', in 1969, the Apex Court once again examining the said term, pronounced that a company incorporated under the Companies Act was outside the purview of 'State' as it was not formed statutorily and was not subject to discharge any statutory duty.<sup>37</sup>

3.6 But then in 1975, another Constitution Bench of the Supreme Court, in the case of *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*,<sup>38</sup>(*Sukhdev Singh* case) when faced with the question of status of public corporations, such as, Oil & Natural Gas Commission(ONGC), the Industrial Finance Corporation(IFC) and the Life Insurance Corporation of India (LIC), set up by the statutes for commercial purposes, whether can be included in the term 'other authorities' within the meaning of Article 12. The Court answered the same in the affirmative, and made the following observations:

*The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation...A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State...The governing power wherever located must be subject to the fundamental Constitutional limitations. The need to subject the power centers to the control of Constitution require an expansion of the concept of State action...the ultimate question which is relevant for our purpose is whether such a corporation is an*

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<sup>37</sup>*Praga Tools Corporation v. C.V. Imanual*, AIR 1969 SC 1306.

<sup>38</sup> AIR 1975 SC 1331.

*agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?*

3.7 A special mention is required to be made of the case of *Sabhajit Tewary v. Union of India*,<sup>39</sup>(*Sabhajit Tewary* case), decided on the same day as the *Sukhdev Singh* case, where the Apex Court took a contrary view holding that the Council of Scientific and Industrial Research (CSIR) was not ‘other authority’ for the following reasons – (a) that it did not have a statutory character like ONGC, LIC or IFC but was merely a society incorporated in accordance with the provisions of Societies Registration Act; and (b) that the employees of CSIR did not enjoy the protection available to government servants as contemplated under Article 311 of the Constitution.

3.8 Later in 1978, in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa*,<sup>40</sup> while dealing with the terms ‘regal’ and ‘sovereign’ functions, the Supreme Court held that such terms are used to define the term ‘governmental’ functions, despite the fact that there are difficulties that arise while giving such a meaning to the said terms, for the reason that the government has entered the field of industry. Thus, only such services should be excluded from the sphere of industry, by necessary implication, which are governed by separate rules and Constitutional provisions such as Articles 310 and 311.

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<sup>39</sup> AIR 1975 SC 1329.

<sup>40</sup> AIR 1978 SC 548.

3.9 Thereafter in the landmark decision of *Ramana Dayaram Shetty v. International Airports Authority of India*,<sup>41</sup>(*International Airports Authority* case) the Supreme Court held as under:

*A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matter. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature or the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even while the directors are appointed by Government, they may be completely free from governmental control in the discharge of their*

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<sup>41</sup> AIR 1979 SC 1628. See also, *K. Ramanathan v. State of Tamil Nadu*, AIR 1985 SC 660.



*functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question 'there is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.*

3.10 In the case of *Ajay Hasia v. Khalid Mujib Sehravardi*,<sup>42</sup> (*Ajay Hasia* case) where a Regional Engineering College whose administration was carried on by a society registered under the Societies Act 1898, question arose as to whether it could fall under the definition of 'State' and thus be amenable to the writ jurisdiction of the Supreme Court under Article 32. It was held by the Court that a society is not on the same footing as the Government of India or the Government of any State, so what remains to be seen is whether it would fall under the ambit of 'other authorities'. The Court emphasised that the concept of agency or instrumentality of the Government is not limited to a corporation created by a statute but is equally applicable to a company or a society and in each individual case it would have to be decided, on a consideration of relevant factors. The Court laid down the relevant tests to determine the existence of State agency or instrumentality, relying on the *International Airport Authority* case, summarised as follows:

1. If the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

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<sup>42</sup> AIR 1981 SC 487.

3. Whether the corporation enjoys a monopoly status which is State conferred or State protected.
4. Whether the State has a 'deep and pervasive' control over it.
5. If the functions of the entity are of public importance and closely related to governmental functions.
6. If a department of Government itself is transferred to a corporation.

3.11 The Court added that these tests were not conclusive or clinching but they were merely indicative indicia which have to be used with care and caution, while stressing the necessity of a wide meaning to be placed on the expression 'other authorities'.

3.12 In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*,<sup>43</sup>(*Pradeep Kumar Biswas* case) the majority view had been that the tests laid down in *Ajay Hasia* case were not rigid set of principles so that a body falling within one of them must be considered to be 'State'. The question in each case would be whether on facts the body is financially, functionally, and administratively dominated by, or under the control of the Government. Additionally, such control must be pervasive. Mere regulatory control, whether statutory or otherwise is not sufficient. If these conditions are met, then a body can be called 'State'. In this case the decision rendered in *Sabhajit Tewary* case was overruled and it was held by the majority that CSIR was 'State' within the meaning of Article 12 of the Constitution.

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<sup>43</sup> (2002) 5 SCC 111. See also, *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, Uttar Pradesh v. Satrughan Nishad*, (2003) 8 SCC 639; *Federal Bank Ltd. v. Sagar Thomas*, AIR 2003 SC 4325; *G. Bassi Reddy v. International Crops Research Institute*, AIR 2003 SC 1764.

## **CHAPTER IV**

### **RTI LAWS & SPORTS BODIES: HUMAN RIGHTS PERSPECTIVE**

4.1 Globally, sports have influenced different aspects of human life ranging from physical and mental well-being, professional employment, interpersonal relationship development, acting as a social bridge between diverse races and communities to even acting as an arrow in the quiver of statecraft. The relation between human existence and sports is uniquely intricate; and, what, therefore, inevitably ensues, is the interplay of sports with human rights.

4.2 The dicta of human rights, being universal in its application, cannot be discounted by sporting organisations. Restrictions on the free flow of information erodes the cardinal democratic values enshrined in the Constitution of India. Denial of information aids the abuse of power by selected segments of the society by excluding the masses politically, socially and economically. The concept of human development is directly linked to human rights. A rights-based approach demands participation in governance and development, which guaranteed access to information can provide.<sup>44</sup>

4.3 Sports bodies even though traditionally autonomous, are gradually being brought into the fold of regulation due to the monopoly status of these bodies, their scale and intrinsic public nature of their functions. Rampant malpractices in these entities and related issues broadly denote the need for application of

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<sup>44</sup>*Available*

at: <http://www.humanrightsinitiative.org/programs/ai/rti/india/articles/RTI%20as%20a%20Human%20Right%20and%20Developments%20in%20India.pdf> (last visited on 02-01-2018).

human rights law to these bodies. However, an impediment faced in this regard is the understanding of how human rights can be enforced against private bodies, including sports federations.

4.4 This chapter would reflect on this firstly by elucidating on right to information as a human right, secondly by examining the principles governing the application of human rights law to private bodies, and thirdly by examining human rights in the context of sports.

#### **a. Right to Information as a Human Right**

4.5 The existence of a right to have access to government information is increasingly accepted around the world, both at the domestic and international levels. With countries such as Mexico and Paraguay designating the ‘right to information’ as the “human right of access to information”. At the domestic level, a right to information was seen to be finding its place in the Constitutional law of several nations, and since the early 1990s, there has been a huge upsurge in the number of States adopting Freedom of Information laws.<sup>45</sup>

4.6 There is now widespread acceptance of the right to information being an essential part of free expression; found in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and the regional human rights treaties in Africa and the Americas.<sup>46</sup>

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<sup>45</sup>Roger Vlugels, “Overview of all FOI Laws”, Fringe Special (2011), *available at*: [http://www.right2info.org/resources/publications/laws-1/ati-laws\\_fringe-special\\_roger-vlugels\\_2011-oct](http://www.right2info.org/resources/publications/laws-1/ati-laws_fringe-special_roger-vlugels_2011-oct) (last visited on 02-01-2018). *See also*, Ackerman and Sandoval-Ballesteros, “The Global Explosion of Freedom of Information Laws” 58 *Adm. L. Rev.* 85(2006).

<sup>46</sup>M. Mc Donagh, “The Right to Information in International Human Rights Law” 13 (1)*HR L Rev.* (2013).

4.7 The right to information has been frequently endorsed by international human rights treaties, as coming within the scope of right to expression. Such bodies have, however, based their recognition of a right to information on the enjoyment of other rights as well, i.e. the right to respect for private life; the right to a fair trial; the right to life; social and economic rights; and the right to take part in public affairs.<sup>47</sup>

4.8 Right to freedom of expression has been relied upon as the umbrella right for the right to information. And, nearly all international human rights treaties emphasise on protecting this right.<sup>48</sup>

4.9 The right to information is a basic right that buttresses good governance, democracy and the practical realisation of human rights. Good governance is not achieved simply by having efficient government or even a democratically elected government. Freedom of information and the assurance of widespread citizen participation in public affairs and an active civil society are essential for the full realisation of democracy and to develop a culture of human rights and accountability.<sup>49</sup> The recognition of right to information is crucial for achieving these ends, hence there is a need for a guaranteed and legislated right to information. Internationally, the legislations on access to information are known as 'Freedom of Information laws'.

4.10 This distinction may appear semantical, however, it is a

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<sup>47</sup>*Ibid.*

<sup>48</sup> Article 19, ICCPR 1966; Article 13, American Convention on Human Rights 1969; Article 10, European Convention on Human Rights and Fundamental Freedoms 1950; and Article 9, African Charter on Human and Peoples' Rights 1981.

<sup>49</sup> Report by the International Advisory Commission of CHRI, chaired by M Reynolds, titled Human Rights and Poverty Eradication: A Talisman for the Commonwealth, *available at*: <https://goo.gl/1RSGWg> (last visited on 08-01-2018).

crucial one and cannot be ignored. It must be kept in mind that the term 'rights' in general implies corresponding duties. The 'citizens' right to information' casts a duty on the Government to ensure that information sought for is provided. The term 'Freedom', on the other hand, does not convey a clear sense of duty on the Government to provide information to the public.

### **- Constitutional Position**

4.11 While some countries recognise right to Information explicitly in their Constitutions, in others the judiciary has interpreted the Right to freedom of speech and expression to include the Right to Information. Though the 'right to information' has not been explicitly recognised in the Constitution of India, the Apex Court has interpreted through several decisions that this right is a part of the 'right to freedom of speech and expression' under Article 19(1)(a). In addition, the Supreme Court of India has gone on to say that **the 'right to know' is an integral part of the 'right to life', and unless one has the 'right to information', the 'right to life' cannot be enjoyed meaningfully.**[emphasis added]<sup>50</sup>

4.12 The right to information under international law has its roots in Article 19 of the Universal Declaration of Human Rights (UDHR) and in Article 19 of the ICCPR, where it is provided that everyone enjoys the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The UN Human Rights Committee (UNHRC) has provided a clear enunciation of what the right involves, emphasizing that Article 19 "embraces a right of access

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<sup>50</sup>See, *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*, AIR 1989 SC 190.

to information held by public bodies”. “Such information”, the Committee noted, “includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production”.<sup>51</sup>

4.13 From the early days of their mandate’, Special Rapporteurs, appointed by Economic and Social Council (ECOSOC), have elaborated on the right to information. In the second Report of the mandate, the Special Rapporteur highlighted the “vitally important” roles served by the right to information.<sup>52</sup>

4.14 In 1998, the Report of Special Rapporteur, submitted to the UN Commission on Human Rights underscored the importance of right to information as follows:<sup>53</sup>

*The right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own...the right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by the Government in all types of storage and retrieval systems...*

4.15 In 2013, the Report of Special Rapporteur, gave a full rationale for a robust right to information:

*...public authorities act as representatives of the public, fulfilling a public good; therefore, in principle, their decisions and actions should be transparent. A culture of*

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<sup>51</sup>General Comment No. 34 of the UNHRC, CCPR/C/GC/34, para. 18, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (last visited on 21-12-2017).

<sup>52</sup>Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45 E/CN.4/1995/32, para. 135, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/750/76/PDF/G9475076.pdf?OpenElement> (last visited on 21-12-2017).

<sup>53</sup>Chris Albin-Lackey, Human Rights Watch, Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria available at: <https://goo.gl/4W4mny> (last visited on 01-04-2018).

*secrecy is acceptable only in very exceptional cases, when confidentiality may be essential for the effectiveness of their work. There is consequently a strong public interest in the disclosure of some types of information. Moreover, access to certain types of information can affect the enjoyment by individuals of other rights. In such cases, information can be withheld only in very exceptional circumstances, if at all.*<sup>54</sup>

4.16 Access to information has become a standard element of several human rights treaties,<sup>55</sup> and has been widely adopted in various international agreements pertaining to sustainable development, the environment, food and agriculture and corruption, among other substantive areas.<sup>56</sup> Freedom of opinion and freedom of expression are recognised as indispensable conditions for the full development of the person. They are essential for any society.<sup>57</sup> ICCPR designates the freedom of expression as a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.<sup>58</sup>

4.17 Recognising the significance of right to freedom of information, Sustainable Development Goal (SDG) 16 of “Peace Justice and Strong Institutions”, links access to information to

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<sup>54</sup>Report of Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression, A/68/362, para. 20, *available at*:<https://undocs.org/A/68/362> (last visited on 19-12-2017).

<sup>55</sup>Report of Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression, A/70/361, para. 6, *available at*:  
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/273/11/PDF/N1527311.pdf?OpenElement> (last visited on 20-12-2017).

<sup>56</sup>*See*, Report prepared by Article 19 (a British human rights organisation), titled “Open Development: Access to Information and the Sustainable Development Goals”, *available at*:  
<https://www.article19.org/wp-content/uploads/2017/07/Open-Development-Access-to-Information-and-the-SDGs-2017.pdf> at 6-9 (last visited on 21-12-2017).

<sup>57</sup>*See*, U.N. Doc. CCPR/C/90/D/1173/2003, Communication No. 1173/2003, *Abdelhamid Benhadj and Ali Benhadj v. Algeria*, *available at*:  
[http://www.worldcourts.com/hrc/eng/decisions/2007.07.20\\_Benhadj\\_v\\_Algeria.htm](http://www.worldcourts.com/hrc/eng/decisions/2007.07.20_Benhadj_v_Algeria.htm) (last visited on 02-01-2018); *See also*, U.N. Doc. CCPR/C/64/D/628/1995, Communication No. 628/1995, *Tae Hoon Park v. Republic of Korea*, *available at*:  
<http://hrlibrary.umn.edu/undocs/session64/view628.htm> (last visited on 02-01-2018).

