

# A fund without a care for the RTI

The Government's claim that the PM CARES Fund is not a public authority is unacceptable



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It may not be an exaggeration to say that when it comes to seeking answers and information under the Right to Information (RTI) Act, the Prime Minister's Office (PMO) is consistent in putting up a screen. **The manner in which the Prime Minister's Citizen Assistance and Relief in Emergency Situations (PM CARES) Fund was set up – with its acronym created to publicise the point that the Prime Minister cares for people – shows a bypassing of the statutory obligations of a public authority.**

## The other funds

A statutorily constituted National Disaster Response Fund (NDRF), which was established under the Disaster Management (DM) Act of 2005, is deliberately ignored while a new, controversial, unanswerable, and 'non-accountable' vehicle is created; its character is not spelt out till today. The NDRF is mandated to be accountable, and answerable under the RTI Act, being a public authority, and auditable by the Comptroller and Auditor General of India. The Government seems to consider statutory provisions for enquiry and information seeking to be embarrassing obstacles. The DM Act provided for a Disaster Response Fund – state and district level funds (besides the national level) and also to collect and use the donations at the local level, with mandatory transparency and audit provisions. The PM CARES Fund centralises the collection of donations and its utility, which is not only against the federal character but also practically inconvenient.

There is the Prime Minister's National Relief Fund operative since the days of Jawaharlal Nehru. The website says (<https://bit.ly/39Plqd1>): "In pursuance of an appeal by the then Prime Minister, Pt. Jawaharlal Nehru in January 1948, the Prime Minister's National Relief Fund (PMNRF) was established with public contributions to assist displaced persons from Pakistan. The resources ... are now utilised primarily to ren-

der immediate relief to families of those killed in natural calamities... and to the victims of the major accidents and riots. Assistance from the PMNRF is also rendered, to partially defray the expenses for medical treatment ... The fund is recognised as a Trust under the Income-Tax Act and the same is managed by [the] Prime Minister or multiple delegates for national causes." The fact is that there is substantial money also left in the PMNRF. But the Narendra Modi government does not want to use it. The PMNRF has the President of India and the Leader of Opposition also as trustees. The Centre now considers it as another obstacle and has created a new trust with the Prime Minister and his Ministers only.

While both funds, the NDRF and the PMNRF, have been relegated to the back burner, the PM CARES Fund is in the limelight. It has been created not by law, not by notification, but by the mere creation of a webpage, and set up last year in March to raise funds for those affected by the COVID-19 pandemic. The page lists its structure, functions and duties in an arbitrary manner. The official appeals for funds are made under the emblem of the Saranath lions and 'Satyameva Jayathe', which means "Truth Alone Triumphs". Therefore, the recent affidavit, where the Delhi High Court was informed that **"the PM CARES Fund is not a Government of India fund and that the amount collected by it does not go to the Consolidated Fund of India"**, is strange. **The affidavit was filed by an Under Secretary at the Prime Minister's Office (PMO), who added that the trust functions with transparency. The most significant lie of this sworn statement is that the Government has no control over the Fund.**

## Query and response

After initial denials, the Government has conceded it to be a public charitable trust, but still maintains that it is not a 'public authority'. In his public speeches, the Prime Minister often makes assurances of transparency. The Bharatiya Janata Party also says it is committed to its promise made in its election manifesto – of there being zero tolerance for corruption. If these are true, then the PM CARES Fund should be declared as 'a Public Authority' under the



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RTI Act, and all RTI queries answered truthfully.

Going back to the affidavit about the PM CARES Fund, the Under Secretary's response reflects the adamant to not be transparent and is a stand in defiance **of the RTI Act. The issue arose after a petitioner/lawyer, Samyak Gangwal, filed a petition seeking that the PM-CARES fund to be declared as the "State" under Article 12 of the Constitution. In another plea, he had sought for the fund to be designated as a "public authority" under Section 2(h) of the RTI Act (<https://bit.ly/3uqifJk>).** The point is that the PMO operates the Fund, but says it cannot supply any information about the PM CARES Fund because it is not a public authority. The PMO completely glosses over the fact that the PMO is a public authority and has to give us answers about the fund under the RTI.

