The Right to Information (Amendment) Act, 2019: The Politics of Disempowering Empowerment

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Abstract

The Right to Information has emerged as a powerful tool to strengthen participatory democracy in India. The journey from secrecy to transparency was a result of people's arduous movement and also the active role played by the media and civil society organisations that culminated into the Right to Information Act, 2005. The Act has given statutory recognition to the cherished right to know and to be informed of the matters that concern public at large. Since then, the Act has enabled the citizens to demand information from every public authority carrying out public functions in exchange of a nominal fee which is waived for the people below poverty line. The Act has indeed made transparency a rule and secrecy an exception and has re instilled people's faith in democracy. From securing individual rights to unearthing scams worth crores, the Act has emerged as a potent weapon empowering citizenry. However, it is interesting to note that although considered boon to the citizens, the Act remained a bone of contention to the government since inception. Almost every government in power have made repeated attempts to dilute the Act. Eventually, the present government serving its second term in power has finally succeeded in bringing significant changes in the Act through the Right to Information (Amendment) Act, 2019. It is debatable as to whether there was any imminent need for the amendment to be introduced or it is a conscious effort to disempower people.

Keywords-*Right to information-amendment acts - rules- impact- challenges*

I. Introduction

History is witness to the fact that government across all nations have always preferred to remain opaque within their administration. Irrespective of political colour or affiliation, government avoid transparency. However,

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in India the freedom of press implicit under Article 19 1(a) of the Constitution played a key role in empowering people and gave them the right to question the government. In the landmark judgment of *State of U.P.Vs. Raj Narain*[2], Mathew J. held that the people of this country were entitled to know the particulars of every public transaction in all its bearing. People are the ultimate masters while media and press acts as watchdog of democracy. Democracy and non-transparency of government cannot co-exist. Functions of government are to be hidden from public gaze, it would certainly tend to encourage corruption, oppression and even misuse or abuse of the authority.[3] The plans and projects of national interest are surrounded by needless secrecy that curbs free flow of information and is the reason behind corruption in society. If information is thrown open and exposed to public view, the decision makers will not summon the courage to indulge in clandestine deals for fear of public opprobrium and penal action.[4]The enactment of the Right to Information Act, 2005 (hereinafter called RTI Act) made access to information a reality and was considered a major step towards ensuring greater transparency, accountability and contain corruption.However, it is unfortunate that the recent amendment to the Act in the form of Right to Information (Amendment) Act,2019 and its Rules have crippled the efficacy of the Act.The present paper makes a critical note of the amendment act and highlights the implications of its implementation.

II. Enactment of the Right to Information Act,2005

The Right to Information Act,2005 is a landmark legislation in the history of India.It has introduced a transparent system of governance and decision-making that eroded the administrative setup imposed by British through the Official Secrets Act,1923 that encouraged secrecy in the affairs of the government. The Act was conveniently embraced by the government of

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[2] AIR 1975 SC 865

[3]A.H.Salkia,*The Right to Information Act,2005- An instrument to strengthen Democracy* AIR, 115(2007).

[4]J.P. Bansal, *Right to Know* ,XXIV ISLJ, (1998)

India post independence and still not repealed despite severe criticism.Nevertheless, whenever there is conflict between the RTI Act and the Official Secrets Act, the former prevails over the latter.In a span of 14 years, the RTI Act has made significant progress in exposing matters relating to governance which was earlier denied by the public officials. It made unexpected disclosures of information concerning grievances of common man, his entitlements and benefits from the government offices and also sought information on matters of larger public interest. The Act has attracted attention on subjects like assets of judges, criminal and educational records and wealth assets of MPs and MLAs,unemployment figures, demonetisation, non performing assets , Electoral Bonds, Rafale deal etc. The Act has encouraged public vigilance and made the government accountable for its every decision made on behalf of the citizens.

The Act makes dissemination of information compulsory and places an obligation upon the Public Information Officer (PIO)to furnish information on request made by the information seeker. If such information seeker is denied the information or given partial or incorrect information, the Act provides for the provision of appeal before the First Appellate Authority (hereinafter FAA) within the department. Furthermore, if the information seeker is aggrieved by the FAA, he may approach the final court of appeal– The Central Information Commission (hereinafter called CIC) or the State Information Commission (hereinafter called SIC) as the case may be, for relief.

