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RTI AMENDMENT: INFORMATION DRIVEN OR INFORMATION CURTAILED?

AUTHORED BY - SAYESHA GAMBHIR

ABSTRACT¹

India is a democratic country and has its own written constitution. The constitution of India sets out the federal structure, political conduct and powers of the government through which the country runs. The preamble gives the authority to the people of the country that the constitutional provisions must flow through “WE THE PEOPLE”. In a democratic country like India, the government is elected through the citizens of the country. To make sure that the govt works in a proper manner, the concept of Good Governance came into picture, of which RTI is a part of it. Good Governance is a process of governance through which government rules in such a way that it ensures more accountability and transparency to the citizen of the country. In India, one such tool to ensure Good Governance is Right to Information Act, 2005², which later was amended in 2019 and is known as Right to Information (Amendment)Act, 2019.

Right to Information acts as a tool in a participatory democracy to protect the welfare of the people. In a democratic country like India, having access to information encourages its citizens to critically examine the acts and policies of their government. The administrative system is more accessible because to right to information. When records are available to the public, government actions become transparent. Transparency allows for the investigation and eradication of widespread corruption. However, the amendment to the original act changed major dimensions of the Act as the 2019 amendment to the act brought amendments to three sections, i.e., Section 13, 16 and Section 27. This research paper tends to study and analyze those amendments which occurred through 2019 amendment. The purpose of this project is to study and analyze the Right to Information (Amendment)Act, 2019³, and to describe the pros and cons of the present amended act.

1. INTRODUCTION to RTI Act,2005

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² The Right To Information Act, 2005 (Act 22 of 2005).

³ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019).

Right to Information (RTI) is a statute passed by the Indian Parliament in 2005⁴ that gives its citizen, the right to access information from the government or any public authority. The Act aims to promote accountability and transparency in the functioning of government agencies and public authorities. The act has gone through various development and thus has evolved from time to time. The purpose and objective of Right to Information (RTI) is to promote transparency and accountability in the functioning of government institutions and empower citizens to participate in the democratic process. RTI allows individual to access to information by requesting it from public authorities and receive timely and ensuring that citizens have access to information that has effect on the lives of the people of the country and to ensure that decisions are made in an open and accountable manner. This helps to prevent corruption, enhance the quality of public services, and promote good governance. Under the RTI Act, the application process is hassle free as any citizen can file an application with a government department or public authority seeking information related to its functioning, decisions, policies, and so on. The responding time given to the authorities is of 30 days⁵, and the information sought must be provided unless it falls under the exempted category. RTI laws also help in ensuring public participation in decision making process and to hold the governments accountable, and exercise their fundamental human rights.

However, the respective act has changed in a dynamic sense since the 2019 amendment⁶ took place. But the major portion of the act remains the same and the citizen of the country still fights for the transparency and never tends to settle for the less. We the people are the essence of this democratic country and thus, people thrive for freedom viz. freedom of information, viz. Right to Information.

1.1 HISTORICAL BACKGROUND

The Right to Information (RTI) Act in India has undergone a long and complex evolution.

1. The history of the Right to Information (RTI) in India can be traced back to the 1970s, where the journalists and several social activists began to demand access to knowledge and information from the government authorities and this need for transparency grew stronger during the Emergency

⁴ *Supra* note 2.

⁵ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019).

⁶ *Id.*

period (1975-77), when the government tried to censor and control the press⁷.

2. The movement related to the RTI was initiated in late 1990s by Mazdoor Kisan Shakti Sangathan (MKSS), whereby it gained momentum with several grassroots organizations and civil society groups, demanding laws ensuring right to access to information from the government. Another event which gave boost to the movement was establishment of thatthe National Campaign for People's Right to Information (NCPRI) in 1996 by a group of activists, journalists, and lawyers. The NCPRI demanded a law that would guarantee citizens the right to access government information.
3. In 2002, the Government of India set up a committee for recommendation for a framework related to establishment of RTI Act and a bill for the same was proposed in that meeting, i.e., Freedom of Information Bill, 2002, which later was called as Freedom of Information Act, 2002⁸ which led to the passing of the Right to Information Act, 2005. The Act came into force on 12 October, 2005, and has been amended in 2019 and latest in 2021.
4. In 2019, the government of India passed amendments to the RTI Act⁹, which led to distress among civilians' society that the amendments would dilute the effectiveness of the Act. The proposed amendments included changes to the salaries and allowances of Information Commissioners, changes to transparency and accountability of Information Commissioners and changes regarding the filing of appeals.

