

AMENDMENT TO RIGHT TO INFORMATION ACT- WHETHER A THREAT TO GOOD GOVERNANCE?

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ABSTRACT

Transparency and accountability in administration are the sine qua non of a participatory democracy. Right to information was introduced as a tool to strengthen participatory democracy in India as it ensures transparency which in turn warrants accountability. The right to information is implicitly guaranteed by the Constitution under Article 19 (1)(a). However, in order to set out a practical regime for providing access to information possessed by the public authorities, the Indian Parliament enacted the Right to Information Act, 2005 and thus gave the citizens a statutory right to demand information. A true democratic set up requires an informed citizenry for which Right to Information acts as a catalyst. Access to information empowers the citizens of this country to demand and obtain information about the governmental functioning and all the public acts done by the public functionaries. But without proper implementation and governance of this legislation, no amount of welfare activities can enhance the quality of life of the citizens.

Right to Information is considered as a key to achieve the attributes of Good governance namely transparency, accountability, predictability, participation, effectiveness, efficiency, Rule of law responsiveness, equity etc. as it provides information to the general public and clarity about functioning of governmental institutions. The latest amendment to the RTI act i.e. The Right to Information (Amendment) Act, 2019 and introduction of the new RTI rules i.e. “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,” however, are

being perceived by many as a threat to good governance in India as these changes curtail the independence of information commissions and make them subordinate to the Government. The paper seeks to analyse the likely impact of Right to Information (Amendment) Act, 2019 and the new RTI rules on good governance in India.

Key words: Right to Information, Good Governance, The Right to Information (Amendment) Act, 2019.

INTRODUCTION

Accountability, transparency, efficiency and people's participation are the most essential attributes of good governance. Right to Information, which is an integral element of a participatory democracy, ensures transparency and accountability in every democratic set up. It also enables citizens to take informed decisions and participate in the governance of the country effectively. Transparency promotes accountability in the administration. Transparency in governmental mechanism makes the public authorities function objectively thereby enhancing predictability.ⁱ Thus, in a fundamental sense, right to information is a basic necessity for good governance. Right to information paves the way for public scrutiny of the governmental actions, thereby making the government more accountable. The right to information impliedly exists in the Constitution under Article 19 (1)(a). Later, with a view to have a separate legislation for providing access to information, the Right to Information Act, 2005 (hereinafter referred as the RTI act) was enacted which came onto force on 12th October 2005.

The Right to Information Act, 2005 provides a statutory right to information to every citizen of India and it also provides certain exemptions from the disclosure of information. There have been many apprehensions over the years regarding the misuse of this right to information for settling personal scores and avenging personal vendetta by filing vexatious applications to obtain information. But with the passing of the Right to Information (Amendment) Act, 2019ⁱⁱ and the coming into effect of 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, 2019ⁱⁱⁱ (hereinafter referred as the new RTI rules) the newest threat is regarding the independence of the Chief Information Commissioners and other Information commissioners. The RTI activists believe that now under the new rules all the information commissioners are under complete subordination of the Central Government as the Government will determine their term of office, salaries, allowances and other conditions of service and the Government will also have the power to relax these provisions. The Government believes that it is a positive change and will ensure stringent and monitored implementation of the RTI Act.

BRIEF HISTORY OF THE RIGHT TO INFORMATION IN INDIA

Before the enactment of Right to Information Act, 2005, the right to information was impliedly read by the Indian Judiciary under Article 19 (1) (a) of the Constitution. The Supreme Court of India in *State of U.P. v. Raj Narain*^{iv} opined that the right to know is implicit in the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution of India. *S.P. Gupta v. Union of India and others*^v, Hon'ble Mr. Justice P.N. Bhagwati expressed his opinion that "where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The right to information was later recognised as a corollary of right to know^{vi}.

The earliest retaliation against the public officials and demand for right to information came from landless workers in rural areas of Rajasthan who were often tricked and were not paid their full wages. The concerned officials used to claim that workers worked for less number of days and used to deduct their remuneration. When the workers used to ask for records, the officials claimed confidentiality. This movement was led by the Mazdoor Kisan Shakti Sangathan (MKSS) founded in 1987 in devdungri in Rajasthan. The movement got the support of activists, lawyers, journalists, judges, civil servants etc. and later this movement gave rise to National Campaign for People's Right to Information (NCPRI) in 1996 which guided the struggle to the national level. Due to these movements and efforts of various governmental and non-governmental organisations there were demands for a separate legislation on RTI. Consumer Education and Research Council (CERC) in 1993 proposed a draft legislation on RTI. NCPRI and Press Council of India played a significant role in drafting the legislation on RTI as well. Later, the Shourie Committee, under the chairmanship of Mr. H. D. Shourie, was

set up by the Central Government and they were officially instructed to prepare a draft legislation on freedom of information.^{vii} Finally a watered down version of these drafts was passed as Freedom of Information Act, 2002 in December 2002 and received the Presidential assent in January 2003. Some states enacted their individual Right to Information Acts by then-like Tamil Nadu (1997), Goa (1997), Karnataka (2000), Rajasthan (2000), Delhi (2001), Assam (2002) etc.