<sup>58</sup>General Comment No. 34, ICCPR, *supra* note 52.



good governance, human rights and accountability; and calls on all Member States to adopt and implement public access to information laws and policies.<sup>59</sup>

4.18 Human rights law also recognizes the connection between right to freedom of expression as contained in Article 19 of ICCPR and other rights. The right to information is also closely connected to Article 25 (1) of ICCPR, which grants every citizen the right and opportunity to “take part in the conduct of public affairs”. The Human Rights Committee has emphasized the importance of freedom of information to public participation “without censorship”.<sup>60</sup> The Office of the High Commissioner for Human Rights (OHCHR) reiterated and expanded this point *inter alia* in its 2015 Report on the Promotion, Protection and Implementation of the Right to Participate in Public Affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them.<sup>61</sup> Additionally, over a hundred countries have been identified as having Constitutional provisions which either specifically recognize the right to information or include it through case law as a fundamental aspect of freedom of expression.<sup>62</sup>

4.19 It is in this complex information landscape, that the United Nations agreed in 2015 on a new comprehensive framework: the 2030 Sustainable Development Agenda to end poverty, protect

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<sup>59</sup> General Assembly Resolution A/RES/70/1, paras. 16.6-16.10, *available at*: [http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf) (last visited on 21-12-2017).

<sup>60</sup> General Comment No. 25, adopted by the Human Rights Committee under Article 40, paragraph 4, of ICCPR, CCPR/C/21/Rev.1/Add.7, para. 25, *available at*: <https://goo.gl/2myYmt> (last visited on 02-01-2018).

<sup>61</sup> A/HRC/30/26

<sup>62</sup> See, Roy Peled and Yoram Rabin, “The Constitutional Right to Information” 42 *Columbia HR L Rev* (2011).

the planet, and ensure prosperity for all. To achieve these aims, the Agenda outlines seventeen SDGs in areas including poverty, health, agriculture, gender equality, innovation, and youth employment, with specific targets for each Goal, and one hundred and sixty-nine targets in total. Within the SDGs framework, access to information and communication technologies underpins the achievement of the development goals. Eleven targets present access to information as a key tenet for achieving their aims. The Agenda differs dramatically from its predecessor, the Millennium Development Goals, in that it takes a rights-based approach to sustainable development. It acknowledges that sustainable development is multifaceted and all its constitutive components are interrelated. Therefore, to address development challenges, it requires addressing all types of rights; social, economic, cultural, political, civil, and informational.<sup>63</sup>

#### **b. Application to Private Entities**

4.20 Traditionally, the human rights jurisprudence developed with a view to provide rights for individuals and groups and imposing obligations on States. Human rights law foresees that individuals and entities not only have rights under its ambit but also duties. The ways in which private persons and entities are attributed duties and held responsible are by far not as straightforward or finely tuned as their enjoyment of rights under the human rights law.

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<sup>63</sup>B Gigler, “Informational Capabilities: The Missing Link for the Impact of ICT on Development” (2011); D Souter, “ICTs, SDGs and economic, social and cultural right” (2016); A Esterhuysen, “Why focus on economic, social and cultural rights? Reflections on trends, achievements and challenges in building a global movement working for human rights on the internet” (2011), *cited in* Maria Garrido and Michelle Fellows, “Access to information and the sustainable development goals” (2017), *available at*: <https://da2i.ifla.org/sites/da2i.ifla.org/files/uploads/docs/da2i-2017-introduction.pdf> (last visited on 03-01-2018).

## **i) State Responsibility**

4.21 Human rights law aims at strengthening the obligations of States with regard to the behaviour of private persons and entities. This can be highlighted through the jurisprudence of the UN Human Rights Committee<sup>64</sup> (UNHRC) and the European Court of Human Rights (ECHR). In a significant augmentation of the efficacy of human rights protections, States have been held responsible by the ECHR for a breach of a positive obligation by failing to protect one private individual against interference by others.<sup>65</sup>

4.22 The General Comment no. 31 on ICCPR published by the UNHRC emphasises this very State responsibility:

*...However, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities...*<sup>66</sup>

4.23 The expansion of the scope of positive obligations of States has equipped the monitoring bodies and the courts with the important powers to demand that certain actions be taken by

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<sup>64</sup>*William Eduardo Delgado Páez v. Colombia*, Communication No. 195/1985, U.N. Doc. CCPR/C/39/D/195/1985 (1990); *Franz Nahlik v. Austria*, Communication No. 608/1995, U.N. Doc. CCPR/C/57/D/608/1995 (1996).

<sup>65</sup>*Costello-Roberts v. United Kingdom*, 247-C Eur. Ct. H.R. (ser. A) (1993); *Woś v. Poland*, 2005-IV Eur. Ct. H.R.; *Storck v. Germany*, 2005-V Eur. Ct. H.R.; *Sychev v. Ukraine*, App. No.4773/02 (2005) (unreported) available at: <http://www.echr.coe.int/echr/> (last visited on 21-12-2017), cited in S. Palmer, "Public functions and private services: A gap in human rights protection" *Intl Jnl of Constl Law* 585-604 (2008), available at: <https://academic.oup.com/icon/article/6/3-4/585/654442> (last visited on 03-01-2018).

<sup>66</sup> General Comment No. 31, Para. 8, available at: <https://goo.gl/ZsYVic> (last visited on 03-01-2018).

States, that by extension restrict the freedom of action of private persons and entities where rights of other persons or important public interest, even fundamental values are concerned.<sup>67</sup>

4.24 This can be understood in the context of the need to hold sports federations accountable even while these bodies claim to be autonomous, for the simple, yet a very important, reason that substantial public interest is at stake.

## **ii) Duties of Private Bodies**

4.25 Human rights are rights possessed simply by virtue of being a human. They are innate, intrinsic, inalienable and *sine qua non* to integrity and dignity of a human person. Though they may be most effectively implemented through the domestic legal system, the system cannot be said to be the source of these rights.<sup>68</sup> Thus, mere State responsibility in ensuring human rights is an incomplete conception of human rights. For capturing the essence of the fundamental nature of these rights, their application to private entities is also essential.

4.26 The African Charter on Human Rights and Peoples' Rights states that "every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community."<sup>69</sup>

4.27 The UN Guiding Principles on Business & Human Rights,

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<sup>67</sup>Ineta Ziemele, "Human Rights Violations by Private Persons and Entities: The Case-Law of International Human Rights Courts and Monitoring Bodies"*EUI Working Papers*(2009)*available at:*

[http://cadmus.eui.eu/bitstream/handle/1814/11409/AEL\\_2009\\_08.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/11409/AEL_2009_08.pdf?sequence=1&isAllowed=y)(last visited on 03-01-2018).

<sup>68</sup> Rosalyn Higgins, *Problems and Process. International Law and How We Use It*, 96 (Oxford: Clarendon Press, 1994).

<sup>69</sup> Article 27, African Charter on Human Rights and Peoples' Rights.

state that business should “respect” human rights, “avoid infringing on the human rights of others” and “address adverse human rights impacts with which they are involved. This responsibility “exists over and above compliance with national laws and regulations protecting human rights”<sup>70</sup>

4.28 UN Guiding Principle 15 states that a company’s responsibility to respect human rights – whether involved through causing, contributing to, or being directly linked to an impact – should be met by having in place policies and processes, including:<sup>71</sup>

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

4.29 In the course of Parliamentary debate on the passage of the Human Rights Act of the United Kingdom, it was clear that private bodies delivering privatised or subcontracted public services were meant to be included within the scope of the Act through the “public function” concept.<sup>72</sup> These private individuals and bodies are in a position to breach human rights guarantees and, therefore, should be subject to the same legal constraints as if they were a public entity exercising the power.<sup>73</sup>

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<sup>70</sup> UN Guiding Principle 11, *available at*:

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (last visited on 03-01-2018).

<sup>71</sup> *Id* at 15-16.

<sup>72</sup> 314 Parl. Deb., H.C. (6th ser.) (1998) 409–410. Debate *cited in* S. Palmer, note 65.

<sup>73</sup> Catherine Donnelly, *Delegation of Governmental power to private parties: A comparative perspective*, 228 (Oxford University Press, 2007) *cited in* S. Palmer, *supra* note 65.

4.30 The Supreme Court in the case of *Jeeja Ghosh & Anr. v. Union of India & Ors.*,<sup>74</sup> held that:

*Insofar as obligation to fulfil these rights are concerned, the same is not limited to the Government or government agencies/State but even the private entities (which shall include private carriers as well) are fastened with such an obligation which they are supposed to carry out. We have also mentioned that in the year 2000, Respondent No. 2, i.e. DGCA (Directorate General Civil Aviation) had issued CAR (Civil Aviation Requirements) with regard to 'carriage' by persons with disabilities and/or persons with reduced mobility.*

4.31 It is not only the Government agencies which are obligated to respect these rights, but private bodies acting as Government agents or to which public functions are delegated or subcontracted should also be held accountable similarly.<sup>75</sup>

### **c. Human Rights and Sports**

4.32 In the context of sporting events, following major risks of Human Rights violations have been identified :<sup>76</sup>

- Violence and Discrimination
- Human Trafficking
- Forced Labour
- Child Labour
- Corruption

4.33 The observance of human rights is dependent on a

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<sup>74</sup>AIR 2016 SC 2393.

<sup>75</sup>National Human Rights Commission(NHRC), Annual Report 2003-2004, at 9.

<sup>76</sup>Mega-Sporting Events Platform for Human Rights, "Human Rights Risk Mitigation in the Sports Context" (Sporting Chance White Paper 2.3, Version 1, 2017), available at: [https://www.ihrb.org/uploads/reports/MSE\\_Platform%2C\\_Human\\_Rights\\_Risk\\_Mitigation\\_in\\_the\\_Sports\\_Context%2C\\_Jan\\_2017.pdf](https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Human_Rights_Risk_Mitigation_in_the_Sports_Context%2C_Jan_2017.pdf) (last visited on 19-12-2017).

democratic society. Human rights may be inherent, but for them to be enabled, people ought to be empowered with information and knowledge so that they can scrutinize the functioning of the authorities to check human rights violations. People need to be capable of participating in the governance of their community. This cannot be done in a meaningful manner unless the RTI law, as a tool, gives the entitlement and mechanism to obtain information.

4.34 Institute for Human Rights and Business's (IHRB) Report titled "Striving for Excellence: Mega Sporting Events and Human Rights" included a series of recommendations for sports governing bodies and other key stakeholders involved in preparing and staging a Mega Sports Event. These recommendations are intended to support efforts made by sports governing bodies to ensure that human rights are more central to the way they do business in the years ahead.<sup>77</sup>

4.35 The Report suggested for there to be an explicit public commitment for observance of human rights (as enshrined in UDHR) in the sports' governing body's constitution or codes of ethics. It further emphasised on the need for a strategy to integrate a human rights-approach in line with the UN Guiding Principles on Business and Human Rights (Guiding Principles) into the sports' governing body's relevant operating procedures; for example: the candidate city/country bid requirements etc.

### **-Corruption**

4.36 The word 'corruption' can be defined in myriad ways, ranging from 'moral depravity' to 'misuse of public power'. In most

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<sup>77</sup> Institute for Human Rights and Business, "Sports Governing Bodies and Human Rights" (2014), available at: <https://www.ihrb.org/megasportingevents/mse-resources> (last visited on 19-12-2017).

of the cases, 'corruption' takes meaning from its manner of manifestation and depends on the context of its usage.

4.37 Black's Law Dictionary (8<sup>th</sup> edition) defines 'corruption' as, "Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; esp., the impairment of a public official's duties by bribery." A second definition of the word provided therein goes as, "The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others." Another definition provides, "The word 'corruption' indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety."<sup>78</sup>

4.38 The present context requires 'corruption' to be viewed as an act or omission, inconsistent with the normal course of duty, done under the influence of external factors such as money, favours, coercion, undue influence etc. Corruption, in a civilised society is a malady, a malignant form of cancer, which, if left unchecked, erodes, *inter alia*, the moral as well as economic fibre of a nation. Corruption also has dire consequences on 'human rights' due to several direct and indirect effects.

4.39 In the case of, *Vineet Narain v. Union of India*,<sup>79</sup> the Supreme Court, while stressing on the need for enhanced transparency, observed,

*The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and*

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<sup>78</sup>Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 855 (Foundation Press, Mineola, New York, 3<sup>rd</sup>edn.,1982), referred in Black's Law Dictionary (8<sup>th</sup>edn.)

<sup>79</sup> AIR 1998 SC 889. See also, *State of Madhya Pradesh v. Shri Ram Singh*, AIR 2000 SC 870.



*funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries.*

4.40 The Apex Court in the aforementioned case added that, “it cannot be doubted that there is a serious human rights aspect involved in a proceeding regarding corruption”, as the prevailing corruption in public life, if allowed to continue unimpeded, will ultimately erode Indian polity.

4.41 Likewise, in the case of *State of Maharashtra, through CBI, Anti-Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar*,<sup>80</sup> the Apex Court held that, “Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights violation in itself, as it leads to systematic economic crimes.”

4.42 The negative effect of corruption on human rights was further highlighted by the Supreme Court in the case of, *Subramanian Swamy v. Manmohan Singh & Anr.*,<sup>81</sup> wherein it was observed that, corruption, not only, poses severe danger to the concept of constitutional governance, but also to the Rule of Law, and the very foundation of democracy in India. The court added that it is undisputable that with the beginning of corruption, all rights are automatically extinguished and that the phenomena of corruption “devalues human rights, chokes development and

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<sup>80</sup>(2012) 12 SCC 384 : (2013) 2 SCC (Cri) 784 : (2013) 2 SCC (L&S) 201.

<sup>81</sup>(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666.

undermines justice, liberty, equality, fraternity, which are the core values of Preambular vision”. In another case, *Subramanian Swamy v. Director, Central Bureau of Investigation and Anr.*,<sup>82</sup> the Apex Court observed, that corruption is “an enemy of the nation”.

4.43 The OHCHR has acknowledged the close link between human rights violations and corruption,<sup>83</sup> stating that “There is an urgent need to increase synergy between inter-governmental efforts to implement the United Nations Convention against Corruption and international human rights conventions.”

4.44 Corruption is a major hurdle in the process of economic development and in modernisation of a country. It undermines development by weakening the institutions on which economic growth depends.<sup>84</sup> It is also suggested that corruption can be viewed as an additional tax on business transactions.<sup>85</sup> There is a consensus between majority of the published works that the correlation between corruption and GDP (Gross Domestic Product) is negative.<sup>86</sup> The World Bank and International Monetary Fund (IMF) presume that corruption has significant negative effects on economic growth. Corruption undermines development by distorting the Rule of Law and weakening the

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<sup>82</sup> (2014) 8 SCC 682.

