



# THE RIGHT TO INFORMATION (AMENDMENT) ACT , 2019

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## ABSTRACT

People's right to information refers to their ability to obtain information from the government. Citizens and non-governmental organisations (NGOs) may seek information from a public authority about government activities under the RTI Act, and RTI agencies must respond within 30 days. The Right to Information (Amendment) Act, 2019, is the subject of this paper. Sections 13 and 16 of the RTI Act of 2005 are amended by this act. Sections 13 and 16 of the original statute stipulate that the Central Chief Information Commissioner, State Level Information Commissioners, and Information Commissioners serve for a period of five years or until they reach the age of 65, whichever comes first. The salaries, allowances, and other terms of service of the Central Chief Information Commissioner shall be the same as those of the Chief Election Commissioner, and those of Information Commissioners shall be the same as those of an Election Commissioner, according to Sections 13 and 16 of the original act. State Chief Information Commissioners shall have the same salary, allowances, and other terms of service as Election Commissioners, and State Information Commissioners will have the same salary, allowances, and other terms of service as the Chief Secretary to the state government. However, the RTI Amendment Act of 2019 proposes that the federal government set the appointments, wages, allowances, and other terms of service for the Central Chief Information Commissioner, Information Commissioners, State Chief Information Commissioners, and State Information Commissioners. In this light, the researcher seeks to shed light on questions such as whether the RTI (Amendment) Act, 2019 interferes with RTI's operation and limits RTI authorities' independence. whether such an amendment is a direct challenge to the concept of federalism Is there an overabundance of authority delegation by the legislative to the central executive.

**Key words:** RTI Act, 2005, RTI (Amendment) Act, 2019, Excessive delegation ,Information Commissioner, Central government.

## INTRODUCTION

“Power tends to corrupt and absolute power corrupts absolutely”- Baron Acton

This comment is especially relevant in light of the recently enacted Right to Information (Amendment) Bill, 2019, which was approved by both chambers of Parliament and has now been signed into law as the Right to Information (Amendment) Act after receiving presidential assent. Transparency, accountability, predictability, and participation are the four core characteristics of good governance. Right to Information (RTI) encourages government institutions to operate with greater transparency and accountability, allowing them to function more honestly. Furthermore, providing citizens with government information allows them to engage in the democratic process. As a result, the right to information promotes good government.<sup>1</sup>

There was a Freedom of Information Act in place prior to the Right to Information Act of 2005<sup>2</sup>. It was repealed in October 2005 by the Right to Information Act. This legislation offers residents of India the right to request information from public authorities about their operations, and the right to information authorities are required to respond within 30 days<sup>3</sup>.

In India, the RTI Act of 2005, which went into effect in 2005, is one of the most significant pieces of legislation passed by the Indian Parliament. The Act aims to promote informed citizenship, openness, and accountability in government at all levels, which are critical to a democracy's functioning. Its goal is to make information disclosure the rule rather than the exception.<sup>4</sup>

Right to information has been explicitly recognised as a fundamental right in the constitutions of countries such as South Africa, Nepal, and Ghana, and the judiciary of some of these countries has interpreted the right to freedom of speech and expression to include the right to information in various judgments.<sup>5</sup> RTI is not recognised as a fundamental right in the Indian Constitution, but various Supreme Courts have construed RTI as a part of the right to freedom of speech and expression under Article 19(1) in various cases (a). Furthermore, the Supreme Court of India has stated that the Right to Know is an inherent aspect of the Right to Life, and that one cannot have the Right to Life unless one has the Right to Information. In addition, the Supreme Court of India has gone on to say that the Right to Know is an integral part of the Right to Life and unless one has the Right to Information the Right to Life cannot be exercised.<sup>6</sup>

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<sup>1</sup> Sudhir Naib, The Right to Information Act 2005: A Handbook 21(2011).  
<sup>2</sup> Hereinafter referred to as RTI Act  
<sup>3</sup> Dharanisha S T, Implementation of Right to Information and Impact on Administration: A Case study of Collegiate Education and Revenue Department in Karnataka, Department of Personnel and Training under the Ministry of Personnel Public Grievances and Pensions 11(2015).  
<sup>4</sup> Dr. Sairam Bhat, Right to Information 14 (2012).  
<sup>5</sup> Debashish Sankhari, Right to Information as a Human Right and Developments in India, Commonwealth Human Rights Initiative (Oct 5th, 2019, 4:14 PM), <https://www.humanrightsinitiative.org/programs/ai/rti/india/articles/RTI%20as%20a%20Human%20Right%20and%20Developments%20in%20India.pdf>.

