MULTI DIMENTIONAL APPROACH TO CONSTITUTIONAL VALIDITY OF PM CARES FUND AND COMPARATIVE ANALYSIS WITH OTHER FOREIGN LAWS

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Introduction

The novel corona virus had spread its roots throughout the globe posing serious danger to the human life with a bat of an eyelid. As an aftermath, the Indian govt. felt the need of establishing a separate fund to accord with the intricacies springing out of the same. The Hon’ble Prime Minister of India, on 28th March 2020, divulged the establishment of the fund- Prime Minister’s Citizen Assistance & Relief in Emergency Situation Fund (PM CARES). Soon after the divulgement, the configuration, functioning and urgency of a separate fund whilst existence of the PMNRF, that deals with similar situations, was questioned along with disputation regarding its public nature. In the month of April, several PILs were filed enquiring about the fund’s transparency and seeking details about its constitution, trust deeds, all government orders for its creation, strategy for COVID-19, PAN details and about total amount deposited so far.

However, the government is at loggerhead with the observation of fund’s public nature. As a response to the RTI application, on 29th of May, PMO announced that the PM CARES fund does not falls under the ambit of “Public Authority” as specified under section 2(h) of the RTI Act, 2005.

So, even after gazillions of debates & confabulations, this matter it is still pending before Hon’ble Supreme Court of India and therefore is under difficult conundrum. Hence, a critical analysis has to be done to fathom the legal standpoint of the PM CARES Fund.

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1 Section 2(h) of the RTI Act, 2005 reads as:
“Public authority” means any authority 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 any-
(i) body owned, controlled or substantially financed;
(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.
PM CARES Fund

PM CARES Fund is a public charitable trust. It has been set up keeping in mind the need for having a dedicated fund with the primary objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected.²

Objectives

- To put forth quintessential services for any kind of public health emergency or for similar kind of extremities.
- For modeling or enhancement of healthcare or pharmaceutical facilities, other unavoidable infrastructure, sponsoring pertinent research or any other type of support.
- To contribute monetary succour, furnish permits of payments of money or take other steps as per the prudence of the Board of Trustees to the afflicted people.
- To handle any such other activity, other than the aforementioned.

Whether the Right to Information Act, 2005 is applicable to the PM CARES Funds?

The freedom of speech and expression is the substratum of a democratic government. The right of citizens to acquire information and promulgate the same is a necessitous component of “freedom of speech and expression” which percolates from Right to Information Act, 2005.

A. PM CARES Fund is a Public Authority

A.1 Pm cares fund is substantially controlled by the Central Government

Section 2(h)(d)(i)³ of the Act elucidates that the public authority means any authority or body or institution of the self-government established or constituted by notification issued or order made by the appropriate government and includes any “body” owned, controlled or substantially financed directly or indirectly by the funds provided by the appropriate government. The amplitude of substantial control under the RTI Act has been annotated by the Hon’ble Supreme Court in Thalappalam Service Coop. Bank Ltd. v. State of Kerala,⁴ stated that, "If the control of the body by the appropriate Government would also be substantial then the body will fall within the definition of a public authority as per Section 2(h)(d)(i) of RTI." Additionally in DAV College Trust v. Director of Public Instruction,⁵ the court placed reliance upon Thalappalam and held that substantial under the RTI Act means a large or considerable value. It does not necessarily have to mean majority or dominant.

²https://www.pmindia.gov.in/en/about-pm-cares-fund/#:~:text=The%20fund%20consists%20entirely%20of%20non%20budgetary%20support.&text=This%20enables%20PM%20CARES%20Fund%20to%20deal%20in%20foreign%20countries.
³Section 2(h)(i) of the RTI Act, 2005 reads as:
⁵DAV College Trust v. Director of Public Instruction, (2008) 4 SLR 321(P&H) (DB)
The following points make it perspicuous that the government exercises an inmost and substantial control over the PM Cares fund:

- The Prime Minister heads the PM Cares Fund as ex-officio Chairperson of the Board of Trustees along with the Minister of Defence, the Minister of Home Affairs and the Minister of Finance as an ex-officio member of the trustee and they collectively exercise sole discretion as to the affairs and management of the trust, including disbursement of the Fund.