The RTI Act has acted as a tool to promote transparency and accountability in government functioning and that of public authorities. It has empowered the citizens of the country to demand information and hold the government accountable for its actions. However, from the recent years, the concern has been raised regarding the effectiveness of the act, particularly after the amendments made in 2019. Civil society continues to advocate for greater transparency and accountability in governance and access to information.

2. AMENDMENTS PROPOSED BY 2019 BILL

RTI Act, 2005 got amended in 2019 and is now known as Right to Information (Amendment)Act,

⁷ State of Uttar Pradesh vs. Raj Narain AIR 1975 SC 865.

⁸ The Freedom of Information Act, 2002 (Act 5 Of 2003).

⁹ *Supra* note 2.

2019. The Right to Information (Amendment) Act, 2019¹⁰, was passed on July 22, 2019, by the Rajya Sabha and by the Lok Sabha on July 25, 2019 and the bill became the act when it got assented from the president. The act of 2019 brought changes to section 13, section 16 and section 27 of the original 2005 act. Following we will elaborate that what changes were brought to the original act.

The Right to Information (RTI) Amendment Act of 2019 in India made changes to three sections of the original RTI Act of 2005, namely Section 13 and Section 16 and Section 27 respectively¹¹.

Section 13¹²: The term of office and terms of service for the Chief Information Commissioner (CIC) and the information commissioner (ICs) are covered under Section 13 of the RTI Act.

Prior to the amendment, the term of Chief Information Commissioner and Information Commissioner to serve the office was of five years. The 2019 RTI Amendment Act, amended the sub-section 1 of Section 13¹³ and changed the term of the CIC and ICs from "a term of five years" to "a term as may be prescribed by the Central Government". This indicates that it is now on the discretion of the Centre to decide the term of service of CIC and ICs. This change gives the Central Government the power to decide the term of the CIC and ICs.

Furthermore, the amendment also made changes to the sub-section 5 of Section 13¹⁴, regarding the salary and allowance of Chief Information Commissioner and Information Commissioner. Previously, the salary of CIC and ICs was equal to those of the chief election commissioner and the election commissioner respectively. After the 2019 Amendment, the salaries of CIC and ICs will be prescribed by the appropriate government, and thus making it on the discretion on the central or State government to decide the salaries and allowance of the respective commissioners.

Thus, the above amendment changed the term of service and salaries and allowance of the CIC and ICs to such an extent that now it depends on the discretion of the Centre to decide it accordingly.

¹⁰ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019).

¹¹ *Id.*

¹² The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s 13.

¹³ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 13(1).

¹⁴ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 13(1).

Section 16¹⁵: deals with the salaries and allowances of the State CIC and State ICs.

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ection 16 of the act is similar to that of 13 but section 16 is related to that of the State CIC and State ICs.

This amendment to section 16 gave autonomous powers to the Central Government in such a manner that, Prior to the amendment, the term of State CIC and State ICs to serve the office was of five years. The 2019 RTI Amendment Act changed the term of the State CIC and State ICs from "a term of five years" to "a term as may be prescribed by the Central Government". This change to **subsection 1¹⁶ and 2¹⁷ of Section 16** gives the Central Government the power to decide the term of the CIC and ICs.

Furthermore, the amendment also made changes to the subsection 5 of section 16¹⁸ which deals with the salary and allowance of the State Chief Information Commissioner and the State Information Commissioner. Previously, the salary of State CIC and ICs was equal to those of the chief election commissioner of state and the election commissioner of the state respectively. After the 2019 Amendment, the salaries of the State CIC and State ICs will be prescribed by the appropriate government which is Central government. Thus, regarding the appointment and salaries of State CIC and State ICs, the power lies to the Central government, making the decision on their own discretion.

Section 27¹⁹: talks about power to make rules by Appropriate Government.

Section 27 of the act deals with the power of the appropriate authority to make rules regarding the provision of the Act²⁰. The 2019 Amendment led to the insertion of 2 new clause to Section 27. The 2 new clauses that are added in Section 27 are added under subsection 2, after clause(c), i.e., "ca" and "cb". These new clause tends to give power and authority to the Centre to act in accordance with section 13 so as to determine the tenure and salaries of the CIC, ICs State CIC and State ICs. The motive of the amendment to section 27 is that to give authority to the Central

¹⁵ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s 16.

¹⁶ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 16(1).

¹⁷ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 16(2).

¹⁸ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 16(5).

¹⁹ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 27.

²⁰ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019).

Government to give effect to the amendments provided in Section 13 and 16 of the said act.

Salary Deductions

The 2019 amendment also helped in removal of the provisions which led to salary deduction. Prior to the 2019 amendment, there was deduction in the salaries of the CIC and ICs, if, at the time of their appointment, they received any pension or retirement benefit from previous government service²¹. But this provision was removed after the 2019 amendment.