<sup>6</sup> Reliance Petrochemicals Ltd. vs Proprietors of Indian Express, AIR 1989 SC 190.

**RESEARCH METHODOLOGY**

The research methodology adopted here is doctrinal in nature. The basis of the study lies in the . Legislations based on Right To Information Act 2019.. Research papers and articles written by eminent scholars have been examined and analysed in detail in this research. The primary sources include judgements and relevant statutory provisions and the secondary sources includes articles, journals and research papers published.

In India, RTI began as a part of constitutional law when the media filed a petition with the Supreme Court to enforce certain logistical implications of the right to freedom of speech and expression, allowing them to challenge governmental orders such as newsprint control, paper distribution bans, and so on. <sup>7</sup> The Supreme Court ruled in one of the cases that "freedom of the press" included "the right of all citizens to speak, publish, and express their opinions, and that "freedom of speech and expression" includes "the right of all people to read and be informed." <sup>8</sup>

The RTI Amendment Act, 2019, is in violation of Articles 14, 19, and 21 of the Indian Constitution because it strips the Central Information Commissioner and State Information Commissioner of their autonomy and independence.. This legislation also grants the central executive considerable rule-making power over the states, resulting in an undue delegation of law-making power by Parliament, which is contrary to the rule of law and constitutional morality. This Act also nullifies the RTI Act's federal status.

**RTI Amendment Act, 2019- Proposed Amendments**

Sections 13, 16, and 27 of the RTI Act, 2005 have been changed by the RTI Amendment Act, 2019. Sections 13 and 16 of the original statute stipulate that the Central Chief Information Commissioner, State Chief Information Commissioners, and Information Commissioners of the centre and states serve for a period of five years or until they reach the age of 65, whichever comes first. Salary, allowances, and other terms of service of the Central Chief Information Commissioner shall be the same as those of the Chief Election Commissioner, and those of Information Commissioners shall be the same as those of an Election Commissioner, according to Sections 13 and 16 of the original act.. State Chief Information Commissioners shall have the same salary, allowances, and other terms of service as Election Commissioners, and State Information Commissioners will have the same salary, allowances, and other terms of service as the Chief Secretary to the state government. However, the RTI Amendment Act of 2019 states that the central government will determine the appointments, salaries, allowances, and other terms of service for the Central Chief Information Commissioner, Information Commissioners, State Chief Information Commissioners, and State Information Commissioners. Before the modification, the states had rule-making authority over fees, salaries, and allowances under Section 27. After the amendment, this rule making power has been taken away from states. <sup>9</sup>

<sup>7</sup> Supra note 1 at 22.  
<sup>8</sup> Bennet Coleman & Co. V. Union of India, 1973 2 S.C.R 757.  
<sup>9</sup> Right to Information (Amendment) Act, 2019, No. 24 of 2019.

## Issues with regard to RTI amendment Act, 2019

1. Before the RTI (Amendment) Bill, 2019, was passed, there was no public consultation.
2. The RTI Act, which was enacted in 2005, lost its federal character.
3. The RTI Amendment Act of 2019 puts the Independent Information Commission's autonomy at jeopardy.
4. Parliament has delegated an excessive amount of power to the central government.

