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THE RIGHT TO INFORMATION (AMENDMENT) ACT, 2019: A SETBACK FOR INDIAN DEMOCRACY

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Abstract

The Right to Information (RTI) Act of 2005¹ was a landmark piece of legislation in India, marking a significant step towards enhancing transparency, accountability, and public participation in governance. Prior to its enactment, there were significant barriers to accessing information held by public authorities, making it difficult for citizens to engage meaningfully with the state. The RTI Act was designed to empower citizens to request information from government bodies, thus enabling them to hold public authorities accountable for their actions. The establishment of Information Commissions (ICs) at the central and state levels was a key feature of this Act, with the role of these Commissions being to adjudicate appeals and complaints, and ensure compliance with the Act by public authorities. However, the amendments to the RTI Act in 2019 have raised serious concerns about the future effectiveness of the Act, particularly regarding its ability to safeguard transparency and maintain an independent system of checks and balances. These amendments have been viewed by many as an attempt to centralize control over the Information Commissions and undermine their ability to function impartially.

KEYWORDS: RIGHT TO INFORMATION, DEMOCRACY, TRANSPARENCY, GOVERNANCE.

Introduction

The Right to Information (RTI) Act, enacted in 2005, was a landmark piece of legislation that aimed to empower citizens by providing them with the right to access information held by public authorities. It was a tool for fostering transparency, enhancing accountability in governance, and promoting democratic participation. The RTI Act's success was largely attributed to the independent functioning of the Information Commissions, which acted as arbiters of disputes between citizens and government bodies over access to information.

¹ The Right to Information, Act 2005

However, in 2019, the Government of India passed amendments to the RTI Act, which significantly altered the structure and functioning of the Information Commissions. The key changes included the empowerment of the central government to determine the tenure, salary, and allowances of Information Commissioners at both the central and state levels. These amendments have sparked intense debates about the potential erosion of the RTI Act's effectiveness and the growing concentration of power in the hands of the executive branch, raising concerns about the potential impact on Indian democracy. This paper critically examines the 2019 amendments to the RTI Act, analyzing their implications on the democratic principles of transparency, accountability, and public participation. The core research question addressed is whether the 2019 amendments to the RTI Act represent a setback for Indian democracy, and if so, in what ways.²

This Act of 2005 marked a watershed moment in India's journey towards transparent and accountable governance. As one of the most progressive pieces of legislation, it empowered citizens to request information from public authorities, thus enabling them to challenge the functioning of government institutions. Prior to the RTI Act, citizens faced significant barriers in accessing information related to governmental decisions, policies, and expenditures. The Act sought to remedy this by enshrining the right of citizens to access public information, subject to limited exceptions.

By opening up channels for information sharing, the RTI Act, 2005 aimed to foster more transparent, accountable, and participatory democratic system. The Information Commissions (ICs), both at the national and state levels, played a crucial role in the RTI framework. These quasi-judicial bodies were tasked with ensuring that public authorities complied with the provisions of the RTI Act, resolving disputes between citizens and government bodies, and ensuring that citizens' right to access information was protected. The success of the RTI Act was largely due to the independence and impartiality of these Information Commissions. It was through these bodies that the law found its power and strength, enabling citizens to challenge governmental denial of information and facilitating greater accountability in public administration. While the RTI Act has been hailed as a victory for transparency and accountability, the 2019 amendments to the Act have raised serious concerns. In an unexpected move, the Indian government introduced changes that significantly altered the functioning of

² Chakravarty, R. (2020). The RTI Act and the challenges to accountability in Indian governance. *Journal of Public Administration*, 45(4), 381-396.

the Information Commissions, weakening their independence and raising questions about the long-term implications for democratic governance in India.³

The key amendments made to the RTI Act in 2019 were as follows:

- **Empowerment of the Central Government over Tenure and Salaries:**

One of the most controversial aspects of the amendments was the centralization of power over the tenure, salary, and allowances of the Information Commissioners. Under the original RTI Act, Information Commissioners at both the Central Information Commission (CIC) and State Information Commissions (SICs) had fixed tenures and received salaries that were equal to those of Chief Election Commissioners (CEC), ensuring that the positions held both stature and independence.

