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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can*

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## Avinash Kumar



*methodology and teaching and learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research*

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# **RTI: IN CHANGING SCENARIO**

*Authored By: P Samay Kumar  
Student of BBA-LLB (Hons.)  
ICFAI Law School, Hyderabad.*

## **Introduction**

India is the largest democratic country in the world having 142 Crores of Population out of which there are 94.5 crores of voters<sup>1</sup> and those voters decide the fate of the government and the people in general. The jurisprudence of democracy has been enshrined in the part-III and Part-IV of the constitution of India. According to the constitution the people of India are sovereign authority and they have Fundamental Rights to know what the government has been doing in their name. Freedom of Speech is the lifeblood of democracy without it democracy will be turned into tyranny or dictatorship. Freedom of Speech Acts like a safety valve in democracy, because people ventilate their grievances by criticizing the government and public officials. Consequently, it does not give the scope to the people to revolt against the existing order.

The history has witnessed several revolutions, which is the result of the lack of information. When people do not get the right kind of information they develop the attitude of apathy and indifference towards the government. The secret policy of British government had compelled some prudent Indians to think otherwise. And in the long run that secret policy of alien rulers acted like a deadly weapon against themselves. Consequently, they had to leave this soil and Indians took the charge to rule them. Thus it is clear that Right to Information not only gives the scope to the people to know about the functioning of the government but it ventilates the grievances of the people.

The Universal Declaration of Human Rights of 1948 has clearly mentioned in Article-23 and 25<sup>2</sup> about the Right to Information which is the inherent right of human being. Right to

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<sup>1</sup> PTI, *India has over 94.50 crore voters as on Jan 1: Government*, THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/news/india/india-has-over-94-50-crore-voters-as-on-jan-1-government/articleshow/97559222.cms?from=mdr> (last visited 23.03.2023).

<sup>2</sup> UNITED NATIONS, *The Universal Declaration of Human Rights*, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited 23.03.2023).

Information laws result the basic premise that government is meant to serve the people. Access to government records and information is necessary prerequisite for enhancing transparency. Transparency removes the misunderstanding and checks the corruption in the administration. The government of India after being realised its importance passed the Right to Information<sup>3</sup> act on 12th October 2005 and since then the Right to Information Act 2005 is being applied and recently Amendment has been done to it in 2019, through out the country. In order to have a basic idea on Right to Information as well as to address the current issues, this paper has been designed.

RTI is a powerful weapon in the hands of people of the country but the weapons need to work as intended when required. India, being a vast country with diversified hierarchy in the administration, the implementation was difficult but never impossible. But here is always room for improvement. Even after 18 years of its enactment, it has failed to acquire constitutional status and has not reached the masses. Usually it is seen that only the people who are in dire need of some information, file for RTI. Although there is provision under the Act to educate people on this topic, but it has failed to reach the rural population where the country lives.

The question of research is Whether the RTI Act is acting as intended by the democracy or it is has just remained as another statutory compliance on paper behind which the real dark faces of the Government live. Further, in this paper I have discussed few suggestions which may be considered to enhance the Act.

The hypothesis for this research paper is that the new Amendment Act, 2019 has brought new problems rather than solving the previous lacunas. Amendment to S.26, 13, 16, 24 of the RTI Act is destroying the federal structure of the RTI Act.

## **PROSPECTS AND PROCEDURAL ASPECTS**

The RTI Act is 21st-century legislation which entitles the people of India with a statutory right, i.e., the 'Right to Information'. However, the Supreme Court recognized the Right to Information as a fundamental right way back in 1975 in the case of State of Uttar Pradesh v.

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<sup>3</sup> Shekhar Singh, *The Genesis And Evolution of The Right To Information Regime In India*, <http://freedominfo.org/documents/India2010singhCountry%20Paper%20FINAL.pdf> (last visited 23.03.2023).