Although statutory bodies, the InformationCommissions(hereinafter called IC) play important roles in ensuring disclosure and supply of information that is essential for a democracy. The Information Commissioners enjoy enormous powers and enjoy the same status as the judges of SC and HCs. The Act bars the courts from entertaining cases in the first instance. However, it does not bar the appellate and writ jurisdiction of the High Courts and the Supreme Court.

III. Terms of office and Conditions of Service of Information Commissions Prior to Amendment

The RTI Act, 2005 makes it obligatory on the Central government and the State governments to constitute Central Information Commission and the State Information Commissions at the central and state level respectively.[5]The objective behind the creation of these commissions is to ensure efficacious solution to address grievances involving denial and delay of information. Where the person is aggrieved by the refusal of information or incomplete and wrongful information by the PIO and the FAA, he can make a complaint or appeal to the Central or State Information Commission as the case may be.[6]

III.I. Appointment of Information Commissioners

Under the Act, the CIC shall comprise of a Chief Information Commissioner and other Information Commissioners not exceeding ten.[7] The Chief Information Commissioners and the Information Commissioners of the CIC are appointed by the President of India on the recommendation of a high power Committee, comprising of the Prime Minister, Leader of Opposition in Lok Sabha or the leader of the single largest group in opposition of the government in the absence and one Union Cabinet Minister to be nominated by the Prime Minister.[8]

Likewise, the SICs are appointed by the Governor of the State on the recommendations of the High Power Committee consisting of Chief Minister, Leader of Opposition in the Legislative Assembly and a Minister of Cabinet Rank in the state to be nominated by the Chief Minister.[9]The RTI Act has kept political interference at bay by making the transparent process of appointment of Commissioner to the Central Information Commission and State Information Commissions.

III.II. Term of Office and Conditions of Services

[5]The Right to Information Act, 2005, No. 22 , Acts of Parliament, 2005 (India).sec 12 and 15.
[6]Id. *at*sec. 18 and 19.
[7]Id. *at* sec. 12 (2).
[8]Id*at*.sec.12 (3).
[9]Id*at*. sec.15(2) and15(3).

The RTI Act provides that the Chief Information Commissioner and the Information Commissioners of the CIC and SIC shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of 65 years ,whichever is earlier and shall not be eligible for reappointment.[10]It also lays down that the salaries and allowances of the Chief Information Commissioners of CICshall be the same as that of the Chief Election Commissioner and the Information Commissioners shall be paid equivalent to that of Election Commissioner.[11]On the other hand, the Chief Information Commissioner of the SIC shall have salaries and allowances similar to that of the Election Commissioner, the other State Information Commissioners shall have the same salaries and allowances as given to the Chief Secretary of the State Government.[12].The salaries and allowances are not to be varied to their disadvantage during service. These provisions made the position of the ICs secure and free from executive control.

II.III. Previous Attempts to Amend the RTI Act

Many attempts were made in the past to amend the RTI Act by the government irrespective of their political affiliations. In July 2006,the first attempt was made to exempt 'file notings' from the definition of information. The file notings which comprise the views or remarks written by bureaucrats on the disposal of important decisions by the government remained the bone of contention for the successive governments. However, owing to pressure from the public and civil society organisations, the government had to issue administrative orders in 2009 for the encouraging disclosure of the file notings.[13]

In June 2013, the CIC gave a landmark judgement where six political parties were brought under the definition of public authorities. This led to the union of all parties and an amendment was proposed in the Lok Sabha in August 2013 to exclude political parties from the purview of the Act. The directions of the CIC

[10]Id *at*.sec. 13(1) and 16 (1)
[11]Id.*at*.sec.13(5).
[12]Id. *at*.sec13(5).
[13] Sudhir Naib,The Right to Information in India,(Oxford University Press, 1st ed. 2013).

against the political parties were challenged in the Apex court and is still pending.[14]

In addition to this, many private member Bills were introduced in the Parliament in 2007, 2011,2012 and 2016 to bring changes in the Act such as furnishing reasons for filing RTI application and rejection of application if such information was found incorrect etc.

Some positive proposals included inclusion of private entities that enter Public – private partnership or PPP agreements or deliver public services under the purview of the Act by RLD MP Jayant Chaudhary in 2012 [15] and putting a time limit for the disposal of second appeals by IC which is not clearly mentioned in the Act by INLD MP Dushyant Chautala in 2016. Nevertheless, none of the proposals made way through any amendment to the Act.

