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The RTI (Amendment) Bill

Pratik Maitra^a

^aSymbiosis Law School, Hyderabad, India

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The proposed revision to the Right to Information Act of 2005¹ has sparked debate over whether the Central Information Commission will be weakened or compromised as a result of the proposed amendments. While there are grounds for concern, it stems from the lack of appropriate rationale for the revisions, not from the wording of the law. In India, the right to information has emerged as a potent weapon for bolstering participatory democracy. The transition from secrecy to transparency was made possible by people's tireless efforts, as well as the active participation of the media and civil society organizations, culminating in the 2005 Right to Information Act.² The Act has enshrined the long-cherished right to know and be informed about issues that affect the general population. Since then, the Act has allowed residents to request information from any government agency performing public tasks in exchange for a small fee, which is waived for those living below the poverty level. The Act has restored people's faith in democracy by making transparency a rule and secrecy an exception. The Act has shown to be a powerful instrument in empowering citizens, from safeguarding individual rights to uncovering multibillion-dollar scams. However, despite being viewed as a gift to individuals, the Act has remained a source of friction for the government since its establishment, with nearly every government in power attempting to weaken the Act. Finally, under the Right to Information (Amendment) Act, 2019,³ the current government, now in its second term in office, has succeeded in bringing important modifications to the Act. It's debatable whether the amendment was introduced because there was a pressing need for it or because it's a deliberate attempt to disempower people. The proposed revision to the Right to Information Act of 2005 has sparked debate over whether the

¹ Right to Information Act 2005

² *Ibid*

³ Right to Information (Amendment) Act 2019

Central Information Commission will be weakened or compromised as a result of the proposed amendments. While there are grounds for concern, it stems from the lack of appropriate rationale for the revisions, not from the wording of the law.

Keywords: *information, right, rti.*

INTRODUCTION

Governments from all over the world have long preferred to keep their administrations opaque. Governments resist transparency regardless of political membership or colour. In India, however, the implied freedom of the press in Article 19 1(a) of the Constitution,⁴ played a crucial role in empowering people and giving them the right to question the government. In the landmark case of *State of Uttar Pradesh vs. Raj Narain*,⁵ Mathew J. concluded that the citizens of this country had a right to know the specifics of every public transaction in all of its ramifications. People are the ultimate masters, while the media and press serve as democratic watchdogs. Democracy and government non-transparency are incompatible. If government functions are hidden from public view, it will almost likely favour corruption, oppression, and even misuse or abuse of power. The plans and initiatives of national importance are shrouded in unnecessary secrecy, which stifles the free flow of information and contributes to societal corruption.⁶ If information is made public, decision-makers will lack the guts to engage in secret negotiations for fear of public opprobrium and legal action. The Right to Information Act of 2005 (hereafter referred to as the RTI Act) made access to information reality and was seen as a major step toward increased transparency, accountability, and corruption prevention. However, the latest revision to the Act in the shape of the Right to Information (Amendment) Act, 2019,⁷ and its Rules has severely hampered the Act's effectiveness. The current study examines the amendment act critically and discusses the ramifications of its implementation.

The current government, now in its second term, has finally succeeded in passing the Right to Information (Amendment) Act, 2019, which was passed by the Lok Sabha on July 22, 2019, and

⁴ Constitution of India, art 19(1)(a)

⁵ *State of Uttar Pradesh v Raj Narain* 1975 AIR 865

⁶ *Ibid*

⁷ Amendment Act (n 3)

the Rajya Sabha on July 25, 2019. Even the opposition leaders' protests were ineffective in stopping the government from infringing on citizens' fundamental rights. The government presented the current modification without making it public in order to dissuade any objections, and the pre-legislative consultation policy, which is a requirement of the legislative process, was not followed.