<sup>83</sup> Available

at: <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx> (last visited on 19-12-2017); See also, Mega-Sporting Events Platform for Human Rights, “Corruption and Human Rights in the Sports Context” (Sporting Chance White Paper 1.3, 2017), available

at: [https://www.ihrb.org/uploads/reports/MSE\\_Platform%2C\\_Corruption\\_and\\_Human\\_Rights\\_in\\_the\\_Sports\\_Context%2C\\_Jan\\_2017.pdf](https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Corruption_and_Human_Rights_in_the_Sports_Context%2C_Jan_2017.pdf) (last visited on 19-12-2017).

<sup>84</sup> R. Klitgaard, *Controlling Corruption* (University of California Press, Berkeley, CA, 1988), cited in Danilo Lučić, Mladen Radišić, et al., “Causality between corruption and the level of GDP”, available at: <http://www.tandfonline.com/doi/full/10.1080/1331677X.2016.1169701> (last visited on 04-01-2018).

<sup>85</sup> K.M. Murphy, A. Shleifer, et al., “Why is Rent-Seeking So Costly to Growth?” *AmrncEcoRev.* 409–414 (1993), cited in Danilo Lučić, Mladen Radišić, et al., *supra* note 84.

<sup>86</sup> Danilo Lučić, Mladen Radišić, et al., *supra* note 85.

institutional foundation on which economic growth depends.<sup>87</sup> Corruption affects economic development by plummeting private investment and conceivably even by altering the composition of government expenditure, specifically by lowering the share of spending on foundational/infrastructural heads such as education, among others.<sup>88</sup>

4.45 If the relationship between the level of economic development measured by GDP and perceived corruption levels across countries is examined, it can be generally observed that the relationship is negative, i.e., poor countries tend to be corrupt. On the other hand, upon examination of the relationship between perceived corruption levels and economic growth rate across countries, it is revealed that the growth rates vary more for countries with high-level corruption.<sup>89</sup> That is to say, while many highly corrupt countries have low economic growth rates, there are also countries that have demonstrably achieved rapid economic growth under rampant governmental corruption. This suggests that some countries may achieve high economic growth regardless of high instances of corruption.<sup>90</sup>

4.46 That being said, a report by the State Bank of India (SBI), examining the co-relation between the corruption levels and GDP growth rate in India, indicates that between 2011 and 2016, as

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<sup>87</sup>Available at: <http://www1.worldbank.org/publicsector/anticorrupt/index.cfm> (last visited on 04-01-2018), cited in Danilo Lučić, Mladen Radišić, *et al.*, *supra* note 85.

<sup>88</sup> P. Mauro, "Corruption and growth" *Qtlly Jrnlof Eco* 681–712(1995), cited in Danilo Lučić, Mladen Radišić, *et al.*, *supra* note 85.

<sup>89</sup>Danilo Lučić, Mladen Radišić, *et al.*, *supra* note 85.

<sup>90</sup> This phenomenon is known as "greasing the wheel" effect where restrictive economic policies of governments are overcome tangentially by way of corruption, *see, supra* note 85. Specifically, in the case of Asian countries, it is referred to as the "Asian Paradox" wherein it is observed that several Asian economies have high levels of corruption as gauged by conventional indicators but at the same time they record high GDP growth. *See generally*, P. Bardhan, "Corruption and Development: A Review of Issues" 35(3) *Jrnl of Eco Lit* (1997), cited in Danilo Lučić, Mladen Radišić, *et al.*, *supra* note 85; *Also see*, Issues Paper on Corruption and Economic Growth, available at:

<https://www.oecd.org/g20/topics/anti-corruption/Issue-Paper-Corruption-and-Economic-Growth.pdf> (last visited on 04-01-2018).

India's rank in Transparency International's global corruption index improved from 96 to 79, its GDP growth rate improved by half a percentage point. The decrease in corruption level in India has translated into foreign fund inflows. The data shows that there has been a significant improvement in foreign investor confidence towards India with the net FDI inflows to India increasing by 64% in the last six years, i.e. from \$21.9 billion in the fiscal year 2012 to \$35.9 billion in the fiscal year 2017.<sup>91</sup>

4.47 The Supreme Court, *In Re: Special Courts Bill*,<sup>92</sup> aptly remarked that, "Corruption and repression – cousins in such situation – hijack development process and in the long run lagging national progress means ebbing people's confidence in constitutional means to social justice." Thus, it would be appropriate to say that corruption in any form, if rampant in public or private sphere, obliterates without distinction, slowly but steadily.

4.48 The duty of sports federations to uphold rights is not merely moral and abstract but rather practical and expedient. A legal obligation has been envisaged through the UN guiding principles on business and human rights. The international body, in emphasising on the significance of human rights, goes so far as to impose responsibility even on purely commercial private entities. **Thus, bodies such as sports federations that are in fact performing public functions, come within this fold by implication.** [emphasis added]

4.49 The aforesaid has also been recognized in Professor Ruggie's Report on FIFA, published in April 2016, that adapts the

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<sup>91</sup>Available at:

<https://timesofindia.indiatimes.com/business/india-business/lower-corruption-level-boosts-gdp-growth-says-sbi-report/articleshow/61028872.cms> (last visited on 04-01-2018).

<sup>92</sup> AIR 1979 SC 478.

UN Guiding Principles to FIFA's operations including the FIFA World Cup. Ruggie discusses briefly the corruption risks linked to FIFA and its events and their impact on human rights:

*Bribery and corruption is not only about giving and taking money for private gain that has been intended for broader social purposes. It may also enable the parties involved to evade legal and contractual requirements, including those protecting human rights. Lack of financial integrity, therefore, is a foundational source of human rights risks.*<sup>93</sup>

4.50 The sooner it is realised that sports markets are public goods, the more self-evident will be the public interest in ensuring fair play in their governance. The *mantra* must be to promote what has the potential to deliver value to the market and limit that which doesn't. Ultimately the role of sports governance must be to deliver value to the athlete, potential athlete, the fan, and the public in general. In all of these, are embedded the broader concept of national interest.<sup>94</sup>

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<sup>93</sup> John G. Ruggie, "For the Game. For the World. FIFA and Human Rights", *available at*: [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Ruggie\\_humanrightsFIFA\\_reportApril2016.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Ruggie_humanrightsFIFA_reportApril2016.pdf) (last visited on 03-01-2018).

<sup>94</sup> Nandan Kamath, "The Way Forward for Sports Federations", *available at*: <http://www.sportstarlive.com/magazine/the-way-forward-for-sports-federations/article19715238.ece> (last visited on 03-01-2018).

## CHAPTER V

### PERUSAL OF THE TERMS ‘PUBLIC AUTHORITY’, ‘PUBLIC FUNCTIONS’ AND ‘SUBSTANTIALLY FINANCED’

#### 1. PUBLIC AUTHORITY

##### a. National Perspective

5.1 To determine whether BCCI, under the existing legal framework, can be included within RTI Act, 2005, it is required to be ascertained whether BCCI can be termed as a ‘public authority’ within the meaning assigned to the term under section 2(h) of the Act.

5.2 Section 2(h) defines the term ‘public authority’ as:

*‘public authority’ means any authority or body or institution of self- government established or constituted—*

*(a) by or under the Constitution;*

*(b) by any other law made by Parliament;*

*(c) by any other law made by State Legislature;*

*(d) by notification issued or order made by the appropriate Government, and **includes**[emphasis added] any—*

*(i) body owned, **controlled**[emphasis added] or substantially financed;*

*(ii) **non-Government organization substantially financed,***

***directly or indirectly by funds provided by the appropriate Government; [emphasis added]***

5.3 A perusal of the above section establishes that a body ‘owned, controlled or substantially financed’, as well as a ‘non-Government Organisation substantially financed’ directly or indirectly by appropriate Government, would be covered in the definition of ‘public authority’ under the RTI Act, 2005.

5.4 In the case of *LIC of India v. Consumer Education and Research Centre*,<sup>95</sup> the Supreme Court observed that “every action of public authority or any person acting in public interest or its acts[that]give rise to public element, should be guided by public interest”.

5.5 In the case of *M.P. Varghese v. Mahatma Gandhi University*,<sup>96</sup> the Kerala High Court observed that the definition of ‘public authority’ has a much wider meaning than that of the term ‘State’ under Article 12 of the Constitution. The Court further observed that the definition of ‘State’ under Article 12 is primarily in relation to enforcement of fundamental rights through courts, whereas the RTI Act, 2005 is for providing an effective legislative framework for “effectuating the right to information” as recognised under Article 19 of the Constitution.

5.6 In the case of *Dhara Singh Girls High School through its Manager, Virendra Chaudhary v. State of Uttar Pradesh & Ors.*,<sup>97</sup> the Court held that “whenever there [is] even [an] iota of nexus regarding control [and] finance of public authority over the activity of private body or institution or an organisation” etc. the same would fall under the provisions of section 2(h) of the RTI Act.

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<sup>95</sup>AIR 1995 SC 1811.

<sup>96</sup>AIR 2007 Ker 230.

<sup>97</sup>AIR2008All92; See also *Committee of Management, Azad Memorial Poorva Madhyamik Vidyalaya, Koloura v. State of Uttar Pradesh*, AIR 2008 (NOC) 2641 (All); *Committee of Management, Ismail Girls National Inter-College, Meerut v. State of Uttar Pradesh*, AIR 2009 All 236

5.7 The provisions of the RTI Act have to be interpreted in consonance and harmony with the objects and reasons stated therein, giving them the broadest scope so as to ensure that any unscrupulous persons are not exempted under the Act, and are not able to hide anything from the public, benefitting from concealing any illegal activities.<sup>98</sup>

5.8 The meaning/ scope of the term “public authority” defined in section 2(h) of the Act, interpreted by several pronouncements of various forums, is sufficiently comprehensive for the current times. Accordingly, at this stage, the Commission does not see the need for a clarification to the statutory definition. That being said, while working on this Report, and examining the information laws of other jurisdictions, one may feel that there are comparatively more comprehensive definitions.

### **b. International Perspective**

5.9 Internationally, the concept of ‘public authorities/bodies’ can be understood with the help of the definition hereunder:<sup>99</sup>

*‘Public authorities’ include all bodies within the executive, legislative, and judicial branches at all levels of government, constitutional and statutory authorities, including security sector authorities; and non-state bodies that are owned or controlled by government or that serve as agents of the government. ‘Public authorities’ also include private or other entities that perform public functions or services or operate with substantial public funds or benefits, but only in regard to the performance of*

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<sup>98</sup>Ibid

<sup>99</sup>Global Principles on National Security and the Right to Information (“The Tshwane Principles”) (2013), available at: [http://issat.dcaf.ch/download/22892/289132/Global%20Principles%20on%20National%20Security%20and%20the%20Right%20to%20Information%20\(Tshwane%20Principles\)%20-%20June%202013.pdf](http://issat.dcaf.ch/download/22892/289132/Global%20Principles%20on%20National%20Security%20and%20the%20Right%20to%20Information%20(Tshwane%20Principles)%20-%20June%202013.pdf) (last visited on 20-12-2017).



*those functions, provision of services, or use of public funds or benefits.*

5.10 On similar lines, the Human Rights Act, 1998 of the United Kingdom provides, ““Public Authority” includes.... any person certain of whose functions are functions of public nature.”<sup>100</sup>

5.11 In the case of *Finnigan v. New Zealand Rugby Football Union Inc.*,<sup>101</sup> the Court opined,

*[w]hile technically a private and voluntary sporting association, the Rugby Union is in relation to this decision in a position of major national importance, for the reasons already outlined. In this particular case, therefore, we are not willing to apply to the question of standing the narrowest of criteria that might be drawn from private law fields. In truth the case has some analogy with public law issues. This is not to be pressed too far. We are not holding that nor even discussing whether, the decision is the exercise of a statutory power - although that was argued. We are saying simply that it falls into a special area where, in the New Zealand context, a sharp boundary between public and private law cannot realistically be drawn.*

5.12 In South Africa, determination of what a ‘public authority/power’ is, can be seen in the observations made by the Court in the case of *Chirwa v. Transnet Limited and Ors.*,<sup>102</sup>:

*Determining whether a power or function is ‘public’ is a notoriously difficult exercise. There is no simple definition or clear test to be applied. Instead, it is a question that has to be answered with regard to all the relevant factors including: (a) the relationship of coercion or power that the actor has in its capacity as a public institution; (b) the impact of the decision on the public; (c) the source of the power; and (d)*

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<sup>100</sup> Section 6 (3)(b).

<sup>101</sup> [1985] 2 NZLR 159.

<sup>102</sup> [2007] ZACC 23.

*whether there is a need for the decision to be exercised in the public interest. None of these factors will necessarily be determinative; instead, a court must exercise its discretion considering their relative weight in the context.*

5.13 Article 19, paragraph 2 of ICCPR embraces a right to access of information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and date of production. Designation of such bodies may also include other entities when such entities are carrying out public functions.<sup>103</sup>

5.14 The Law of the Republic of Armenia on Freedom of Information, 2003, Article 3 defines ‘Organisation of public importance’ as “private organizations that have monopoly or a leading role in the goods market, **as well as those providing services to public in the sphere of health, sport,** [emphasis added] education, culture, social security, transport, communication and communal services.

5.15 Under the UK Freedom of Information Act 2000 (FOI), the Secretary of State has the power to designate any person **who appears to exercise functions of a public nature** as a public authority [emphasis added].<sup>104</sup>In this manner, anybody, performing public functions or functions of a public nature can be covered under the ambit of the FOI Act.<sup>105</sup>

5.16 In Mexico, the General Act of Transparency and Access to Public Information referring to ‘right to information’ as the

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<sup>103</sup> General Comment No. 34 (ICCPR), Para. 18, *supra* note 44.

<sup>104</sup>Section 5, Freedom of Information Act 2000.

<sup>105</sup> Virginia Hills, “When is it the Public’s Interest for Government Policy Documents to be Disclosed” 3 Convergence 186 (2007).

“human right of access to information”<sup>106</sup>, lays down rather exhaustive criteria for inclusion of ‘individuals and legal entities who receive and use public resources and exercise acts of authority’. Article 81 thereof requires the concerned agency to take into account factors such as **“if a governmental function is performed, the level of public funding, the level of regulation and government involvement, and whether the government participated in its creation”**. [emphasis added]

5.17 Thus, it may be noted that various countries have opted for an exhaustive definition, which even includes private bodies that either perform functions of public importance or are funded by their governments within the ambit of their respective Right to Information/ Freedom of Information Acts.

