

**KILLING THE SPIRIT OF RTI? : THE RIGHT
TO INFORMATION (AMENDMENT) ACT, 2019**

Submitted to:

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ACKNOWLEDGEMENT

I take this opportunity to thank all those who have helped and guided me in making this project and for that, I would like to express my deepest gratitude to Hon'ble Shri Divya Prakash Sinha, Central Information Commissioner who helped and motivated me during the whole duration of the internship. I would also like to express my sincere gratitude to Shri Haro Prasad Sen, Deputy Registrar, who has guided and provided me with his invaluable suggestions, ideas pertaining to incorporation of this project. Furthermore, I would like to thank Mr. Dhruvraj Tomar and Mr. Harish, who have guided me, and furthered my understanding of various legalities and working of the RTI Act, 2005. Furthermore, I also express my gratitude to other staff members of the Registry for extending various facilities in witnessing hearing of cases and preparing case briefs which played an important role in completing this assignment. Secondly, I would like to express my gratitude to my friends, co-interns and my parents who have supported me throughout my internship.

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INTRODUCTION

India enjoys the status of being the largest democracy in the world. Transparency, accountability, public participation, and interaction are the pillars of a democratic system. Public participation is possible only when people of the nation are informed of things going around in the country such as the programs and schemes brought in by the government for the welfare of its people. Administrative authorities in India are vested with wide discretionary powers which often create a qualm of maladministration, corruption, and abuse of power in the minds of the people.

History was created in the year 2005 when the Indian Parliament enacted The Right to Information Act ('RTI Act'), the landmark legislation that changed the dynamics of Indian administration. The RTI Act brought with itself accountability, responsibility, and alertness in administration thus reducing corruption and unnecessary delays in the implementation of government schemes to a significant extent. Introduction of Right to Information meant that people could now actively participate in the process of governance and administration as they could now have access to the information held by the administrative authorities such as disclosure of information regarding government rules and regulations meant for public welfare.

The RTI Act is 21st-century legislation which entitles the people of India with a statutory right, i.e., the 'Right to Information'. However, the Supreme Court recognized the Right to Information as a fundamental right way back in 1975 in the case of *State of Uttar Pradesh v. Raj Narain*¹, wherein it ruled that *"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. They are entitled to know the particulars of every public transaction in all its bearings."* The apex court in the landmark case of *S.P. Gupta & Ors. v. The President of India*² further recognized Right to Information as a fundamental right-ruling that *"The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information*

¹State of Uttar Prasad v. Raj Narain, A.I.R. 1975 S.C. 865

²S.P. Gupta & Ors. v. The President of India, A.I.R. 1982 S.C. 149.

regarding the functioning of Government must be the rule.” Right to Information is perhaps the dearest contrivance of the civil society which has made a sempiternal impact in the public memory. The RTI Act has thus successfully done justice to its objective by giving the people access to information regarding the CBSE Board papers³ and accounts of political parties⁴ to name a few.⁵



³CBSE v. Aditya Bandopadhyaya, (2011) 8 S.C.C. 497.

⁴Subhash Chandra Agarwal v. Indian National Congress and Ors., 2015 S.C.C. OnLine C.I.C. 604.

⁵Abhinav Kumar and Prakhar Bhardwaj, *Book Review of "The Right to Information in India" by Sudhir Naib*, 2(1) NLUJ Law Review 127 (2013).

ATTRIBUTES OF THE RTI ACT

Before jumping onto the main topic in consideration, it is important to state out what RTI is and what it covers. Hereunder lies the basic attributes of RTI Act, 2005.

Firstly,

The administrative authorities are duty bounded to disclose the information demanded by the people. Information includes every mode of information in the form of a document, emails, contracts, circulars, press releases, records, memos, advice, logbooks, samples, models and any electronic mode of information such as tapes, cassettes, videos, diskettes, etc as specified under Section 2(f) of the RTI Act. However, the reactive to the disclosure of the above information is subject to security of the nation, private information and the other individual's information. (As mentioned under section 8 and 9 of the RTI Act, which are the exemptions provided to deny the information along with provisos)

Secondly,

To get access to any information the interested person needs to submit an application before Public Information Officer ('PIO') requesting the concerned information. If the PIO fails to grant access to requested information within the stipulated period i.e., within 30 days from the date of receipt of RTI Application, the applicant then has the right to approach the first appellate authority. Section 19(1) of the RTI Act mandates the first appellate authority to disclose the information within 45 days. Failure of the first appellate authority to disclose the information within the stipulated period gives the applicant the right to file a second appeal against the PIO before the Central Information Commission or the State Information Commission which is a quasi-judicial body under the act. However, the applicant does not have the right to approach the local courts to enforce his Right to Information. The Information Commission under the act has the power to conduct inquiries like a civil court and can impose penalties.

