

**RIGHT TO INFORMATION (AMENDMENT) ACT, 2019- A MOCKERY ON THE
AUTONOMY OF ADMINISTRATION**

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INTRODUCTION

Baron Acton's thought: "*Power corrupts and absolute power corrupts absolutely*" is suitable in the context of the RTI Amendment Act, 2019 because of the absolute discretionary power conferred to the CG.

There are four basic tenets of good governance- "accountability, transparency, public participation, and predictability" associated with the government. We can imagine public participation only when information is easily available to the public concerning the affairs of the government. RTI Act encourages responsibility and transparency in the affairs of all organs of government which makes the government more answerable. Prior to the RTI Act, 2005 the administrative authorities had the discretionary authority under the "Official Secrets Act, 1923" not to provide adequate information to the public which ultimately resulted in maladministration, bribery, and misuse of power.

The RTI Act came into existence in the year 2005 and it is one of the most historical legislations which created a milestone in the legal history of India. The objective of the Act was to give a sense of empowerment to the citizens: bring "transparency and accountability" to the affairs of government. It was a major move to make the citizens well informed about the affairs of the government.

SIGNIFICANCE OF THE RTI ACT, 2005

Before discussing the relevant attributes of the Amendment Act, 2019, it is important to summarise the pertinent provisions of the RTI Act, 2005 which are:

Firstly, the key objective of this Act was to bring transparency and empower the citizens of this country. The former president of the USA, Barak Hussain Obama, in his speech to the administration made a similar point on the importance of information:

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“In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency is the most prominent expression of a profound national commitment to ensuring an open government. At the heart of that commitment is the idea that accountability is in the interest of the government.”

The RTI Act authorises citizens of India to seek information from the government and at the same time, the government has to furnish the relevant information to the applicant in a specified time-bound manner. The application can be filled in both online and offline mode. The Information comprises “any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material as well as any kind of information such as tapes, cassettes, videos, diskettes, etc.”² There are certain kinds of information that is not subject to disclosure at any cost.³

Secondly, as per the statutory provisions, to have any piece of information, an application should be filed before the “Public Information Officer (PIO)”. In case, the PIO didn’t provide the required information within the period of thirty days,⁴ the applicant can raise the issue before the First Appellate Authority (FAA). The FAA is bound to furnish the same information within forty-five days.⁵ Even if the FAA didn’t provide the same information within that period, the applicant can go for the second appeal to the “Central Information Commission or the State Information Commission” which are the quasi-judicial body which has the power to conduct inquiries and impose penalties for the enforcement of the right of the applicant.

Thirdly, it is related to the fees. The applicant has to pay a minimal fee of Rs. 10 along with the application⁶ and “Below Poverty Line” category is exempted to pay the requisite fee.⁷ As far as the format of application is concerned, The Act does not prescribe any format of the RTI application, but the application should contain the full disclosure which includes name, address, signature, and questionnaire along with the name and position of the PIO.

² Right to Information Act, § 2(f), 2005 (India).

³ Right to Information Act, § 8, 2005 (India).

⁴ Right to Information Act, § 7(1), 2005 (India).

⁵ Right to Information Act, § 19(6), 2005 (India).

⁶ Right to Information Act, § 6, 2005 (India).

⁷ Right to Information Act, § 7, 2005 (India).

KEY HIGHLIGHTS OF THE RTI AMENDMENT ACT, 2019

First and foremost, The Amendment Act, 2019 conferred discretionarily arbitrary authority to the Central Government to decide the “term of office of Chief Information Commissioner (CIC) and Information Commissioners (ICs) at the Centre and the State level”. However, prior to the amendment, the tenure of the CIC and ICs at the Centre and the State level was of five years or sixty-five years whichever comes earlier.

Secondly, The RTI Amendment Act, 2019 gave authority to the Central Government to determine the “salaries, allowances, and the other terms & conditions of service of the CIC and ICs at the Centre and the State level.” But prior to the Amendment Act, “salaries, allowances, and the other terms and conditions of service of the CIC and ICs at Centre level” was equivalent to those of the “Chief Election Commissioner and the Election Commissioners” respectively. However, “salaries, allowances and the other terms & conditions of service of the CIC and the ICs at the State level” was identical to the “salary of the Election Commissioner and the Chief Secretary of the state” respectively.