- Gov.in is the official domain of the PM Cares website. The use of this domain is monitored under the Ministry of Electronics and Information Technology protocols girdled for the purpose of allocating the domain gov.in.

- The name of the fund itself advocates about the control and supervision of Prime Minister or his office over the functioning of the fund. Furthermore, the PM's pictorial representation has been used in government advertisements making entreaties for bestowals.

- Advertisements enticing contributions to the PM Cares Fund have been made by government agencies from their budgetary allocation.

From the above-mentioned analysis, it is therefore germane to prognosticate that the government exercises a deep, pervasive and substantial control over the PM CARES Fund under the RTI Act, 2005. Also, in the landmark case of National Stock Exchange of India Limited v. Central Information Commission, it was held that, "The three conditions- owned, controlled and substantially financed are distinct and even if one of the three is satisfied by a body, it would be sufficient to declare it a public authority."

Thus, by the interpretation of the above facts and the judicial decisions cited, it is crystal clear that the condition in order for a body to come under purview of public authority is "substantially controlled by the government" and since the PM Cares fund is substantially controlled by the Central Government it is therefore a public authority.

**A.2 PM Cares fund is a body that discharges public duties and functions**

In order to be a public authority, the body must discharge public duties and functions. The website of PM CARES fund unequivocally states that the Prime Minister is the ex-officio Chairperson of the Board of Trustees along with the Minister of Defense, the Minister of Home Affairs and the Minister of Finance as an ex-officio member of the of the Board of Trustee and each member is weighed as constitutional functionary which insinuates of a public office with the primal public duty of unburdening any kind of emergency or distress situation, akin posed by the COVID-19 pandemic, and to impart amelioration to the affected (ftp pm cares website).

Furthermore, the use of the State Emblem of India on the official website of PM Cares Fund website and its logo gives an intellection of a public office and further bespeaks towards the public nature of the fund. Use of State Emblem is undeniably prohibited under Section 3 of The State Emblem Act, 2005 unless its use by any authority is notified by the government under this Act.

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6 National Stock Exchange of India Limited v. Central Information Commission, 2010 (100) SCL 464 (Del.)
7 Section 3 of The Emblems and Names (Prevention of Improper Use) Act, 1950 reads as:
Article 47 of the Constitution bestows a public duty on the State to protect, promote and improve the public health of its citizens. Additionally, right to health is a fundamental right available to the people under Article 21. A combined interpretation of the constitution and objective of PM cares fund, right to health under Article 21 and the public duty of the state to improve public health under Article 47 makes it apparent that the PM Cares fund is a body that accepts voluntary funds in order to parole the vital public duty to combat any emergency situation like Covid-19 by apropos measures thereby shielding the fundamental right to health of the public and unshackling it’s constitutional directive to meliorate public health thereby coming under the gamut of a public authority. In Venkatesh Navak v. CPIO & DCIT, the Supreme Court had made it clear that if an authority was controlled by the government and had been performing a public duty, it could well be defined as a public authority and fell under the purview of Section 2(h) of RTI Act of 2005. Also, in the historic case of Mr. Subhash Chandra Agarwal v. Parliament of India, it was observed that while a body which is either a State for the purpose of Article 12 or a body discharging public functions for the purpose of Article 226 is likely to answer the description of public authority in terms of section 2(h)(d)(i) of the RTI Act, the mere fact that such body is neither, will not take it out of the definition of public authority under section 2(h)(d)(i) of the RTI Act. Thus, from the above analysis it is conspicuous that PM CARES fund is a public authority within the meaning of Section 2(h) of the Act as it is substantially controlled by the central government and it performs the public duty to safeguard the public from emergency situations like covid-19.

A.3 The right to get information about a public charitable trust is not exempted under the Right to Information Act

Section 2(j) provides the right to the citizens to seek information from any public authority which includes inspection of work, documents, recording notes, extracts or taking certified samples of materials and also gleaning information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic modus or through printouts where such information is stored.

Prohibition of improper use of certain emblems and names. Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colorable imitation thereof without previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.

Duty of the state to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Definition In this part, unless the context otherwise requires, the State includes the Government and 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.

