

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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RTI: A Modern Tool For Empowerment And Exploitation

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Abstract

Right to Information is an enabling right which provides the common people a chance to keep a check on the functioning of its government. It is a cornerstone of every successful democracy. It paves a way for the people and organisations to seek information from a public entity working on behalf of the government. The RTI officials are required to respond to such a request within 30 days. The goal of this paper is to demonstrate how the Right to Information (also referred to as 'RTI') Amendment Act of 2019 undermines the ground-breaking RTI Act of 2005. RTI in a democratic society is an instrumental tool to add weight to voice of people for good governance whereas the same has been misused for people with their ulterior motive. Here are both good and has instances regarding the same. Majority of people still are unknown about the act, Judiciary has been key in pointing out use of RTI and providing people with solutions or discarding unreasonable ask of people through use of RTI.

The purpose of this article is to explain how the RTI institution operates and the function of Information Commissioners within it. The paper goes on to explain how the RTI Amendment Act of 2019 dismantles the RTI Act of 2005's core underpinnings. To justify this notion, the author will examine what the RTI Amendment Act really implies for the nation as a whole, as well as how it would entirely undermine the openness promised to people. The paper will then elaborate the prospective impacts of the amendment, explaining that how the Information Commissioners have become pawns in the hands of the central government as a result of the 2019 amendment. The paper is finally concluded with some fruitful recommendations which can enhance the efficacy of the institution of the RTI.

METHODOLOGY: The research is based on secondary data from various sources.

KEYWORDS: RTI Act 2005, RTI (Amendment) Act, 2019, Information Commissioner, Central Government, Democracy, People, Administration.

Introduction

India has the distinction of being the world's largest democracy. The cornerstones of a democratic system are transparency, accountability, public engagement, and interaction. Public engagement is only feasible when citizens are informed on what is going on in the country, such as the government's plans and initiatives for the welfare of its citizens. In India, administrative authorities have broad discretionary powers, which frequently raise public concerns about mismanagement, corruption, and power abuse. Transparency, accountability, predictability, and participation are the four core characteristics of good governance.

Right to Information (RTI) encourages government institutions to operate with greater openness and accountability, allowing them to function more fairly. Furthermore, providing individuals with government information allows them to engage in the democratic process. As a result, the right to information promotes effective government.

It is notable to mention that with all good things, bad things follows soon. People for good have used RTI whereas it is being misuse too. In name of RTI, people have been trying to misuse the right provided to them under the act. This paper aims to deliver both aspects of RTI in Indian context.

1. HOW RTI HELPS IN GOOD GOVERNANCE

There is no need to think twice that RTI is closely linked to good governance, as transparency and accountability are pillars of good governance. The true goal of representative government is welfare of people as it is arguably an effective tool for obtaining good governance in Democratic society.¹

1.1 How RTI is important from people's point of view

From people's point of view (being a commoner), we can establish certain perspective of citizens:

- a. People pay taxes to the government and contribute to the income of government*
- b. The same tax is taken and contributed to the development of society.*
- c. People, in a society where there is no development always wonder what has happened to the taxes they paid*

¹ Viswam, S. (1983). The Right to Information. India International Centre Quarterly, 10(2), 175–185.
<http://www.jstor.org/stable/23001642>

- d. *For them it is justifiable to be concerned about access to the whereabouts of the plans and schemes of the government, which is ignited after people, pay their taxes.*

RTI is a tool via which people are provided with access to the information with certain boundary. In addition, they can opt to take legal action in case they discover some misconduct in the information provided.

1.2 Empowerment of common people via RTI

If we look into what was people's stand before the introduction of RTI, we can see that people did not have a say in the socio-political decisions made by the government. Following, which, people started to feel that they were being ignored and excluded, and a sense of indifference towards the policies of the government. There was always a sort of secrecy from the government's side with respect to the policies of the government. People's perspective what that they had the right to know what was going on and that their opinion and voices should be taken into account as they were the ones who were in direct consequences of those policies.²

The introduction of the act in 2005 made an environment for citizens. It provided the citizens with access to information. It equipped them with a voice in political and economic decision taken by the government.