The act, however, had flaws. The ruling Government in 2004 had set up a National Advisory Council (NAC). Later in the year 2004, the National Campaign for People's Right to Information (NCPRI), suggested many amendments to the 2002 Freedom of Information Act. These were forwarded to the NAC and was then forwarded to the Prime Minister of India for further action.^{viii} The Right to Information Bill incorporating some of those amendments and other changes, was passed by both houses of the Parliament in May 2005 and came into effect on 12th October, 2005.

CONCEPT OF RIGHT TO INFORMATION

A Right is usually defined as an interest recognised by the law and protected by the machinery responsible for the administration of justice. According to *Sir John Salmond* right is “an interest recognised and protected by a rule of justice (rule of law or rule of right). It is an interest in respect of which there is a duty and disregard of which is a wrong.”^{ix}

The term information is defined in *Oxford Dictionary*^x as “Facts provided or learned about something or someone”; or “knowledge communicated or received concerning a particular fact or circumstance”. Section 2 (f) of the *Right to Information Act, 2005* defines information as—“information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”.

‘Right to Information’ has been defined under *Section 2 (j) of the Right to Information Act, 2005* as: “*right to information*” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) *inspection of work, documents, records;*

(ii) *taking notes, extracts, or certified copies of documents or records;*

(iii) *taking certified samples of material;*

(iv) *obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;*

Also *Section 3 of the Right to Information Act, 2005*, provides as follows-

“Right to Information- Subject to the provisions of this Act, all citizens shall have the right to information.”

The statutory right to information is thus available only to the citizens of India and can only be exercised to access the information under the control of or held by public authorities.^{xi} *Section 2(h)* defines public authorities for the purposes of the RTI Act, 2005 in the following words-

“public authority means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.”

Thus, an Indian citizen can obtain any information pertaining to the affairs of the government unless it falls under one of the exemptions mentioned in the RTI Act, 2005.

CHANGES INTRODUCED BY THE RTI (AMENDMENT) ACT, 2019 AND NEW RTI RULES 2019

Exactly 12 days after celebrating 14 years of RTI Act in India, some controversial changes have been made to the RTI laws. On 24th October the widely discussed Right to Information (Amendment) Act, 2019 (received the Presidential assent on 1st August 2019) came into force along with the enforcement of 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.

- Three sections namely section 13, section 16 and section 27 have been amended by the *Right to Information (Amendment) Act, 2019*. The following changes have been made-
 - A. **Section 13 (1) Before Amendment-** “The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment.”

Section 13 (1) After Amendment- “The Chief Information Commissioner shall hold office *for such term as may be prescribed by the Central Government* and shall not be eligible for reappointment.”
 - B. **Section 13 (2) Before Amendment-** “Every Information Commissioner 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 sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.”

Section 13 (2) After Amendment- “Every Information Commissioner shall hold office *for such term as may be prescribed by the Central Government* or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.”

C. *For Section 13 (5) the following sub-section has been substituted-* “The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment

Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.”

D. The amendments made to *Section 16 (1) and Section 16 (2)* pertaining to the tenure State Chief Information Commissioners and State Information Commissioners respectively are exactly the same as mentioned in above in respect of Section 13(1) and 13(2), i.e. the tenure will be as may be prescribed by the Central Government.

E. *For section 16 (5), the following sub-section has been substituted-* “The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.”

F. *In Section 27 (2) new clauses namely clause (ca) and (cb) have been inserted* after clause (c), they now provide that the Appropriate Government have the power to make rules in respect of the following also-

“(ca) the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (1) and (2) of section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (1) and (2) of section 16.”

“(cb) the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners under sub-section (5) of section 13 and the State Chief Information Commissioner and the State Information Commissioners under sub-section (5) of section 16.”

These modifications bring all the information commissioners even the State Information Commissioners under the direct control of the Central Government which is likely to truncate the independence of all the Information Commissioners and might hamper the efficiency of the Information Commissions.