It is important to note that the 2019 RTI Amendment Act also introduced other changes to the RTI Act, such as the introduction of fees for filing an appeal and the exemption of Intelligence and Security Agencies from the purview of RTI Act, but these changes were not made to any specific section of the RTI Act.

However, these amendment came with the mixed perception where some criticised it, and some look forward for the positive changes in the Act. Some argued that these amendment led to weakening of the purpose of RTI act, and also it gave undue advantage to the power of the centre, making a weak federal structure. At the same time, many argued that it also came with some positive changes like e-filing, removal of salary deductions and more protection of personal information. Thus, the amendment to the act has both, the drawback and the advantages, and we will now further discuss the drawbacks and the positive outcome from the proposed amendment.

3. DISADVANTAGES AND OBJECTIONS

AGAINST THE BILL

The Right to Information (RTI) Amendment Act of 2019 in India introduced some changes to the original RTI Act of 2005. The amendment to the original act came with positive changes as well as some drawbacks for the Indian society. The following are some drawbacks of the 2019 RTI Amendment Act:

3.1 Weakening of the RTI Act and compromise of independence of Information Commissioner:

Amendment to the section 13 and 16 of the act tends to weakens the purpose and objective of the

²¹ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 4.

original Act. Section 13 and 16 of 2005 act was inserted with the aim of maintain independency and transparency of the Information Commissioners so as to reduce the biasness. The aim of the RTI Act, 2005²² was a landmark legislation that brought transparency and accountability in the functioning of the government. But the amendment to these sections tends to disregard the main objective of the act and thus tends to dilute the powers of the Information Commissions and reduce the transparency and accountability of the government as the amendment gave the power to the central government for the appointment of the Chief Information Commissioner and Information Commissioner. The new amendment has severely weakened the independence and autonomy of Chief Information Commissioner and Information Commissioner as their tenure and salary are now fixed by Central Government, making them puppets of the Central Government. Thus, these amendments led to weakening the agenda and aim of the Act and led to the compromise to independence of Information commissioner, giving more powers to the central government.

3.2 Against the federal Structure of the State:

The 2019 amendment tends to give excess power to the central government and it is against the federal structure of the State. The aim of the RTI act is to provide proper information to the public against every legislation, action and anything that the state does, and thus it must remain independent from the state. But this amendment to the RTI act tends to contaminates the true nature of the act and also of Delegated Legislation. The objective of the act was to ensure the transparency and independent autonomy. But, through amendment in 2019, it allows the government to select the CIC and ICs which directly manipulates the functioning of the CIC and ICs in such a manner that the appropriate government selects the authority of their choice and thus make them their puppet. Hence, which could lead to a situation where the CIC and ICs are not able to function independently.

Thus, it is rightly quoted by Lord Acton *“Power tends to corrupt; absolute power corrupts absolutely”*

3.3 Exclusion of political parties:

The aim of the act was to provide transparency to the general public from all the government actions and to give people the power, to know every action and the motive behind the action. However, the 2019 amendment has removed political parties from the ambit of the public authorities under Right to Information Act, 2005. This means that political parties are no longer

²² The Right To Information Act, 2005 (Act 22 of 2005).

obligated to disclose information about their internal functioning, funding, and other matters of public interest. This amendment has been criticized in manner that it acts as a shield to political parties and their actions from public scrutiny and accountability.²³

3.4 Removal of fixed tenure for Information Commissioners:

One of the most crucial amendments to the RTI act is that of removal of the fixed tenure of Information Commissioners (ICs) at the central and state levels. Earlier, ICs had a fixed tenure of five years, and thus the accountability and diversity was maintained and it provided them with security of tenure and ensured their independence. But the removal of fixed tenure may lead to a situation where ICs are vulnerable to political pressure and can be removed arbitrarily²⁴ and this can lead to political dominance which is harmful to a democratic country like India.

3.5 Protection of personal information:

One of the most controversial sections of the RTI Act is Section 8²⁵, which tends to provide exemption from the disclosure of information by public authority to the General public. The Act provides the protection of personal information of Public authority from disclosure if its disclosure affects the sovereignty and integrity of the country, and thus it gives immunity or an undue advantage to the state to escape from sharing information, and hence it is often criticised that this power is usually misused by the government to deny access to information and hide the information that is critical to the functioning of the government and its policies.²⁶

3.6 Non-Conformity to Pre-Legislative Consultation Policy:

It has been witnessed that the amendment was proposed very silently, even without prior notification and discussion with the public and this is against with the true nature of Democracy and further in violation of the democratic principles of the country. Furthermore, it is contended that the bill was neither discussed with MPs nor, it was brought to media for public opinion. And hence it is violative of the 2014 policies related to legislative consultation.²⁷

²³ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 2(h).

