

Applicability of RTI Act to NGOs

AREAS COVERED

- Context of Applicability of RTI on NGOs
- Supreme Court judgment clarifying 'substantially financed' for applicability of RTI Act on NGOs
- 'RTI Applicant' responsible for showing whether NGO is substantially funded by the Govt.
- RTI should be encouraged within the NGO sector, since it will enhance the credibility of the Sector.

Q: What is the background of RTI Act?

Right to Information Act was promulgated in 2005. It basically empowers citizens to have access to information that is in control of public authorities. This Act is applicable to whole of India, except J&K.

Q: Since general perception is that RTI is applicable to Govt. bodies, then why questions are raised on its applicability to NGOs also ?

Basically RTI obligates 'public authority' to provide all information sought under the Act by a citizen. To answer the above question, we need to understand the definition of 'Public Authority'. As per Section 2(h) the Act a Public Authority means a body established under (a) constitution, (b & c) under any central or state laws, (d) under a notification issued by appropriate Govt., including

- a body owned, controlled or substantially financed, and

- any NGO substantially financed,

directly or indirectly, by funds provided by the Govt.

Thus the last part specifically covers NGOs, although some argued that the intention was to cover only those societies, which the Govt. forms for implementing its different schemes. Examples could be State and District Health societies, State Aid Control societies, etc.

However, since then there have been various court cases, interpreting the applicability of RTI Act to NGOs, and these need to be considered for arriving at any final understanding.

Q: What are the major court cases which gave clarity on applicability of RTI on NGOs?

In Oct'2013, Supreme Court while adjudicating in a decision *Thalapalam Service Cooperative Bank Ltd v State of Kerala and others* covering both cooperative societies as well as NGOs generally, it stated that for determination of applicability of RTI to non-profit organisations (referred to as NGOs) will depend upon if these NGOs have been **substantially financed** by the Government. Determination that which organisations are substantially financed has to be factually based. It also stated that certain indirect types of support might not qualify as government support. For example, it clarified that

merely providing subsidies, 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 Court also examined if these organisations can be termed as statutory bodies, since they were monitored by statutory bodies, like Registrar. It observed that cooperative bodies are subject to control and regulatory mechanisms of Cooperative Registrar however this control is only an indirect one and not all pervasive. Since these are managed by Governing Bodies and their final authority is a General Body and not the Registrar, thus these cannot be stated to be Statutory Bodies. The same arguments also apply in case of NGOs who report to Society Registrar or Charity Commissioner.

Q: Who is responsible to show whether an NGO is substantially financed by the Govt.?

The burden to show that a body is owned, controlled or substantially financed or that a NGO is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the **applicant** who seeks information. The issue can also be examined by the appropriate Government through the State Public Information Officer, State Chief Information Officer, State Chief Information Commission, Central Public Information Officer etc., when the question comes up for consideration.

A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

Q: Has NGO been defined under RTI Act?

It is well known that NGO term has not been defined under any Act. However the Supreme Court in the above-mentioned case has also clarified that while term Non-Government Organisation (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act.

Q: What are the ethical issues involved in this?

NGO Sector stands for enhancing transparency both by the Governments as well as by the Corporate sector. Hence many argue that the Sector itself also needs to set an example and follow these principles and not hide behind the legal veil. It certainly makes sense to develop a perception among public at large that the Sector is totally transparent. There can be different frameworks of this transparency, some NGOs hold regular *Jansunwai* or 'Public hearing' at least with the community that they work with, though sometimes the manner in which these Public Hearings are held is criticized. In this context RTI is a well recognized framework and needs to be encouraged within the Sector whether required by law or not.