Thirdly, The Amendment Act, 2019 also abolished the provision of the other benefits including the “Pension or Retirement benefits conferred to the CIC and ICs at the Centre and the State level” from the previous government service. However, prior to the Amendment Act, at the time of the appointment, if the CIC and ICs at the Centre & the State level were already getting “Pension or Retirement benefits” for his/her prior government service, their salaries will be reduced by an amount equal to the “Pension or Retirement benefits”.

COMPARATIVE ANALYSIS OF THE RTI ACT, 2005 AND RTI (AMENDMENT) ACT, 2019⁸

Sl. No.	Statutory Provision	RTI Act, 2005	RTI (Amendment) Act, 2019
1.	Term of Office (Section 13)	Section 13 stipulates the “term of the CIC and ICs” was of five years or sixty-	The Amendment Act abolished this particular provision

⁸Right to Information Act (2005); Right to Information (Amendment) Bill (2019); PRS

		five years whichever comes earlier.	and confers the absolute power in the hand of the CG to decide the term of the CIC and ICs.
2.	Term of Office (Section 16)	Section 16 stipulates the “term of the State CIC and ICs” was of five years or sixty-five years whichever comes earlier.	The Amendment Act abolished this provision and confers the absolute power in the hand of the CG to decide the term of State CIC and ICs.
3.	Salary (Section 13)	Section 13 stipulates that the “salaries, allowances, and other terms & conditions of service” of the CIC will be equal to the “salaries, allowances and other terms & conditions of service” of the Chief Election Commissioner. Section 13 further stipulates that the “salaries, allowances, and other terms & conditions of service” of the ICs will be equal to the “salaries, allowances, and other terms & conditions of service” of the Election Commissioner.	The Amendment Act abolished this particular provision and confers the absolute power in the hand of the CG to decide the “salaries, allowances, and other terms & conditions of service” of the Central CIC and ICs.
4.	Salary (Section 16)	Section 16 stipulates that	The Amendment Act

		<p>the “salaries, allowances, and other terms & conditions of service” of the State CIC will be similar to the “salaries, allowances, and other terms & conditions of service” the State Election Commissioner.</p> <p>Section 16 further stipulates that the “salaries, allowances, and other terms & conditions of service” of the State ICs will be similar to that of the “salaries, allowances and other terms & conditions of service” of the Chief Secretary to the State Government.</p>	<p>abolished this particular provision and confers the absolute power in the hand of the CG to decide the “salaries, allowances, and other terms & conditions of service” of the State CIC and ICs.</p>
5.	Deductions	<p>Section 27 specifically stipulates about deduction. It stated if the CIC and the ICs at the Centre and the State level at the time of appointment are already getting the “Pension or Retirement benefits” for his/her prior government service, their salaries will be deducted by an amount</p>	<p>The Amendment Act, 2019 abolished these statutory provisions.</p>

		equal to the “Pension or Retirement benefits”.	
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THE JUSTIFICATION OF THE GOVERNMENT

The justification of the government in introducing these amendments to the Act is the following:

1. Firstly, the Central Government claimed that there is a lacuna in the RTI Act itself for making the “Election Commission of India” and the “Central & State Information Commission” in the parlance with each other. The “Election Commission of India” derives its authority from the Constitution of India under Article 324 whereas “Central & State Information Commission” derives its authority from the RTI Act, 2005. The government further claimed that we can’t equate a constitutional body and a statutory body; through this amendment, we would rationalize their status. The government also claimed that it would bring accountability and transparency.

The government in their defence contended that the “Election Commission” being a constitutional body is totally different from the “Information Commission” which is a statutory body and due to which both the bodies can’t be equated. But, we have the reference of Central Vigilance Commission Act, 2003 which is contrary to the excuse of the government. Under the Act the “salaries, allowances, and other terms & conditions of service” of the Central Vigilance Commissioner will be equal to the “salaries, allowances and other terms & conditions of service” of the Chairperson of Union Public Service Commission (UPSC) and the “salaries, allowances, and other terms & conditions of service” of the Vigilance Commissioner will be equal to the “salaries, allowances and other terms & conditions of service” of the member of UPSC.⁹ If the Central Vigilance Commission, being a statutory body can be equated with a constitutional body like the UPSC, then, why will the Information Commission be the only exception?