Section 2(j) of RTI Act reads as follows: “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes: (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored; or in a computer or in any other device.
printouts where the information is hoarded in a computer or in any other device. **Section 8** and **9** of the **RTI Act** state the exempted situations wherein information can be deprived of. Nonetheless, public charitable funds like PM CARES fund have been occluded from the list. This non-incorporation unveils the foresight of the Legislature to embrace certain exceptional circumstances and the proscription of public charitable trust like PM CARES fund is a sturdy indicator of their palpable intention to not bar it out from the ambit of the Act. Thus, it is germane to prognosticate that when the legislative intent was to bring the public charitable trust, who are public authorities under the scope of right to information, the denial to publish information on the functioning of PM cares fund contradicts the above intention by providing a blanket ban on the anonymity of donations received and thereby, violating the well cherished, avant-garde and apprized right to receive information under **Section 2(h)** which is a right under **Article 19(1)(a)** of the **Constitution of India, 1950**.

By the virtue of **Section 4** of **RTI Act, 2005** the public bodies shall within 120 days of enactment of **RTI Act** and must update annually and publish the kind of information, the duty and function, elaborate about the councils, committees and boards, records of employees and their wages and other information. **Sub-section (2)** states that the public bodies should disclose all this information by themselves *su o mo t u* by a suitable media that is available to all.

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**14** Section 8 of RTI Act, 2005 reads as:

**Exemption from disclosure of information—Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen—** (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade secrets or intell

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**15** Section 9 of RTI Act, 2005 reads as:

**Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.**

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**16** Article 19(1)(a) of The Constitution of India, 1949 reads as:

**All citizens shall have the right to freedom of speech and expression**

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**17** **Section 4—Obligations of public authorities—**

(1) **Every public authority shall—**

(1a) publish, within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organization, functions and duties;

(ii) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(iii) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditure and reports on disbursements made

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**18** It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *su o mo t u* to the public at regular intervals through various means of communications, including internet, so that public have minimum resort to the use of this Act to obtain information.
While Clause 5.3 of the Trust deed states that there is no control either directly or indirectly by the any of the state governments or the central government. But lately while retaliating at a RTI application filed on PM CARES Fund the Government revealed that PM CARES Fund is a body “owned by, controlled by and established by the government of India”. In addition, it was also stated that the as the fund is administered by private individuals as trustees and is not financed by the appropriate government therefore it cannot be regarded as a public authority.

In the case of Anand Narain Poharkar v. Lokmat Newspaper Charitable Trust, a Public Interest Litigation was filed alleging that the funds collected by a charitable trust from the public was misused and not used for the relief of victims of the Kargil war, to which the High Court was of the opinion that appropriate legislation should be enacted so that the collection and utilization of the fund can be monitored and the funds collected can actually reach the beneficiary.

Clause 8 of the PM CARES Fund Trust deed elucidates upon the powers of the Board of Trustees, which has absolute command regarding the administration and management of the fund. The Chairperson has the sovereignty to nominate three other trustees amongst the distinguished dignitaries in various fields such as law, science, health, etc. However, the Hon’ble Supreme Court in the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, held that if the government has a dominant role to play in terms of appointment of the secretary, nomination or suspension of members of the administrative board, then it is said to have control over the body.

The Chairperson of PM CARES Fund is the Honorable Prime Minister of the nation and by the virtue of clause 6.7 of the trust deed of the Fund is entitled to make changes in the configuration of the board of trustees, by nominating, removing or replacing a person as a trustee.

In a nutshell, from the above-mentioned clauses in the trust deed, it can be inferred that the Government has a crucial sway over the Fund.

Section 3 of The Charitable and Religious Trusts Act, 1920 elucidates about the power to apply to the court in respect of trusts of a charitable or religious nature, that person may apply by petition to the court having

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19. This trust is not created by or under the Constitution of India or by any law made by the Parliament or by any State Legislature. This trust is neither intended to be or is in fact owned, controlled or substantially financed by any Government or any instrumentality of the Government. There is no control of either the Central Government or any State Government/s, either direct or indirect, in functioning of the Trust in any manner whatsoever.