1.3 Accomplishment by RTI: Examples

The RTI has provided citizens with a module of optimistic transparency and accountability. Some examples of the same can be seen as³:

- a. **Adarsh Scam**: wherein, in place where a 6-storeyed building was supposed to be made for widows and war heroes of kargil war, therein a 31-storey building was erected. Two activist presented with an application in the court, following which a revelation was made that the land did not belong to Government of Maharashtra but to Ministry of Defense.
- b. **2G Scam**: the fraud was led by Adimuthu Raja, which involved telecom ministry. The same reveled the rot of corruption in the congress party. The same fraud was a revelation of RTI, wherein some officials took the bribery worth more than 150,000Cr was brought in front of the public.

² Jain, A. (2012). GOOD GOVERNANCE AND RIGHT TO INFORMATION: A PERSPECTIVE. Journal of the Indian Law Institute, 54(4), 506–519. <http://www.jstor.org/stable/43953611>

³ Khanwalker, V. (2011). THE RIGHT TO INFORMATION ACT IN INDIA: ITS CONNOTATIONS AND IMPLEMENTATION. The Indian Journal of Political Science, 72(2), 387–393. <http://www.jstor.org/stable/42761423>

- c. **Indian Red Cross Society Scam**: After enactment of RTI, the public were able to question public authority and ask the information for the same. Red Cross society had diluted the funds which was supposed for Relief and Rehabilitation for people who suffered from natural disaster during the Kargil war. After people asked for the documentation of the same, it was revealed that the said fund was used to buy luxurious goods by a certain IAS officer.

1.4 Amendment of 2019: Criticism by people

After the 2019 amendment of the Act, Article 13 of the same have entrusted that salary of the information commissioner to be decided by the Central Government. The people have heavily criticized the same. The Amendment has taken power from the people and empowered the government. Before the amendment came into picture, more than 6000 cases were being filed on a daily basis. It is believed among the mass that the amendments has challenged the independence of the act.

1.5 Findings from (6)

From above, I am of the opinion that RTI can be a very powerful tool if used in the correct way. RTI is not just an information provider, it is something more, it is a tool that empowers the common people to be involved in the decision making process. RTI in a developing country like India can be seen as a true essence of good governance whose effective implementation is needed as Abuse of authority can be controlled by the act. RTI and transparency acts as a bridge for trust between people and the government. By valid implementation of this act, people can sleep safely knowing they can rely on their government

2. MISUSE OF RTI

It is arguable that in the process of implementation of laws there will always be some people who will misuse the same. Like how police seems to misuse, their powers sometimes to suppress law, and like how some clever criminals misuse judicial system by prolonging the trial process. There is misuse of laws is always dependent on the society as it comprises of different kind of people in the society and other factor is based on judiciary's power to punish the wrongdoers. Can it be said with 100% confidence that only good people will use RTI for benefit of society and not the other way around?⁴

⁴ Jenkins, R., & Goetz, A. M. (1999). Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India. *Third World Quarterly*, 20(3), 603–622. <http://www.jstor.org/stable/3993324>

2.1 Blackmailing

People when they find out a small mistake on behalf of someone, which can cost them their job, will directly, go on to blackmail them regarding the same for monetary benefits. To be able to blackmail someone who has been indulged in some illegal activity, there are some illegal actions. The blackmailer can threaten an illegal action saying that they will expose their act and subsequently extort money for the same. This does not mean that everyone will do the same, but there is no denying that someone will be doing this.

2.2 Election Agenda

RTI is a powerful means to turn something up and down. People can be influenced quickly. Like the proverb, "*everything is fair in love and war*", people go out of their way to claim a seat in election be it internal or external elections. There has been instances wherein people have provoked someone about some insights and made them file a case regarding the same under RTI. This leads in their image being bad for the time being and hence led to misuse of the same. This can be taken in good way as well as bad. He can file a case himself but provoking others to file on his behalf for some ulterior motives is bad. There are some instances that such filed cases are based on lies fed to them by politicians only to make their oppositions image bad during the elections.