With the amendment, the central government was granted the power to determine the tenure, salary, and allowances of the Information Commissioners. This shift effectively diminished the independence of the commissions, as their functioning could now be influenced by the executive branch. The autonomy of the Information Commissions, once a cornerstone of the RTI Act, was compromised, raising concerns about potential political interference in their operations.

- **Reduction of Fixed Tenure:**

The original Act stipulated that Information Commissioners served for a fixed term of five years, or until they turned 65 years old, whichever came first. However, the amendment allowed the central government to determine the tenure of Information Commissioners, thereby giving it more control over the duration of their service. This change made the tenure of Information Commissioners flexible, and their continuation in office could now be influenced by political considerations. This departure from the fixed term undermined the principle of independent functioning of the Information Commissions.

- **Erosion of the Commissions' Autonomy:**

The 2019 amendments raised fears that the centralization of authority over the Information Commissions would compromise the independence of these bodies.

³ Sinha, D. (2019). Transparency and accountability in India: An analysis of the RTI amendments. *Public Policy and Governance Journal*, 31(2), 105-120

Information Commissioners, whose primary function is to adjudicate disputes impartially, might now feel pressured to align their decisions with the preferences of the central government. This could deter the commissions from ruling in favor of citizens when their access to information is unjustly denied by government authorities.⁴

The independence of an institution like the Information Commission is vital for the credibility of the RTI Act. If the commissioners are subject to political pressures regarding their tenure and salary, it may lead to a situation where their decisions reflect the interests of the ruling political party, rather than serving the interests of transparency and accountability.

Historical Context of the RTI Act and the Role of Information

Commissions

The Right to Information Act was passed in 2005 after years of advocacy by civil society organizations and grassroots movements. It was intended to make government functioning more transparent by giving citizens the legal right to request information from public authorities. The Act sought to tackle systemic corruption and inefficiency in public offices and create a culture of openness in governance. Information Commissions functioned as quasi-judicial bodies under Right to Information Act and are responsible for overseeing the implementation of the legislation. The role of these Commissions was vital in ensuring the proper application of RTI provisions, adjudicating appeals, and imposing penalties on public authorities that failed to comply with the Act.⁵ The Information Commissioners were given a fixed tenure and were provided financial independence to carry out their duties effectively.

Before the amendments, the Information Commissioners had tenure of five years and were paid salaries and allowances at par with Election Commissioners, who hold high constitutional authority. This structure was designed to insulate the Commissioners from political influence and ensure their impartiality in handling complaints and appeals related to information requests.

⁴ Zafar, M. (2020). The right to information in India: A threat to transparency or a tool for empowerment? *Journal of South Asian Politics*, 30(3), 172-189.

⁵ Nair, V. (2020). Impact of RTI amendments on the functioning of public authorities. *Journal of Indian Public Policy*, 27(2), 233-247.

The 2019 Amendments to the RTI Act: A Detailed Overview

The Right to Information Act, 2005, was designed to facilitate the public's right to seek information from government bodies, with certain limitations. It empowered citizens to request information from public authorities, promoting transparency and accountability. The Information Commissions, both at the national and state levels, were set up to adjudicate appeals and complaints under the RTI Act.⁶

The 2019 amendments introduced key changes, specifically related to the tenure, salary, and allowances of Information Commissioners. Prior to the amendment, the tenure of Information Commissioners was set at five years, with their salaries and allowances pegged at the same level as that of an Election Commissioner (for the Central Information Commission) or a State Election Commissioner (for State Information Commissions). The 2019 amendment altered this provision, giving the central government the authority to determine the tenure, salary, and allowances of Information Commissioners.

These amendments have been justified by the government as necessary to "bring uniformity" and to align the functioning of the Information Commissions with those of other constitutional bodies. However, critics argue that the amendments grant excessive discretionary power to the executive, potentially undermining the independence of the Information Commissions.