23. Notwithstanding anything to the contrary contained in this Dees, the chairperson shall be empowered to modify the constitution of the Board of Trustees, including the designation of Vice-Chairperson, as set out in this Deed, from time to time, by executing a written instrument to this effect. To clarify, the Chairperson may, at his discretion, (i) add a person as Trustee; (ii) remove a Trustee; or (iii) replace any existing Trustee with another person as Trustee.

24. Section 3 of The Charitable and Religious Trusts Act, 1920 act reads as: Power to apply to the court in respect of trusts of a charitable or religious nature—Save as hereinafter provided in this act, any person having interest in any express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the court within local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:-(1) directing the trustee to furnish the petitioner through the court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and (2) directing that the accounts of the trust shall be examined and audited: Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.
appropriate jurisdiction over the subject matter of the trust and can direct the trustee to provide details about the management, funds and can even direct that the trust shall be examined and audited. A public charitable trust is created with the benevolent objective to benefit the needy in dire times.

The **Public Information Officer v. Balchandra Vasudev Radkar**\(^25\) the Bombay High Court noted that the word “control” connotes a wider meaning and includes ample powers than just being construed and restricted to financial dealings and matters. It has wider amplitude with respect to legal terminology meaning to regulate, restrict, to direct, superintend and more. “Aid” means to provide support or help; apart from financial support it can also mean providing assistance for infrastructure and in many other modes. Ownership of a body along with control or substantial finance of funds provided by the Government either directly or indirectly shall make the body a public authority under the RTI Act.

The countrymen donate to these public charitable trusts thinking that their money is used for the benefit of an unprivileged or disadvantaged person. But if the same trust is not open to questions or does not furnish the details regarding the management and utilization of the funds then there will be no transparency and the confidence that the donors have posed upon the trustee and the trust might start dwindling. There might be speculations as well that the funds have not reached the actual beneficiaries or have been misutilized thereby not fulfilling the objective of the fund.

**Foreign legislations relating to access of information to citizens for public health purposes**

1. **SOUTH AFRICA**

The Constitution of Republic of South Africa by the virtue of Section 32(1)\(^26\) confers every citizen the right to acquire any information held by the state or an individual for protection of their rights. The Promotion to Access of Information Act was enacted by the legislature in 2002 which laid down the procedures following which an individual can get access to the information held by private and federal bodies. In the plight of Covid-19 on 23 March 2020, President Cyril Ramaphosa declared the establishment of Solidarity Fund with the objective of contributing and solving the crisis of national healthcare. And for effective management they had Board of Directors, Audit and Risk Board Committee, Disbursements Board Committee, Fundraising Board Committee and Executive Team each of which was headed either by a chairperson or an Interim CEO. And on 30th September an interim report was published regarding the funds raised and the amounts disbursed. This data is so clear about each and every penny which was raised either from the Corporate, individuals, or other foreign donations and how much of that fund was utilized in the field of health response, Humanitarian effort, or the Solidarity Campaign. It has statistics of each and every PPE kit, ventilator and other essential equipment bought.

\(^{25}\) The Public Information Officer v. Balchandra Vasudev Radkar, Writ Petition No. 26 of 2011

\(^{26}\) Section 32

1. Everyone has the right of access to
   a. any information held by the state; and
   b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. UNITED STATES

The Constitution of United States in Amendment 1\(^27\) prohibits the Congress from making any law that abridges the freedom of speech or press. In the United States statutes have been enacted to provide not only provide federal records but also access to federal meetings. The Freedom of Information Act (1966) and Privacy Act (1974) provide access to federal records and the access to federal advisory committee meetings is provided by Federal Advisory Committee Act (1972) and Sunshine Act (1976). According to the statute the agencies are under an obligation to publish in advance about these kinds of meetings so that it can be publicly accessible. But the acts do contain exemption of some documents like classified national defense records and other important trade secrets and other documents provided under Freedom of Information Act. This right is available not only to the citizens but also the foreigners. But access to information is forbidden if the documents are related to foreign relations, classified National Defence information, trade secrets and confidential financial information, any information that might lead to unwarranted invasion into a person’s privacy.