2.3 Social media Influence

Social media has provided people with a platform to express their views and thoughts about things. We know that 75% of things in social media is manipulative or manipulated media/things. RTI has proven its worth in a democratic society as people began to question authority and the concerned authority had to answer the same. RTI helps to see what we want to protect when it comes to use of platforms for receiving and imparting information without any interference from government or a third party. People have tendency to post with little knowledge and it is circulated to a mass, and hence sometimes wrong news can affect people. Little knowledge is dangerous and not all things we see in social media are true.

3. Comparative Analysis: Practical Application Of The Rti

The following are brief accounts of various scandals that were brought to light by exercise of the right to information.

3.1 The Commonwealth Games Scandal

An RTI petition in 2010 turned out to reveal one a major Indian scam which involved a gigantic sum of around Rs. 70,000. The money allotted and used for the event was poorly used – allocating poor facilities to the athletes, employing services for inflated prices and disregarding services that were offered at reasonable prices. The revelation of this scandal led to the accused members of the scandal being charged for criminal conspiracy, cheating, forgery and also under the Prevention of Corruption Act.

3.2 Unused MLA funds

The residents of Pandav Nagar approached their MLA with a request for the construction of a street. However, the MLA denied their application stating that the fund had already been exhausted. The residents subsequently applied a RTI petition and requesting the total amount allocated, the expenditure of the amount and the remaining balance. The RTI later revealed that the MLA had been allocated a sum of Rs. 2 crores for developmental purposes, which had not been expended and was sitting idly with the MLA. The revelation of this information rendered the MLA unable to deny the construction of a street and thus the street was constructed.

3.3 The Adarsh Society Scam

The Adarsh Housing Society is a 31-story building which was constructed for the widows of the Kargil war martyrs. However, the building was soon occupied by politicians, bureaucrats and military officers. An RTI issued by RTI activists Simpreet Singh and Yogasharya Anandji revealed that these occupants had bend several rules to occupy the flats at below market rates. It was revealed that the land in which the building was built did not belong to the state government but instead to the Ministry of Defence. This revelation soon forced the then Chief Minister of Maharashtra – Ashok Chavan to resign.

3.4 The 2G Scam

With the onset of 2G in the telecom sector, it was revealed by a RTI filed by activist Subash Chandra Agarwal that certain ministers had colluded with mobile phone companies to undercharge them while allocating frequencies in return of a bribe. This RTI exposed several leaders such as the then telecom minister A Raja and the DMK leader Kanimozhi

3.5 The Indian Red Cross Society Scam

A RTI filed by a NGO Resurgent India, revealed that funds collected by the Indian Red Cross Society in the name of Kargil War Relief, Orissa Cyclone Relief and Gujarat Earthquake Relief never reached the said victims and was instead used for other purposes such as by electronics, furniture and covering restaurant bills. The RTI revealed large scale diversion of grants from the Ministry of Social Justice and Empowerment, Ministry of Health and Family and also corruption on behalf senior IAS officers.

4. Critical Analysis

Before the introduction of the RTI, the secrecy in the various government operations often provided ample opportunity for officials to participate in corrupt practices, such as diverging public funds, taking bribes, adapting inefficient methods to carry out their functions, etc. These corrupt practices in turn were damaging to the citizens and the underprivileged in particular, as in many cases funds that were collected for them, never reached them. This resulted in a atmosphere of distrust and scepticalness about the government.

This cynicism has however reduced to a great extent with the introduction of the Right to Information Act 2005. The act has brought about greater administrative and executive efficiency by putting a spotlight on several ongoing corrupt practices. Further the establishment of institutions such as the Central and State Information Commissions has helped ensure transparency in the implementation of the act. By reducing the unnecessary secrecy that surrounded the decision-making process, the Right to Information is expected to improve the quality of decision-making by public authorities in both policy and administrative affairs. It also allows organisations and individuals to learn about the criteria used by government entities when making decisions. It is envisaged that this will improve the quality of participatory democratic democracy by allowing all citizens to participate in a more complete and informed manner.