Raj Narain<sup>4</sup>, wherein it ruled that “The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.” The apex court in the landmark case of S.P. Gupta & Ors. v. The President of India<sup>5</sup> further recognized Right to Information as a fundamental right-ruling that “*The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information regarding the functioning of Government must be the rule.*”

## Definition of Right to Information

Right to Information accessible under this Act which is held by or under the control of any public authority and includes the Right to-

- Inspection of work, documents, records;
- Taking notes, extracts or certified copies of documents or records;
- Taking certified samples of material;
- Obtaining information in the form of diskettes, floppies, and tapes videocassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

## Bodies coming under the RTI Act

The right to information Act covers all levels of Government-Centre, State district and local self-governing bodies like Panchayats and Municipal bodies. It also covers non-governmental organisations – i.e. NGOs and other private bodies – that are financed substantially with public funds provided by the government. Every citizen has the right to put in an application requesting information or copies of records held by these bodies and such information should be given by the concerned body.

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<sup>4</sup> State of Uttar Prasad v. Raj Narain, A.I.R. 1975 S.C. 865

<sup>5</sup> S.P. Gupta & Ors. v. The President of India, A.I.R. 1982 S.C. 149.

## **The three level regime for accessing information**

At the first level of the regime, every public authority has designated officers for receiving applications (also called information requests) from citizens.

At the second level, every public authority has designated senior officers to look into those cases where citizens request for information have been refused. If citizens do not get the requested information or are not satisfied with the information they have received under this law, they have the right to send an appeal to the Department Appellate Authority (DAA) designated within the concerned public authority.

At the third level, an independent State Information Commission (SIC) has been set up to look into those cases where citizen are not satisfied with the decision of the DDA. The SIC also has the powers and responsibility to monitor compliance of public authorities to this Act and submit an annual report to the State Legislature.

## **The Role and Duties of the Public Information Officer**

Under the RTI Act, Public Information Officers (PIOs) should be designated in all administrative units of every public authority in order to receive information requests from citizens. They also have responsibility and duty to provide the requested information within 30 days. The PIO is the main point person whom citizens will contact for exercising their right to information under this law. In public authorities controlled by the State Government they are called State Public Information Officers (SPIOs).

### **Duties of a PIO: Sections 7, 10 & 11**

- 1) PIO should render assistance to those who cannot write an application.
- 2) Must inform the application of the appellate authority to whom he should approach for review of the decision taken on the fees for supply of information and also the time limit.
- 3) Give information in the form in which it is originally sought subject to resource constraint and preservation of the record in question.
- 4) Give written reasons for rejection of information request, details of the time limit for appeals and the Approach appellate Authority.

- 5) If allowing partial access he shall give notice to the applicant stating
  - a) Which part will be provided after serving the exempt portions,
  - b) Reasons for arriving at this decision including findings on any factual matter relating to the materials on which the findings are based.
  - c) Name and designation of the person who gave his decision.
  - d) Details of fees to be deposited.
  - e) Applicant's right to seek review of the decision on fee charged or the decision taken- including details of the appellate Authority and the time limit for filing the review / appeal.
- 6) If information sought has been supplied by third party or is treated as confidential by the third party, PIO must give written notice to the latter within 5 days of receiving the information request and take its representation into consideration.
- 7) Third party must be given a chance to make a representation (oral or written) before the PIO within 10 days of receiving the notice.

### **Exemptions from disclosure of information according to Section 8:**

1. Information that would prejudicially affect the sovereignty, integrity, security, scientific or economic interest and relation with a foreign state.
2. Information which would lead to commission of an offence.
3. Information whose release is forbidden by a court or tribunal or discloser which might constitute contempt of court.
4. Information whose release may lead to breach of privileges of parliament or state legislature.
5. Commercial and trade secrets, intellectual property etc. that would harm competitive position of third party.
6. Information available to a person in his fiduciary relationship (Information shares between client and lawyer or landlord and tenant or patient and doctor.)
7. Information received in confidence from a foreign government.
8. If information disclosure endangers life and physical safety of any person.
9. If it is about a source of information or assistance given in confidence of law enforcement or security purposes.
10. If it is likely to impede investigation and prosecution process.

11. Cabinet papers including deliberations of Ministers, Secretaries and other officers. (But decisions and related reasons contained in them will be made public after the decision has been taken and the matter is complete or over)
12. Personal or private information- subject to large public interest- to be decided by the public information officer.

All exemptions subject to public interest override. If public interest outweighs harm to the public authority, information must be disclosed. The power to decide whether public interest outweighs is with the public information officer and the Appellate Authorities.