### No public consultation before passing of the RTI (Amendment) Bill, 2019

Attempts were made to alter the RTI Act of 2005. The draught suggestions were made available in the years 2012 and 2017 for the aim of consultation and discussion. However, the newly revised statute of 2019 was passed without being brought to the attention of public stakeholders.<sup>10</sup> The government implemented a Pre-Legislative Consultation Policy in 2014, which specifies that every department or ministry that proposes new laws or revisions to existing laws must present the draught bill to the public for comment. The perspectives of those who are likely to be affected by such laws should be considered.<sup>11</sup>

By failing to make the updated draught ideas public, the government has violated the standards set forth in the Pre-legislative consultation policy of 2014. The Department of Personnel and Training, which is in charge of enforcing the RTI Act, has no reports indicating that Information Commissioners, who are directly affected by the bill, were consulted before it was passed.<sup>12</sup>

When asked why there was no public input, the Centre responded that the amendments only affected the government and RTI officers, and that the public was not involved. Several Information Commissioners were interviewed and revealed that they, too, had not been consulted.<sup>13</sup> The RTI activist Anjali Bharadwaj filed two RTI queries requesting a copy of a letter which contains the views/ opinions of information commissioners over the RTI (Amendment) Act, 2019 and RTI rules. In response to the RTI application, it was stated by information commissioners that they have not commented on it as they were not approached before passing of the bill.<sup>14</sup>

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<sup>10</sup> Venkatesh Nayak, The Right to Information (Amendment) Bill, 2019, A Critical Review of the Amendment Proposals and the Underlying Reasoning (Dec 3<sup>rd</sup>, 2019, 1:00 PM), <https://www.humanrightsinitiative.org/download/CHRI-RTIABill2019-critique-Jul19.pdf>.

<sup>11</sup> Union Ministry of Law and Justice Legislative Department (Dec 3<sup>rd</sup>, 2019, 12: 44 PM), <http://www.legislative.gov.in/documents/pre-legislative-consultation-policy>.

<sup>12</sup> Supra note 10.

<sup>13</sup> Priscilla Jebaraj, CIC was not consulted on RTI amendment Act, The Hindu, Nov 28, 2019, <https://www.thehindu.com/news/national/cic-was-not-consulted-on-rti-amendment-act/article30099380.ece>

<sup>14</sup> Ibid.

## Disintegration of the federal character of the RTI Act, 2005

The RTI (Amendment) Act of 2019 has granted the central executive the right to determine the salary and allowances of Information Commissioners not only at the federal level but also at the state level. The salaries of the centre's information commissioners are paid from the consolidated fund of India, whereas the salaries of state information commissioners are paid from the state's consolidated fund. Unless the state is under president's authority under Article 356 of the Constitution, neither the Parliament nor the centre can exercise control over the consolidated fund of states. It's difficult to see how Parliament can outsource the determination of state information commissioners' salaries and allowances to the centre through the legislative procedure.<sup>15</sup>

There was a clear split of authority between the centre and state legislatures when it came to determining the tenure, pay, and allowances of information commissioners under the original act. This is an important aspect of the RTI Act's federal nature. One of the primary goals of splitting these powers between the centre and the states is to give financial and functional autonomy from the current administration, allowing them to operate without fear or favour.<sup>16</sup>

The state information commission is established and constituted by the state government under Section 15 of the state constitution (1). The governor of the state is responsible for appointing the state chief information commissioner and state information commissioners, according to Section 15(3). On the other hand, he has the authority to dismiss them from their positions. The state information commission's rulings are final and cannot be appealed to the central information commission. The central government has no influence in the formation or operation of the state information commission. The federal character of the RTI Act's legislative scheme is disintegrated as a result of the modifications.<sup>17</sup> Under Sec 27 of the RTI act, 2005, the state legislature had rule making power with regard to salaries, allowances, tenure and appointments and after the amendment, all these powers has been exclusively given to centre and this leads to obliteration of federal character of RTI act, 2005.<sup>18</sup>

<sup>15</sup> Supra note 10.

<sup>16</sup> Supra note 10.

<sup>17</sup> M Sridhar Acharyulu, RTI amendment: Centre has no authority to make law on states, DTE (Jan 19<sup>th</sup>, 2020, 10:30 PM), <https://www.downtoearth.org.in/news/governance/rTI-amendment-centre-has-no-authority-to-make-law-on-states-65997>.