- *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* have also introduced some radical changes in the tenure and other conditions of service of all the Information Commissioners. The key changes are-
 - A. *Rule 3* has reduced the tenure of CIC and ICs (from 5 years) to 3 years. The rule provides that “the Chief Information Commissioner, or Information Commissioners, as the case may be, shall hold office for a period of three years from the date on which he enters upon his office.”
 - B. Similarly, *Rule 12* has reduced the tenure of SCIC and SICs to 3 years. The rule provides that “the State Chief Information Commissioner, or State Information Commissioners, as the case may be, shall hold office for a period of three years from the date on which he enters upon his office.”
 - C. *Rule 5* has fixed the salaries of CIC and ICs- “the Chief Information Commissioner shall receive a pay of Rs. 2,50,000 (fixed) per mensem and an Information Commissioner shall receive a pay of Rs. 2,25,000 (fixed) per mensem.

- D. Similarly, *Rule 14* fixes the salaries of SCIC and SICs as- “the State Chief Information Commissioner shall receive a pay of Rs. 2,25,000 (fixed) per mensem and the State Information Commissioners shall receive a pay of Rs. 2,25,000 (fixed) per mensem.
- E. *Rule 22* gives an untrammelled power to the Central Government. It reads as – “Power to relax- The Central Government shall have power to relax the provisions of any of these rules in respect of any class or category of persons.”

WHETHER THE AMENDMENT IS A THREAT TO GOOD GOVERNANCE IN INDIA?

The term “Governance” is not a novel term. It means “the process of decision-making and the process by which decisions are implemented (or not implemented). Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.”^{xii} Good Governance is an ideal state, a criteria to measure how public affairs and governance is conducted and how they ought to be managed. Right to information has always been considered a key to good governance as it ensures transparency and accountability, it also creates informed citizenry which enables participation of the people. But the recent subversion of the institution through the RTI (Amendment) Act, 2019 and RTI Rules of 2019 might create inroads in India’s quest towards good governance.

There are various concerns regarding these recent developments in the laws relating to RTI. One of the major concerns is that the rules have been drafted in secrecy and were enforced without inviting public opinions, with complete disregard to the procedures prescribed in the Pre-Legislative Consultation Policy of 2014^{xiii}. The policy requires “all draft rules to be placed in the public domain for objections/suggestions of people”. The draft rules however were not placed in public domain and there were no consultations with members of the public and the stakeholders.

In the new rules, the government, under rule 22, is empowered with the “power to relax” the provisions of the rules. This rule engenders speculations that the government might determine

different tenures for different information commissioners at the time of appointment and misuse this power.^{xiv}

Apart from Rule 22 there are other rules giving untrammelled powers to the Central Government, like Rule 21 gives absolute power to the Central Government to decide on any other allowances or service conditions not specifically covered by the 2019 Rules and its decision will be binding. Rule 23 makes the Central Government the final authority regarding the interpretation of these Rules.

With the amendments to Section 13 and 16 of the original Right to Information Act, 2005, the Government now has the discretion to determine the tenure and other conditions of service of all the information commissioners, this might create an atmosphere of fear and insecurity amongst them and they would not be in a position to work freely, this curtails their freedom and puts them under complete subordination of the ruling government. They would be reluctant to take strict actions against the government which would defeat the purpose of the RTI act. This poses a threat to the stature and prestige of the Information Commission as they will have to work under the direct subordination of the Government. Amongst other things, the Centre's control over the State Information Commissions is against the federal character of the Constitution which also one of the basic features of the Indian Constitution which is unamendable. Also with the revised fixed pay under rule 5 the Information Commissioners are now inferior to Chief Information Commissioners which creates hierarchy which was deliberately avoided in the original Act.

CONCLUSION

Right to information is a significant tool in creating informed citizenry which is an essential ingredient of any democracy and Information Commissions are the guardians of this right. From the above discussion it is clear that these recent developments in the law relating to RTI pose a serious threat to these institutions and also to our quest to attain the attributes of Good Governance. Although it's too early to form an opinion but it appears that these amendments would not only likely to create an atmosphere of insecurity amongst the information commissioners but might also subvert the efficiency of the information commissions which in turn would create obstacles in the furtherance of good governance. This subordination would

render these commissions toothless and would defeat the purpose of the RTI Act. Transparency, accountability, efficiency, effectiveness of the administration and people's participation form the backbone of every democratic set up and compromising these would mean destroying the very fabric of democracy.

REFERENCES

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- ⁱⁱⁱ Came into force on 24th October 2019.
- ^{iv} AIR 1975 SC 865. Also see *People's Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363; *Union of India v. Association of Democratic Reforms*, AIR 2002 SC 2112.
- ^v *S.P. Gupta v. Union of India and others*, AIR 1982 SC 149.
- ^{vi} *Dinesh Trivedi v. Union of India*, (1997) 4 SCC 306.
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