The citizens of the country will be able to understand the government's performance by ensuring access to necessary information and knowledge, and the cumulative impact of such a procedure will be the control of corruption and the arbitrary exercise of authority. Public accountability is an aspect of governance, and the government is made up of public servants who are held accountable to the public for their work.

As a result, accountability and governance are integral parts of the government, which serves as both a principle and an agent in the public realm. When a government agency transforms a government policy into a programme, the success of the transaction is heavily reliant on a clear knowledge and outcome of the desired outcome. It should come as no surprise that the history of public accountability and governance has changed from assessing inputs to measuring outputs, and from matching outputs to defining outcomes. Thus, the only thing that undermines the government's or the public sector's accountability or effectiveness is a lack of information on any subject and this weakness has been greatly mitigated by RTI.

4.1 The Loopholes and limitations

Despite these wildly positive results, RTI is still subject to several limitations and cannot provide accountability or transparency in certain areas where umbrella protection is provided in the form of exemptions. A system of bureaucracy wherein secrecy and opaqueness are of the essence, still exists. Certain laws, such as the Official Secrets Acts, 1923 that were introduced in colonial times still exists, makes the disclosure of official information by public authorities to the citizens, an offence.⁵

Further ambiguities exist in certain definitions of the act while can and are being exploited by authorities. Section 4 of the RTI act which requires proper maintenance of records and easily availability/dissemination of the said records is yet to be implemented strictly and the element of suo motu is absent as the due internal process to be followed has not been described by the act.

The RTI amendment bill, 2019 has further posed a threat to the power and incentives of the Central Information Commission, with the bill proposing amendments to provisions which dictate the salary and term of the Chief/State Information Commissioners. The Bill has also proposed bringing the Information Commission more under the power of the Central government, which would severely deter the autonomy of the commission. This is possible due to sections 27 and 28 of the Act which give "state governments" and "competent authorities" the authority to set their own rules, which in many ways contradicts the RTI Act. Many competent authorities, state governments, and corrupt bureaucracies or officials make extensive use of this law.⁶

⁵ Khanwalker, V. (2011). THE RIGHT TO INFORMATION ACT IN INDIA: ITS CONNOTATIONS AND IMPLEMENTATION. *The Indian Journal of Political Science*, 72(2), 387–393. <http://www.jstor.org/stable/42761423>

⁶ Roberts, N., & Roberts, A. (2010). A Great and Revolutionary Law? The First Four Years of India's Right to Information Act. *Public Administration Review*, 70(6), 925–933. <http://www.jstor.org/stable/40927109>

5. Judicial Standing WRT RTI

Decisions highlighting the Importance of Right to Information

1. The Right to Information Act, or RTI Act, is a piece of 21st-century law that gives Indian citizens a legislative right to information. In the case of State of **Uttar Pradesh v. Raj Narain**⁷, even before the enactment of RTI Act, the Supreme Court held that it is an inherent right of the citizens of India to access any and every information which affects the public. The court held that the people are entitled to know the particulars of every transaction taking place in the public domain.
2. Thereafter, the Hon'ble Supreme Court of India in the landmark case of **S.P. Gupta v. President of India & Ors.**⁸ recognised the Right to Information as a Fundamental Right. The court stated that the transparent functioning of a government emanates from the right to knowledge. This right the court argued can be traced as a part of the Freedom of Speech and Expression, as stated under Article 19(1)(a). On the basis of this rationale, it was observed that it is the obligation of the government to disclose information regarding its functioning, in order to maintain transparency in the whole system.
3. In the case of **Bennett Coleman V. Union of India**⁹ it was ruled that Right to Know, which is a subset of Freedom of Speech and Expression, is the foundation around which the Right to Information is built. A person has a basic right to access information, and the government is obligated to defend that right and create chances for it to be used successfully.
4. It was vehemently held in the case of **R.P. Limited V. Proprietors, Indian Express Newspapers, Bombay, Pvt. Ltd.**¹⁰ that the citizens must have access to information in order to participate in the democratic framework of a country. Such a right to information equips people with a free society with the tools they need to successfully thrive as a democratic entity, thus expanding the notion of the Article 21 of the Indian Constitution.
5. A landmark judgement was also delivered in the case of **Union of India V. Association for Democratic Reforms**¹¹, where the court held that in order to introduce transparency in the process of elections, it is necessary for the electors to have access to the criminal records and details about the financial conditions of the candidates running for the elections.