Thirdly,

A minimal fee of Rs.10 is charged for filing the application seeking information. The fee is however exempted for people belonging to the below poverty line. There is no prescribed format for applying however the application must include signature, name, and address of the applicant and the requisite information along with the name and position of the PIO.

AMENDMENTS PROPOSED BY THE 2019 BILL

The 2019 amendment bill amended section 13 and section 16 of the RTI Act, 2005.

Firstly, previously the term of office for the Central Chief Information Commissioner ('CIC'), the State Information Commissioner ('SIC') and Information Commissioner was fixed to 5 years or until the age of 65 years whichever is earlier. However, the newly amended bill empowers the Central Government to prescribe the term of office for the commissioners as it may deem fit to the government.

Secondly, the salary of Chief Information Commissioner and Central Information Commissioner was previously identical to the salary of the Chief Election Commissioner ('CEC') and Election Commissioner, whereas the salary of the Chief State Information Commissioner and State Information Commissioners were identical to the salary of the Election Commissioner at the state level and salary of the SIC was equivalent to the Chief Secretary of the state. The newly amended bill, however, empowers the Central government to prescribe the salary, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners.⁶

Thirdly, as per the newly amended bill, if Chief Information Commissioner and Information Commissioners are receiving the pension or any other retirement benefits from the previous government service, their salaries will be decreased by an amount equivalent to that pension.⁷

A comely table would probably ease our way in comparing the changes that have been proposed.

⁶Section 2 & Section 3, Right to Information (Amendment) Bill, 2019.

⁷Section 4, Right to Information (Amendment) Bill, 2019.

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
Term	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
Deductions in Salary	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions.

Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019⁸

OBJECTIONS AGAINST THE BILL

⁸Right to Information Act, 2005; Right to Information (Amendment) Bill, 2019; PRS.

The objections against the bill are threefold.

- **AGAINST THE FEDERALISTIC STRUCTURE OF THE ACT**

The 2019 amendment bill came as a jolt to the RTI Act as the bill wipes out the federal structure of the RTI Act by empowering the government with excessive power of delegated legislation. The salaries and allowances of the SIC are drawn from the Consolidated Fund of the respective states over which the Centre has no authority. Likewise, the definition of term “appropriate government” under the RTI Act⁹ read with the rulemaking power vested in them under Section 27 of the RTI Act empowers the SIC to adjudicate upon the disputes relating to access to information or of public records held by the administrative authorities under the jurisdiction of their respective states.

- **COMPROMISING THE INDEPENDENCE OF INFORMATION COMMISSION**

The new amendment bill has crippled the autonomy and independence of CIC, SIC and the ICs as they no longer have a fixed salary and a fixed tenure thus making them a puppet of the Central Government.

- **VIOLATIVE TO THE 2014 PRE-LEGISLATIVE CONSULTATION POLICY**

The Government atrociously violated the 2014 Pre-Legislative Policy by being the cold shoulder to the views of the Government.

FEDERALIST STRUCTURE

⁹Section 2(a), Right to Information Act, 2005.

The new bill giving unreasonable authority to the Central Government has stirred up a hornets' nest as the Statement of Objects and reasons attached to the amendment bill fails to answer the question as to how the SIC is constituted by and whose salary and tenure is subject to the control of Central Government.

Further, Section 15(1) of the RTI act authorizes the State Government to set up the State Information Commission and Section 15(3) empowers the State Government to appoint the State Information Commissioner and vests power in the Governor to remove them on grounds of proven misbehaviour and incapacity. Further, the decision of SIC cannot be challenged before the CIC. Therefore, the federal scheme of the RTI act stands firm and clear. The Central Government has no right exercise authority over the appointment of the SIC as there is a very sharp and explicit demarcation between the jurisdictional limit of the Centre and State.

Further, Section 27(2) of the RTI Act authorizes the State Government to determine the procedure for the appointment of SICs and make rules and regulations. It is the function of the State Government to determine salary, allowances and the terms and conditions of the service of the office-bearers. With the new amendment coming in, two sets of rules will now govern the officials with both the Centre and the State having the power to determine the stipend which is set to create a state of dubiety in the functioning of SICs.