## **Time bar on information covered by exemptions**

Upon completion of 20 years, information about any occurrence, event or matter will be given irrespective of exemptions. But information relating to sovereignty, integrity, security, scientific or economic interests information which would lead to incitement to commit and offence, Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers and matters relating to the privileges and immunities of legislators and MPs will not be given even after 20 years. Decision of the Central Government is final as regards computation of the time period.

### **Who is excluded? Section 24 and Schedule:**

Central Intelligence agencies and security agencies like the IB, RAW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Enforcement Directorate, Narcotics Control Bureaus, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, NSG, Assam Rifles, Special Service Bureau, CID Special Branch of Andaman and Nicobar Islands, CID Crime Branch of Dadra Nagar Haveli and Special and Special Branch, Lakhadweep Police. Similar agencies established by the State Governments will also be excluded.

But information relating to allegations of corruption and human rights must be given. Information about allegations of human rights violation will be given only with the approval of the Central or State Information Commission- as the case may be. Time limit for the same is 45 days.

By enacting the Right to Information Act the government has fulfilled long cherished desire of the common men of this country. In fact, the common men were not able to get information from the government as and when necessary. The Right to Information is not only strengthens

the democracy but also it makes the representative more responsive and responsible. Access to information is one of the prerequisites of Good Governance. Transparencies bring the openness and make the government free from corrupt charges. Now it seems that our government is marching forward in the path of Good Governance. Thus, one can conclude with the words of Justice Bhagwati who said “No democratic Government can survive without accountability and the basic postulate of accountability that the people should have information about the functioning of the government. It is only when people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.”

Right to Information is perhaps the dearest contrivance of the civil society which has made a sempiternal impact in the public memory. The RTI Act has successfully done justice to its objective by giving the people access to information regarding the CBSE Board papers<sup>6</sup> and accounts of political parties<sup>7</sup> and many others.<sup>8</sup> But from the prospective of a lawyer, there are still many loop holes and room for improvement in the Act, which, if not resolved in time, may lead to the failure of this novel instrument. Hence, I have addressed those issues in the next chapter.

## **RECENT DEVELOPMENT Lacuna in the RTI Act, 2005**

Although the Right to Information Act, 2005 was thought and proved to be revolutionary but it facts several criticisms on ground. The Act provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively, or suo moto, by public authorities. Some of the criticisms are given below –

1. The Act does not emphasize active intervention in educating people about their right to access information. Hence, it did not reach the mass rural population like the other fundamental rights. Unless an average common man seeks some professional help, it was difficult for him to access the provision made by law.

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<sup>6</sup> CBSE v. Aditya Bandopadhyaya, (2011) 8 S.C.C. 497

<sup>7</sup> Subhash Chandra Agarwal v. Indian National Congress and Ors., 2015 S.C.C. OnLine C.I.C. 604.

<sup>8</sup> Abhinav Kumar and Prakhar Bhardwaj, Book Review of “The Right to Information in India” by Sudhir Naib, 2(1) NLUJ Law Review 127 (2013)

2. According to the RTI Act, the first appeal will lie before the officer who is senior in rank to the Public Information Officer (PIO) in the Public Authority in cases where the applicant is aggrieved by the decision of the PIO. But the Act is silent about the power and procedure of this first appellate authority.
3. As per provision of the said Act, the information commissioners are empowered to impose any of the penalties provided under the Act. Penalty would naturally mean that the amount that has been levied would be remitted to the government. But in this Act there is no such express legal provision or rule for implementing this provision.
4. Filing an application do take time, energy and money. Therefore, no person will file an application until and unless he/she is really in need of that information. The process could have been more easily assessable and professional assistance is always required for the majority of the people.

## The Right to Information (Amendment) Act, 2019

The Act changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states. Table 1 below compares the provisions of the Act and the Bill.

**Table 1:** Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Act, 2019.

Provision	RTI Act, 2005	RTI (Amendment) Act, 2019
<b>Term</b>	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
<b>Quantum of Salary</b>	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.