The union government attempted for the second time in two years to enact legislation amending the Right to Information Act, 2005 (RTI Act), this time through the RTI (Amendment) Bill, 2019. (RTI Bill). In effect, the proposed modifications give the union government the right to determine the tenure, pay, and terms and conditions of employment of information commissioners (ICs), including the chief information commissioner (CIC) and - state information commissioners (SICs. As a result, campaigners (Roy and Dey 2019) and - members of the opposition parties (Saha 2019) have expressed concerns that this modification poses an existential threat to the RTI Act. According to Congresswoman Sonia Gandhi, the amendment is being suggested in order to "destroy [the CIC's] status and independence" (Hindu 2019). The bill, according to two previous CICs, may "kill" the RTI Act itself (Azad and Acharyulu 2019). The transition from secrecy to transparency was made possible by people's tireless efforts, as well as the active participation of the media and civil society organisations, culminating in the 2005 Right to Information Act. The Act has enshrined the long-cherished right to know and be informed about issues that affect the general population. Since then, the Act has allowed residents to request information from any government agency performing public tasks in exchange for a small fee, which is waived for those living below the poverty level. The Act has restored people's faith in democracy by making transparency a rule and secrecy an exception. As a result, the law had correctly established a line between ICs and ECs in terms of salary, allowance, and service terms and conditions. They express concerns about the proposed revisions' language and the potential for abuse. It cannot be denied that the RTI Act has proven to be extremely effective in holding governments at all levels accountable to citizens. It has assisted in uncovering government wrongdoing (Sharma 2015), exposing dubious practises (Regidi 2017), and even dispelling flagrant official lies (Sagar 2018). This isn't to say that the agencies in charge of implementing and enforcing the right to information are

doing their jobs properly. Recent research uncovered significant flaws in the way the Central Information Commission and state information commissioners have operated (RaaG and SNS 2017). It cannot be denied that these institutions could perform a lot better and would almost certainly require legal and institutional intervention. In this essay, I'll dissect both the RTI Bill's arguments and the concerns raised regarding its possible impact. I plan to go over the bill's provisions in-depth to see if the provisions support either set of arguments.

GETTING TO KNOW THE BILL

There are just three effective clauses in the RTI Bill. The first alter Section 15 of the RTI Act,⁸ replacing the CIC's statutorily defined tenure of five years with a length determined by the government by rules promulgated under the law. The same article also eliminates parity between ICs and ECs by requiring the union government to establish rules governing salary, allowances, and terms and conditions of work.⁹ However, the proposed amendment contains two caveats: first, salary, allowances, and terms and conditions of service for ICs cannot be changed after their appointment, and second, ICs appointed before the bill becomes law will continue to be controlled by the RTI Act as it was before the amendment. Even if it becomes law, the amendment will be prospective in nature and will keep one vital safeguard for us.

The second clause repeats the first clause, but in the context of SICs, and thus amends Section 16, whereas the final clause amends Section 27,¹⁰ to give the union government the authority to make rules regarding the matters mentioned in amended Sections 15 and 16,¹¹ as well as IC tenure, salaries, and so on. The clauses are no different than what one would find in any statute pertaining to statutory authority, but the difference here is the clear consequence of such an alteration, which is that the administration, not the legislature, will get to decide on the terms and conditions of ICs' service. The second clause repeats the first clause, but in the context of SICs, and thus amends Section 16, whereas the final clause amends Section 27 to give the union government the authority to make rules regarding the matters mentioned in

⁸ Right to Information Act 2005, s 15

⁹ *Ibid*

¹⁰ Right to Information Act 2005, s 27

¹¹ Right to Information Act 2005, s 16

amended Sections 15 and 16, as well as IC tenure, salaries, and so on. The clauses are no different than what one would find in any statute pertaining to statutory authority, but the difference here is the clear consequence of such an alteration, which is that the administration, not the legislature, will get to decide on the terms and conditions of ICs' service.

- While the union government's ostensible justification for the RTI Bill is illogical, some of the concerns about the bill's impact may be overstated. For one thing, the regulations have yet to be drafted, so it's unclear how this will affect the Central Information Commission and state information commissioners' operations, especially since current appointments are exempt from the proposed adjustments. For another, the removal sections have not been changed, and the amendment still states that pay, allowances, and other terms and conditions of service cannot be changed to the detriment of ICs. This also means that fears that this amendment will empower the union government to “punish” an independent-minded IC by reducing their pay or dismissing them are baseless. The major concern with the revisions, though, is the way the union administration has attempted to drive them through Parliament. Despite the fact that the text of the proposed modification was made public in 2018 when an attempt was made to approve the RTI Bill,¹² the government has not launched a large-scale consultation or discussion to solicit public comment on the bill). The bill has not been referred to the Lok Sabha's Standing Committee, but it is still awaiting clearance in the Rajya Sabha.
- The "justifications" presented are just factual facts that have nothing to do with the proposed changes. The lack of a meaningful basis for this modification, the inability to address the underlying shortcomings in the RTI institutions, and the lack of public participation in the process all point to a broader fear: a government that will do anything it wants, regardless of the implications for the people. More than the merits of the proposed revisions, these factors could constitute a significant threat to a measure

¹² Right to Information (amendment) Bill 2018

like the RTI Bill, not only to the RTI Act but to the concept of participatory democracy as a whole.¹³