It is further pertinent to note that the State Government is required to present an annual report before the State Legislature with respect to the functioning of the State Information Commission. Based on this annual report the State legislature inspects the performance of the SICs. With the new amendment bill coming into effect and the Centre empowered to fix the salary and tenure the SICs may no longer be accountable to the State legislature. Thus, the appointment of the SICs and the decision on their salaries and tenure is the sole jurisdiction of the State Government. The new amendment bill by empowering the Central Government with the powers of the State Government has annihilated the federal scheme of the RTI Act.¹⁰

INDEPENDENCE OF THE COMMISSION

¹⁰Right To Information (Amendment) Bill, 2019: A Mock on the Autonomy of Administration<<https://ijlpp.com/right-to-information-amendment-bill-2019-a-mock-on-the-autonomy-of-administration/>>

The Central Government by bringing in the amendment bill in a rather clandestine manner has attacked the very fundamental institution responsible for ensuring that people exercise their Right to Information. Information Commissions being the final adjudicatory body hold a very significant position in the administration. The new amendment bill has clamped down the independent functioning of the Information Commissioners who over the years have passed crucial orders such as the direction to the Government to release information leading to the revelation of scams and corruption. The new amendment bill has struck at the heart of the autonomy of ICs by empowering the Central Government to determine the salary and tenure of these authorities. The present bill has defeated the purpose of parliament behind fixing the salaries and tenure of these bodies. The ICs can no longer be fearless in their approach.

Further, the State of objects and reasons attached to the RTI Amendment Bill says that CICs and SICs being statutory bodies cannot be equated to a constitutional authority such as the Election Commission of India ('ECI').¹¹ Thus the Government has contradicted its move of harmonizing and ameliorating the salary, allowances and the eligibility criteria and the manner of appointment of Chairpersons or Presiding officers and other members of 19 tribunals and the adjudicating authorities through the 2017 Finance Act.¹² The Government increased the salary of Chairpersons of 17 out of 19 tribunals to INR 2,50,000 which is the same as the salary of the Election Commissioner and Supreme Court Judges and the salary of the members were raised to INR 2,25,000 equal to that of the High Court Judges.¹³ It is pertinent to note that these tribunals are statutory authorities established under specific laws and none of these tribunals performs a constitutional function like the ECI. The Information Commission was never included in the above list which speaks volumes about the intention of the Government that it seeks to downgrade the status of the ICs in the Centre as well as the State through the new amendment.

Further, the Supreme Court in a string of landmark judgments as stated above has held that Right to Information is like the Right to vote is a fundamental right originating from the right

¹¹Statement of Objects and Reasons, Right to Information (Amendment) Bill, 2019.
<http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/181_2019_LS_Eng.pdf>

¹²The Finance Act, 2017.
<http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/181_2019_LS_Eng.pdf>

¹³*New ITAT Members To Get Marginal Salary Hike But Limited 3 Year Term For Members, VPs And President*, itatonline.org (June 3, 2017)
<<http://itatonline.org/info/new-itat-members-to-get-3x-salary-hike-to-rs-250000-per-month/>>

of expression under Article 19(1)(a).¹⁴ Thus both the Election Commission and the Information Commission are the result of a fundamental right. Thus the objective behind the amendment bill stands in a stark contradiction with rulings of the Apex Court.¹⁵



¹⁴S.P. Gupta & Ors. v. The President of India, A.I.R. 1982 S.C. 149.

¹⁵Right To Information (Amendment) Bill, 2019: A Mock on the Autonomy of Administration <<https://ijlpp.com/right-to-information-amendment-bill-2019-a-mock-on-the-autonomy-of-administration/>>

VIOLATION OF PRE-LEGISLATIVE CONSULTATION POLICY

"It is a matter of grave concern that the amendments to the Right to Information Act (RTI) law were introduced in complete secrecy and in flagrant violation of the Pre-Legislative Consultation Policy of the Central government, which mandates public disclosure and consultation on draft legislation," Aruna Roy told reporters at a press conference on Monday.

Aruna Roy said owing to "the undemocratic way of its introduction", the contents of the draft amendments were not known by MPs, citizens and the media till the bill was circulated to members of the Lok Sabha on the eve of its introduction.

The Government secretly introduced the amendment bill without consulting the two primary stakeholders: the citizens and the Information Commission. Further, neither the media nor the MPs were made aware of the bill. Thus, the Government egregiously violated the 2014 Pre-Legislative Policy by being the cold shoulder to the views of the Government. The 2014 policy clearly states that pre-legislative scrutiny must take place before the final drafting of the bill is decided and is introduced in the Parliament.¹⁶ Thus the Government has abused its power.