### **c. Interpretation of the word ‘includes’: -**

5.18 In clause (d) of section 2(h) of the RTI Act 2005 the term ‘includes’ has been used. From an interpretational perspective, it is a truism that when the definition clause in any statute uses the word “means”, what follows is intended to be exhaustive. It becomes a “hard-and-fast” definition and no meaning other than that which is put in the definition can be assigned to the same.<sup>107</sup> On the other hand, when the word “includes” is used in a definition, it appears that the Legislature did not intend to restrict the definition to the items already listed, rather it intended to make the definition enumerative, and not exhaustive. That is to say, a term defined with “include” will retain its ordinary meaning

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<sup>106</sup> Article 4

<sup>107</sup> Lord Esher, M.R. in *Gough v. Gough*, [(1891) 2 QB 665 : 60 LJQB 726 : 65 LT 110]. See also, *P. Kasilingam v. P.S.G. College of Technology* [1995 Supp (2) SCC 348 : AIR 1995 SC 1395].

but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.<sup>108</sup>

5.19 In the case of *N.D.P. Namboodripad v. Union of India*,<sup>109</sup> the Apex Court, while interpreting the word ‘includes’, observed that it has different meanings in different contexts. The Court further said that it was indeed true that generally the word ‘include’ is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive, not restrictive. The Court cited, Justice G.P. Singh’s treatise on interpretation,<sup>110</sup> where it is stated that where a word defined is declared to ‘include’ such and such, the definition is *prima facie* extensive, but the word “include” when used while defining a word or expression, may also be construed as equivalent to “mean and include” in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression.

5.20 In the case of *Principal, M.D. Sanatan Dharam Girls College, Ambala City & Anr. v. State Information Commissioner, Haryana & Anr.*,<sup>111</sup> it was observed by the Punjab & Haryana High Court that the use of the word ‘includes’ in section 2(h)(d) of the RTI Act, indicated that the definition is illustrative and not exhaustive; and, that such “definition it to be taken as *prima facie* extensive” The Court added that the object of the RTI Act is to promote transparency and accountability in the working of every ‘public authority’ and it was vital for democracy that the citizenry is informed and there is transparency of information. Referring to

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<sup>108</sup> *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union*, (2007) 4 SCC 685.

<sup>109</sup> (2007) 4 SCC 502. See also, *Regional Director v. High Land Coffee Works of P.F.X. Saldah*, 1991(3) SCC 617; *C.I.T A.P. v. Taj Mahal Hotel*, 1972 SC 168 (6); *South Gujarat Roofing Tiles Manufactures Association v. State of Gujarat*, (1977) SC 90; *Ponds India Ltd. v. Commissioner of Trade Tax*, 2008 (8) SCC 369.

<sup>110</sup> G.P. Singh, *Principles of Statutory Interpretation* (10th edn., 2006).

<sup>111</sup> AIR 2008 P&H 101.

the long title/preamble of the Act, which *inter alia* emphasises on an “informed citizenry” as vital to the functioning of the democracy in India, the Court further observed that the long title itself highlights the need for a liberal interpretation of the provisions of the Act.

5.21 In the case of *Tamil Nadu Road Development Company Ltd. v. Tamil Nadu Information Commission*,<sup>112</sup> (TNRDC case) the Court adopted a similar approach and noted that the term ‘includes’ entailed that certain words occurring in its proximity should be accorded a liberal interpretation. Additionally, in light of the objective behind enactment and implementation of the Act, it was concluded that a broad and purposive interpretation must be given. The relevant extracts from the judgment are reproduced below:

*If we look at the definition of Section 2(h), which has been extracted herein above, it is clear that the appellant company does not come under the provisions of Section 2(h)(a)(b)(c) or (d), but thereafter Section 2(h)(d) of the definition clause uses the word ‘includes’. It is well known that when the word ‘includes’ is used in an interpretation clause, it is used to enlarge the meaning of the words and phrases occurring in the body of the statute...Therefore, obviously the definition of bodies referred to in Section 2(h)(d)(i) of the RTI Act would receive a liberal interpretation, and here the words which fall for interpretation are the words ‘controlled or substantially financed directly or indirectly by funds provided by the appropriate Government’.... The RTI Act is virtually enacted to give effect to citizen's right to know. Citizen's right to know has been construed by the Hon'ble Supreme Court as emanating from the citizen's right to freedom of speech and expression, which is a fundamental right. So, a legislation, which has been enacted to give effect to right to know, which is one of the basic human rights in today's world, must receive a purposive and broad interpretation.... The*

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<sup>112</sup>(2008) 6 Mad LJ 737.

*RTI Act has also provided a remedy for facilitating the exercise of the right to information and the reason for the remedy is also indicated in the Preamble to the Act. So going by the direction in Heydon's Case, followed by the Supreme Court in Bengal Immunity (supra) such an Act must receive a purposive interpretation to further the purpose of the Act. So any interpretation which frustrates the purpose of RTI Act must be eschewed. Following the said well known canon of construction, this Court interprets the expression "public authority" under Section 2(h)(d)(i) liberally, so that the authorities like the appellant who are controlled and substantially financed, directly or indirectly, by the government, come within the purview of the RTI Act. In coming to the conclusion, this Court reminds itself of the Preamble to the RTI Act which necessitates a construction which will hopefully cleanse our democratic polity of the corrosive effect of corruption and infuse transparency in its activities.*

5.22 Thus, it is evident from the above discussion that the word 'includes' in section 2(h)(d) of the RTI Act, has to be given an illustrative and enumerative meaning and has to be bestowed a liberal interpretation, in line with the Preamble to the Act.

#### **d. Interpretation of the word 'control'**

5.23 The word 'control', as a noun, has been defined in Black's Law Dictionary (8<sup>th</sup> edition) as, "the direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee". As a verb, 'control' has been defined as, "to exercise power or influence over", "to regulate or govern".

5.24 Merriam-Webster dictionary,<sup>113</sup> defines 'control' in the noun form as, "the power to make decisions about how something

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<sup>113</sup> Online version. Available at: <https://www.merriam-webster.com/dictionary/control> (last visited on 28-12-2017).

is managed or done; the ability to direct the actions of someone or something; an action, method, or law that limits the amount or growth of something.” As a verb, ‘control’ is defined as, “to direct the behaviour of (a person or animal); to cause (a person or animal) to do what you want; to have power over (something); to direct the actions or function of (something); to cause (something) to act or function in a certain way”.

5.25 In the case of *Prasar Bharati v. Amarjeet Singh*,<sup>114</sup> the Apex Court observed that, the expression ‘control’, although not defined, in the light of Article 235 of the Constitution of India, has been held to be conferring wide power upon the High Court. The Court referred to the case of *Bank of New South Wales v. Commonwealth*,<sup>115</sup> wherein it was stated that, “the word ‘control’ is an unfortunate word of such wide and ambiguous import that it has been taken to mean something weaker than ‘restraint’, something equivalent to ‘regulation’.”

5.26 Since the word ‘control’ has not been defined in the RTI Act, there is uncertainty in its interpretation. Therefore, in order to determine whether BCCI is a body ‘controlled’ by the Government, it is essential to first decipher the scope of this word within the ambit of the RTI Act.

5.27 In the *TNRDC* case, the Court looked into ‘control’ over a company in terms of the control over its Board of Directors, concluding that where the composition of Board of Directors of a

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<sup>114</sup> (2007) 9 SCC 539. See also, *State of West Bengal v. Nripendra Nath Bagchi*, AIR 1966 SC 447; *Madan Mohan Choudhary v. State of Bihar*, (1999) 3 SCC 396 : 1999 SCC (L&S) 700; *Yoginath D. Bagde v. State of Maharashtra*, (1999) 7 SCC 739 : 1999 SCC (L&S) 1385; *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, (1998) 3 SCC 72 : 1998 SCC (L&S) 786 : AIR 1998 SC 1079.

<sup>115</sup> (1948) 76 CLR 1.

company was controlled by the appropriate government, the company was also ‘controlled’ by the appropriate Government.

5.28 Similarly, in the case of *Nagar Yuwak Shikshan Sanstha v. Maharashtra State Information Commission*,<sup>116</sup> (*Nagar Yuwak* case) ‘control’ was viewed by the Court as possession of control over management of the petitioners.

5.29 In the case of *Panjabrao Deshmukh Urban Co-operative Bank Ltd. (Dr.) v. State Information Commissioner, Vidarbha Region, Nagpur*,<sup>117</sup> (*Panjabrao* case) the Bombay High Court examined the Article 12 test of ‘control’, and stated that the same would apply to public authorities as well, meaning thereby that the control must be ‘deep and pervasive’.

5.30 The Delhi High Court, however, took a different view. In the case of *Indian Railway Welfare Organisation v. D.M. Gautam*,<sup>118</sup> the Court held that the Article 12 test of ‘deep and pervasive’ control would not be relevant in determining whether there was an absence or presence of control in the context of RTI Act.

5.31 Taking the aforesaid view further, the Delhi High Court in the case of *Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa*,<sup>119</sup> (*Krishak Bharti* case), observed that, it is apparent that in all the decisions concerning the word ‘State’ under Article 12, the test evolved is that of ‘deep and pervasive’ control, whereas in the context of RTI Act, there are no such qualifying adjectives *vis-à-vis* the word ‘controlled’.

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<sup>116</sup> AIR 2010 Bom 1.

<sup>117</sup> AIR 2009 Bom 75.

<sup>118</sup> (2010) 169 DLT 508.

<sup>119</sup> (2010) 118 DRJ 176.



5.32 Looking into this issue in the case of *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*,<sup>120</sup> (*Thalappalam* case), the Apex Court observed that the meaning of the expression ‘controlled’, which figures in between the words ‘body owned’ and ‘substantially financed’ under section 2(h)(d) of the RTI Act, must connote the control of a substantial nature exercised by the appropriate Government. The Court further added that the control of the impugned body by the appropriate Government must not be merely supervisory or regulatory, rather it should be of such a degree which amounts to substantial control over the management and affairs of the body.

5.33 The aforesaid guidance provided by the Apex Court in the *Thalappalam* case, i.e. that the ‘control’ must be ‘substantial’, would be better understood in a following section of this Report, where the implications of the word ‘substantial’ are discussed in detail. At this point, suffice it to say, that the word ‘control’ has to be accorded a harmonious construction that is in sync with the object and purpose of the RTI Act. Thus, a construction that supports the foregoing should be embraced, while the one that defeats such purpose needs to be shunned.

## **2. PUBLIC FUNCTIONS**

### **a. National Perspective**

5.34 It may be noted here that in *Ajay Hasia* case, the Supreme Court held that if a corporation is performing functions of public importance, closely related to governmental functions it may be categorised as an agency or instrumentality of the State. As stated earlier, the understanding is that public functions are

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<sup>120</sup> (2013) 16 SCC 82.

those functions which hold importance for the public, affect the public in a significant way, and a body performing those functions can be viewed by the public as an extension or arm of the State.

5.35 Black's Law Dictionary (8<sup>th</sup> edition), talks about 'Public-Function Doctrine' as entailing that a private person's actions constitute State action if the private person performs functions that are traditionally reserved for the State.

5.36 The above-mentioned dictionary also talks about 'Governmental-Function Theory' or 'Public-Function Rationale', as a principle by which private conduct is characterised as State action, especially, for due process and equal protection purposes, when a private party is exercising a public function.

5.37 In the case of *Binny Ltd. v. V. Sadasivan*,<sup>121</sup> the Supreme Court noted that there are private bodies as well, which may be discharging public functions. The Court further said that it is difficult to draw a line between 'public functions' and 'private functions' when they are being discharged by a purely private authority. "A body is performing a 'public function' when it **seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so**[emphasis added]. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.....Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also

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<sup>121</sup>(2005) 6 SCC 657.

perform some types of public function....Non-governmental bodies such as these are just as capable of abusing their powers as is Government”.<sup>122</sup>

5.38 In the case of *G. Bassi Reddy v. International Crops Research Instt. & Anr.*,<sup>123</sup> it was observed by the Supreme Court, that although it is not easy to define what a public function or public duty is, it can be reasonably said that such functions are akin to those performable by the State in its sovereign capacity.

5.39 In the case of *Andi Mukta Sadguru Shree Mukta Jeevandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.Rudani*,<sup>124</sup> the Apex Court observed:

*Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to ‘any person or authority’. The term ‘authority’ used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. **The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant[emphasis added].** What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.*

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<sup>122</sup> de Smith, Woolf & Jowell, *Judicial Review of Administrative Action* (5th Edn.) referred in *ibid.*

<sup>123</sup> AIR 2003 SC 1764.

<sup>124</sup> AIR 1989 SC 1607.

## **b. International Perspective**

5.40 Taking a look at foreign jurisdictions for a clearer understanding of the term ‘public function’, we find that in the case of *Poplar Housing and Regeneration Community Association Ltd v. Donoghue*,<sup>125</sup> the then Chief Justice Lord Woolf proposed a liberal interpretation of the term ‘public function’. He proposed that in order to make an otherwise private act a public one, there must be “a feature or a combination of features which impose a public character or stamp on the act.” Such public characteristics may include statutory authority for the task carried out; the degree of control exercised by the public body over the exercise of the function; and how closely the acts in question are “enmeshed in the activities of the public body.”

5.41 In the case of *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v. Wallbank*,<sup>126</sup> the House of Lords recognised the significance of using a “public function” analysis. Lord Nicholls concluded that there could be “no single test of universal application” in relation to the definition of ‘public function’. It was, however, added that the relevant factors for the claimants included the extent to which the function was being publicly funded, the exercise of statutory powers, the placing of Central Government or local authority in performing the function, or the rendering of a public service.

5.42 Therefore, it can be inferred that, contrary to popular belief, the terms ‘public authority’ and ‘public function’, can be effectively used in reference to private bodies, who by virtue of the

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<sup>125</sup>[2002] Q.B. 48.

<sup>126</sup>[2004] 1 A.C. 546.

nature of their functions, obtain a character typically assumed by the State.

### **3. SUBSTANTIALLY FINANCED**

5.43 A reading of the section 2(h) of the RTI Act establishes that a body owned, controlled or ‘substantially financed’ as well as a non-Governmental Organisation ‘substantially financed’, directly or indirectly, by the appropriate Government, is a ‘public authority’, within the purview of the definition given in the said section.

It, therefore, follows that if a body/entity is substantially financed by the appropriate Government, then even if it is not constituted under the Constitution of India or a Statute, and is a Non-Governmental Organisation/private body, it will be well within the ambit of the RTI Act, 2005.

5.44 To enrich this understanding, it is imperative to understand the meaning and scope of the term ‘substantially financed’. Since this term has not been defined by the Legislature in the RTI Act, other sources are required to be perused for according it a fruitful meaning.

5.45 From an economic standpoint, talking about Public-Private Partnerships (PPPs), the United Nations Economic and Social Commission in Asia and the Pacific (UNESCAP) mentions that land acquisition done by the Government on behalf of the private entity as well as tax incentives, can be classified as Government support measures.<sup>127</sup>

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<sup>127</sup>*Available at:*  
[http://www.unescap.org/ttdw/ppp/ppp\\_primer/351\\_types\\_of\\_government\\_support\\_and\\_incentives.html](http://www.unescap.org/ttdw/ppp/ppp_primer/351_types_of_government_support_and_incentives.html) (last visited on 26-12-2017).

