

ANALYSIS OF RIGHT TO INFORMATION (AMENDMENT) ACT, 2019

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ABSTRACT

Right to information means the freedom of people to have access to government information. RTI act implies that citizens and NGO's may request information from a public authority pertaining to government operations which should be replied by RTI authorities within 30 days. This Paper deals with issues pertaining to Right to Information (Amendment) Act, 2019. This act amends section 13 and section 16 of the RTI Act, 2005. Section 13 and Section 16 of the original act sets the term of Central Chief Information Commissioner, State Level Information Commissioner and Information Commissioners at 5 years or 65 years of age, whichever is earlier. Section 13 and Section 16 of original act also states that salaries, allowances and other terms of service of the Central Chief Information Commissioner shall be same as that of Chief Election Commissioner and those of Information Commissioners shall be same as that of an Election Commissioner. The Salaries, allowances and other terms of service of State Chief Information Commissioner will be same as that of an Election Commissioner and those of State Information Commissioners be same as that of the Chief Secretary to the state government. But the RTI Amendment Act, 2019 has proposed that the appointments, salaries, allowances and other terms of services of Central Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners shall be as prescribed by the central government. In this perspective the researcher tries to throw light on issues such as: whether the RTI (Amendment) Act, 2019 interferes with the functioning of RTI and curtail the independence of RTI authorities? whether such an amendment is an assault on the idea of federalism? Whether there is excessive delegation of power by legislature to Central executive?

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

Introduction

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

This quote stands more pertinent to the newly passed Right to Information (Amendment) Bill, 2019 which was passed by both the houses of Parliament and has now become an act by the name Right to Information (Amendment) Act by receiving president's assent.

Good governance has four basic elements- transparency, accountability, predictability and participation. Right to Information (RTI) promotes transparency and accountability in the functioning of government institutions, which makes these organizations function more objectively. Further, giving citizens information from the government enables them to participate in the democratic process. The Right to Information, thus, ushers in good governance.¹

Prior to Right to Information Act, 2005², there was Freedom of Information Act, 2002 in existence. In October 2005 Right to Information Act replaced it. This act gives right to citizens of India to have access to information belonging to public authorities with regard to their functioning and the right to information authorities are bound to reply within 30 days.³

In India, the RTI Act, 2005, which came fully into effect in 2005 is one of the most historic legislation enacted by the Parliament of India. The Act attempts to bring about informed citizenship, transparency and accountability in the government at all levels, which is vital to the functioning of a democracy. It seeks to establish disclosure of information the norm and confidentiality an exception.⁴

Right to information has been explicitly recognised as fundamental right in the Constitutions of countries like South Africa, Nepal, Ghana and in some of the country's judiciary has interpreted through various judgments that right to freedom of speech and expression is inclusive of right to information.⁵ Even in India Constitution RTI has not been recognised as fundamental right but various Supreme court in various instances has interpreted that RTI is a part of right to freedom of speech and expression under Article 19(1)(a). 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.⁶

In India, RTI started developing as a part of constitutional law through the filing of a petition by the media before the Supreme court for enforcement of certain logistical implication of the right to freedom of speech and expression which would permit them to challenge governmental orders for control of newsprint, ban on distribution of papers, etc.⁷ In one of the cases, Supreme Court held that "freedom of the press meant the right of all citizens to speak, publish and express their views and Freedom of speech and expression includes within its compass the right of all citizens to read and be informed."⁸

RTI Amendment Act, 2019 is ultra vires of Articles 14, 19 and 21 of the Constitution of India as it takes away the autonomy and independence of the Central Information commissioner and State information commissioner.

¹ Sudhir Naib, The Right to Information Act 2005: A Handbook 21(2011).

² Hereinafter referred to as RTI Act

³ Dharanesh 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).

⁴ Dr. Sairam Bhat, Right to Information 14 (2012).

⁵ 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>.

⁶ Reliance Petrochemicals Ltd. vs Proprietors of Indian Express, AIR 1989 SC 190.

⁷ *Supra* note 1 at 22.

⁸ Bennet Coleman & Co. V. Union of India, 1973 2 S.C.R 757.

This act also gives excessive rule making power to central executive over the states, thereby amounting to excessive delegation of law-making power by Parliament and therefore is against rule of law and constitutional morality. This Act also obliterates federal character of RTI Act.