Apart from that an interesting fact associated with the RTI Act, 2005 is that the original RTI bill recommended the salaries, and the allowances of the CIC and ICs were on parlance with

⁹ The Central Vigilance Commission Act, § 5(7), 2003 (India).

the secretaries and the additional secretaries respectively. But the parliamentary committee consists of the then BJP MP Ram Nath Kovind (now the President), Balavant Apte, and other leaders recommended to change the same and increase it to the same level as the chief election commissioner and other election commissioners for the CIC and ICs respectively which is ironical in itself.¹⁰

2. Secondly, there is a contradictory provision in the RTI Act itself. Under the RTI Act, the decision of the CIC is in parlance with the decision of the Supreme Court's Judge. However, the decision of the CIC can be challenged before the High Court which is contradictory. The Central Government claimed that the Amendment Act would strengthen the whole structure of the RTI Act.

However, there are other statutory bodies that are considered to be on par with the judges of the Supreme Court as the members of "National Green Tribunal (NGT) and the National Human Rights Commission (NHRC)" but the Central Government did not address this issue to have uniformity.

OBJECTION AGAINST RTI AMENDMENT ACT, 2019

1. It is not in consonance with the pre-legislative consultation policy, 2014.
2. Crumbling the federalism of the RTI Act.
3. Menace to the autonomy of Impartiality and the Independence of Information Commission.
4. Delegation of Excessive powers to the Central Government.

PRE-LEGISLATIVE CONSULTATION POLICY

The Central Government came up with the pre-legislative consultation policy in the year 2014, which stipulates that any ministry/department which is going to make new laws or amend the existing provision of any law, in that case, it is the duty on the part of the government to put such draft bill before the public domain for discussion. The point of view of a person who is going to be affected by such a law should be taken into consideration by the government.

¹⁰ RTI Act amendment: Former information commissioners, activists criticise government move, (February 15, 2020, 16:45 PM), <https://www.apnlive.com/rti-act-amendment-former-information-commissioners-activists-criticise-government-move/>

It is not the first time the government tried to amend the RTI Act, 2005. They already tried in the year 2012 and 2017 and the draft proposal was put before the public domain for healthy discussion and recommendation. However, ironically the new Amendment Act was passed by the parliament without putting it before the public domain. The Government has not acted as per the guidelines stated in the pre-legislative consultation policy, 2014 by not placing the amended draft proposals in the public domain. Apart from that, there was no consultation with the ICs before passing the RTI (Amendment) Bill, 2019. The government on the other hand put an excuse that the public is not at all involved in the process because the amendment is going to affect only the RTI officers and government.

CRUMBLING THE FEDERALISM OF THE RTI ACT, 2005

Prior to the Amendment Act, 2019, there was a crystal clear bifurcation of separation of power between the centre and the state legislature concerning the “term, salaries and allowances” of the ICs at the centre and state level which exemplify the “federal structure” of the RTI Act. The prominent reasons for providing federal structure are to give functional and financial independence from the government.

Under Amendment Act, 2019, the Central Government has the unreasonable discretionary authority to determine the “term, salaries and allowances of the CIC & ICs at the Central level as well as the State level”. The Act stipulated that the salaries and allowances of the ICs of the centre shall be paid out of the “consolidated fund of India” and of state ICs shall be paid out of the “consolidated fund of state.” As per the constitutional provision, neither the Central Government nor the Parliament has any authority over the “consolidated fund of state” except in case of “President’s rule in the state under Article 356 of the Constitution of India.” It is hard to digest as to under what authority parliament through its law-making power delegate the centre to decide the “salaries and allowances” of the State ICs.¹¹

MENACE TO THE AUTONOMY OF IMPARTIALITY & INDEPENDENCE OF INFORMATION COMMISSION

One of the prominent reasons why the Parliamentary Standing Committee equates the CIC with the Chief Election Commission rather than a civil servant because of the aspect of

¹¹ *The Right to Information Is Dead. Here Is its Obituary*, (February 19, 2020, 13:32 PM), <https://thewire.in/government/the-right-to-information-is-dead-here-is-its-obituary>

independence of the commission. The purpose of the RTI Act is to safeguard the interest of the public by providing the details without any distress of the Centre and State Government.

The Amendment Act curtailed the impartiality as well as independence of the ICs by lowering its rank and by authorizing the Central Government to decide the “salaries, allowances, and tenure” of these authorities. This directly makes the whole institution as a bureaucrat under the authority of the Central Government which won’t allow the Commission to work in an impartial way.¹²

DELEGATION OF EXCESSIVE POWERS TO THE CENTRAL GOVERNMENT

It was an absolute legislative function of the statutory authority under the RTI Act, 2005 to fix the “tenure, salaries, allowances and other conditions of services of the CIC and ICs at the Centre and State level”. But conferring the absolute authority in the hand of the Central Government tends to excessive delegation.