⁷ Uttar Pradesh v. Raj Narain, AIR 1975 S.C. 865.

⁸ S.P. Gupta vs President of India and Ors., AIR 1982 SC 149.

⁹ Bennett Coleman V. Union of India, 1973 AIR 106.

¹⁰ R.P. Limited V. Proprietors, Indian Express Newspapers, Bombay, Pvt. Ltd. 1989 AIR 190.

¹¹ Union of India V. Association for Democratic Reforms, AIR 2002 SC 2112.

6. **UPSC V. Angesh Kumar**¹², wherein some unsuccessful candidates in 2010 Civil services exam approached court for directions regarding UPSC to disclose details of marks awarded to them including the cut off marks for every subjects, scaling methodology, model answers and complete list of results of all candidates. *The court directed to disclose raw marks as well as the model answers of the questions of the examination under section 3 and 6 of the act.*¹³

7. **UOI V CIC**¹⁴, wherein the petitioner in the case challenged a certain order of CIC whereby CIC declared, "The ministers in the union government and all states governments as public authorities under section 2(h) of RTI". The court was of opinion that, "the order of CIC is to be set aside and the directions issued by the CIC in the case was beyond the scope of CIC. Moreover the question is not to be raised in the first glimpse at all"¹⁵.

8. **Harinder Dhingra V Bar association**¹⁶, wherein the appellant sought information related to the number of complaints against advocates, cases which were disposed and violation of Advocate act. The court was of opinion that, "The bar council is a statutory body that was constituted as per the advocates act. The purpose of which is to protect the ethical standards of advocates and punish members for misconduct. The court held that Bar councils are liable to provide information as per the RTI."¹⁷

9. **Shri Vijay Kamble V Custom Department**,¹⁸ Mumbai, wherein the appellant asked for copies, which was subject to cause notices and other documents during the proceedings by DRI and currently under adjudicating by the CPIO and the authority, had declined to disclose the information of the same under section 8 of the Act. The court was of opinion that, "RTI cannot be invoked to access the information related to that proceedings. If intervention for disclosure of the information related to an outgoing adjudication process is allowed, the same will lead to questions being asked about proceeding before courts. The same would be in contravention of Separation of power under constitution of India."¹⁹

¹² C.A. No. 5924/2013

¹³ A K Goel in case of UPSC V Angesh Kumar,

¹⁴ 165 (2009) DLT 559

¹⁵ Anil Kumar in case of Union of India V Central information commission, 165 (2009) DLT 559

¹⁶ 2016 SCC OnLine CIC 2207

¹⁷ M. Sridhar Acharyulu in case of Harinder Dhingra V Bar association Punjab 2016 SCC OnLine CIC 2207

¹⁸ F.No.CIC/AT/A/2008/01466

¹⁹ A.N. Tiwari in case of Shri Vijay kamble V Custom department, F.No.CIC/AT/A/2008/01466

10. *Chandrakant Vrajlal Fichadiya V State of Gujrat*²⁰, wherein the petitioner filed an application seeking a copy of map under RTI which was a third party information, which can only be revealed after getting consent from third party. *The court held that the same can only be disclosed if it falls under public interest and only if the map doesn't cause any kind of harm or injury to such third party.*²¹

11. *People's Union Of Civil Liberties vs. Union Of India*²², wherein the court was of opinion that, “ *The ask of petitioner in this case is unconstitutional. the ask of petitioner is subjected to nullifying the effect of any order or judgement which requires disclosure of information. The Act should be allowed to bloom and grow*”.²³

12. *R.K Jain V UOI*²⁴, wherein the court was of opinion that, “ *the information with regards to charges and penalties imposed on employees and the records of the same are matters of relationship between employer and employee and the disclosure has no relationship to any public activity*”.²⁵ This case is an example of media manipulation which caused unwanted attention towards people started by their rival groups.