RTI Amendment Act, 2019- Proposed Amendments

The RTI Amendment Act, 2019 has amended Section 13, 16 and 27 of the RTI Act, 2005. Section 13 and Section 16 of the original act sets the term of Central Chief Information Commissioner, State Level chief Information Commissioner and Information Commissioners of centre and states at 5 years or 65 years of age, whichever is earlier. Section 13 and Section 16 of original act also states that salaries, allowances and other terms of service of the Central Chief Information Commissioner shall be same as that of Chief Election Commissioner and those of Information Commissioners shall be same as that of an Election Commissioner. The Salaries, allowances and other terms of service of State Chief Information Commissioner will be same as that of an Election Commissioner and those of State Information Commissioners be same as that of the Chief Secretary to the state government. But the RTI Amendment Act, 2019 has stated that the appointments, salaries, allowances and other terms of services of Central Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners shall be as prescribed by the central government. Before the amendment, under Section 27 the states has rule making power with regard to fee payable, salaries and allowances. After the amendment, this rule making power has been taken away from states.⁹

Issues with regard to RTI amendment Act, 2019

1. There was no public consultation before passing of the RTI (Amendment) Bill, 2019.
2. Disintegration of the federal character of the RTI Act, 2005.
3. RTI Amendment Act, 2019 is a threat to autonomy of Independent Information Commission.
4. Excessive Delegation of powers to Central government by Parliament.

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

There were attempts to amend RTI Act, 2005 in the year 2012 and 2017, the draft proposals were placed in the public domain for purpose of consultation and discussion. But the newly amended act of 2019 was passed without placing it before public stake holders.¹⁰ In the year 2014, the government adopted Pre- Legislative consultation policy which clearly states that any department/ Ministry making new laws or amendments to the existing laws, such draft bill should be placed before public for the sake of discussion. The views of the people who are likely to be affected by such laws should be taken into consideration.¹¹

⁹ Right to Information (Amendment) Act, 2019, No. 24 of 2019.

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

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

The Government has not acted as per the guidelines stated in Pre legislative consultation policy, 2014 by not placing the amended draft proposals in public domain. The Department of Personnel and Training which is responsible for implementation of RTI act has no reports to show that Information Commissioners were consulted before passing the bill who directly stand affected.¹²

When the Centre was questioned as to why there was no public consultation carried out, the centre stated that the amendments affected the government and RTI officers, the public was not involved. The interviewing of several Information commissioners revealed that they were not consulted either.¹³ 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.¹⁴

Disintegration of the federal character of the RTI Act, 2005

Through RTI (Amendment) Act, 2019, the Parliament has given powers to central executive of determining the salaries and allowances of Information commissioners not only at central level but also at states. The salaries of information commissioners of centre are paid out of consolidated fund of India and of state information commissioners are paid out of consolidated fund of state. Neither the Parliament nor the centre can exercise control over the consolidated fund of states unless the state is under president's rule under Article 356 of the Constitution. It is difficult to understand as to how Parliament can through law making process delegate to centre the determining of salaries and allowances of state information commissioners.¹⁵

Under the original act, there was clear division of powers between centre and state legislatures for fixing the tenure, salaries and allowances of information commissioners. This forms an essential part of federal character of RTI Act. One of the main purposes of dividing these powers between centre and states is to provide financial and functional autonomy from the government of the day, which will in turn ensure them to function without fear or favour.¹⁶

The state government establishes and constitutes the state information commission under Section 15(1). Under Section 15(3), it is the responsibility of the governor of the state to appoint state chief information commissioner and state information commissioners. On the other hand, he is also vested with the powers of removing them from the post. The decisions delivered by state information commission cannot be challenged before central information commission. The central government has no role to play in establishment and functioning of state information commission. Through the amendments there is disintegration of federal character of legislative scheme of RTI act.¹⁷ Under Sec 27 of the RTI act, 2005, the state legislature had rule making power with regard

¹² *Supra* note 10.

¹³ 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>

¹⁴ *Ibid*.

¹⁵ *Supra* note 10.

¹⁶ *Supra* note 10.