In the *Re Delhi laws case*, The Hon’ble SC held that “The legislature does not have authority to delegate its essential law-making functions into the hands of the executive.”¹³ “The legislature should keep the work of essential legislative functions to itself such as determining the legislative policy and laying down standards which are enacted into a rule of law and it can leave the task of subordinate legislation which by its very nature is ancillary to the statute to the subordinate bodies.”¹⁴

In the case of *A. N. Parasuraman vs. Tamil Nadu*,¹⁵ the Hon’ble Supreme Court held that “the provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act 1966 is not in consonance, both on the ground of excessive delegation as well as the violation of the Article 14 of the Constitution of India as it did not contain adequate guidelines to the executive for the exercise of the delegated legislative power.”

If we analytically examine the RTI Amendment Act, 2019, it is evident that the parliament gratuitously conferred excessive legislative authority to the Central Government for deciding the “tenure, salaries, allowances and other conditions of services of the CIC & ICs at the

¹² *Id.*

¹³ AIR SC 332 (1951)

¹⁴ *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills and others*, AIR SC 1232 (1968)

¹⁵ 4 SCC 683 (1989)

Centre and State level” and did not lay down any standard rule-making guidelines for the Central Government relating to “tenure, salaries, allowances and other conditions of services.”

THE DRAWBACKS OF THE AMENDMENT ACT, 2019

According to the researcher, the loopholes associated with the Amendment Act, 2019 are as follows:

1. The Amendment Act empowered the Central Government absolutely which directly deteriorates the basic notion and structure of the RTI Act.
2. The Amendment Act gave arbitrary authority to the Central Government. Therefore, the aspect of neutrality of the ICs mutilated and it made the ICs more trustworthy to the government.
3. The Amendment Act made the Central and State Information Commissioner dependent on the Central Government. Therefore, the autonomy of the Independence of Information Commission becomes weak.
4. The Amendment Act moderates the status of the Information Commissioner at the Centre & State level from those of the Judges of the SC which resulted in lack of authority to issue directives to the officers.
5. One of the major drawbacks of the Amendment Act is that it was passed by the Parliament without taking into consideration the view of the general public.
6. The RTI Act brought accountability and transparency in the governance but the Amendment Act certainly took away the transparency because of the arbitrary power which is being conferred to the Central Government.

CONCLUSION

The RTI Act was enacted by the government was to bring “transparency, culpability and accountability” to the administration in all the organs of the government. The act was enacted to empower the citizen of India to access all kinds of information and at the same time safeguard the independence of the ICs so that they could accomplish their duties freely without any undue influence.

The RTI Act had brought a revolutionary change in the whole administrative system and gradually transformed India where any citizen of this country has the statutory right to access every kind of information associated with any organ of the government. The RTI served as a weapon in the hands of citizens of India to deter the “misuse of power” and authorize them to ask genuine questions from the bureaucracy and the governments. As Justice A. P. Shah, (former Chief Justice, Delhi and Madras High Courts) described the importance of information as:

“Information is the currency that every citizen requires to participate in the life and governance of society”

It is the basic right of every citizen of India to seek information because without information we cannot expect a vibrant democracy. We have witnessed that the citizens of this country utilized this statutory right and unearthed some of the famous scams like Adarsh Housing Society Scam, Commonwealth Games Scam, 2G spectrum scam etc.,¹⁶ However, the RTI Act had a two-fold feature. On one hand, it provided the statutory rights to citizens of this country and on the other hand, it uses to hold all organs of government accountable at the same time.

The Amendment Act abridges the autonomy, independence, and impartiality of the Information Commission by diminishing their status and lowering their rank. It conferred vital legislative functions to the Central Executive which is irrational and capricious and it tends to be excessive delegation. Therefore, the New Amendment Act altered the fundamental notion of the RTI Act. It is right to connote that the new amendment captivates the impartiality, autonomy, authority, and independence of ICs and makes them mere puppets in the hand of the Central Government. It conferred absolute authority to the Central Government which is a direct threat to the freedom of speech and expression of citizens and gradually it might lead to the dictatorship.

¹⁶10 Years of RTI: 5 Stories Of Ordinary People Using The Act For Positive Change, (January 17, 2012, 15:50 PM), https://www.huffpost.com/archive/in/entry/2015/10/13/rti-10-years_n_8277290.html