

RTI AMENDMENT ACT 2019 MAKES RTI ACT 2005 “A PAPER TIGER”

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INTRODUCTION

RTI Amendment bill was introduced in the Lok Sabha by the Minister of state for personnel public grievances and pension on July 19 ,2019 and passed on July 22 ,2019 .It was passed by Rajya Sabha on 25 July 2019 But the opposition is up in the arms with Congress leader Adhir Ranjan Chaudhary calling it “dangerous” DMK leader and former union minister A Raja termed it as “dark day for the democracy” .

RTI Act was enacted in June 2005 and it came into force in October the same year by UPA government after the assent of the then president A P J ABDUL KALAM replacing the freedom of information Act 2020 which was passed by the previous NDA government .The RTI ACT was hailed across the country as a major landmarks in the country’s March toward strengthening of democracy as it empowers every citizen to seek information regarding the government and it’s official barring a few exceptions considered necessary and sensitive to the national security. even privatised public utility companies and NGO that receive 95 % of their funds from the government were under its ambit.

The objective of the historical legislation was to ensure transparency, probity and accountability in the governance of the country that was suffering from inefficiency and corruption. It also acts as a deterrent factor for the government servant’s and bureaucrats that they cannot act and work arbitrarily and thus plays a role of doctrine of checks and balances.

RIGHT TO KNOW: CONSTITUTIONAL PROSPECTIVE

This act was legislated and finally enacted with the objective of consolidating the fundamental rights in the country's constitution "Freedom of speech and expression "under article 19 (1)(a).

In **Prabhu Dutt v. Union of India**, the supreme Court has held that the right to know news and information regarding administration of the government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it in the interest of society and the individual from which the press obtains information.

In **Secretary General, Supreme Court of India v. Subhash Chandra Agarwal**, the high court of Delhi held – The source of right to information does not emanate from right to information Act .it is a right that emerges from constitutional guarantee under article-19 (1)(a) as held by the supreme Court in a catena of decisions.

In **Anjali Bhardwaj & Ors. V. Union of India**, supreme Court of India held that the RTI Act is enacted not only to sub-serve but also to ensure freedom of speech. Good governance, which is an essential component of any vibrant democracy, can be achieved if the act is properly implemented. Attaining good governance is also one of the visions of the constitution. It also has a vital connection with the development of the nation.

Right to know is the species of the right to speech and expression provided by the article 19 (1)(a) of the Constitution .A citizen has a fundamental right to access towards information .it is the duty of the state to protect the fundamental rights .But it is also requisite to provide the opportunities under which this right can be effectively enjoyed by all.

As earlier mentioned, that Right to know is the species of the right to speech and expression. Right to information is not absolute right similar to right to freedom of speech and expression. Right to freedom of speech and expression comes with few "Reasonable Restrictions "as mentioned under Article -19 (2) of Indian constitution.

In **supreme Court of India v. Subhash Chandra Agarwal**, A five judge constitution bench led by chief justice Ranjan Gogoi passed a judgment that the office of CJI is a "public authority" under Right to information Act ,2005.

Justice Khanna, who shared his judgment with Chief Justice Gogoi and Justice Deepak Gupta, observed that “transparency and accountability should go hand-in-hand”. Increased transparency under RTI was no threat to judicial independence.

Justice D.Y. Chandrachud, in his separate and concurring opinion, eloquently observed that “judicial independence is not secured by the secrecy of cloistered halls”.

Justice N.V. Ramana, in his opinion, struck a more cautionary note, saying judicial independence was the basis of the trust public reposes in the judiciary. Only the right dose of transparency should be calibrated with judicial independence.

The Bench, however, agreed, in one voice, that the right to know under RTI was not absolute. The right to know of a citizen ought to be balanced with the right to privacy of individual judges.

“Right to information should not be allowed to be used as a tool of surveillance,” Justice Ramana wrote.

Hence, on this aspect, Justice Khanna held that personal information of judges should only be divulged under RTI if such disclosure served the larger public interest.

WHY RTI AMENDMENT BILL SO CONTROVERSIAL?

Under the provisions of the Act, any citizen of India was empowered to request information from a public authority that is required to reply expeditiously or within 30 days. Success of the RTI can be judged by the fact that almost 5000 daily applications were filed, In the first 10 years of the enactment of the law, around 17,500, 000 applications were filed of which one fourth were requests to the Center.

The Act had been working fairly well since its inception till the coming of the BJP led NDA government of Prime Minister Narendra Modi when one witnessed a fall in the number of applications. A 6% fall between 2015-16 and 2016-17 was reported in the RTI applications filed with the 1950 public authorities of the Central government which was receiving maximum information applications followed by states of Maharashtra and Karnataka.

Notwithstanding the fall in the rate of application, the Act was used extensively by the BJP to expose the Congress-led UPA government for its various acts of commission and omission that included scams and scandals.

With its record of its appeal and widespread usage, a legitimate question arises: why is the Modi government 2.0 so keen to amend the RTI Act and to what goal? In order to arrive at an unbiased conclusion, it is more than imperative to look at changes that have been made thorough amendments.

KEY HIGHLIGHT OF RTI AMENDMENT BILL, 2019

Term:

Firstly, the bill aims at amending Section 13 and 16 of the RTI Act, 2005. In 2005 Act, the term for the Central Chief Information Commissioner, State-level Chief Information Commissioner and Information Commissioners was fixed for the term of 5 years (or until the age of 65 years whichever is earlier). But the amendment specifies that the appointment will be for such term as may be prescribed by the central government.