5.46 Similarly, the World Bank while discussing Government support in financing PPPs, elucidates that **the Government may decide to provide direct support for the project, for example through subsidies/grants, equity investment and/or debt**[emphasis added]. Funded support involves the government committing financial support to a project, such as:<sup>128</sup>

- direct support – in cash or in-kind (e.g. to defray construction costs, to procure land, to provide assets, to compensate for bid costs or to support major maintenance);*
- waiving fees, costs and other payments which would otherwise have to be paid by the project company to a public-sector entity (e.g. authorising tax holidays or a waiver of tax liability);*
- providing financing for the project in the form of loans (including mezzanine debt) or equity investment (or in the form of viability gap funding).*

5.47 In terms of waving fees and payments as an example of Government extending financial support, there are also instances of cricket association(s) within the bounds of a local body such as the Municipality, being extended the benefit of tax exemptions on otherwise leviable property taxes.

5.48 In the case of *Palser v. Grimling*,<sup>129</sup> while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial”, i.e., just enough to avoid the *de minimis* principle. The word “substantial” literally means solid, massive etc.

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<sup>128</sup>Available at: [http://ppp.worldbank.org/public-private-partnership/financing/government-support-subsidies#\\_ftn1](http://ppp.worldbank.org/public-private-partnership/financing/government-support-subsidies#_ftn1) (last visited on 26-12-2017).

<sup>129</sup>(1948) 1 All ER 1, 11 (HL).

5.49 Etymologically speaking, in Black's Law Dictionary (6<sup>th</sup> edition), the word “substantial” is defined as “of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.” The word “substantially” has been defined to mean “essentially; without material qualification; in the main; in substance; materially.”

5.50 Interestingly, in the Shorter Oxford English Dictionary (5<sup>th</sup> edition), the word “substantial” means “of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.” The word “substantially” has been defined to mean “in substance; as a substantial thing or being; essentially, intrinsically.” **Therefore, it can be said that the word “substantial” is not synonymous with “dominant” or “majority”. It is closer to “material” or “important” or “of considerable value.” “Substantially” is closer to “essentially”. Both words can signify varying degrees depending on the context**[emphasis added].<sup>130</sup>

5.51 The Chairman, Press Council of India, Justice P.B. Sawant, former judge, Supreme Court of India, underscoring the importance of bringing private bodies within the purview of right to information, opined that:<sup>131</sup>

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<sup>130</sup> Meaning of the term ‘substantial’ as discussed in *Krishak Bharti* case.

<sup>131</sup> Amulya Gopalakrishnan, “Information by right”, *Frontline* (2003) available at: <http://www.frontline.in/static/html/fl2001/stories/20030117002710000.htm> (last visited on 02-04-2018).

*Private bodies, especially where their activities affect the fundamental rights of the public, must be required to disclose information. In times of far reaching privatisation, institutions such as electricity boards and banks cannot be left out of law's scope.*

5.52 In the case of, *The Hindu Urban Cooperative Bank Ltd. v. The State Information Commission & Ors.*,<sup>132</sup>(*The Hindu Urban Cooperative Bank* case), the Punjab & Haryana High Court observed that the word “substantial” has not been defined under RTI Act and has no limited or fixed meaning. For the purpose of legislation, it has to be construed in its ordinary and natural sense relatable to the aims, fundamental purpose and objects sought to be achieved to provide transparency to control corruption and to promote accountability under the RTI Act.

5.53 In the *Thalappalam* case, the Apex Court observed that the expression “substantially financed” in Sections 2(h)(d)(i) and (ii) indicate the degree of financing, which must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc. The Court further stated that:

*Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as ‘substantially financed’ by the State Government to bring the body within the fold of ‘public authority’ Under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent*

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<sup>132</sup>ILR (2011) 2 P&H 64.



*grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i).*

5.54 It was also observed that though the term 'Non-Government Organisations' as such is not defined in the RTI Act, but over a period of time, it has acquired a meaning of its own and has to be seen in that context. If a Non-Government Organisation which though neither owned nor controlled by the State, receives substantial financing from the appropriate Government, it would also fall within the definition of 'public authority' under section 2(h)(d)(ii) of RTI Act.

5.55 The Delhi High Court in the case of *Indian Olympic Association v. Veerish Malik & Ors.*,<sup>133</sup> held that,

*.... what amounts to 'substantial' financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not 'majority' financing, or that the body is an impermanent one, are not material.*

*Equally, that the institution or organization is not controlled, and is autonomous ..... is irrelevant; indeed, the concept of nongovernment organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform or pre-dominantly performs 'public' duties, too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfilment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing.*

5.56 In the case of *Nagar Yuwak* case, it was observed by the Bombay High Court that the term 'substantially financed' has been repeatedly used by the Parliament with a view to eliminate,

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<sup>133</sup>ILR (2010) 4 Del 1.

from the equation, such institutions which are financed directly or indirectly with a small or a little contribution of funds by the appropriate Government.

5.57 In the case of *Population Services International v. Rajesh Dhiman*,<sup>134</sup> the Delhi High Court, while deciding whether the petitioner organisation (PSI) would be ‘public authority’ within the RTI Act, observed that, “if taken on absolute terms, a contribution ranging between Rs. 11 to 16 crores by the Government from its corpus of public funds cannot be considered as insignificant”. Such a contribution would render PSI as being ‘substantially financed’ by the Government. The Court further observed that, “...if over 1 crore or over 10% of the revenue funding comes from Government, directly or indirectly, it would certainly qualify as substantial funding.”

5.58 In the case of *Visvesvaraya Technological University v. Assistant Commissioner of Income Tax*,<sup>135</sup> the Apex Court placed reliance on the judgment of the High Court of Karnataka in the case of *CIT v. Indian Institute of Management*,<sup>136</sup> particularly on the view expressed that the expression “wholly or substantially financed by the Government” as appearing in section 10(23-C) of the Income Tax Act, 1961, cannot be confined to annual grants and must include the value of the land made available by the Government. The Apex Court further referred to the observations of the Karnataka High Court, which had held that, apart from annual grants the value of the land made available, the investment by the Government in the buildings and other infrastructure and the expenses incurred in running the

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<sup>134</sup> W.P.(C) 3422/2012: 2013 SCC OnLine Del 3659.

<sup>135</sup> (2016) 12 SCC 258.

<sup>136</sup> (2014) 226 TAXMAN 301 (Kar)

institution must all be taken together while deciding whether the institution is wholly or substantially financed by the Government.

5.59 In the case of *Krishak Bharti* case, the Delhi High Court held that:

*It is important to note that the word 'financed' is qualified by the word 'substantially' indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the government. They must be 'substantially financed'. In simple terms, it must be shown that the financing of the body by the government is not insubstantial. The word 'substantial' does not necessarily connote 'majority' financing. In an annual budget of Rs. 10 crores, a sum of Rs. 20 lakhs may not constitute a dominant or majority financing but is certainly a substantial sum. An initial corpus of say Rs.10 lakhs for such an organization may be 'substantial'. It will depend on the facts and circumstances of a case. Merely because percentage-wise the financing does not constitute a majority of the total finances of that entity will not mean that the financing is not 'substantial'. A reference may be made to two different meanings of the word 'substantial'.*

5.60 Further, in the case of *CIT v. Parley Plastics Ltd.*,<sup>137</sup> the Bombay High Court held that the term “substantial” does not mean more than 50% and it can be 10% or 20%, depending on the other terms and conditions. If the legislature had any percentage more than 50% in mind, it would have been so provided for.

5.61 In the case of *CIT v. Desia Vidyashala Samiti Shimoga*,<sup>138</sup> the Karnataka High Court, held that the Government grant to the extent of 34.33% amounts to substantial financing and

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<sup>137</sup>322 ITR 63 (Bom.).

<sup>138</sup>ITA No. 1133 of 2008, dated 02.08.2011.

consequently, exemption under section 10(23C)(iiiab) of the Income Tax Act, 1961, is allowable.

5.62 In the case of *The Hindu Urban Cooperative Bank* case, it was held by the Punjab & Haryana High Court that, in the larger context of public interest, the funds which the Government deal with, are public funds. They belong to the people. The Court added:

*In that eventuality, wherever public funds are provided, the word 'substantially financed' cannot possibly be interpreted in narrow and limited terms of mathematical, calculation and percentage (%). Wherever the public funds are provided, the word 'substantial' has to be construed in contradistinction to the word 'trivial' and where the funding is not trivial to be ignored as pittance, then to me, the same would amount to substantial funding coming from the public funds. Therefore, whatever benefit flows to the petitioner-institutions in the form of share capital contribution or subsidy, land or any other direct or indirect funding from different fiscal provisions for fee, duty, tax etc. as depicted hereinabove would amount to substantial finance by the funds provides directly or indirectly by the appropriate Government for the purpose of RTI Act in this behalf.*

5.63 In the case of *Munish Kumar Seth v. Public Information Officer*,<sup>139</sup> it was observed by the Punjab State Consumer Disputes Redressal Commission (PSCDRC), that the words, “substantially financed, directly or indirectly by funds provided by appropriate Government” are wide enough to bring within its sweep not only direct fund outflow from State exchequer, but also indirect monetary benefit which may have been facilitated by Governmental action. **The PSCDRC added that, the word “funds” occurring in sub-clause (d) of Section 2 (h) have to be**

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<sup>139</sup>2012(3)RCR(Civil)660.

**interpreted to include not only a direct cash outflow from Government to non- Government organization, but also indirect “funds” such as a financial concession or benefit or subsidy or remission of what was otherwise due to Government under any law or levy. Going by the dictionary meaning of the word “fund”, it includes not only money received or collected but also money saved.**[emphasis added]

The 'Cambridge Dictionary online' defines the word fund as: a sum of money saved, collected or provided for a particular purpose; money needed or available to spend on something; a lot of something. Therefore, if a private organisation saves money by avoiding payment of what was otherwise due from it to Government under any law, rule or regulation, it would amount to a financial benefit to that organization.

5.64 In the case of *Mother Dairy Fruit and Vegetable Private Limited v. Hatim Ali & Ors.*,<sup>140</sup> the Delhi High Court held that it is relevant to note that the expression “substantially financed” is suffixed by the words “directly” or “indirectly”. Thus, the finances indirectly provided by an appropriate Government would also have to be considered while determining whether a body has been substantially financed by an appropriate Government. The test to be applied is whether funds provided by the Central Government, directly or indirectly, are of material or considerable value to the body in question.

5.65 In the case of *R.K. Jain & Ors. v. Indian Bank Association (IBA)*,<sup>141</sup> the CIC referred to its earlier observations made in the

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<sup>140</sup>AIR 2015 Delhi 132.

<sup>141</sup>Complaint Nos. CIC/MP/C/2015/000044 and CIC/SH/C/2016/000123. Decided On: 13-11-2017.

case of *Shikha Singh v. Tuberculosis Association of India*,<sup>142</sup> as follows:

*While considering the question of substantiality of finance, the aspect of public interest cannot be overlooked because the funds, which the Government deal with, are public funds. They belong to the people. In that eventuality, wherever public funds are provided, the word 'substantially financed' cannot possibly be interpreted in narrow and limited terms of mathematical, calculation and percentage). Wherever the public funds are provided, the word 'substantial' has to be construed in contradistinction to the word 'trivial' and where the funding is not trivial to be ignored as pittance, then to me, the same would amount to substantial funding coming from the public funds. Therefore, whatever benefit flows to the respondent organization in the form of any grant, donation, subsidy, land or any other direct or indirect funding would amount to substantial finance by the funds provided directly or indirectly by the appropriate Government for the purpose of RTI Act in this behalf.*

5.66 The CIC in this case held that 43% public sector resource, tax concessions, publicity funding, accommodation in twenty cities without rent makes the IBA totally dependent upon the Government and public-sector banks for survival and functioning.<sup>143</sup>

5.67 In the case of *Darbari v. PIO, Willington Gymkhana Club*,<sup>144</sup> the CIC observed that the fact that the Gymkhana Club, Ooty was enjoying the exclusive possession of land worth thousands of rupees, admeasuring 67 acres in a prime area of tourist destination city of Udakamandalam for a trifling lease of Rs. 220

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<sup>142</sup>File No: CIC/AD/C/2010/001271 dated 29/1/2011.

<sup>143</sup>*R.K. Jain & Ors. v. Indian Bank Association (IBA)*, Complaint Nos. CIC/MP/C/2015/000044 and CIC/SH/C/2016/000123. Decided On: 13-11-2017

<sup>144</sup>CIC/SH/A/2014/000684. Decided On: 04-12-2017.

per year, was enough to establish that the Gymkhana Club Ooty was directly and substantially funded by Government, and hence it had to be answerable and accountable for its activities. Consequently, the club was held to be a public body and public authority under section 2(h) of the RTI Act.

5.68 In the case of *National Stock Exchange of India Limited v. Central Information Commission & Ors.*,<sup>145</sup> the Delhi High Court observed that financing in terms of percentage *vis-à-vis* total budget is not important and it is not necessary that it should be ‘majority’ financing. What amounts to “substantial financing” cannot be put in a straight-jacket formula of universal application and has to be adjudged on a case-to-case basis.

5.69 On the same lines, in the case of *Manju S. Kumar v. Sanskriti School*<sup>146</sup>, the CIC while reviewing the scope of the term ‘substantial financing’, held that it is not necessary that the grant be “continuous or current”.

5.70 In the case of *Shri Subhash Chandra Aggarwal & Shri Anil Bairwal v. Indian National Congress/All India Congress Committee & Ors.*,<sup>147</sup> the CIC held that political parties such as INC/AICC, BJP, CPI(M), CPI, NCP and BSP have been substantially financed by the Central Government and are, therefore, public authorities under section 2(h) of the RTI Act. The rationale of the Commission was that thirty per cent of their income that would have otherwise paid by way of income tax was been given up in their favour by the Central Government. The Commission added that it is undisputed that this is substantial

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<sup>145</sup> (2010) 100 SCL 464 (Del).

<sup>146</sup> No. CIC/OK/C/2006/000129

<sup>147</sup> 2013(3)RCR(Civil)400.

financing, though indirectly. In addition to this, the concessional allotment of land and buildings in prime locations in the national capital, State headquarters and/or District level, amounted to a considerable sum by way of direct and indirect financing.