	Commissioners and the Chief Secretary to the state government, respectively	
<b>Deductions in Salary</b>	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions

## Criticism

First of all the new Amendment Act, neither resolve nor even address the problems of 2005 Act. Rather a series of new problems seems to have been developed due to the amendment. Few of them has been discussed below.

### *Independence of the Commission*

A fixed tenure and high status provided to Commissioners under the RTI Act, 2005, to allow them to carry out their functions with autonomy and impartiality. It is meant to empower them to direct even the highest offices to comply with the law when it comes to making relevant public information accessible to the citizen. This was also the recommendation of the parliamentary standing committee that had reviewed the original RTI law draft in 2004. But the 2019 amendment bill seeks to modify these protections and empower the central government to prescribe rules to decide the tenure, salaries and allowances of these commissioners. Allowing the central government to do so for all information commissioners is harmful for the following reasons:

- i. It undermines the autonomy of the officials whose role it is to remain independent of the government;
- ii. It weakens the ability of information commissioners to pass orders to disclose information that the central government may not wish to provide; and
- iii. It also damages citizens' access to vital public information, as well as the principles of open government.

### ***Federalist Structure of the Act***

The 2019 amendment bill came as a jolt to the RTI Act as the bill wipes out the federal structure of the RTI Act by empowering the government with excessive power of delegated legislation. The Statement of Objects and reasons attached to the amendment bill fails to answer the question as to how the SIC is constituted by and whose salary and tenure is subject to the control of Central Government.

Further, Section 15(1) of the RTI act authorizes the State Government to set up the State Information Commission and Section 15(3) empowers the State Government to appoint the State Information Commissioner and vests power in the Governor to remove them on grounds of proven misbehaviour and incapacity. Further, the decision of SIC cannot be challenged before the CIC. Therefore, the federal scheme of the RTI act stands firm and clear. The Central Government has no right exercise authority over the appointment of the SIC as there is a very sharp and explicit demarcation between the jurisdictional limit of the Centre and State.

Thus, the appointment of the SICs and the decision on their salaries and tenure is the sole jurisdiction of the State Government. The new amendment bill by empowering the Central Government with the powers of the State Government has annihilated the federal scheme of the RTI Act.<sup>9</sup>

### ***Violation of Pre-Legislative Consultation Policy***

It is a matter of grave concern that the amendments to the Right to Information Act (RTI) law were introduced in complete secrecy and in flagrant violation of the Pre-Legislative Consultation Policy of the Central government, which mandates public disclosure and

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<sup>9</sup> -Justice Lokur, Right To Information (Amendment) Bill, 2019: A Mock on the Autonomy of Administration, INDIAN JOURNAL OF LAW AND PUBLIC POLICY, <https://ijlpp.com/right-to-information-amendment-bill-2019-a-mock-on-the-autonomy-of-administration/> (last visited 30/01/2023)

consultation on draft legislation.<sup>10</sup> The Government secretly introduced the amendment bill without consulting the two primary stakeholders: the citizens and the Information Commission. Further, neither the media nor the MPs were made aware of the bill and hence it can be concluded that there has been abuse of Government's power.

By enacting the Right to Information Act the government has fulfilled long cherished desire of the common men of this country. In fact, the common men were not able to get information from the government as and when necessary. The Right to Information is not only strengthens the democracy but also it makes the representative more responsive and responsible. Access to information is one of the prerequisites of Good Governance. Transparencies bring the openness and make the government free from corrupt charges. But the recent RTI Amendment Bill 2019 seems to have weaken the law. The only implication that one can derive from this is that the government wants to control the information commissioners. The new provisions may dilute the purpose of fundamental right and Right to Information Act, 2005 given to citizens under the constitution. There was no need to bring this amendment. Hence a judicial review is required for this amendment done by the parliament. Because as Justice Bhagwati said "No democratic Government can survive without accountability and the basic postulate of accountability that the people should have information about the functioning of the government. It is only when people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy."

## Suggestions

No demonstrative government can survive without accountability and basic postulate of accountability that is the people should have information about the functioning of the government. The RTI Act aims at securing and ensuring in the administration.