III. The Right to Information (Amendment) Act, 2019

The present government serving its second term in power has finally succeeded in bringing the Right to Information (Amendment) Act,2019 that was passed on July 22,2019 by the Lok Sabha and on July 25,2019 by the Rajya Sabha. Even theobjections from the opposition leaders could not stop the government from trampling upon the fundamental right of citizens. The present amendment was proposed by the government without putting it in the public domain to discourage any objection while the pre legislative consultation policy which is a pre requisite of the legislative process was not complied with.

The pre legislative consultation policy of 2014, involves a study of social and financial costs, benefits and the key challenges that requires to be settled before undertaking the legislation. The policy mandates that draft legislation may be

[14]Association for Democratic Rights v. Subhas Chandra Agarwal CIC /SM/C/2011/001386

[15]*RJD Leader Jayant Chaudhary introduces a private member Bill in the Lok Sabha*,Times of India, 2012.

kept in the public domain for a minimum period of thirty days for being proactively shared with the public for their comments and feedback.[16]

The present President of India,Sri Ram Nath Kobind who has passed the Bill without any scrutiny was a member of the Parliamentary Committee that had supported equating the position of CIC with CEC during the making of the original Act. The Committee had quoted "*This is the essence of the bill in the sense that the mechanism of access to information will depend on effectiveness of this system.It should therefore be ensured that the Commission and its functionaries perform their duties independently and with complete autonomy.For this it is necessary to elevate their status to that of the Election Commissioner of India.*"[17]

It is indeed surprising that the Central Information Commission was not even consulted on the Act or Rules.

III.I. Key Features of the Right to Information Act, 2019

The amendment act makes changes in Sections 13, 16 and 27 which are discussed in detail for a better understanding.

A. Tenure of Service - The Act amends Sec 13 and 16 of the Act of 2005 changing the tenure of service of the Information Commissioners of the Central and State Information Commissions. Under the Act of 2005, the Chief Information Commissioners and Information Commissioners held a term of five years.The present amendment alters the provision and leaves it on the Central government to determine the term of office for them.

B. Quantum of Salary- The salary of the Chief Information Commissioners and Information Commissioners that was equivalent to the salary of the Chief Election Commissioner and Election Commissioners respectively , has been altered and now their salaries ,allowances and other terms and conditions of service will be fixed by the Central government. However, their salary will not

[16]Legislative Department, Ministry of Law and Justice, Government of India, *Pre Legislative Consultation Policy* (February, 05, 2014) ,http://legislative.gov.in/documents/pre-legislative-consultation-policy.

[17]*President Ram Nath Kobind shrugs off appeal,clears RTI Bill,* The Telegraph , August, 02, 2019.

be varied to their disadvantage after their appointment.It also provided that the Information Commissioners appointed before the commencement of the Amendment Act shall continue to be governed by the provisions of the RTI Act,2005.

C. Insertion of new provisions- The Amendment Act makes insertion of two new sub-sections – "*ca*" and "*cb*" to Section 27 empowering the Central government to make rules to give effect to the Amendment.

III.II. Rules to give effect to Right to Information (Amendment) Act,2019

The Right to Information (Term of Office, Salaries,Allowances and Other Terms and Conditions of Service of Chief Information Commissioner,Information Commissioners in the Central Information Commission,State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules 2019 lays down the new rules under the Right to Information (Amendment) Act,2019 which came into effect on 31st October,2019.The Rules make significant changes to the tenure ,salaries and conditions of service of the Information Commissioners which are summarised below:

A. Tenure- The tenure of service of Chief Information Commissioners and Information Commissioners of CIC and SIC is reduced from five years to three years. The maximum age limit remains unchanged at 65.The Chief Information Commissioners and Information Commissioners of the CIC and SIC who were in service under the Central and State Government shall be deemed to have retired from such service.

B. Salaries and allowances-The salary of the Information Commissioner of the CIC and SIC has been reduced to INR 2, 25,000 per mensem. (reduction of INR 25, 000).However, the salary of the Chief Information Commissioners of the CIC and the SIC remains unchanged. (INR 2,50,000)Other allowances including dearness allowance, travelling allowance, accommodation, leave, earned leave, travel concessions and daily allowances will be equivalent to officers holding a post carrying the same pay in the Central Government and the State Governments as the case may be. The Rules do not lay down the provisions relating to pension and reserves the discretion of the Central Government to decide such matters.