6. Findings

RTI has been an effective instrument to promote transparency and accountability in administration. There has been lack of awareness among majority of people which is required for effective use of the act. Following which government programs and other related services has not reached to all public as a result of this people from backward class are disadvantage on the receiving end of corrupt practices prevailing in root level and nepotism by the government.²⁶ Several RTI activists have been attacked in various states. Despite this, I believe RTI is a necessary and strong tool. The government must protect RTI advocates.

- a. *There is inconsistencies in the Public Distribution system.*
- b. *There has been improvement in accountability and performance of the government*
- c. *There has been reduction in corruption in the government department*

²⁰ C/SCA/20547/2016

²¹ R.M. Chhaya in case of Chandrakant v.rajlal Fichadiya V State of Gujrat C/SCA/20547/2016

²² AIR 1997 SC 56

²³ S S Ahmad in case of People's Union of Civil liberties V UOI, AIR 1997 SC 568

²⁴ (2013) 14 SCC 794

²⁵ SC in case of R.K.Jain v. Union Of India, (2013) 14 SCC 794

²⁶ Singh, M. (2017). V.N. Shukla's Constitution of India. 13th ed. Lucknow: Eastern Book Company, pp.137-138

- d. Before, RTI the staffs and officer were very sluggish in their work and now they have become active in their duty.
- e. The government staffs were not conscious before whereas now they have been doing their work consciously.
- f. Before enactment of the RTI, proper action with respect to public grievances and complaints were not being taken whereas now all concerned officials have been serious with respect to all complaints of the same.
- g. Lack of awareness among people has made its application limited to less people.
- h. People have been using RTI to obtain their ulterior motive.
- i. RTI has been misused to some extent.
- j. Sometimes RTI makes people feel like a mad person shouting in front of a deaf wall.
- k. It is an effective tool for prisoners who seek information under RTI
- l. Motive of RTI is not to disclose any information which will cause in loss or harm to any third person directly.
- m. RTI activists have been attacked and threatened in order to keep them silent.
- n. RTI doesn't let people intervene which is not of their use or subject to their knowledge(like the dialogue 'none of your business')
- o. RTI has been introduced keeping in mind the constant grievances of public.(lack of transparency, accountability, lack of institutional machinery and information)

7. The Amendments Under The Right To Information (Amendment) Act, 2019

- This Amendment has made changes to Section 13 and 14 of the Act. The changes incorporated are relating to the term of the Chief Information Commissioner, the State Information Commissioner, and Information Commissioner. Initially the terms of these information officers was kept for five years or until the age of retirement (which in their case was set at 65 years). The newly modified law, on the other hand, gives the Central Government the authority to dictate the duration of the office for commissioners as it sees proper.²⁷

²⁷ Devika Sharma, *The Right to Information (Amendment) Act, 2019: Bill receives President's Assent: Centre to decide term and salary payable*, SCC ONLINE (August 02, 2019), <https://www.sconline.com/blog/post/2019/08/02/the-right-to-information-amendment-act-2019-bill-receives-presidents-assent-centre-to-decide-term-and-salary-payable-to-cic-ic-state-ic/>.