The Law Commission has also given in its Report<sup>11</sup> on the Whistle Blowers Law which is called Public Interest Disclosure (Protection) Act. The original Public Interest Disclosure (Whistleblowers) Bill placed in Parliament was weak and ineffective. The Standing Committee Report however has made some very good recommendations. These should be accepted at once

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<sup>10</sup> plcp.pdf (legislative.gov.in)

<sup>11</sup> <http://lawcommissionofindia.nic.in/reports/179rpt1.pdf>, last visited on 15.02.2012

and a more comprehensive Whistleblower Protection Bill should be passed by Parliament<sup>12</sup>.

The Central Information Commission has passed a resolution that if any citizen who is asking for information is attacked or killed, his queries will be accessed by the Commission and put on the website. Similarly in Rajasthan the government has taken a decision that in the case of any person who has asked for information from the panchayat and has been attacked, the government will initiate a social audit by the state team<sup>13</sup>.

Some suggestions are given below to make the RTI Act more effective and useful –

- i. The government argues RTI is not a fundamental right, and CIC and State Information Commission are not constitutional bodies. But, the Supreme Court in catena of landmark cases, has held that RTI, like the right to vote, has emanated from right of expression under Article 19(1)(a). Both CEC and CIC enforce these two aspects of that fundamental right.
- ii. Human rights violation like custodial death, tortures, causing disappearance and other violences to the people by the security personnel in abuse of power, which became frequent happening nowadays As per section 24 of the RTI Act, such information is to be addressed to the security and intelligence organizations which will be provided, subject to the approval of the concerned Information Commission, within 45days. This provision is meaningless and unreasonable The RTI Act may be made useful to the people if the said provisions are substituted by “in case of information sought for concerns human right violations, the proviso to Section 7(1) should be made applicable”. By doing so every information requested by a citizen which concerns human right violation, the intelligence and security organization will provide the information within 48hours like other public authorities who are to provide the information concerning the life and liberty within 48hours.
- iii. The provision as mentioned in Section 8 of the Act relating to secrecy has become an exception under the RTI Act. This section is required to be made clearer. This can be done by giving guideline to illustrate the different aspects which are exempted.
- iv. There may be possibility that some people may misuse this act to harass the officials. So some provisions may be inserted in the RTI Act to empower the Information Commissions to award cost against the complainants or the appellants for initiating frivolous and vexatious applications to the public information officers.

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<sup>12</sup> “No pressing need to amend RTI Act”, The Statesmen, (10.12.2011), Saturday Interview.

<sup>13</sup> Ibid.

- v. The Act is silent about the power and procedure of this first appellate authority. A rule in this connection is necessary to be framed to deal with this appeal and the power to impose penalty, if any.
- vi. As per provision of the said Act, the information commissioners are empowered to impose any of the penalties provided under the Act. But in this Act there is no such express legal provision or rule for implementing this provision. So new rule may be imposed to fill up this lacuna.
- vii. When the original bill was proposed by the then government, the objective was to equate the status of the chief information commissioner with the secretaries to the Government of India, and the other commissioners with joint secretaries. The legislation was referred to the parliamentary committee in December 2004. The committee contended that the information commissioners should not be made equal to secretaries and joint secretaries, rather for the sake of autonomy, they should be placed on a footing equal to the election commissioners. But recently the government stated that the status of the Information Commissioners (ICs) is not to be equated with that of the election commissioners (ECs) on the grounds that the election commission is a constitutional body whereas the information commission is a statutory body under the act.

At the end, it can be concluded that the hypothesis of this paper that the new Amendment Act, 2019 has brought new problems rather than solving the previous lacunas is true and the above mentioned recommendations may be placed into the act to solve those lacunas. RTI plays a crucial role in the democracy and, if not taken care of, the lacunas may render it ineffective.

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- i. State of Uttar Prasad v. Raj Narain, A.I.R. 1975 S.C. 865
- ii. S.P. Gupta & Ors. v. The President of India, A.I.R. 1982 S.C. 149.
- iii. CBSE v. Aditya Bandopadhyaya, (2011) 8 S.C.C. 497
- iv. Subhash Chandra Agarwal v. Indian National Congress and Ors., 2015 S.C.C. OnLine C.I.C. 604.

## Statutes

- i. The Constitution of India, 1950.
- ii. Right to Information Act, 2005.
- iii. Right to Information (Amendment) Act, 2019