Uniform Trust Code is a model law which has been adopted by 36 states of the United States. Section 813\(^28\) of the code elaborates on the duties of a Trustee. It is the responsibility of the trustee to inform the beneficiaries about the administration of the trust. The trustee shall also upon request of such beneficiary provide copy of trust instrument and provide the data of trust income or principal to a beneficiary.

The Disaster Relief Fund in the United States has been established to combat natural disasters and even to provide relief to the survivors. It is funded by the Congress and the Federal Emergency Management Agency is responsible for coordination and management of the fund under Stafford Act. The accounts of the Disaster Relief Fund are to be published by the Federal Emergency Management Agency every month with funding summary and other parameters by the virtue of Public law 114-A. These reports can be found on the official website of Federal Emergency Management Act.\(^29\)

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\(^{27}\) Amendment I states-
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

\(^{28}\) Section 813-Duty to inform and report
(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary’s request for information related to the administration of the trust.
(c) A trustee shall send an account to the distributes and permissible distributes of trust income or principal and to other qualified beneficiaries who request it, at least annually and at the termination of the trust. The account of trust income and principal may be formal or informal, but shall include information relating to the trust property, liabilities, receipts and disbursements, including the amount of the trustee’s compensation, a listing of the trust assets and, if feasible, their respective market values.

\(^{29}\) https://fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports
3. RUSSIA

The Soviet Union enacted laws “On Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government” in the year 2010 empowering people to exercise their right to information. The act sets out clear procedures for requests and access of information and the federal agencies under the Government from whom the information can be accessed. Any person whether a citizen or not has the right to access such information. The 1993 Russian Constitution by the virtue of Article 24(2) confers the right to freely obtain information about the activities of the state and local administration. State may refuse to provide information if it concerns about private life of a person without his consent, state secret, official or financial secrets, or judicial review of a case which is prohibited by the established law or when there is threat to a person’s life or health. And presently under Article 29(4) the constitution of Russian Federation confers the right to information.

4. FRANCE

Article 34 of the Constitution of France confers the right to obtain administrative documents held by whether public or private bodies discharging public service. These documents include orders, files, memoranda, studies, statistics, description or interpretation of laws, or other documents of significant importance related to public or private institutions carrying out public service. Some categories of documents are exempted access from the law like the classified Defense information, security and security of individuals and so on. But the documents regarding proceeding related to the Government cannot be disclosed.

30 Article 2- Scope of the Present Federal Law
31 Article 34-Statutes shall determine the rule concerning:
Civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties; freedom, diversity and the independence of the media; the obligations imposed for the purposes of national defense upon the person and property of citizens.
5. UNITED KINGDOM

The Freedom of Information Act, 2000[^34] provides access to information to citizens in a unique manner as it imposes an obligation on public authorities to disclose certain information. The information can also be accessed upon request to that public authority. Here public authority includes state schools, government departments, police forces and local authorities. This act is applicable all over the United Kingdom except for Scotland which has its own Freedom of Information Act, 2000. The aforesaid Act does not apply to the Federal Judiciary or elected representatives of the Government like Senators, President or the Vice-President. There is no limitation to access of information on the grounds of citizenship or residence.

6. GERMANY

In January 2006, Germany enforced the Federal Freedom of Information Act[^35] which had a new legal perspective of unconditional and free access to documents and information held by any federal authority. Moreover, some federal authorities have an obligation to publish certain information[^36] even without anyone’s request to publish such data. There is also a Freedom of Information Commissioner to corroborate that the officials adhere with the Act. The main functions of the commissioner are to deal with the grievances, to conduct audits, and to provide recommendations for enhancing the access to data. But this right is also subject to restrictions; the public authorities can deny the request if it concerns national security or it might endanger the safety of the citizens, any trade secret or any personal information.

7. NEW ZEALAND

The Official Information Act enacted in 1982 provides access to various documents held by public authorities including their function, structures, and kinds of documents held by them, the principles based on which decisions and recommendations are made. This responsibility lies with the Ministry of Justice to publish the latest edition of these public service agencies once in two years[^37]. There are certain kinds of documents that are exempted from this category, which are not entitled to be accessible for the citizens.