- The compensation received by the CIC and the Central Information Commissioner was in tandem with the compensation received by the Chief Election Commissioner (CEC) and Election Commissioner. The compensation received by the Chief State Information Commissioner (CSIC) and State Information Commissioners were previously identical to those of the state's Election Commissioner, and the SIC's salary was equivalent to that of the state's Chief Secretary. The newly passed amendment act empowers the central government to decide the compensation and other terms of service of the Chief Information Commissioner and Information Commissioners, as well as the State Chief Information Commissioner and State Information Commissioners.²⁸
- Finally, under the newly modified law, if the Chief Information Commissioner or any other Information Commissioner receives a pension or other retirement benefits from past government work, their wages will be reduced by an amount equal to that pension.

A comprehensive comparative table below portrays the difference in the original act and the amendment act.²⁹

Provisions relating to the Act	RTI Act, 2005	RTI (Amendment) Act, 2019
Term	The Chief Information Commissioner (CIC) and the Information Commissioners (ICs) (at the central and state levels) will serve five-year terms.	The Amendment Act removes this provision and states that the central government will have the authority over the term of office for the CIC and the ICs.
Quantum of Salary	The compensation received by the CIC and the Central Information Commissioner was in tandem with the compensation received by the Chief Election Commissioner (CEC) and Election Commissioner. The compensation received by the Chief State Information Commissioner (CSIC) and State Information Commissioners (SIC) were previously	The Amendment Act removes this provision and states that the central government will have the authority over the compensation and the terms of service of the Chief Information Commissioner and Information Commissioners, as well as the State Chief Information Commissioner and State Information Commissioners.

²⁸ *Id.*

²⁹ Right to Information Act, 2005; Right to Information (Amendment) Bill, 2019; PRS.

	identical to those of the state's Election Commissioner, and the SIC's salary was equivalent to that of the state's Chief Secretary.	
Deductions in Salary	According to the Act, if the CIC and ICs (at the union and state levels) are receiving a pension or other retirement benefits for past government work, their salary will be cut by an amount equivalent to the pension at the time of their appointment. Previous government service includes: (i) service with the union government, (ii) service with the state government, (iii) service with a corporation formed under union or state law, and (iv) service with a firm owned or controlled by the union or state government.	The Amendment Act invalidates these provisos.

8. Criticisms To The Amendment

❖ **VIOLATION OF THE 2014 PRE-LEGISLATIVE CONSULTATION POLCY**

The government formulated some drafts and suggestions were taken up between 2012 and 2017 to alter the RTI Act of 2005. The government, anyhow, amended the original act without taking in suggestions from the public stakeholders.³⁰ In 2014, the government passed a Pre-Legislative Consultation Policy, according to which every government body needs to float the proposed draft of the bill for public consideration.³¹

The government ignored the public opinion and disregarded Pre-Legislative Consultation Policy by not floating the draft for public opinion.³²

³⁰ Venkatesh Nayak, *The Right to Information (Amendment) Bill, 2019, A Critical Review of the Amendment Proposals and the Underlying Reasoning* (2019), <https://www.humanrightsinitiative.org/download/CHRI-RTIABill2019-critiqueJul19.pdf>.

³¹ Union Ministry of Law and Justice Legislative Department (4th March 10: 44 PM), <http://www.legislative.gov.in/documents/prelegislative-consultation-policy>.

³² *Supra* Note 9.

❖ **DISMANTLES THE FEDERAL CHARACTERISTICS OF THE RTI ACT, 2005**

The RTI (Amendment) Act of 2019 arbitrarily grants the central executive immense powers to control and regulate the compensation, allowance, and terms of service of the Information Commissioner's both at state and central levels, which were earlier specified under the act.

The compensation and allowances paid to the Central Information Commissioners are from consolidated funds of India, whereas for SIC the payments are made from the state's consolidated funds. The amendment tarnishes the federal ideals of the constitution because earlier there was a justified split of authority between the union and state legislature in terms of the pay and terms of service. The federal character of the RTI Act's legislative system is disintegrated as a result of the modifications.³³ The powers vested in the state by virtue of Section 27 of the RTI Act, 2005 to make rules regarding the compensation and allowances of SIC has been frivolously transferred to the Centre.