## CHAPTER VI

### ANALYSIS OF THE LEGAL STATUS OF BCCI

6.1 In light of the discussion in the foregoing chapters, the legal status of BCCI may now be examined.

6.2 The questions pertaining to the legal status of BCCI under Article 12 of the Constitution has arisen before the Delhi High Court in various cases *viz Mohinder Amarnath & Ors. v. BCCI*,<sup>148</sup> (*Mohinder Amarnath case*), *Ajay Jadeja v. Union of India & Ors.*,<sup>149</sup> (*Ajay Jadeja case*), and *Rahul Mehra & Anr. v. Union of India*,<sup>150</sup> (*Rahul Mehra case*).

6.3 In *Mohinder Amarnath case*, BCCI was held not to be an instrumentality of State taking into consideration the contractual nature of the rights and duties. However, in the *Ajay Jadeja case*, the Court, dealing with the question of nature of the duties performed by BCCI and that of the rights infringed, held that a writ under Article 226 is maintainable given the public nature of activities undertaken by BCCI. The Court referred to the judgment in the case of *Air India Statutory Corporation & Ors. v. United Labour Union & Ors.*,<sup>151</sup> wherein the Supreme Court had emphasised on the public nature of the functions performed by a private body as necessary criterion for falling under Article 226. The Court also recognised that even if a matter arises from a contract purely under private law, a writ will lie if the contract gives rise to a public duty or if the action thereunder involves violation of fundamental rights.

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<sup>148</sup> CW.NO.632/89. Decided on 23-08-1989.

<sup>149</sup> (2002) 95 DLT 14.

<sup>150</sup> (2004) 78 DRJ 155 (DB).

<sup>151</sup> (1997) 9 SCC 377 : 1997 SCC (L&S) 1344.

6.4 In *Rahul Mehra* case, it was clarified that due to the withdrawal of the writ petition by Ajay Jadeja, the order passed thereof also stood vacated. However, it was affirmed that writ petition against BCCI is maintainable owing to the monopoly nature of the functions performed by BCCI in regulating and controlling the game of cricket. According to the Court the words “any person or authority” used in Article 226 may cover any other person or body performing public duty.

6.5 Certain observations of the Apex Court, in the case of *Board of Control for Cricket, India & Anr. v. Netaji Cricket Club & Ors.*,<sup>152</sup> (*Netaji Cricket Club* case) pertinent to the current deliberation, are reproduced hereunder:

*The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a **monopoly status as regard regulation of the sport of cricket**[emphasis added] in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia **enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same**[emphasis added]. Ordinarily, **its full members are the State Associations except, Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers**[emphasis added]. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. **Its control over the sport of competitive cricket is deep,***

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<sup>152</sup>AIR 2005 SC 592 : (2005) 4 SCC 741. Paras 80-82.

**pervasive and complete**[emphasis added]. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards...keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body in-charge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of the society.

### **Whether BCCI should be 'State' within the meaning of Article 12?**

6.6 In the case of *Zee Telefilms Ltd. v. Union of India*,<sup>153</sup> (*Zee Telefilms* case) the issue that arose before a Constitution Bench of the Supreme Court, was whether BCCI was 'State' within Article 12 and consequently could a writ petition under Article 32 of the Constitution be maintainable against BCCI. The Court held:

*It would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus, the little control that the Government may be said to have on the Board is not pervasive in nature. Such control is purely regulatory and nothing more.*

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<sup>153</sup>AIR 2005 SC 2677: (2005) 4 SCC 649. See also, *A.C. Muthiah v. Board of Control for Cricket in India &Anr.*, (2011) 6 SCC 617.

6.7 Referring to the case of *Chander Mohan Khanna v. National Council of Educational Research and Training*,<sup>154</sup> and *Som Prakash Rekhi v. Union of India*,<sup>155</sup> the Court stated:

1. *The Board is not created by a statute*
2. *No part of share capital of the Board is held by the Government.*
3. *Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.*
4. *The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.*
5. *There is no existence of a deep and pervasive State control. All functions of the Board are not public functions nor are they closely related to governmental functions.*
6. *The Board is not created by the transfer of a government-owned corporation. It is an autonomous body.*

6.8 BCCI, was, therefore, held not to be ‘State’ under Article 12 of the Constitution. The Supreme Court sounded a note of caution in this case that the situation prevailing in the *Rajasthan State Electricity* case and *Sukhdev Singh* case, was no longer prevalent as in the meantime the socio-economic policy of the Government of India had changed, and hence there was no need to further expand the scope of ‘other authorities’ under Article 12 by judicial interpretation.

### **Minority View in *Zee Telefilms* Case**

6.9 The minority view in the *Zee Telefilms* case was expressed by Justice Sinha on behalf of Justice S.N. Variava and himself; and the same deserves a special mention here. It was said that our Constitution is an ongoing document and thus requires a liberal interpretation and therefore the interpretation of Article 12 with regard to the exclusive control and management of the game

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<sup>154</sup>AIR 1992 SC 76.

<sup>155</sup>AIR 1981 SC 212.

of cricket by the Board and the enormous power exercised by it, called for a new approach.<sup>156</sup>

6.10 The minority judges also maintained that the *Pradeep Kumar Biswas* judgement was not a binding precedent within the meaning of Article 141 of the Constitution. This was because the question which arose in the *Pradeep Kumar Biswas* case was, whether the judgment in *Sabhajit Tewary* was correctly rendered or not. Since the decision in *Pradeep Kumar Biswas* case revolved around the activities of CSIR vis-à-vis the tests laid down in *Sabhajit Tewary* case, the ratio must be considered to be in respect of those questions only. They added that the questions raised in the present case were “neither canvassed nor was there any necessity therefor”.<sup>157</sup>

6.11 It was further said that:

*Broadly, there are three different concepts which exist for determining the questions which fall within the expression ‘other authorities’:*

- (i) The corporations and the societies created by the State for carrying on its trading activities in terms of Article 298 of the Constitution wherefor the capital, infrastructure, initial investment and financial aid, etc. are provided by the State and it also exercises regulation and control thereover.*
- (ii) Bodies created for research and other developmental works which are otherwise governmental functions but may or may not be a part of the sovereign function.*
- (iii) A private body is allowed to discharge public duty or positive obligation of public nature and furthermore is allowed to perform regulatory and controlling functions and*

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<sup>156</sup> Para 55. *Note:* All future references to the paragraphs of the *Zee Telefilms* case are of the SCC citation.

<sup>157</sup> Paras 257 and 258.

*activities which were otherwise the job of the Government.*<sup>158</sup>

6.12 The judges (minority view) further observed that one cannot have the same yardstick for judging different bodies to ascertain whether any of them fulfils the requirement of the law and what actually is necessary to see are the functions of the body concerned.<sup>159</sup>

6.13 After perusal of both domestic and foreign jurisprudence, the learned judges laid down certain tests that could assist in solving this complex issue:<sup>160</sup>

- (i) When the body acts as a public authority and has a public duty to perform.*
- (ii) When it is bound to protect human rights.*
- (iii) When it regulates a profession or vocation of a citizen which is otherwise a fundamental right under a statute or its own rule.*
- (iv) When it regulates the right of a citizen contained in Article 19(1)(a) of the Constitution available to the general public and viewers of the game of cricket in particular.*
- (v) When it exercises a de facto or a de jure monopoly.*
- (vi) When the State outsources its legislative power in its favour.*
- (vii) When it has a positive obligation of public nature.*

6.14 Continuing thereon, it was said that the traditional tests of control - financial, functional and administrative, by the Government as laid down in *Pradeep Kumar Biswas* case would apply only when a body is created by the State itself for different purposes but incorporated under the Companies Act or registered

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<sup>158</sup> Para 70.

<sup>159</sup> Para 71 and 73.

<sup>160</sup> Para 172.

under the Societies Registration Act. Those tests may not be applicable in a case like that of BCCI, where it was established as a private body many years ago. Being allowed by the State to represent the country at the international stage it became an archetypal body for Indian cricket. The magnanimity and enormity of the functions of BCCI provide it with a monopolistic status for all practical purposes. BCCI tinkers with the fundamental rights of citizens pertaining to their right of speech or right of occupation, and has a final say in several matters such as those of registration of players, umpires and others connected with the game of cricket, which is extremely popular in the country.

6.15 By virtue of being the organisers of competitive cricket between one association and another or representing different States or different organisations having the status of State, making bye-laws for the same BCCI is *de facto* legislating on 'sport' related activities. This is essentially a State function in terms of Entry 33 List II of the Seventh Schedule of the Constitution. Additionally, BCCI enjoys State patronage as a national federation, conferred by the Central Government. This necessitates and justifies the application of a different test.<sup>161</sup>

6.16 Thus, it can be seen that the minority judgment in the *Zee Telefilms* case did make some very interesting points which are extremely pertinent to the discussion endeavoured here.

6.17 Now, in conjunction with the above deliberation some uncontentious points can be culminated as follows:

1. *With BCCI, one finds an entity permitted de facto by the State to represent the country at the international stage.*

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<sup>161</sup> Para 173.

*BCCI selects the 'Indian Team', and the selected players wear the national colours.*<sup>162</sup>

2. *ICC recognises BCCI as the 'official' body representing India.*
3. *Neither the Government, nor BCCI have ever sought to challenge, discuss or change the aforesaid status.*
4. *BCCI practically enjoys a monopolistic status in controlling and regulating the game of cricket in India. BCCI controls the policy formulation related to cricket and its implementation, affecting the country at large, which is essentially a State function.*<sup>163</sup>
5. *BCCI and its actions/activities, directly and indirectly, affect the fundamental rights of citizens, players, and other functionaries.*

6.18 The aforementioned points bear a striking resemblance to a 'State-like' entity wielding 'State-like' powers. In light of these facts, it is difficult to convince oneself that BCCI does not fall within the definition of 'State' under Article 12.

6.19 Moreover, the doctrine of *contemporanea expositio* entails that "the best meaning of a statute or document is the one given by those who enacted it or signed it, and that the meaning publicly given by contemporary or long professional usage is presumed to be the correct one, even if the language may have a popular or an etymological meaning that is very different."<sup>164</sup> This rule has been applied by the Supreme Court in several cases. However, the Court added words of caution that such a rule must give way where the language of the statute is plain and unambiguous.<sup>165</sup>

6.20 BCCI's political significance is also highlighted, time and again, by the desire of governing parties to control it by

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<sup>162</sup> See, Annexure to the Report – MoA of BCCI.

<sup>163</sup> *Ibid.*

<sup>164</sup> Black's Law Dictionary (8<sup>th</sup> edn.).

<sup>165</sup> See, *Desh Bandhu Gupta v. Delhi Stock Exchange Association Ltd.*, AIR 1979 SC 1049; *K.P. Varghese v. ITO*, AIR 1981 SC 1922; *Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubaneswar*, AIR 1991 SC 1028; *N Suresh Nathan v. Union of India*, AIR 1992 SC 564; *M.B. Joshi v. Satish Kumar Pandey*, AIR 1993 SC 267.



controlling the position at the helm of the Board. As has been noted on several occasions over the years that the post of the President of BCCI was occupied by a politician owing allegiance to the then governing political party. For example: Mr. N.P.K. Salve, veteran politician and Union Minister from INC was the BCCI President between the years of 1982 and 1985; Mr. Madhavrao Jivajirao Scindia, politician and Minister from INC held the position from 1990 to 1993; Mr. Ranbir Singh Mahendra, politician from INC between the years 2004 and 2005; Mr. Sharad Pawar politician from Nationalist Congress Party and a Cabinet Minister in the UPA-I Government from the year 2005 to 2008; and, very recently Mr. Anurag Thakur, a Member of Parliament from BJP was the BCCI President from 2016 to 2017.

### **BCCI –Performing ‘Public Functions’?**

6.21 The answer to this question would be in affirmative taking into consideration the judgments/decisions of the Apex Court, various High Courts and other adjudicatory bodies at the Central and State level. It has been explicitly observed in various cases that BCCI enjoys a monopoly status in the cricketing domain, which is recognised by the Union Government as well as the ICC, the international governing body of cricket.<sup>166</sup> The intent of the Government of India, to hold BCCI accountable under RTI Act, by tacitly recognising it as an NSF and thereby a ‘public authority’ was abundantly clear by the answer provided by the Minister of Youth Affairs and Sports, in the Lok Sabha.

6.22 Justice Sinha while discussing the scope of public functions, in the *Zee Telefilms* case, referred to the book *American*

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<sup>166</sup>See, *Netaji Cricket Club* case, *Zee Telefilms* case, *Cricket Association of Bihar* case (the referral case), decision of CIC in *Subhash Chandra Agarwal* case, 2017.

*Constitutional Law* by Laurence H. Tribe, where such functions are described in the following terms:<sup>167</sup>

*The ‘public function’ cases. —When the State ‘merely’ authorizes a given ‘private’ action — imagine a green light at a street corner authorizing pedestrians to cross if they wish — that action cannot automatically become one taken under ‘State authority’ in any sense that makes the Constitution applicable. Which authorizations have that Constitution-triggering effect will necessarily turn on the character of the decision-making responsibility thereby placed (or left) in private hands. However, described, there must exist a category of responsibilities regarded at any given time as so ‘public’ or ‘governmental’ that their discharge by private persons, pursuant to State authorization even though not necessarily in accord with State direction, is subject to the federal constitutional norms that would apply to public officials discharging those same responsibilities. For example, deciding to cross the street when a police officer says you may is not such a ‘public function’; but authoritatively deciding who is free to cross and who must stop is a ‘public function’ whether or not the person entrusted under State law to perform that function wears a police uniform and is paid a salary from State revenues or wears civilian garb and serves as a volunteer crossing guard....*

6.23 With respect to regulation of cricket in India, it is true that there exists no such legislation, Central or State. BCCI took on the role of regulating the game, makes laws to that effect, which were allowed by the State. Justice Sinha further observed that many public duties are prescribed by the courts rather than laid down by the Legislature, and some can even be said to be assumed voluntarily. Some statutory public duties are “prescriptive patterns of conduct” in the sense that they are “treated as duties to act reasonably so that the prescription in

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<sup>167</sup>Laurence H. Tribe, *American Constitutional Law*, 1705 (The Foundation Press Inc., 1978).

these cases is indeed provided by the courts, not merely recognised by them.”<sup>168</sup>

6.24 Thus, it can be concluded that the monopolistic nature of the power exercised by BCCI, the *de facto* recognition afforded by the Government, the impact of the Board’s actions/decisions on the fundamental rights of the players, umpires and the citizenry in general, entail that the nature and character of functions performed by BCCI are that of public functions.