[^34]: Section 1- General right to access to information held by public authorities.
(1) Any person making request for information to a public authority is entitles-
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.

[^35]: Section 1- Underlying Principles
(1) Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law. For the purposes of these provisions, a natural or legal person shall be treated as equivalent to an authority where an authority avails itself of such a person in discharging its duties under public law.
(2) the authority may furnish information, grant access to files or provide information in any other manner.
(3) Provisions in other legislation on access to official information shall take precedence, with the exception of Section 29 of the Administrative Act and Section 25 of Book Ten of the social code.

[^36]: Section 11- Obligations to publish information.
(1) The authorities should keep directories identifying the available information resources and the purposes of the collected information.
(2) Organizational and filing plans without any reference to personal data shall be made generally accessible in accordance with the provisions of this Act.
(3) The authorities should make the plans and directories stated in sub-sections 1 and 2 and other appropriate information generally accessible in electronic form.

[^37]: Section 20-Publication setting out functions of public service agencies and organizations
(1) The Ministry of Justice shall cause to be published, not later than the end of the year 1989, a publication that includes in respect of each public service agency and each organization-
8. CANADA

The **Access to Information Act** of Canada which came into force in 1983 confers the right to access information held by federal agencies to the citizens, an individual present in Canada and the permanent residents with the objective to allow the people to engage in democratic process.\(^{38}\) The concerned minister of a particular government institution is required to publish the organizational details and responsibilities of that agency, manuals and the kinds of records held by them with details annually.\(^{39}\)

But again, there are particular documents which the public is not entitled to access mentioned in **Section 13, 14 and 15** of the Act. The documents obtained from authorities in confidence such as international organizations, the documents relating to international affairs, federal and provincial relations and defence shall remain concealed.\(^{40}\)

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39. Section 5 - Publication on government institutions

5(1) The designated minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing:

(a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;

(b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this part;

(c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and

(d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this part should be sent.

40. Exemptions

Section 13 - Information obtained in confidence

(1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this part that contains information that was obtained in confidence from:

(a) the government of a foreign state or an institution thereof;

(b) an international organization of states or an institution thereof;

(c) the government of a province or an institution thereof;

(d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or

(e) an aboriginal government

Section 14 - Federal-provincial affairs

The head of a government institution may refuse to disclose any record requested under this Part that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs.

Section 15 - International affairs and defence

(1) The head of a government institution may refuse to disclose any record requested

(a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

(c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention, or suppression of subversive or hostile activities;
9. MEXICO

Mexico confers the right to freedom of Information by the virtue of Article 7 of the Constitution\(^{41}\). Federal law of Transparency and Access to Public Government Information grants abundant access to information held by any authority or entity of the state whether judiciary or legislature or executive. Apart from that information can also be obtained from any person or group entitled with public funds which has the authority at state or municipal level. The nation provides free access to public information. It also imposes an obligation on the Government authorities to keep the administrative files updated and should necessarily provide all the updated information about the management and utilisation of public resources\(^{42}\). If the entities fail to comply with the above-mentioned conditions, then they are entitled to be penalised.

**International conventions**

Right to access of information is an essential component of democracy that keeps a check on corruption and provides transparency and accountability of the Government. This has been recognised by the United Nations General assembly as well because of which it was adopted as a fundamental right in the year 1946. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinions and can seek and impart information through any media. Even the International Covenant on Civil and Political Rights, 1966 by the virtue of Article 19 confers the right to freedom of expression.

**Comparative analysis**

(1) Article 19(1)(a)\(^{43}\) of the Indian Constitution confers to every citizen the “freedom of speech and expression” and Right to Information is envisaged under this section. In a catena of judgments, the Hon’ble Apex Court has held that the right to know, receive and impart information has been recognized within the right to freedom of speech and expression.\(^{44}\) Freedom of press which is secured by this article includes broadcasting and even cyber technology. Unlike the United States constitution, Article 19(1)(a) does not expressly mention the liberty of press where an information can be printed or published without previous permission.