²⁴ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 13.

²⁵ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 8.

²⁶ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019), s. 8.

²⁷ Pre-Legislative-Consultation-Policy, available at: <https://legislative.gov.in/pre-legislative-consultation-policy/> (last visited on May 4, 2023)

Overall, the 2019 amendment came with many drawback to the Democratic nature of the country and these changes has been witnessed as a step back in India's commitment to accountability, transparency, and the right to access to information. These amendments have been criticized by various organizations, activists, and the opposition parties, who further demanded their repeal.

4. BENEFITS OF THE AMENDMENTS

The Right to Information (RTI) Act acts as a tool for general public which helps them to be aware of every action of the state and holding all the authorities accountable for their Action. The Right to Information (RTI) Amendment Act of 2019 introduced some changes to the original RTI Act of 2005. The amendment to the original act came with positive changes like introduction of e-filing and reduction of workload and better accountability to the general public etc. The following are some potential benefits of the 2019 RTI Amendment Act:

4.1 Better management of RTI requests:

The 2019 amendment act gives power to the central government to frame rules regarding the management of RTI requests, including putting limit on the number of requests that can be made by an individual and the time limit for submitting a request. This can help the government for management of the RTI process, as this helps in reduction of can the workload of Information Commissions and to further prevent the misuse of the RTI Act.

4.2 Reduction in the workload of Information Commissions:

The Right to Information act allows the appropriate government for the transfer of pending RTI applications to other Information Commissions, which further promotes reduction of the workload on the Information Commissions. This can ensure timely disposal and can help in reducing the backlog of RTI applications.

4.3 Protection of personal information:

The RTI act further allows for the protection of data of individuals and personal information of individuals, including Aadhaar card details, from being disclosed under the RTI Act. This helps in safeguarding the privacy and personal information of citizens.

4.4 Encouragement of digital filing:

The amendment act promotes digital filing and online payment of RTI fees, making the process more efficient and cost-effective. This may help in more active process of RTI filing where the workload can be reduced and the system can become more accountable, transparent and citizen friendly, thus reducing the burden on Information Commissions and promote transparency in the RTI process.

4.5 Introduction of fees for filing an appeal:

The 2019 amendment came with introduction of fees for filing an appeal against the decision of the first appellate authority. As we have witnessed that there are thousands of cases which are proved to be fake and vague applications and this can lead to affect or dilute the true nature of RTI, and thus charging the fees will help in reducing the no. of fake applications and this may discourage frivolous appeals and ensure that only genuine appeals are filed.

In conclusion, the 2019 RTI Amendment Act²⁸ in India has several potential benefits, including better management of RTI requests, strengthening the autonomy of the Information Commission, reducing the workload of Information Commissions, protecting personal information, encouraging digital filing, introduction of fees for filing an appeal, solution from the problem of fake cases and exemption of Intelligence and Security Agencies from the purview of RTI Act. Thus, we have witnessed that every statute has both positives and negatives and it all depends on the needs and perception of the people who use this act as a tool to maintain the accountability of the State.

5. CONCLUSION

Right to Information acts like a tool for the general public in such a sense that it creates a situation where the authorities can be held liable and accountable for their action. It is one of the most important statutes which directly overflows from Article 19 of the constitution of India and it acts as a natural right which flows directly from the concept of democracy.²⁹ Every statute has its own

²⁸ The Right To Information (Amendment) Act, 2019 (Act 24 Of 2019).

²⁹ *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294.

pros and cons and so does this act have its own benefits and drawbacks. The amendment to the original act came with many positive benefits like e-filing of RTI application and fees procedure. But it majorly was criticised for affecting and diluting the true nature of the act. The amendment has been criticised for making the act less transparent and affecting the federal structure of the act. The act was made to provide information and knowledge to the public related to actions of the government so that the citizens of the country can have access to the information, making the government more transparent and accountable. But the amendment to the act has weakened this transparency feature. The feature of the good governance is the transparency and accountability, participation and legitimacy, and the objective of the RTI act was to act as a tool of Good Governance, but it has rather been now acting as a tool of government which makes autonomous to the government to whether disclose the information or not. It has been further witnessed that the RTI act has been changed more than of what it was originally provided. The essence of the act has vanished but still it thrives for fight of accountability, In conclusion, it depends on the citizen of the country that how to take these amendments, and if they have more cons than the benefit, then further action should be taken by the people of the nation to fight with the cons. India is a democratic country and is known for its legislative systems. More than 4 million RTI are filed per year in India. The people of the country are the power of the country and the government should address the public in a proper manner and thus the government should not abuse its power and should provide the information to the general public.

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