**PM Cares Fund - Not Public Authority ??**

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On March 28th 2020, Prime Minister Narender Modi has announced establishment of a National fund Prime Minister Citizens Assistance and Relief in Emergency Situation ( **PM CARES** ) which is the primary objective of dealing with any kind of emergency or distress such as COVID-19. Following which on March 31st 2020 Government of India has brought out an  **Taxation and other law** ( relaxation of certain provisions ) Ordinance 2020. This ordinance is aimed at extending the tax payment deadlines and also providing 100% tax rebate for contribution to the **PM CARES** fund under Section 80(G) of Income Tax Act 1961.

As per PM Cares web portal, the **PM CARES** fund is managed by Trust with Prime minister, Minister of Finance, Minister of Home and Minister of Defence as **Ex officio Trustee** with provision of appointment of three eminent members as trustee in pro bono capacity. The burden on managing the PM CARES funds entirely rest on these Trustees. Objective of taking relief assistance, financial assistance. Prime Minister Modi has publicly requested and encouraged people and organizations to generously contribute to the fund.

As on today after 52days PM Cares funds has been receiving funds from Individuals, Public Sector Industries, Corporate Sector. As per the publicly announced details on the amount of corpus collected stands at Rs 9677.9 Cr ( $ 1.2 Billion ). This data is scraped from the publication of the Press Information Bureau. Additionally Rs 2098.Cr has been pledged to PM Cares & Rs 7988 Cr from Other Government Organization. PM CARES is also funded by the Bail bounds security given by accused in criminal offences ( Jharkhand, Madhya Pradesh , Patna HC ). On May 13th 2020, Rs3100 Cr of the PM Cares funds has been allocated for Purchase of Ventilators ( Rs 2000Cr ), providing for Migrants ( Rs1000Cr ) and vaccination infra ( Rs 100 Cr ).

On RTI filed by Student of Azim Premji University ( Harsha Kandukuri ) with Prime Minister Office ( PMO ) had denied providing information citing that PM CARES does not fall into ambit of **Section 2(h) of RTI Act 2005**. On a similar RTI with PMO seeking the funding and transactions details of PM Cares by activist Vikrant Tagoda, the same reason provided and also mentioned that “*i****ndiscriminate and impractical demand under RTI act for all dry and sundry information would be counterproductive as it adversely affects the efficiency of administration as it bogged down on non-productive work of collecting and furnishing information***”. A subsequent RTI by Law student Sandeep Pamarati of Sri Vijayanagar Law college Anantapur was also disposed under 2(h) of RTI Act.

**Ambit & Scope of 2(h) RTI Act 2005**

Section : 2(h) : “**Public Authority**” **means** any authority or body or institution of self government established or constituted

1. By or under the Constitution
2. By any other law made by Parliament
3. By any other law made by State Legislature;
4. By notification issued or order made by the appropriate Government

It also includes any

1. Body **owned, controlled** or substantially financed
2. Non-Govt Organizations substantially financed

Directly or indirectly by funds provided by the **appropriate Government.**

Section : 2(a) of RTI Act 2005

**Appropriate Government** means **in relation to a public authority which is established, constituted, owned, controller** or substantially financed by funds provided directly or indirectly

i) by the Central Government or the Union Territorial administration, the Central Government;

ii) by the state Government, the state Government

The mechanical and complete abnegation of its duty by the Prime Minister Office is clearly reflected in the nature and content of the replies.

To Begin with Article 226 and Article 227 of the Constitution allow for the creation of Consolidated fund of India and Contingency fund of India. These funds are repositories of all moneys ( borrowing, tax, revenue, deposits, remittances - Consolidated fund ) and Contingency fund which provisioned to be handy at the time of National emergency. As per Comptroller Auditor General, the current balance of Contingency fund is Rs8000Cr. There is a Prime Minister Relief Fund which is under the Prime Minister with an unused balance of Rs 3800 Cr as on December 2019. There are also Member of Parliament Local Area Development funds ( MPLAD ) established in 1993 which has around 7800Cr unused balance.