Implications of the 2019 Amendments on Indian Democracy

1. Undermining the Independence of Information Commissions

The independence of the Information Commissions is vital to the effective implementation of the RTI Act. By centralizing the authority to determine the tenure, salary, and allowances of Information Commissioners, the government has reduced the autonomy of these bodies. Information Commissioners, who were previously insulated from executive influence by having their terms and benefits defined in the Act, are now vulnerable to executive control. This has raised concerns that the government could use its power to appoint commissioners who are more sympathetic to its interests, thus undermining the impartiality of the RTI process.⁷

⁶ Singh, R. (2020). The role of RTI in strengthening Indian democracy: A critique of the 2019 amendments. *Indian Political Science Review*, 42(3), 245-262

⁷ Mehta, R. (2021). Erosion of transparency? An analysis of the 2019 RTI amendments. *Law and Society Review*, 39(4), 452-468.

2. **The Impact on Transparency and Accountability:**

The key feature of the RTI Act is that it fosters transparency in government operations by enabling citizens to access information about public policies, spending, and decision-making. The amendments, by reducing the independence of Information Commissions, threaten the effectiveness of this transparency mechanism. When the Information Commissions are influenced by the executive, there is a risk that their decisions may be biased, thus allowing the government to withhold or manipulate information. This, in turn, would diminish the accountability of public authorities.

3. **Centralization of Power and the Erosion of Democratic Norms:**

One of the pillars of Indian democracy is the decentralization of power, ensuring that no single entity or branch of government has unchecked authority. The amendments to the RTI Act contribute to the centralization of power by giving the central government control over the functioning of both the Central and State Information Commissions. This diminishes the ability of state-level bodies to operate independently and effectively. Such centralization can undermine the spirit of federalism and democratic pluralism, leaving citizens with fewer avenues for recourse and reducing the diversity of viewpoints within government.

4. **The Erosion of Public Participation:**

The RTI Act was designed not only to ensure transparency but also to encourage public participation in governance. By weakening the Information Commissions, the 2019 amendments could result in a less accessible RTI system, particularly for marginalized or rural citizens who rely heavily on Information Commissions to ensure their rights are upheld. If the RTI process becomes more bureaucratic and less responsive to the needs of the public, it could diminish the role of ordinary citizens in holding the government to account.⁸

Criticism of the 2019 Amendments

1. Political Motivations Behind the Amendments

⁸ Chakravarty, R. (2020). The RTI Act and the challenges to accountability in Indian governance. *Journal of Public Administration*, 45(4), 381-396.

Critics argue that the amendments to the RTI Act reflect a broader trend of political interference in the country's democratic institutions. By empowering the central government to determine the terms of Information Commissioners, the amendments give the executive branch an increased ability to control the flow of information and protect its own interests. This has led to accusations that the amendments are designed to limit scrutiny of the government's actions and reduce the transparency that the RTI Act was supposed to guarantee.

2. **Weakening the Integrity of the RTI System**

The changes to the RTI Act's governance structures could lead to a weakening of the RTI system overall. Information Commissions are meant to act as impartial arbiters in disputes between citizens and public authorities. However, by making Information Commissioners more vulnerable to political influence, the amendments undermine the very principle of fairness that the RTI Act is supposed to enshrine. This could discourage citizens from using the RTI system or result in a system where the outcomes are determined by political considerations rather than the merits of the case.

Conclusion

The 2019 amendments to the RTI Act significantly undermine the core principles of transparency, accountability, and democratic participation in India. By centralizing power and reducing the independence of Information Commissions, the amendments risk making the RTI system more susceptible to political influence and less effective in ensuring open governance. These changes represent a setback for Indian democracy, as they compromise one of the key mechanisms designed to promote public participation and hold government institutions accountable. If the amendments are allowed to stand, India's commitment to democracy, transparency, and accountability will be jeopardized.

It is crucial that stakeholders—civil society, political parties, and citizens—push for reforms that preserve the integrity of the RTI Act and safeguard the independence of Information Commissions. Only by maintaining the autonomy of these bodies can India ensure that the RTI Act continues to serve as a robust tool for transparency and democratic governance.

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