❖ **CURTAINS THE INDEPENDENCE OF THE INFORMATION COMMISSIONERS**

The post of the Chief Information Commissioner, who shared the same status as that of an Election Commissioner, has been downgraded. The status of CIC is now equivalent to that of a secretary, which is obviously a lower rank.

This change is more likely to change their way of functioning and their eroded independence will eventually result in them working like bureaucrats under the instructions of the centre. The primary motive of the RTI Act, 2005 of keeping the post of CIC equivalent to the post of CEC was to ensure that the right to information of the Indian citizens remain intact. After, the amendment there will be an impediment in the process of provision of information, and the information which might be detrimental for the central government would not be released by the Information Commissioners owing to the undue pressure of the higher authorities.³⁴ The uncertainty relating to the salary and tenure of the Information Commissioners is more likely to make the government's functioning opaque.

³³ M Sridhar Acharyulu, *RTI amendment: Centre has no authority to make law on states*, DTE (Jan, 2020), <https://www.downtoearth.org.in/news/governance/rTI-amendment-centre-has-no-authority-to-make-law-on-states-65997>.

³⁴ Sridhar Acharyulu, *RTI Amendments: An Obituary to Independent Information Commission*, Livelaw (Jan, 2020), <https://www.livelaw.in/columns/an-obituary-to-right-to-information-act-149313>.

❖ **PARLIAMENT'S EXCESSIVE DELEGATION OF COMPETENCES TO THE CENTRAL GOVERNMENT**

There is need to understand that regulating the tenure of work and the compensation, allowances and terms of service of CIC, ICs, CSIC and SIC, who are statutory authorities, is a pivotal legislative function. If such a function is out rightly outsourced to any other body of the government (in the case concerned the Executive), then the Principle of Separation of Power would be defeated and will be detrimental for a democratic state. Even the Supreme Court of India in the case of A. N. Parasuraman v. Tamil Nadu³⁵ held that excessive delegation by anybody of the government is in gross violation of the Article 14 of the Indian Constitution.



³⁵ A. N. Parasuraman v. Tamil Nadu, 1989 4 SCC 683.

Conclusion And Suggestions

It would not be abrupt to conclude that RTI Act's independence owing to the new modifications, has been seriously impeded. It is justifiable to say that RTI Act has been one of the most empowering and effective actions in the last two decades. It is the result of RTI Act that we learned of the commonwealth fraud and 2G scam³⁶. Until now, the legislation has resulted in honest officers being protected while dishonest officers have been convicted. Most importantly, it has given Indian citizens the confidence to speak up and demand answers from their government. It was this legislation that offered incredibly powerful voice to the voiceless, and it makes me tense that with the revisions, the RTI Act's main goal would be entirely disintegrated. In my opinion the Amendment Act is not constitutionally sound due to various reasons like the amendment dismantles the federal characteristics of the original Act, the legislature excessively delegates the authority over Information Commissioners to the Central Executive, undermines the Independence of ICs and violates the 2014 Pre-Legislative Consultation Policy.

Some Suggestions to improve the status of the RTI Act:

- The court has both the constitutional ability and the obligation to declare such an amendment unlawful and restore the Information Commissioners' independence.³⁷
- In addition, rather than hiring just former government employees as Information Commissioners, governments should try to appoint RTI campaigners, human rights activists, or academics. So that the institution's effectiveness and diversity can be preserved.
- They should also strengthen the institution of RTI, so that the RTI applicants should not be harassed or assaulted. This can be done by increasing the number of ICs and making the procedure less cumbersome.
- Since the Information Commissioners plays the role of a regulator and an adjudicator, to make the process of adjudication less burdensome for the ICs, there can be a quasi-judicial body for adjudication.

³⁶ Subramanian Swamy v. A. Raja, (2012) 11 SCR 873.

³⁷ Jairam Ramesh v. Union of India, W.P.(C) No. 001473 - / 2019. *In this case, Jairam Ramesh challenges the Constitutional Validity of the 2019 Amendment of the RTI Act, the case is at present pending in the Supreme Court of India.*