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

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, 2005.¹⁸

RTI Amendment Act, 2019 is a threat to autonomy of Independent Information Commission

The RTI rules has reduced the status of Chief information commissioner from the post of election commissioner which is *pari materia* to the post of the judge of Supreme Court to the post of secretary which is lower in ranking. This makes information commissioners to work as bureaucrats under the higher authorities. One of the main reasons of Parliamentary Standing Committee for equating CIC with Chief election commission and making him first among the Information commissioners is to protect the rights of the citizens to have access to public records without fear of officers working in Prime Minister or Chief Minister office.¹⁹

The information commissioners were treated on par with Chief Information Commissioner under the original act as they drew same amount of salaries. But under the RTI (Amendment) Act, 2019, the Information Commissioners are made subordinate to Chief by him acting as the boss. The salaries of Information commissioners have been reduced from Rs. 2.50 lakh to Rs. 2.25 lakh in order to prove that Chief will be of Secretary rank while the Commissioners would serve below him at Joint Secretary level. 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.²⁰

Excessive Delegation of powers to Central government by Parliament

The fixing of tenure, salaries, allowances and other conditions of services of Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners who are statutory authorities under the Act, is an essential legislative function. Delegation of such essential legislative function to central government amounts to excessive delegation.

The legislature does not have authority to delegate its essential law-making functions into the hands of executive.²¹ “The legislature should keep the work of essential legislative functions to itself such as determining the legislative policy and laying down standards which is enacted into a rule of law and it can leave the task of subordinate legislation which by its very nature is ancillary to the statute to the subordinate bodies”.²²

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 that 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

¹⁸ Ibid.

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

²⁰ Ibid.

²¹In Re Delhi laws, AIR 1951 SC 332.

²²Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills and others, AIR 1968 SC 1232.

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.²³

The Supreme Court struck down the provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act 1966, both on ground of excessive delegation as well as violation of the Art. 14 of the Constitution as it did not contain adequate guidelines to the executive for the exercise of the delegated legislative power.²⁴

When the amended provisions of RTI Amendment Act, 2019 are construed in the light of the above mentioned cases, it can be understood that the Parliament while giving to the Central Government the power of fixing the tenure, salaries and allowances of the Chief Information Commissioner and other authorities under the act have not determined any legislative policy and has not laid down any standards which can act as a guidance to central government in making rules pertaining to tenure, salaries and allowances. Through this parliament has delegated its essential legislative function to central executive. Therefore, RTI Amendment act, 2019 is in violation of Article 14 of the Constitution of India and should be struck down.

Article 19 endows a constitutional duty on the state to provide access to information to citizens and such duty acts as a positive liberty of people. The preamble of the RTI act makes it clear that such a right of citizens forms integral part of democracy and rule of law. "The Honourable Supreme Court has held that the obedience to rule of law and norms of the Constitution of India is part of constitutional morality and people have right to such constitutional morality. The constitutional morality means a duty to bow down to norms of Constitution and not to act in a manner which would become violative of the rule of law or reflection of action in an arbitrary manner"²⁵.

The Honourable Supreme Court in *Mohd. Arif v. Supreme Court of India*²⁶ 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 is against constitutional norms and rule of law.

Due to delegation of excessive law making powers to central government under the amended act by Parliament, it is ultra vires of Article 14 and 19(1) (a) of the constitution as the powers give to central government is arbitrary and against rule of law as there are no guidelines given to it by Parliament to fix the tenure, salaries and allowances. There are wide discretionary powers being allotted to Central government which can be misused. The amended act has posed a threat to independency 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 citizens rights to have access to information belonging to public authorities violating Article 19(1)(a).

²³ Sathe, S.P., Administrative Law, 7th Edition, Lexis Nexis Butterworths, P. 54.

²⁴ A. N. Parasuraman v. Tamil Nadu, 1989 4 SCC 683.

²⁵ Shayara Bano v. Union of India, 2017 (9) SCC 1.

²⁶ 2014 (9) SCC 737.

Conclusion

The RTI Amendment Act, 2019 takes away the independence and autonomy of the Central Information Commission and State Information Commission by reducing their positions and lowering them to the rank of civil servants. Through this, the fundamental rights of citizens to seek information under Art. 19(1) (a) has been violated indirectly as there is threat to obtaining information which is free from fear or favour. Entrustment of legislative power without laying down legislative policy is inconsistent with the basic concept on which our constitutional scheme is founded. The RTI Amendment Act, 2019 delegates essential legislative functions to Central executive and it is ultra vires of Article 14 and 19(1) (a) of the Constitution as the power entrusted to central executive is unreasonable and arbitrary and it amounts to excessive delegation. Due to the excessive delegation, there is curbing of powers of state legislature which is against the principles of federalism. Therefore RTI (Amendment) Act 24 of 2019 should be declared unconstitutional.