### **BCCI – a National Sports Federation?**

6.25 In reply to an unstarred question, number 2097 raised on March 27, 2012, the Minister of Youth Affairs and Sports, in the Lok Sabha, Shri Ajay Maken, stated that the Government in April, 2010, declared that **all the National Sports Federations (NSFs) receiving a grant of Rs. 10 lakhs or more would be treated as ‘public authority’ under section 2(h) of the RTI Act.**[emphasis added].<sup>169</sup> Thus, RTI Act is applicable to all such NSFs being deemed ‘public authorities’.<sup>170</sup> The Hon’ble Minister continued that, **so far as BCCI is concerned, the Government of India has been treating it as an NSF and has been approving its proposals for holding events in India and participating in international events abroad.**[emphasis added] The answer of the Minister clearly shows that the Government of India has been treating BCCI as a NSF, and therefore it should also be treated as a ‘public authority’ in terms of section 2(h) of the RTI Act.

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<sup>168</sup>*Zee Telefilms* case. Para 144.

<sup>169</sup>Available at: <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=117915&lsno=15> (last visited on 15-02-2018). See also, *Subhash Chandra Agrawal v. PIO, Department of Sports*, CIC/LS/C/2012/000565. Decided on 16-06-2017. (*Subhash Chandra Agrawal* case, 2017); Annexure II.

<sup>170</sup>Ministry of Youth Affairs and Sports, Department of Sports’ letter number F.No.36-2/2010-SP-II, dated March 30, 2010 ‘Declaring National Sports Federations as Public Authority’; Annexure III.

6.26 Further, reference may also be made to the Reply dated July 27, 2016 to the Lok Sabha Starred Question No. 142 by Shri Vijay Goel, the then Minister of State for Youth Affairs and Sports. In this reply, the Hon'ble Minister, elaborating on the 'pivotal role' of NSFs in promotion of various sports disciplines, listed the following activities and programmes as undertaken by various NSFs: **“organization of national/international tournaments in the country, selection of sportspersons/teams, sending them for training and participation in international tournaments abroad, organization of training/coaching under renowned Indian and foreign coaches....”**. And, it be noted that in relation to cricket, BCCI exclusively performs/undertakes these activities in as well as on behalf of India; thereby operating and functioning as the NSF for cricket.

#### **BCCI – ‘Substantially financed’ by the Government?**

6.27 It may be accurate to say that the Central Government does not extend any direct financial assistance to BCCI, but it is also on record that it has been giving financial assistance in other forms and manner such as granting concessions in income tax, customs duty etc., providing land at excessively subsidised rates, among others.

6.28 It is on record that the State Governments have also provided land at subsidised rates, at many places to Cricket Associations (for example: The State of Himachal Pradesh allocated about fifty-thousand square metres land to Himachal Pradesh Cricket Association on a ninety-nine-year lease at Re.

one per month)<sup>171</sup> and that cumulatively, BCCI has enjoyed tax exemptions of thousands of crores. To be precise, between 1997-2007, the total tax exemption amounted to INR 21,683,237,489/- (INR Twenty-one billion six hundred eighty-three million two hundred thirty-seven thousand four hundred eighty-nine).<sup>172</sup>It may also be noted here that from 2007-2008 onwards, the registration of BCCI under section 12A of the Income Tax Act, 1961, as a Charitable Trust, was withdrawn.

6.29 Now, after a perusal of the economic connotation of the term “substantially financed” as well as a thorough examination of the judgments of the Apex Court, various High Courts, the CIC as well as other adjudicatory fora, it can be concluded that this term does not necessarily imply “majority financing/funding”. What is “substantial” would have to be adjudged on a case-by-case basis, and seen contextually rather than attempting to apply a straight-jacket formula.

6.30 It is also not necessary that the financing only be in the form of direct grants, funding etc., as has been held by the Courts and the CIC, in an array of cases, that tax exemptions/subsidies/concessions, providing land at paltry lease amounts etc., all amount to indirect financing by the Government, rendering such impugned bodies as ‘public authorities’.

If the Government is foregoing a significant amount of money (in the form of tax or other levy), which otherwise would have been deposited in the National/State Exchequer, and would have been

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<sup>171</sup>Available at:

<https://economictimes.indiatimes.com/news/politics-and-nation/anurag-thakur-former-himachal-cms-son-turned-hpca-into-a-company-after-benefitting-from-state-largesse/articleshow/31431494.cms> (last visited on 05-01-2018).

<sup>172</sup>See, Annexure II.

‘public money’, it would qualify as indirect “substantial funding” by the Government. And, it would follow that the body/entity receiving such benefits would be a ‘public authority’, even though it may be a private, non-statutory or non-Government body, thereby putting such a body squarely within the purview of the RTI Act.

6.31 It is worth mentioning here that the Government, Central as well as the States, allowing the use of their infrastructure by BCCI, regularly at the time of events or even otherwise also tantamounts to ‘substantial financing’. It may be noted that the amount of revenue that can alternatively be generated by the Government from making available such infrastructure to any third party, on payment basis, makes the level of this financing particularly ‘substantial’.

6.32 Further, the Central as well as the State Governments allowing the BCCI to have monopoly in the game of cricket, impliedly authorising BCCI to raise funds/generate resources from numerous other sources, funds and resources, which otherwise could have been directed to the National/ State Exchequer, also amounts to ‘substantial financing’.

6.33 In view of the above, it can be asserted that BCCI has, over the decades, indeed received ‘substantial financing’ from the Governments.

## CHAPTER VII

### CONCLUSIONS AND RECOMMENDATIONS

7.1 The preceding chapters of this Report, with the aid of various tools of interpretation, binding precedents, judgements/decisions having a persuasive value, rules of construction and juristic writings, arrives at a conclusion that BCCI ought to be classified as 'State' within the meaning of Article 12 of the Constitution. An analysis of the functioning of BCCI also shows that the Government does exercise control over its activities and functioning. As was argued in the *Zee Telefilms* case that BCCI, falling in line with the foreign policy of India, did not recognise a player from South Africa due to their practice of apartheid; and that the cricket matches between India and Pakistan in view of tense international relations were made subject to Government approval. The foregoing positions BCCI as a 'limb of the state', and it should, therefore, be held to be 'State'.

7.2 The case law discussed in the preceding chapters also sheds light on the threshold of 'control' that the Government is required to have on a body under section 2(h) of the RTI Act. It can be deduced from the same that such 'control' is much lower in magnitude than what is required under Article 12 of the Constitution. Thus, the threshold for 'public authority' being lower than that of 'State' under Article 12, bastions the argument that BCCI would have to be covered under the RTI regime.

7.3 Moreover, even if BCCI is continued to be regarded as a private body, but owing to its monopolistic character coupled with the public nature of its functions and the 'substantial financing' it has received from appropriate Governments over the years (in the form of tax exemptions, land grants *et al*) it can,

within the existing legal framework, still be termed as a ‘public authority’ and be brought within the purview of the RTI Act.

7.4 In addition to the above, there are certain other relevant factors that ought to be taken into consideration *apriori* the recommendations of the Commission, which are as follows:

- The uniform of the players of the Indian team (as selected by BCCI) contains the national colours and their helmets display the Ashok Chakra.<sup>173</sup>
- BCCI, though not a NSF, nominates cricketers for the Arjuna Awards etc.<sup>174</sup>
- The Parliament and the State Legislatures chose not to enact a legislation to govern the sport of cricket reflecting tacit recognition on the issue afforded to BCCI.<sup>175</sup> Recently, the Apex Court reaffirmed that BCCI is the “approved” national level body holding virtually monopoly rights to organize cricketing events in the country.<sup>176</sup>

7.5 In light of the preceding discussions, the Commission makes the following recommendations:

- (1) Non-consideration of the role played by BCCI as monopolistic in regulation of the game of cricket has resulted in the Board flying under the radar of public scrutiny, encouraged an environment of opacity and non-accountability. In the past, this has probably given an impression in the minds of the general public that corruption and other forms of malpractices are adversely affecting one of the most popular sports played in India.

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<sup>173</sup>*Zee Telefilms* case. Para 236.

<sup>174</sup>*Id.* Paras 5 and 248.

<sup>175</sup>*Id.* Para 242.

<sup>176</sup>*See, Union of India v. Board of Control for Cricket in India & Ors.*, 2017 (9) SCALE 400



BCCI exercises 'State-like' powers affecting the fundamental rights of the stakeholders, guaranteed under Part III of the Constitution. It is hereby recommended that BCCI be viewed as an agency or instrumentality of State, under Article 12 of the Constitution, thereby making it amenable to the writ jurisdiction of the Supreme Court under Article 32.

(2) Human rights are sacrosanct and innately associated with the human personality. These rights are continually evolving, are to be respected by, and can be enforced against not only the 'State' but also private bodies/entities. Therefore, the BCCI should be held accountable, under all circumstances, for any violations of basic human rights of the stakeholders.

(3) BCCI virtually acts as a National Sports Federation (NSF). Its own Memorandum of Association states that the Board's objects and purposes are to control, improve quality, lay down policies pertaining to the game of cricket in India as well as select teams to represent India at international fora. Moreover, as per the statement made in the Lok Sabha, the Central Government has already been regarding BCCI as a National Sports Federation and hence, it is recommended that, for the removal of any doubt, the same be explicitly mentioned in the list of NSFs available on the ministry's website. This express mention would automatically bring BCCI within the purview of RTI Act. Other sports bodies listed as NSFs' in Annual Report 2016-17,<sup>177</sup> of the Ministry of Youth Affairs and Sports available on its website do attract the provisions of the RTI Act. This website also contains information regarding (Chief Public Information

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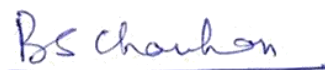
<sup>177</sup>Available at: [https://yas.nic.in/sites/default/files/English\\_Annual%20Report\\_2016-17-min.pdf](https://yas.nic.in/sites/default/files/English_Annual%20Report_2016-17-min.pdf) (last visited on 13-02-2018). See also, *supra* note 160; Annexure II.

Officer) CPIOs and Appellate Authorities catering to RTI requests addressed to specific NSFs.<sup>178</sup>

In light of the above stated facts, since all other sports bodies which are listed as NSFs are covered under the RTI Act, it is inconceivable as to why BCCI should be an exception.

- (4) Additionally, it is recommended that RTI Act be made applicable to BCCI along with all of its constituent member cricketing associations, provided they fulfil the criteria applicable to BCCI, as discussed in this Report.

The Commission recommends accordingly.



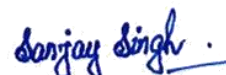
[Justice Dr. B.S. Chauhan]  
Chairman



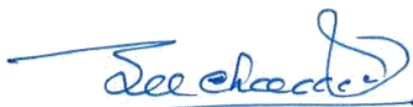
[Justice Ravi R. Tripathi]  
Member



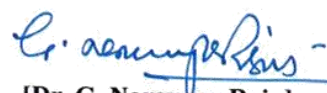
[Prof. (Dr.) S. Sivakumar]  
Member



[Dr. Sanjay Singh]  
Member-Secretary



[Suresh Chandra]  
Ex-officio Member



[Dr. G. Narayana Raju]  
Ex-officio Member

<sup>178</sup>Available at: <https://yas.nic.in/sites/default/files/File907.pdf> (last visited on 13-02-2018). See also, *supra* note 160; Annexure II.

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4. *Ajay Jadeja v. Union of India &Ors.*, (2002) 95 DLT 14.[Delhi High Court]
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## **LIST OF ABBREVIATIONS**

1. A.P. – Andhra Pradesh
2. AICC – All India Congress Committee
3. AIR – All India Reporter
4. All. – Allahabad
5. Anr. – Another
6. BCCI – Board of Control for Cricket in India
7. BJP – Bharatiya Janta Party
8. Bom. – Bombay
9. BSP – Bahujan Samaj Party
10. CAR - Civil Aviation Requirements
11. CBI - Central Bureau of Investigation
12. CIC – Central Information Commission
13. CIT – Commissioner of Income Tax
14. Coop. – Cooperative
15. CPI – Communist Party of India
16. CPI(M) - Communist Party of India (Marxist)
17. Ct. – Court
18. Del. – Delhi
19. DGCA - Directorate General Civil Aviation
20. Doc. – Document
21. ECHR – European Court of Human Rights
22. ECOSOC - Economic and Social Council
23. Edn. – Edition
24. Eur. – European
25. FDI – Foreign Direct Investment
26. FIFA - The Fédération Internationale de Football Association
27. FOI - Freedom of Information
28. GDP - Gross Domestic Product
29. HC – High Court

30. HL – House of Lords
31. HR – Human Rights
32. IBA – Indian Banking Association
33. Ibid – Ibidem (is used to refer to an authority in the footnote immediately preceding the current footnote and the same page/ place is being referred to.)
34. ICC – International Cricket Council
35. ICCPR - International Covenant on Civil and Political Rights
36. Id. – Idem (is used if the authority is the same but the page or place of reference is different.)
37. IFC - Industrial Finance Corporation
38. IHRB - Institute for Human Rights and Business
39. IMF - International Monetary Fund
40. INC – Indian National Congress
41. INR – Indian Rupee
42. Jrnl. - Journal
43. Ker. – Kerela
44. L. Rev. – Law Review
45. LIC – Life Insurance Corporation
46. LJ – Law Journal
47. M.P. – Member of Parliament
48. Mad. – Madras
49. NCP – Nationalist Congress Party
50. NCRWC - National Commission to Review the Working of the Constitution
51. NGO – Non-Government Organisation
52. NHRC - National Human Rights Commission
53. NSF – National Sports Federation
54. OHCHR – Office of the High Commissioner of Human Rights
55. ONGC - Oil & Natural Gas Commission
56. Ors. – Others

- 57. P&H – Punjab and Haryana
- 58. PIO – Public Information Officer
- 59. PPP - Public-Private Partnership
- 60. PUCL - People's Union for Civil Liberties
- 61. QB – Queen’s Bench
- 62. RTI – Right to Information
- 63. SBI – State Bank of India
- 64. SC – Supreme Court
- 65. SCC – Supreme Court cases
- 66. SDG - Sustainable Development Goal
- 67. Supra - used to refer to a prior footnote
- 68. UDHR - Universal Declaration of Human Rights
- 69. UK – United Kingdom
- 70. UN – United Nations
- 71. UNESCAP - United Nations Economic and Social Commission in Asia and the Pacific
- 72. UNHRC – United Nations Human Rights Committee
- 73. UPA - United Progressive Alliance
- 74. v. – versus