(2) According to Section 2(b)\(^{45}\) of the RTI Act “public authority” is any institution or self-government established by the Constitution, any law made by the Parliament, any other law made by legislature, by any notification issued

\(^{41}\) Article 7 reads as-

Freedom of speech, opinion, ideas, and information through any means shall not be abridged. Said right shall neither be abridged through any indirect means, such as abuse of official or private control over paper, radio electric frequencies or any other materials or devices used to deliver information, or through any other means of information and communication technologies aimed at impeding transmission or circulation of ideas and opinions.

\(^{42}\) Article 12 reads as- Compelled bodies shall make public all information regarding the amounts of, and the people receiving for any reports delivered by said people regarding the use and destination of said public resources.

\(^{43}\) Article 19 reads as –

(1) All citizens shall have the right

(a)to freedom of speech and expression;


\(^{45}\) Section 2(b) states-

“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, includes any-
(i)body owned, controlled or substantially financed;
(ii)non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;
by the appropriate government and also comprises an entity if the body is owned, controlled or substantially financed or a non-governmental organization directly or indirectly receiving funds from the Government.

Whereas the term “agency” refers to public bodies including Government Corporation or corporations controlled by Government, any executive department including that of the President, however legislative branch i.e., the Congress and the courts are excluded from the definition.

This renders it difficult in India for entities to fall under the purview of Public Authority and causes confusion creating a barrier for seeking and obtaining information, whereas in the United States all of the government agencies are included in the ambit of agency and so information can be accessed easily.

(3) In India if the institution is substantially financed by the Government only then it can be circumscribed in the purview of public authority and then information related to that entity can be obtained as explained in section 2(h)(i) of the RTI Act, 2005. Article 7 of the Federal Law of Transparency and Access to Public Government Information grants abundant access to information held by any authority of the state whether judiciary or legislature or executive, information can also be obtained from any person or group entitled with public funds which has the authority at state or municipal level.

Mexico provides rights to get information from a group that has public funds but in India it has to be proved that the entity is substantially financed by the appropriate Government only then that authority can be labelled as a public authority.

(4) The Constitution of South Africa allows the right to acquire information from a state and even an individual to exercise one’s right by the virtue of Article 32. There is no such provision in the Indian statutes that allows a person to obtain information from any individual, under the veil of which many authorities with ignoble intention are prevented from scrutiny.

(5) The access to information under the RTI is available only to Indian citizens as per Section 3 of the said Act. According to the official website of U.S. Department of Agriculture and U.S. Department of States of the United States any person can have access to federal records except for the ones which fall under exemptions. The Canadian

\[\text{Section 2(h)(i) of the RTI Act, 2005 states}
\]

\(\text{(i) body owned, controlled or substantially financed.}\)

\[\text{Exception made for information deemed by this law as privileged or confidential, all compelled bodies shall have available and updated for the general public, based upon the Regulations and the guidelines}
\]

\(\text{I) its organizational structure;}
\]

\(\text{II) the powers of each one of the administrative units;}
\]

\(\text{IV) the monthly wage per position, including the compensation, including the compensation system, according to the corresponding provisions;}
\]

\(\text{IX) information on the allocated budget, as well as reports concerning its use, based upon the terms of the Federal Budget of Expenditure. For the case of the Federal Executive, said information shall be available for each department and entity at the Tax Ministry, which at the same time shall publish the economic situation, public finances and public debt, based upon the terms of said budget;}
\]

\(\text{XI) the design, execution, allocated amounts and criteria used for access to subsidy programs. As well as the list of beneficiaries of all social programs established by the Decree of the Federal Budget of Expenditure.}\)

\[\text{Federal Law of Transparency and Access to Public Government Information, Article 12 reads as-}
\]

\(\text{Compelled bodies shall make public all information regarding the amounts of, and the people receiving for any reason public resources, as well as reports delivered by said people regarding the use and destination of said public resources.}\)

\[\text{Article 32 reads as}
\]

\(\text{(1) Everyone has the access to}
\]

\(\text{(a) any information held by the state}
\]

\(\text{(b) any information that is held by another person and that is required for the exercise or protection of any rights.}\)

\[\text{Right to information- Subject to the provisions of this Act, all citizens shall have the right to information.}\)

\]

\[\text{U.S. Department of states, https://foia.state.gov/learn/foia.aspx}\)
Access to Information Act by the virtue of Section 4\(^3\) confers access to information from federal authorities by a person irrespective of their citizenship or nationality.