## More questions and gaps

Some of the claims made in the affidavit are: **The PM CARES Fund was neither created by the Constitution of India nor by any statute. If that is the case, under what authority does it use the designation of the Prime Minister, designated symbols of the nation, the tricolour and the official (gov.in) website of the PMO, and grant tax concessions through an ordinance? Why does the Prime Minister make appeals for contributions to this fund saying it will help the Government fight COVID-19? The link, "About PM CARES Fund" (<https://bit.ly/2Wm8Lvw>), makes it clear.**

The amount received by the Fund does not go to the Consolidated Fund of India. If it goes to the CFI, it could have been audited by the CAG. Because this Fund is not audited by CAG, the Government has to ensure that it is answerable and foreclose any possibility of corruption. It should be transparent when it comes to its sources and fund disbursement.

The third claim is: "This Trust is neither intended to be or is in fact owned, controlled or substantially financed by any Central Government or State Government or any instrumentality of the any Government. In other words, 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". The Prime Minister is the ex-officio Chairman and three cabinet Ministers (for Defence, Home and Finance) are ex-officio members. A Government advertisement for the PM CARES Fund says: "PM announces new fund for people to donate towards Govt. fight against Coronavirus". Another advertisement makes the claim, "MY Govt or Meri SARKAR". It is interesting that the Prime Minister is the Chairperson of the Board of Trustees (<https://bit.ly/3um6Of6>), when the claim is that it is not connected with the Government. If the PM CARES Fund is unconnected with the Government, **then the Fund could become an office of profit. And that could disqualify him and the three Ministers from holding those constitutional offices.**

The composition of the board of trustees can never be a determinative factor to ascertain whether the respondent is a "public authority" or not; the Prime Minister as chairman and three Cabinet Ministers as members, in their official capacity, determines it to be a public authority. This board decides how to spend the funds collected, which is the prime function. The Prime Minister's Office administers the activities. This is 'substantial control' which is the test to determine its character as a public authority under the RTI Act as highlighted in the landmark judgment of the Supreme Court of India in *Thalappalam Service Coop. Bank Ltd. vs State of Kerala*.

The point that some Government officer provides ex gratia services to the public trust is of no relevance; a Government officer providing secretarial assistance on an honorary basis while discharging his official duties can never be a relevant consideration for declaring a body to be a public authority. By agreeing that it is a public trust managed by the Prime Minister and three Ministers in their ex-officio capacity, the Government cannot say that it was irrelevant to

declare it as a public authority. The Prime Minister and the Ministers do not take decisions in their personal capacity. They have to work to implement the objectives of the trust.

## Funding avenues

The mere grant of certain tax exemptions with regard to the voluntary donations made to a public trust is not a determinative factor for the purpose of Section 2(h) of the RTI Act. An ordinance was promulgated to amend Income Tax Act, 1961 and declare that the donations to the PM CARES Fund "would qualify for 80G benefits for 100% exemption". The official website and the Press Information Bureau (<https://bit.ly/3D2cFCR>) also declared that donations to the PM CARES Fund "would qualify for 80G benefits for 100% exemption under the Income Tax Act, 1961. Donations to PM CARES Fund will also qualify to be counted as Corporate Social Responsibility (CSR) expenditure under the Companies Act, 2013... PM CARES Fund has also got exemption under the FCRA [Foreign Contribution Regulation Act] and a separate account for receiving foreign donations has been opened". All this amounts to substantive funding.

Section 19 of the Indian Trusts Act mandates the trustees to present full and accurate information of the amount and state of the trust property to the beneficiaries. Because of this statutory access, all information about the PM CARES Fund should be accessible as per Section 2(f) of RTI Act; "information" here means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force" (this enables access to information of trust even if it is private, through the Indian Trusts Act). The claim that the PM CARES Fund is not a public authority is absurd to say the least.

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