## ANNEXURES

### I - MoA of BCCI

1. The name of the Association is “THE BOARD OF CONTROL FOR CRICKET IN INDIA” and it shall hereafter be referred to as the “BCCI”.
2. The objects and purposes of the BCCI are:
  - (a) To **control and improve quality and standards of the game of Cricket in India, lay down policies, roadmaps, guidelines and make rules and regulations (and amend or alter them) in all matters relating to the game of Cricket**[emphasis added], recognizing that the primary stakeholders are the players and Cricket fans in India, and that accountability, transparency and integrity of the Game are the core values;
  - (b) To provide for measures necessary for promotion and development of the game of Cricket, welfare and interest of Cricketers and elimination of unethical and unfair practices in the Game of cricket; and for that purpose, organize coaching schemes, establish coaching academies, hold tournaments, exhibition matches, Test Matches, ODIs, Twenty/20, and any other matches and take all other required steps;
  - (c) To strive for sportsmanship and professionalism in the game of Cricket and its governance and administration; inculcate principles of transparency and ethical standards in players, team officials, umpires and administrators; and to ban doping, age fraud, sexual harassment and all other forms of inequity and discrimination;

- (d) To encourage the formation of State, Regional or other Cricket Associations and the organization of Inter-State and other Tournaments; to lay down norms for recognition which achieve uniformity in the structure, functioning and processes of the Member Associations;
- (e) To arrange, control, regulate and if necessary, finance visits of Teams that are Members of the International Cricket Council and teams of other Countries to India;
- (f) **To arrange, control, regulate and finance, visits of Indian Cricket Teams to tour countries that are members of the International Cricket Council or elsewhere in conjunction with the bodies governing cricket in the countries to be visited**[emphasis added];
- (g) **To select teams to represent India**[emphasis added] in Test Matches, One Day Internationals, Twenty/20 matches and in any other format in India or abroad as the BCCI may decide from time to time;
- (h) To foster the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them regarding the same;
- (i) To appoint India's representative/s on the International Cricket Council, as also to Conferences and Seminars connected with the game of Cricket;
- (j) To appoint Managers and/or other team officials for the Indian Teams;
- (k) To employ and appoint CEOs, professional managers, auditors, executive secretaries, administrative officers, assistant secretaries, managers, clerks, team support staff, players, and other service personnel and staff; and to remunerate them for their services, by way of salaries, wages, gratuities, pensions, honoraria, ex-gratia payments and/or provident fund; and to

remove/terminate or dismiss such employees or personnel;

- (l) To ensure that tickets to cricket matches are widely available well in advance of the matches to members of the public at reasonable rates, and to prevent distribution of the same as largesse; and also to offer seats gratis or at nominal rates to students;
- (m) To lay out cricket grounds and to provide pavilion, canteen and other facilities and amenities for the convenience and benefit of the members, players, and the Cricket fans including the women and the disabled, and to ensure the availability of Cricket gear and amenities to Cricket players;
- (n) To constitute Committees, from time to time, and entrust or delegate its functions and duties to such Committees, for achieving the objects of the BCCI;
- (o) To vest immovable properties and funds of the BCCI in Trustees appointed by it, for carrying out the objects of the BCCI;
- (p) To sell, manage, mortgage, lease, exchange, dispose of or otherwise deal with all or any property of the BCCI;
- (q) To acquire or purchase properties – movable and immovable, and assets – tangible and intangible, and to apply the capital and income therefrom and the proceeds of the sale or transfer thereof, for or towards all or any of the objects of the BCCI;
- (r) To collect funds, and wherever necessary, borrow with or without security and to purchase, redeem or pay off any such securities;
- (s) To carry out any other activity which may seem to the BCCI capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value or render profitable or

generate better income/revenue, from any of the properties, assets and rights of the BCCI;

(t)To promote, protect and assist the Players who are the primary agents of the game by:

(i)Creating a Players' Association to be funded by the BCCI;

(ii)Being sensitive to Players' before international calendars are drawn up so that sufficient time is provided for rest and recovery;

(iii)Taking steps, particularly on longer tours, so the emotional wellbeing and family bonds of the Players' are strengthened;

(iv)Compulsorily having qualified Physiotherapists, Mental Conditioning Coaches / Counsellors and Nutritionists among the Team's support staff;

(v)Having a single point of contact on the logistics and managerial side so that Players' can fully concentrate on the game;

(vi)Registering all duly qualified agents to ensure there is oversight and transparency in player representation;

(vii)Offering appropriate remuneration of an international standard when representing the country on the international stage, and always recalling that national representation has priority over club or franchise;

(u)To grant/donate such sum/s for:

(i)Such causes as would be deemed fit by the BCCI conducive to the promotion of the game of Cricket;

(ii)The benefit of Cricketers or their spouses and children by introducing benevolent fund schemes or other benefit schemes, as the BCCI deems fit, subject to its rules and regulations;



- (iii)The benefit of any other persons who have served Cricket or their spouses and children as the BCCI may consider fit;
- (iv)To award sponsorships to sportspersons in games other than Cricket for development of their individual skills; and
- (v)To donate to any charitable cause;
- (v)To start or sponsor and/or to subscribe to funds or stage matches for the benefit of the Cricketers or persons who may have rendered service to the game of Cricket or for their families, or to donate towards the development or promotion of the game and to organize matches in aid of Public Charitable and Relief Funds;
- (w)To impart physical education through the medium of Cricket;
- (x)To co-ordinate the activities of members and institutions in relation to the BCCI and amongst themselves;
- (y)To create and maintain a central repository and database of all Cricketers along with their game statistics;
- (z)To introduce a scheme of professionalism and to implement the same;
- (aa)To provide a fair and transparent grievance redressal mechanism to players, support personnel and other entities associated with Cricket;
- (bb)Generally to do all such other acts and things as may seem to the BCCI to be convenient and/or conducive to the carrying out of the objects of the BCCI.

3. The income, funds and properties of the BCCI, however acquired, shall be utilized and applied solely for the promotion of the objects of the BCCI as set forth above to aid and assist

financially or otherwise and to promote, encourage, advance and develop and generally to assist the game of cricket or any other sport throughout India.

4. The BCCI shall not be dissolved unless the dissolution is decided upon by a resolution passed at a General Meeting of the BCCI convened for the purpose, by a majority of 3/4th of the Members present and entitled to vote. The quorum for such meeting shall be 2/3rd of the Members who have a right to vote. In the case of dissolution of the BCCI, if there shall remain after satisfaction of all debts and liabilities, any property whatsoever, it shall be given or transferred to some other institution or institutions having objects similar to those of the BCCI and not running for profit.

**II – Reply of Hon’ble Minister of State for Youth Affairs and Sports to Unstarred Question No. 2097 in the Lok Sabha**

UNSTARRED QUESTION NO: 2097 ANSWERED ON: 27.03.2012

SPORTS FEDERATIONS UNDER RTI

SEEMA UPADHYAY SUSHILA SAROJ USHA VERMA OM PRAKASH YADAV MAHESHWAR HAZARI Will the Minister of YOUTH AFFAIRS AND SPORTS be pleased to state:

- (a) whether the Government proposes to bring various sports association/federations including the Board of Control for Cricket in India (BCCI) under the ambit of the Right to Information Act, 2005 so as to ensure transparency in their functioning;
- (b) if so, the details thereof and the response of these federations and BCCI thereon; (c) the progress made by the Government so far in this regard;
- (d) whether the BCCI gets various concessions in income tax, custom duty etc. and land at concessional rates for stadia; and
- (e) if so, the details thereof during the last three years and the current year?

**ANSWER**

MINISTER OF THE STATE (INDEPENDENT CHARGE) IN THE MINISTRY OF YOUTH AFFAIRS AND SPORTS (SHRI AJAY MAKEN)

(a) to (c) The need for bringing National Sports Federations (NSFs) including BCCI under ambit of Right to Information Act, (RTI) 2005 has been voiced from time to time. Accordingly Government in April, 2010 declared all the NSFs receiving grant of Rs.10.00 lakhs or more as Public Authority under Section 2(h) of the RTI, 2005. There are major court rulings for treating the National Sports Federation as a public authorities, especially in view of the state-like function discharged by them such as selection of the national team and control and regulation of sports in the country, which also make them amenable to the writ jurisdiction of High Courts under Article 226 of the Constitution of India. Notwithstanding the above, the Government has proposed to bring all the National Sports Federations including BCCI under the RTI Act in the proposed Draft National Sports Development Bill, with provision of exclusion clause protecting personal/confidential information relating to athletes.

(d) & (e) In so far as BCCI, in particular, is concerned, Government of India has been treating BCCI as a National Sports Federation and approving the proposal of BCCI for holding the events in India and participation in international events abroad. The Central Government does not extend any direct financial assistance to BCCI. But the Central Government has been granting concessions in income tax, customs duty, etc. to BCCI. The State Governments also have provided land in many places to the Cricket Associations.

As per the Section 80(G) 92) (viii) (c) and sum paid by the assesses, being a company, in the previous year as donations to the Indian Olympic Association or to any other association or institutions established in India, as the Central Government may, having regard to the prescribed guidelines, by notifications in the official gazette specify in this behalf for (i) the development of infrastructure for sports and games; (ii) the sponsorship of sports

and games. For being eligible under the above Act BCCI was registered under Section 12 (a) read with Section 17 (a) as an charitable institution and was availing tax exemptions. Department of Revenue has informed that the registration granted to BCCI under section 12A of the Act was withdrawn in December 2009 with effect from 1 June, 2006. As such BCCI has availed tax exemptions as a charitable organization till 30.06.2006 as per details given below:

<b><u>S.No.</u></b>	<b><u>Annual year</u></b>	<b><u>Amount of exemption</u></b>
1.	1997-1998	Rs.11,01,44,329/-
2.	1998-1999	Rs.18,18,20,87,740/-
3.	1999-2000	Rs.8,37,14,734/-
4.	2000-2001	Rs.36,01,22,999/-
5.	2001-2002	Rs.42,98,07,762/-
6.	2002-2003	Rs.31,46,41,089/-
7.	2003-2004	Rs.26,28,78,110/-
8.	2004-2005	Rs.33,46,89,451/-
9.	2005-2006	Rs.32,99,98,557/-
10.	2006-2007	Rs.127,51,52,718/-

Further, Ministry of Finance (Deptt. of Revenue) has informed that no specific exemption of Customs, Central Excise duty and Service Tax has been extended to BCCI in the last three years and the current year, except an exemption for temporary import of specified sports, medical, photographic, broadcast and office equipment for the purpose of organizing the International Cricket Council World Cup 2011 as per Notification No.07/11-Customs, dated 9.2.2011.

**III - Ministry of Youth Affairs and Sports, Department of Sports' letter number F.No.36-2/2010-SP-II, dated March 30, 2010 'Declaring National Sports Federations as Public Authority'**

F.No.36-2/2010-SP-II  
Government of India  
Ministry of Youth Affairs and Sports  
(Department of Sports)

New Delhi the 30<sup>th</sup> March, 2010

To

The President/Secretary General/General Secretary of  
All National Sports Federations

Subject: Declaring National Sports Federations as Public Authority

Sir/Madam

On receiving directions from Central Information Commission to identify, notify and direct all NGOs/other organizations falling under the purview of Ministry of Youth Affairs and Sports and qualifying as Public Authority under Right to Information Act, 2005, the Ministry undertook an exercise in respect of National Sports Federations to check the applicability of various conditions of RTI Act and noted that:

- i) National Sports Federations (NSFs) come within the purview of Ministry of Youth Affairs and Sports as per the Allocation of Business Rules, 1961.
- ii) The Ministry recognizes one National level Sports Federation in each discipline for the purpose of development and promotion of their disciplines.
- iii) These federations are fully responsible and accountable for the overall management, direction, control, regulation, promotion, and development of their discipline in the country.
- iv) They are expected to collaborate with Ministry of Youth Affairs and Sports and Sports Authority of India to develop promotional plans (LTDPs) and activities for the development of their discipline.
- v) They are in turn recognized by the various international federations and also by the Indian Olympic Association.
- vi) They serve as nodal body for participation of "India" teams in international events.
- vii) They are also responsible for affiliation of State and District Units in the country.
- viii) They receive special attention and privileges from the Government which are otherwise unavailable to such organizations.
- ix) They receive Government funding for various purposes including organization of national championships and training and participation of sportspersons in tournaments in India and abroad, equipments, coaches and other facilities.
- x) The Government grant forms a major part of their budget for promotion and development of their sport, including preparation of the national teams.

xi) The Government specifies the purpose and manner in which such funding is to be utilized and the federations are accountable to the Government for such privileges and funding so received.

2. The Government, after taking into consideration all above relevant facts and circumstances, has concluded the National Sports Federations are doing a "State" function and are dependent on Government funding for performing this task and hence are "substantially financed" by the Government..

3. It has therefore been decided to declare all National Sports Federations receiving grant of Rs. 10 lakhs or more as Public Authority under Section 2(h) of the RTI Act, 2005.

4. All NSFs getting covered by this provision are requested to immediately designate Central Public Information Officers and Appellate Authorities as per Section 5 of the Right to Information Act, 2005 and intimate their details to the Ministry.

5. They are further requested to fulfill their obligations of being a Public Authority, as per Section 4 of the Right to Information Act, 2005, like maintaining all their records duly catalogued and indexed in a manner so as to facilitate the right to information under this Act and *suomoto* disclosure/publishing of information pertaining to the federation, including the following:

- i) the particulars of their organisation, functions and duties;
- ii) the powers and duties of their officers and employees;
- iii) the rules, regulations, instructions, manuals and records, held by them or under their control or used by their employees for discharging their functions;
- iv) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of their policy or implementation thereof;
- v) all relevant facts while formulating important policies or announcing the decisions which affect public;
- vi) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as their part or for the purpose of advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- vii) a directory of their officers and employees;
- viii) the monthly remuneration received by each of their officers and employees, including the system of compensation as provided in their regulations;

- ix) the budget allocation within the federation, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- x) particulars of recipients of concessions, permits or authorisations granted by them;
- xi) the particulars of facilities available to citizens for obtaining information including the working hours of a library or reading room, if maintained for public use etc;
- xii) such other information as may be prescribed.

And thereafter, update this information every year.

6. The details as outlined above shall be sent to this Ministry latest by 15<sup>th</sup> April, 2010 and also be made available on their websites. Compliance to the above instructions is mandatory for a National Sport Federation to become eligible to receive government grant under the Scheme of Assistance to National Sports Federations.

7. This may be treated as most urgent.

  
(DEEPIKA KACHHAL.)  
DIRECTOR

Copy to:

President/Secretary General, Indian Olympic Association  
Chief Information Commissioner, Central Information Commission  
All State Sports Secretaries  
All officers in MYAS and SAI  
Technical Director (NIC) for uploading on the website

Copy for information to:

PS to MYAS  
PS to Secretary (Sports)  
PS to Secretary (Youth)  
PS to Joint Secretary (Sports)  
PS to Joint Secretary (Youth Affairs)