C. **Discretionary Power of Central Government-** Rule 21 gives absolute power to the Central Government to decide on any other allowances or service conditions not specifically covered by the Rules of 2019 and as such the decision of the Central Government shall be binding.It also makes the Central government the final arbiter to the interpretation of these rules.

Therefore, a close study of the Amendment Act of 2019 and its Rules indicate that there is gross usurpation of powers by the Central government disregarding the theory of separation of powers defeating the very objective of the original Act.The provisions introduced in the Amendment Act will have a serious impact on the autonomy and integrity of the Information Commissions that are cited below:

(i) While age of superannuation of members of other tribunals and adjudicatory authorities is fixed between 65 and 70, the tenure of the Information Commissioners of CIC and SICs have been further reduced to three years violating Article 14 of the Indian Constitution.
(ii) The Salary of the Information Commissioners have been reduced from INR 2,50,000 to INR 2,25,000.This contradicts the policy that guided the harmonisation exercise that was laid down for Tribunals and Adjudicating Authorities under the Finance Act,2017 and 2017 Rules.[18]
(iii) The pensionary benefits of the Information Commissioners have not been included in the Rules.Therefore,there is scope of deciding pensions for every retiring Commissioner individually by the Central Government.
(iv) The Amendment Act and Rules confer unbridled power to the Central Government in determining the terms and conditions of appointment of the Chief Information Commissioners and Information commissioners of the CIC and SIC. The flexibility retained by the government to

[18]The salaries of the authorities holding judicial, administrative and other important posts were upgraded to INR 2,50,000 by the government in exercise of its powers under the Tribunal ,Appellate Tribunal and Other Authorities (Qualifications ,Experience and other Conditions of Service of Members) Rules ,2017 under Section 184 of the Finance Act,2017, https://dor.gov.in/sites/default/files/Rules%202017.pdf.

change the rules gives arbitrary powers to the Central government to alter the rules to their own advantage. The Act gives enormous power to the Centre making the of services that was under the jurisdiction of the state Governments in the original Act. This transgression of power violates the Section 29 of the RTI Act that mandates the Central and State governments to lay before each House of Parliament or the State Legislatures respectively every rule made under the Act. This also violates the constitutional principles of federalism which is one of the basic features of the Constitution.

(v) When the 2005 Act was passed all the provisions relating to the appointment of ICs were scrutinised by the Parliamentary Standing Committee before it was finally rolled out. The government's omission to discuss the amendment with the opposition, RTI activists and the citizens is an attempt to weaken the architecture of the Information law and also violates Sec4(1) (c) of the Act. [19]Even the Central Information Commission was not consulted before making the Rules which was disclosed by an RTI filed by Anjali Bhardwaj, a renowned RTI activist.

IV. Implications of the Right to Information (Amendment)Act,2019

To rationalise the amendment, Dr.Jitendra Singh, the Minister of State for Personnel, Public Grievances and Pensions who had introduced the Bill in the Lok Sabha, has stated that the amendment is a benevolent and minor mechanism rather than a basic amendment to the RTI law.[20] Nonetheless, the government after disregarding the people of India and the opposition stated certain reasons for the above amendment. The first justification was that giving same status to constitutional bodies like Election Commission and statutory bodies like Information Commissions was faulty and an outcome of hurriedness. It is indeed surprising that the Act that went through extensive debates and discussions in the House before its passage was thought to be passed in haste by

[19]The Right to Information Act, 2005, No.22, Acts of Parliament, 2005 (India). sec. 14(1) (c).

[20]Press Information Bureau, *The Right to Information (Amendment) Bill introduced in Lok Sabha,19 .08.2019,* (July, 20, 2020), https://pib.gov.in/PressReleseDetailm.aspx?PRID=1579510.

the Minister. The government also claims that the equivalence drawn between the Election Commission and Information Commission is flawed in the original Act. The Election Commission is a constitutional body established under Article 324 of the Constitution of India while the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Act and by reducing the stature of the CICs and SICs the Amendment rationalises the status of the two institutions.[21]In addition, the government points out that CIC has been given equal status as that of the judge of the SC but the judgements of the CIC can be challenged in the HCs. Therefore,to strengthen the overall structure of RTI, the amendment has been brought. According to him, the Amendment Act streamlines and reinforces the Act and brings in greater transparency.[22]

The justifications given by the Hon'ble minister for downgrading the salaries and controlling the conditions of the service of the Commissioners is nothing but sheer waste of time and resources.The amendment appears to have distorted the structure of the Information Commissions violates the very objective expressly provided in the parent Act. The excessive control of the Central government over the Central and State Information Commissions will have long term implications.