¹⁶Pre-Legislative-Consultation-Policy
<<http://legislative.gov.in/sites/default/files/plcp.pdf>>

Personal Views/Opinion

Firstly,

When the government stated that the status of the Information Commissioners (ICs) is not to be equated with that of the election commissioners (ECs) on the grounds that the election commission is a constitutional body whereas the information commission is a statutory body under the act. There are several bodies such as the National Green Tribunal and the National Human Rights Commission whose members are considered to be at par with Supreme Court judges or Election Commissioners. The NGT and NHRC are also statutory bodies. As a matter of fact, this hierarchy of sorts between the constitutional bodies and statutory bodies is itself uncalled for. The position of Information Commission with respect to it being a statutory body or a quasi-judicial body is still in the dark. In order to ascertain the difference between quasi-judicial body and statutory body, a brief distinction lies hereunder.

Statutory bodies are established by acts which Parliament and State Legislatures can pass. These bodies are entities shaped by an Act of Parliament or state legislatures and set up by the government to consider the data and make judgments in some arena of activity. Basically, a statutory body is an organisation of government which is not demarcated in Constitution of India but it gets its powers, service rules, authority by an act of parliament or state legislatures. They are generally established to perform specific functions which a government considers effectively performed outside a traditional departmental executive.

Quasi-judicial bodies are institutes which have powers analogous to that of the law imposing bodies but these are not courts. They primarily oversee the administrative zones. The courts have the power to supervise over all types of disputes but the quasi-judicial bodies are the ones with the powers of imposing laws on administrative agencies. These bodies support to lessen the burden of the courts. Quasi-judicial activity is restricted to the issues that concern the particular administrative agency. Quasi-judicial action may be appealed to a court of law.

Secondly,

When the original bill was proposed by the then government, the objective was to equate the status of the chief information commissioner with the secretaries to the Government of India, and the other commissioners with joint secretaries. The legislation was referred to the

parliamentary committee in December 2004. The committee had six to seven BJP MPs, one of whom was (current president) His Excellency Shri Ram Nath Kovind. They had then contended that the information commissioners should not be made equal to secretaries and joint secretaries, and that for the sake of autonomy, they should be placed on a footing equal to the election commissioners. Despite the BJP having taken a contrary stand when it was in opposition, it seems to have lost its own rationale over the period of time

Thirdly,

The government argues RTI is not a fundamental right, and CIC and State Information Commission are not constitutional bodies. But, the Supreme Court in catena of landmark cases, has held that RTI, like the right to vote, has emanated from right of expression under Article 19(1)(a). Both CEC and CIC enforce these two aspects of that fundamental right. The 2005 RTI Act says information is a ‘constitutional right’, while the 2019 bill contradicts it. If the Election Commission that enforces a right under Article 324 (1), is a constitutional institution, how can the Information Commission that enforces a fundamental right under Article 19(1)(a), not be a constitutional body? The mandate of both is similar — to fulfil constitutional rights obligations. If RTI was introduced earlier in India, like some other countries, then, like the CEC, it would have found mention in the Constitution itself.¹⁷

¹⁷RTI: A bill that may kill a right<<https://www.hindustantimes.com/analysis/rti-a-bill-that-may-kill-a-right/story-EkYRO9yihPpG0oexQJaCGJ.html>>

CONCLUSION

It's a matter of pride that India has one of the best Information legislations in the world. Every year 4-6 million people file RTI applications to the government seeking access to information. On the ground, a very large number of people ask for basic information related to their rations, pensions, health, and education and for things which are their basic rights denied to them because of corruption. When people access to this information, it exposes corruption and they can hold the government accountable. However, the RTI law is not only used for basic rights and entitlements but is also used to hold the highest offices of administration, legislature and the judiciary accountable. People through the Right to Information law have unearthed some of the major scams, educational qualifications of the elected representatives and the assets and liabilities of the highest functionaries of the land in recent years which resulted in a huge backlash of the Right to Information law by the Government over the years. Previous Governments have tried to amend the RTI Act but the present Government has become successful in clandestinely amending the law by which it has debilitated the very basic institution responsible for enforcing people's Right to Information.

The Right to Information law has converted India from a defective elective democracy to a participative democracy. Right to Information which is the fundamental right of every citizen of India is currently under threat. The new amendment is a menace to the prime objective of the 2005 RTI Act which was to ensure transparency and accountability in the administration. The initial scheme of the RTI Act was designed to ensure the autonomy of the Information Commissioners so that they can perform their functions freely without any pressure from the Government. Thus, the new amendment has changed the basic feature of the RTI Act. It is safe to say that the Central Government by taking away the authority, independence and autonomy of the Information Commissioners has made them their puppets and have butchered the soul of the RTI Act.