(6) If any information forbidden to be published in any court or tribunal may be guilty of Contempt of Court according to Section 8(1)(b)\(^4\) of the Right to Information Act but there is no such provision for contempt in the Mexican Information Act.

(7) Exemption 9\(^5\) of the Freedom of Information Act of United States protects geological information including maps, data and location of wells and other similar information from being disclosed, similar provisions are also provided in the Freedom of Information Act of United Kingdom under Section 39\(^6\).

(8) Privacy Act and Freedom of Information Act of the United States protect the individual information of an individual. By the virtue of Section (d)\(^7\) of the Privacy Act a person can request for his personal information that can be requested for review, to update or correct the held information from a federal agency. Whereas the Indian laws lack this kind of provisions.

(9) Article 7(X)\(^8\) of the Federal Law of Transparency and Access to Public Government Information of Mexico provides that the audit reports of each body under the purview of the act for the fiscal year by the Comptroller’s officers or a Superior Auditing office shall be made available to the public. But in the RTI Act of India there is no such mention of audit reports to be published.

(10) Article 7(XIII)\(^9\) of the Federal Law of Transparency and Access to Public Government Information of Mexico the public is also entitled to receive the information about the hiring contracts about the good acquired,
leased or services provided, the details of the agency acquiring the contract and even the terms of such a contract. There is no such law in the RTI regarding any hiring contracts.

**Recommendations**

(1) Currently, there are no acts formulated by the Central Government which regulate upon public charitable trust but there are numerous acts legislated by various states of the country. As Entry 10 of List III of the **Seventh Schedule** of the Constitution of India includes the subject of Trust and Trustees and Entry 28 of the same list states the subject of Charities and Charitable Institutions it is well within the ambit of the Parliament to enact a legislation upon the afore said topic.\(^{60}\)

(2) Accountability along with transparency is an important facet of Democracy to contain corruption. Therefore, the trust shall furnish the updated information of Foreign Donations, and other contributions irrespective of their kind whether cash, or property movable or immovable to the trust when asked through any application. Not only the contributions but also the accounts of utilization of that money in the welfare of public must also be provided when a beneficiary applies for such data.\(^{61}\)

(3) The proposed administrative authority must contain representatives of the people namely, the law makers as well as proportionate number of bureaucrats having adequate experiences in relief and welfare and knowledge of managing and accounting funds to maintain balance and equilibrium and avoid problems such as delay, lack of proper approach etc. and should also include defence personnel or social workers according to the purpose for which the fund has been created.\(^{62}\)

(4) Annual reports regarding the receipts, liabilities and funds received along with the residuary amount in the fund must be maintained.\(^{63}\)

(5) Periodic audits must be done to analyse financial statements and accounting records to verify accuracy. These audits can prove to be strategic tools in establishing financial transparency with the donors.

(6) Funds made out of contributions of public or state funds must also be put under scrutiny under this enactment to ensure proper utilization of funds and to promote transparency and accountability.\(^{64}\)

**Conclusion**

Thus, from the above legal analysis it is apposite to prognostic that the action of denying information relating to the PM Cares fund under the Right to Information Act is a blatant violation of the fundamental right to access information under Article 19(1)(a). Furthermore, a comparative analysis of various legislative provisions of foreign countries and India relating to disclosure of information concerning public charitable trusts also unfurls that information concerning public charitable trusts is available to citizens in foreign states like USA, Canada, UK, South Africa etc. It is unambiguous that the objective behind establishment of PM CARES Fund is noble during these unfortunate times but due to certain ambiguous answers the transparency and accountability of the trustees is dubious.

\(^{60}\) 191\(^{st}\) Law Commission Report, Pg. 47, 2004
\(^{61}\) 191\(^{st}\) Law Commission Report, Pg. 11, 2004
\(^{62}\) 191\(^{st}\) Law Commission Report, Pg. 67, 71 2004
\(^{63}\) 191\(^{st}\) Law Commission Report, Pg. 73, 2004
\(^{64}\) 191\(^{st}\) Law Commission Report, Pg.55, 2004