Salary:

In the RTI Act, 2005 the salary of the Central Information Commissioner (CIC) was equivalent to the salary of the Chief Election Commissioner, salary of the State Chief Information Commissioner (SCIC) and the Information Commissioners (ICs) was equivalent to the salary of the Election Commissioners and at the state level, State Information Commissioner (SIC) the salary was equivalent Chief Secretary to the state. In this proposal, however, it is suggested that the provisions of the RTI Act, 2005 be amended so as to provide that the term of office and the salaries, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners, shall be such as may be prescribed by the central government.

Deductions:

The proposed amendment bill also removes the provision that when appointed, if CIC and ICs are receiving the pension or any other retirement benefits from the previous government service, their salaries will be reduced by an amount equal to that pension.

NEGATIVE ASPECTS OF THE BILL

It would grant greater powers to the centre as everything will be decided by the government. Thus, the neutrality of information commissioners would be crippled and make information commissioners "More Loyal" to the government. They will behave like the employees of the government and if they so wish, they can decide to withhold information that can support the government.

The original act had defined terms tenures, salaries, appointment, etc. The amendment is viewed as the tenure, salaries, appointment to be decided on a case to case basis by the government.

The proposed amendment diminishes the status of the CIC, SCIC and IC from that of the Supreme Court Judge and thus, this would lower their authority to issue the directives to the senior government officers.

The proposed amendment would adversely affect the independence of the CIC, SCIC and ICs as the Centre will now have the authority to decide the tenure, terms and salaries of these officials. Thus, this is a threat to independence.

The proposed bill was introduced and passed without the public consultation which hampers the citizens' right to information as a public consultation is necessary for laws to become successful and drafting of the legislation cannot be left to the elected representatives alone.

On issues like NPAs, demonetisation, RBI, etc., the information commission got the government to reveal significant information- something it can do only if it has both authority and independence

It appears as an effort to bring the Central Information Commission under the absolute control of the central government. The CIC and ICs deal with huge vested interests, especially in the senior bureaucracy. It is important for them to be independent.

This amendment will take away the transparency as it will empower the central government to unilaterally decide which will fundamentally weaken the whole basic idea and structure of the RTI.

WHAT'S GOVERNMENT'S DEFENCE?

The government has maintained that it has not tinkered with autonomy or independence of the central information commission. Minister of State in the Prime Minister's Office Jitendra Singh while introducing the RTI Amendment Bill 2019 in the Lok Sabha on Monday said the Modi government is correcting the anomaly in the RTI law passed by the UPA government.

He said, "Probably, the then government of the day, in a hurry to pass the RTI Act, 2005, overlooked a lot of things. The Central Information Commissioner has been given the status of a Supreme Court judge but his judgments can be challenged in the high courts. How can that exist?"

"The RTI Act did not give the government rule-making powers. We are merely correcting these through the amendment,"

UNCOMFORTABLE RTI PLEAS IN BACKGROUND

This comes in the backdrop of a few orders of the information commission that were considered uncomfortable for the Modi government in recent times. Two examples can be gauged from PM Modi's degree row and the status of non-performing assets in public sector banks.

In January 2017, acting on an RTI activist's application, information commissioner Sridhar Acharyulu ordered the Delhi University to allow inspection of records of students who had

passed BA course in 1978, the year in which Prime Minister Narendra Modi passed the examination.

Within the next couple of days, Sridhar Acharyulu was stripped of human resource development portfolio. Then Chief Information Commissioner RK Mathur took away HRD ministry from him. Interestingly, in a reshuffle within the central information commission on December 29, 2016, Acharyulu had retained HRD ministry in his portfolio.

In another incident from the previous Modi government's tenure, the Reserve Bank of India had been directed on an RTI application, to provide details of the NPA in public sector banks and the details of big loan defaulters. The RBI had denied revealing information sought citing confidential nature of the same. The matter reached the Supreme Court, which first in 2015, directed the RBI to make the information available and reiterated the order in April this year after the central bank failed to comply with the order.

RTI AMENDMENT ACT, 2019 AND SUPREME COURT

The Supreme Court issued a notice to center on a plea by member of Parliament Jairam Ramesh challenging the amendments in the Right to Information Act, 2005. The notice was issued by a bench comprising of Justices DY Chandrachud and KM Joseph. It alleges that it is violative of object of the parent statute itself. There is no rational nexus between the Amendment Act/Rules and the object of the Act itself and infringes fundamental rights guaranteed under Articles 14, 19(1)(a) and 21 of the Constitution. The plea says that the amendments have substantially altered the architecture of independence of information commissioners.

CONCLUSION

The main aim of the RTI Act, 2005 which was to promote transparency, accountability in the working of every public authority and the citizens' right to secure the access to information is being crippled by this amendment bill, 2019. This is an attempt to take away the free flow of unbiased information and place before the general public, the filtered information by the public

authorities in order to please the government. The government has weakened the sunshine law without providing any credible rationale for bringing an amendment as this will definitely hamper the independent working of the Information Commissioners. They are now no more vested with the independence, transparency, status and authority but will now be functioning as one of the departments answerable ultimately to the central government.