COUNTERCLAIMS AND CLAIMS

The government's reasoning for introducing the amendment is, to put it mildly, absurd. The "reason" for this amendment does not make sense even on a cursory perusal of the statement of aims and reasons. In effect, the government is merely stating the obvious: the ECI and the information commissions have distinct purposes. That is undeniably true, but it in no way explains why ICs should not have the same status as ECs. It also ignores the fundamental reason for the existence of this provision in the first place: that ICs, given the nature of their work, should have the same status as ECs. This was done in consideration of the right to information's constitutional status, which is equal to that of the right to vote (Azad and Acharyulu 2019). The government provides no justification for why ICs should no longer have the same status as ECs, other than the obvious reality already mentioned. This isn't to say that all criticisms are without merit. Without a doubt, the executive will have a considerably stronger influence in the ICs' terms and conditions of employment, but this cannot be used to conclude that the ICs will lack independence. For one thing, the government cannot "punish" an independent IC by removing them from office. Of course, it's possible that the rules crafted for the RTI Bill compromise the independence of the ICs in some way. However, because no draught rules have been published or suggested, this remains a matter of conjecture.

CONCLUSION

No administrative, economic, or constitutional reforms can save India from the ever-deepening morass of inefficiency, corruption, and malpractices as long as the Indian mind remains unchanged and the people remain as they are. For the first time, the Right to Information Act of 2005 permitted citizens to bring about such improvements by requesting reasons for government decisions made on their behalf. In India, it ushered in a new era of transparency and participatory governance. It is terrible that the government could pass the

¹³ *Ibid*

Right to Information (Amendment) Act, 2019, and put the regressive provisions into effect. The Information Commissions have been reduced to being the Central government's stooge. The Centre's abuse of power to control the Information Commissions, which are the highest court of appeal, is a clear attack on the Commissions' independence. Furthermore, the SIC has been brought under the control of the central government, which is in violation of the nation's federal framework. The opposition, as well as civil society organisations, have slammed the administration for its authoritarian approach. Previously, citizens' concerns about ICs were limited to the filling of vacancies on the Information Commission and a greater representation of ICs from the various fields stated in the Act. The Hon'ble Supreme Court held that the Commissioners must have judicial knowledge and experience because they perform judicial and quasi-judicial functions by exercising adjudicatory and penal powers in the landmark case of *Namit Sharma Vs. Union of India*,¹⁴ which dealt with the constitutional validity of Sections 12(5)¹⁵ and (6)¹⁶ and Section 15(5)¹⁷ and (6)¹⁸. The court, however, left it to Parliament to decide whether such an appointment required any judicial experience in its review petition. Regardless of the outcome of the case, the federal and state governments have always preferred to pick Commissioners from the domains of administration and governance who are loyal to the government. M.Sridhar Acharyulu, a former Central Information Commissioner, has stated that, among other reasons for the continued attempts to lower the status of Information Commissioners, one of the factors responsible for the regressive amendment could be the increasing number of bureaucrats appointed as Information Commissioners with higher privileges, which has caused heartburn among even the most senior officials. Although it is too early to predict the effects of the amendment, people and civil society organisations are concerned about the progress of pending cases before the Commission's as well as the future of India's other institutions.¹⁹

¹⁴ *Namit Sharma v Union of India* Writ Petition (Civil) No 210/2012

¹⁵ Right to Information Act 2005, s 12(5)

¹⁶ Right to Information Act 2005, s 12(6)

¹⁷ Right to Information Act 2005, s 15(5)

¹⁸ Right to Information Act 2005, s 15(6)

¹⁹ *Ibid*

As a result, some recommendations for restoring the Information Commissioners' status include:

- The central government should meddle as little as possible to ensure the commissioners' independence and neutrality. The CIC and SICs perform quasi-judicial roles and are not to be confused with government employees. As a result, any changes to their tenure and conditions of service should be reversed as soon as possible because it compromises their moral standards.
- The RTI Rules 2019, which allow the central government unrestricted discretionary powers, should be repealed. The ability to waive any of the rules for any class or category of Commissioners, as well as other matters, on a case-by-case basis, is arbitrary and undermines the Information Commissioners' position. In the future, this clause will stifle the Commissions' independence and integrity.
- The State Government should be empowered to establish the tenure and conditions of service of the Information Commissioners within their respective states while maintaining the essence of federalism.
- Last but not least, in the future, all revisions and rules should be made public in accordance with the Act's provisions in order to prevent power abuse. Furthermore, this will ensure that the Commissioners function better and that citizens have faith in them.