<sup>18</sup> Ibid.

## The RTI Amendment Act of 2019 puts the independence of the Independent Information Commission in jeopardy.

The Chief Information Commissioner's standing has been downgraded under the RTI guidelines from that of an election commissioner, which is *pari materia* to that of a Supreme Court judge, to that of a secretary, which is a lower-ranking position. As a result, information commissioners are forced to function as bureaucrats under the supervision of higher authorities. One of the main reasons for the Parliamentary Standing Committee equating the CIC with the Chief Election Commission and placing him first among the Information Commissioners is to protect citizens' right to access public records without fear of being harassed by officers working in the Prime Minister's or Chief Minister's offices.<sup>19</sup>

Under the original act, the information commissioners and the Chief Information Commissioner were paid the same amount of money. The RTI (Amendment) Act, 2019, however, makes the Information Commissioners subservient to the Chief, who serves as the boss. The wages of Information Commissioners have been decreased from Rs. 2.50 lakh to Rs. 2.25 lakh in order to demonstrate that the Chief will hold the position of Secretary, while the Commissioners will serve as Joint Secretaries beneath him. The other rules in detail explain as to how information commissioners have been equated with civil services. Due to the amendments and new RTI rules the information commissioners will not be in a position to make bold and independent decisions or even complaint against CIC if there are any kinds of issues in the functioning of it.<sup>20</sup>

### Parliament's Excessive Delegation of Powers to the Central Government

Fixing the tenure, salaries, allowances, and other terms and conditions of service of the Chief Information Commissioner, Information Commissioners, State Chief Information Commissioners, and State Information Commissioners, who are statutory authorities under the Act, is a crucial legislative function. Excessive delegation of such a crucial legislative duty to the federal government is unethical.

The legislature does not have the authority to outsource its primary legislative tasks to the executive branch. <sup>21</sup> "The legislature should keep essential legislative functions to itself, such as determining legislative policy and establishing standards that are enacted into a rule of law, and it can delegate the task of subordinate legislation, which is by its very nature ancillary to the statute, to the subordinate bodies."<sup>22</sup>

Delegation of power to the executive is of two kinds i.e. legislative and executive. The grant of legislative power is challenged on the ground of excessive delegation whereas the grant of executive power may be challenged on the ground of its alleged violation of the right to equality guaranteed by Art 14 or violation of any rights guaranteed under Article 19. The delegation of power is upheld once it is in accordance to the policy and standards laid down by the courts.<sup>23</sup>

<sup>19</sup>Sridhar Acharyulu, RTI Amendments: An Obituary to Independent Information Commission, Livelaw (Jan 23<sup>rd</sup>, 2020, 3:24 PM), <https://www.livelaw.in/columns/an-obituary-to-right-to-information-act-149313>

<sup>20</sup> Ibid.

<sup>21</sup>In Re Delhi laws, AIR 1951 SC 332.

<sup>22</sup> Municipal Corporation of Delhi Vs. Biral Cotton, Spinning and Weaving Mills and others, AIR 1968 SC 1232.

<sup>23</sup> Sathe, S.P., Administrative Law, 7<sup>th</sup> Edition, Lexis Nexis Butterworths, P. 54

The provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act 1966 were struck down by the Supreme Court on the grounds of excessive delegation and violation of Article 14 of the Constitution because it did not provide adequate guidelines to the executive for the exercise of delegated legislative power.

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When the amended provisions of the RTI Amendment Act, 2019 are interpreted in light of the aforementioned cases, it is clear that the Parliament, in granting the Central Government the power to fix the tenure, salaries, and allowances of the Chief Information Commissioner and other authorities under the act, has not established any legislative policy or set any standards that can serve as a guide to the central government in making rules related to the act. Parliament has delegated the central executive's essential legislative function as a result of this therefore, RTI Amendment act, 2019 is in violation of Article 14 of the Constitution of India and should be struck down.