V. Conclusion and Suggestions

As long as the Indian mind is not reformed and the people remain what they are, noadministrative, economic or constitutional reforms can serve the country from the ever deepening quagmire of inefficiency, corruption and malpractices.[23] The Right to Information Act,2005 for the first time empowered the citizens to bring such reforms by demanding reasons for the decisions taken by the government on their behalf.It opened new horizons to transparency and participatory governance in India.It is tragic that the government could succeed in enacting the Right to Information (Amendment) Act, 2019 and implement the regressive

[21]*Supra* note 18.
[22]*Supra* note 18.
[23]Jagmohan ,*Social and Cultural Capacities for corruption – free governance* , 39 IIC Quarterly(2012).

Rules that has reduced the Information Commissions as a hand-puppet of the Central government. The transgression of power by the Centre, to control the Information Commissions which is the highest court of appeal is a blatant strike on the independence of the Commissions. Moreover, the SIC too have been brought under the sway of the Central government that contravenes the federal structure of the nation. The government has been hugely criticised for its despotic approach by the opposition and also by the civil society organisations. Earlier, the concern of citizens with regard to ICs was limited to the filling up of vacancies in the Information Commission and larger representation of ICs from varied fields mentioned in the Act.[24]In the landmark case of *Namit Sharma Vs.Union of India*[25], dealing with the constitutional validity of Section 12(5) and (6) and Section 15(5) and (6) the Hon'ble Supreme Court held that it was mandatory for the Commissioners to have judicial knowledge and experience as they perform judicial and quasi –judicial functions by exercising adjudicatory and penal powers. However, in its review petition, the court left the discretion on the Parliament to consider whether such appointment required any judicial experience. Irrespective of the consequence of the judgement, the government at the centre or in the states have always preferred appointment of Commissioners from the fields of administration and governance who remain loyal to the government.Former Central Vigilance Commisioner, N.Vittal, in his book *Enging Corruption ? How to clean up India* has quoted:

"that soon after independence the delicate distinction between politics and the civil service started eroding. The process has gone on for so long that today policymaking seems to be an area left vacant to be grabbed by any intelligent and visionary civil servant.Ministers are busy with postings/transfers and handling individual cases.In the states, the situation is much worse.In many places, the role reversal has resulted in an increased politicization of the bureaucracy."

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[24]The Right to Information Act, 2005, No., Acts of Parliament, 2005 (India) Sec. 12(5) & 15(5) states that the Information Commissioners should be chosen from Persons of eminence in life with wide knowledge of and experience in law, media, science and technology, social service, management, journalism, mass media or administration and governance.

[25]Writ Petition (Civil) No.210 ,(2012)

M.SridharAcharyulu, a former Central Information Commissioner has commented that besides others reasons for continued attempts to reduce the status of Information Commissioners, one of the factors responsible for the regressive amendment could be the increasing number of appointment of bureaucrats as Information Commissioners enjoying higher privileges that led to heartburns of even senior most officers.[26]Although it is very early to foresee consequences of the amendment, the uncertainties loom large in the minds of the citizens and the civil society organisations about the progress of the pending cases before the Commissions and also about the future of the other institutions of India. Therefore, to restore the position of the Information Commissioners, some suggestions include:

(1) To ensure independence and neutrality of the commissioners there should be minimum interference by the Central Government. The CIC and SICs carry out quasi judicial functions and cannot be equated to the government servants.Therefore,alterations made to their the tenure and conditions of service should be immediately withdrawn as it affects their moral standards.
(2) Keeping the essence of federalism unscathed, the State Government should be empowered to determine the tenure and conditions of service of the Information Commissioners within the respective states,
(3) The RTI Rules 2019 that gives unbridled discretionary powers to the Central government should be revoked. The power to relax any of the rules for any class or category of Commissioners and other matters on case to case basis is arbitrary and undermines the position of the Information Commissioners. This provision will also dampen the independence and integrity of the Commissions in future.
(4)Last but not least, in future, all amendments and rules should be brought before the public domain in compliance with the provisions of the Act so that transgression of power could be curbed. Moreover, this will ensure better performance of the Commissioners and build the trust of the citizens.

[26]M.SridharAcharyulu, *The Right to Information is Dead.Here is its Obituary* (Oct,29,2019), The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).sec 12 and 15.wire.in.