Each of the above funds Consolidated fund, Contingency fund, Prime Minister National Relief fund, MPLADS each have parliamentary oversight and report the transactions made into the accounts and transactions charged on the account. Each of these accounts also has machinery to monitor the allocation of funds and track the progress of the initiatives which are funded from these funds. There is a general transparency and information is available on respective public authority under Section 4 of RTI Act.

The creation of PM Cares and its astronomical growth in terms of public money brings about a lot of questions. Such as Why do we need an extra constitutional fund like PM Cares? The amount of money that is being collected into PM Cares funds and how effectively it is utilized for the betterment of the society and coming out of this difficult situation. Francis Bacon said “information is the Oxygen of democracy, it invigorates wherever it percolates “. The information on working of PM Cares is essential as it holds an enormous amount of money. Primer Minister Narender Modi's appeal to Indian citizens has brought an avalanche of money into the fund. As of now it has no executive, parliamentary or judicial oversight. With No clear cuts rules of usage and shroud of obscurity which covers PM Cares leaves much to be answered.

PM Cares Fund is a **National fund** and is administered by the Prime minister of India as Ex officio and it has come into existence through an **ordinance** and hence it comes under the ambit of 2(h)(d)(1) - body owned, controlled and substantially financed by appropriate government. ( in this case the Central Government ). **In Geetha Vs CPIO** ( Ministry of Youth affairs - famously BCCI ) - it is held that the Doctrine **of fairness and good faith** obligates the board which controls the sport of cricket to exercise enormous public functions as public authority. They cannot act arbitrarily, whimsically or capricious and BCCI actions should be judged and view by higher standards. Thus PM Care funds with its anormus corpus of money and exclusively made to mitigate disaster scenario should come out clean by subjecting itself to demands of RTI act

In **Sukdev Vs Bhagatram Singh Singh Raghuvansh**i, if a given function is of such importance and so **closely related to government function** to be classified as a government agency, even the presence or absence of **state financial aid might be irrelevant** . Matters of **High public interest** or performing public functions are by **virtue of Nature of functions performed by government agencies** . PM Cares funds are used to ameliorate the public trauma and have the highest public interest and thus are liable to be open to public scrutiny.

Lastly citing **Justice Mathew in State of UP vs Raj narain**, People of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know particulars of every public translation in all its bearing. There righ to know, which is derived from concept of freedom of speech, though not absolute is a factor which should make one wary when secrecy is claimed for transactions.

India is a democracy and follows rule of law along with checks and balances and it citizens have the right to know about the PM Cares fund.

**Source :**

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3. <https://rti.gov.in/rti-act.pdf>
4. <https://www.indiaspend.com/pm-cares-received-at-least-1-27-bn-in-donations-enough-to-fund-over-21-5-mn-covid-19-tests/>
5. PMNRF - <https://pmnrf.gov.in/en/about>
6. MPLADS - <https://www.mplads.gov.in/mplads/AuthenticatedPages/Reports/Citizen/rptExpSummaryReportOLDFormat.aspx>
7. 3100 - <https://pib.gov.in/PressReleasePage.aspx?PRID=1623649>
8. Ordinacne - [link](https://pib.gov.in/PressReleseDetail.aspx?PRID=1609734#:~:text=The%20Ordinance%20also%20amended%20the,Prime%20Minister%20National%20Relief%20Fund.&text=Hence%2C%20any%20person%20including%20corporate,CARES%20Fund%20up%20to%2030.06.)
9. PIL - Politically motivated - <https://www.livelaw.in/top-stories/misconceived-petition-sc-dismisses-pil-challenging-pm-cares-fund-155174?infinitescroll=1>
10. PM Cares - Not Public Authority - <https://www.livelaw.in/top-stories/pm-cares-fund-not-a-public-authority-under-rti-act-says-prime-ministers-office-157573>
11. RTI Vikratn Tagoda - <https://thewire.in/government/pmo-rti-pm-cares-supreme-court>
12. Contingency fund - <https://www.firstpost.com/business/union-budget-2019-contingency-fund-of-india-helps-govt-meet-emergency-expenses-parliament-nod-required-to-utilise-it-6806821.html>