Article 19 establishes a constitutional duty on the state to provide citizens with access to information, which serves as a sort of positive liberty. The RTI Act's preamble states that citizens' right to information is an essential component of democracy and the rule of law. "The Honourable Supreme Court has concluded that adherence to the rule of law and the principles of the Indian Constitution is part of constitutional morality, and that citizens have a right to such morality." "Constitutional morality" is "a duty to submit to the Constitution's principles and not to act in a way that would be a violation of the rule of law or a reflection of arbitrary action"<sup>25</sup>.

The Honourable Supreme Court in *MohdArif v. Supreme Court of India*<sup>26</sup> has held that substantive due process is part of Article 21 and it has to be read with articles 14 and 19 of the Constitution. when an act is unreasonable and arbitrary, the provisions of the Act are liable to be stepped down resorting to the principle of substantively process. The provisions of RTI (Amendment) Act 24 of 2019 are highly arbitrary and unreasonable and are against constitutional norms and rule of law.

Due to the delegation of excessive law making powers to the central government under the amended act by Parliament, it is in violation of Article 14 and 19(1)(a) of the constitution, as the powers granted to the central government are arbitrary and contrary to the rule of law, as there are no guidelines provided by Parliament to fix tenure, salaries, and allowances. The central government has a lot of discretionary powers, which could be abused. The amended act has posed a threat to independence and autonomy of RTI authorities as they are given the post of bureaucrats and are placed under the ambit of superiors which makes them to be obedient to them and follow their orders without going the other way around. This indirectly affects the citizen's rights to have access to information belonging to public authorities violating Article 19(1)(a).

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<sup>24</sup> A. N. Parasuraman v. Tamil Nadu, 1989 4 SCC 683. <sup>25</sup> Shayara Bano v. Union of India, 2017 (9) SCC 1. <sup>26</sup> 2014 (9) SCC 737.

## CONCLUSION

By decreasing their roles and downgrading them to the rank of civil officials, the RTI Amendment Act of 2019 takes away the Central Information Commission's and State Information Commission's independence and autonomy. Citizens' fundamental rights to seek information under Art. 19(1) (a) have been indirectly violated as there is a threat of receiving information without fear or favour. The core principle on which our constitutional architecture is based is incompatible with entrusting legislative power without establishing legislative policy. The RTI Amendment Act, 2019 delegated key legislative powers to the central executive, which is in violation of Article 14 and 19(1)(a) of the Constitution since the power vested in the central executive is unjustified and arbitrary, and it amounts to excessive delegation. Excessive delegation limits the

powers of state legislatures, which is contrary to the ideals of federalism. As a result, Act 24 of 2019 on RTI (Amendment) should be ruled illegal.

It is a source of pride for India that it has one of the greatest information laws in the world. 4-6 million people file RTI requests with the government each year, requesting access to information. On the ground, a vast number of individuals want basic information about their rations, pensions, health, and education, as well as basic rights that have been denied them due to corruption.. People who have access to this information can expose corruption and hold government officials accountable. The RTI law, on the other hand, is utilised not just to protect basic rights and entitlements, but also to hold the highest levels of government, the legislature, and the judiciary accountable. People have unearthed major scams, elected representatives' educational qualifications, and the assets and liabilities of the highest functionaries of the land through the Right to Information law in recent years, resulting in a massive backlash of the Right to Information law by the government over the years. Previous governments have attempted to change the RTI Act, but the current administration has been successful in quietly amending the statute, crippling the very fundamental institution charged with enforcing people's right to information.

India has gone from a flawed elected democracy to a participatory democracy thanks to the Right to Information Act. The right to information, which is a fundamental right of all Indian citizens, is currently under attack. The new modification jeopardises the primary goal of the 2005 RTI Act, which was to improve administrative transparency and accountability. The RTI Act's initial concept was intended to ensure the independence of Information Commissioners, allowing them to carry out their duties without interference from the government .As a result, the new modification has altered the RTI Act's fundamental feature. It is safe to state that the Central Government has turned the Information Commissioners into puppets and wiped out the RTI Act's soul by taking away their authority, independence, and autonomy.

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