

## **AN ANALYSIS ON THE RIGHT TO INFORMATION (AMENDMENT) ACT 2019**

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### **Research objective**

The objective of this research is to determine whether the Right to Information (Amendment) Act, 2019 is in the spirit of true democracy, and to analyse the objective behind this amendment. It seeks to understand the motivation behind passing such an act, the surrounding political climate, as well as the possible and plausible effects of such an amendment. This study seeks to analyse the amendment based on the various different perspectives that have been put forth during the controversy that this bill evoked when it was passed as an act.

### **Research methodology**

The research methodologies used in the following research paper are Doctrinal Research methodology by analysing the statutes and acts such as the Right to Information (Amendment) Act 2019 and the Right to Information Act 2005, as well as various newspaper articles. Analytical Research methodology is also applied to ensure objectivity in analysing the Right to Information (Amendment) Act 2019.

### **Research questions**

- (i) What is the background and objective of the Right to Information Act 2005?
- (ii) What is the quoted motive behind the Right to Information (Amendment) Act 2019?
- (iii) Is the Right to Information (Amendment) Act constitutionally valid?

### **Literature review**

Owing to the recent nature of this amendment, there is no in-depth analysis of the same. This research seeks to bridge the gap between the legal language of the Right to Information (Amendment) Act, 2019 and analyse it in the context of public order and morality, and the rights of the people. Various newspaper articles regarding the same have been published, and for the sake of authenticity, only those sources whose originality can be verified and which have been published are considered by the researcher. Articles such as “What makes Right to Information Amendment Bill so controversial?” by Prabhash K Dutta, highlights the controversy sparked by the act. The article “Knowledge, Power, Policy: Tracing the Right to Information Act’s Role in Catalyzing India’s Political Transformation” by Priyanshi Bhartia discusses the enforcement and effects of the Right to Information bill, and examines the developments throughout the years. The article “The True Dangers of the Right to Information (Amendment) Bill” by Alok Prasanna Kumar examines the government’s justifications and the constitutional validity of the act. A Comment on the Unconstitutionality of the Right to Information (Amendment) Bill, 2019 by Shilpa Jain and Rohit Jacob Varghese, Analysis Of Right To Information (Amendment) Act, 2019 by Gouthami G, Impediments In The Impementation Of Right to Information Act by Yash Borana all seek to analyse the downfalls that will be caused by the implementation of the Right to Information (Amendment) Act, 2019.

### **Chapterisation**

1. History of Right to Information Act
2. Legal Analysis of Right to Information (Amendment) 2019
  - 2.1 Amendment of Tenure
  - 2.2 Amendment of Salary
  - 2.3 Rules for Enforcing Determined Salary and Tenure
3. Motive behind Right to Information (Amendment) 2019
4. Political situation during Right to Information (Amendment) 2019

**List of Cases (Bluebook 20<sup>th</sup> Edition Format)**

1. Ram Prasad Narayan Sahi And Ors v. The State Of Bihar And Ors., (1953) 215 AIR (India).
2. Ameerunnissa Begum And Ors. v. Mahboob Begum And Ors., (1953) AIR 91 (1952) (India).
3. Gulf, Colorado And Santa Fe Ry. Co. v. Ellis 165 U.S. 150 (1891).
4. Reliance Petrochemicals Ltd. v. Proprietors of Indian Express, (1989) 190 AIR SC (India).
5. Bennet Coleman & Co. v. Union of India, (1973) 2 SCR 757.

**Introduction**

The Right to Information (Amendment) Act, 2019 [Right to Information Amendment 2019] was a controversial bill passed by the government in August 2019. It has been widely criticized by the public as being unconstitutional and immoral, and opposed to public policy. This act seeks to make changes to the original Right to Information Act 2005, by centralizing certain powers and specifications. The Right to Information Act of 2005 sought to promote transparency of the government and came with the implied purpose of giving the people of the country to ensure that their elected representatives are working in concurrence to the people's wishes. This amendment seeks to make the salaries and tenures of the Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner, State Information Commissioner subject to the decision of the Centre. This was a shift of the power from the legislation to the executive, wherein in the earlier original act of Right to Information 2005 had fixed the tenure of these offices at 5 years, and the salaries as being equivalent to those of the analogous salaries of the Election Commissioners, both at the Centre and State level. Furthermore, the 2019 amendment also gave powers to the legislation to enact rules regarding the salaries and tenures of the original act. The constitutional validity has been questioned and this amendment has been seen as a paRight to Informationsan movement. It has been criticized as a move by the Bharatiya Janata Party as a mode of obstructing information from the citizens.



## Main Body of Research Paper

### 1. History of Right to Information Act

Article 19 of the International Covenant on Civil and Political Rights (1966), which was agreed upon and entered into by India, reads as follows:

*“everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinion without interference and to seek, and receive and impart information and ideas through any media and regardless of frontiers.”*

This Covenant was later ratified by India in 1978. This Article 19 entrusts people with the right to not only express their own opinions, but also to receive such opinions and information. Article 19(1)(a) of the Constitution of India guarantees to all the citizens of the State the right to freedom of speech and expression as a fundamental right<sup>1</sup>. In 2001, the Law Commission of India's 179<sup>th</sup> Report recommended the formulation of a law that would enable the citizens to access information about the government<sup>2</sup>. This was in light of growing corruption within the government and a sort of alienation between the citizens and the government. There were sufficient checks and balances between the different organs of the government, but not between the citizens and the government<sup>3</sup>. To facilitate transparency and accountability which would not only make the government more conscious of and responsible for its actions, but also restore the faith of the citizens in the Government, the Freedom of Information Act, 2002<sup>4</sup> was passed<sup>5</sup>.

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<sup>1</sup>Reliance Petrochemicals Ltd. v. Proprietors of Indian Express, (1989) 190 AIR SC (India).

<sup>2</sup>Reliance Petrochemicals Ltd. v. Proprietors of Indian Express, (1989) 190 AIR SC (India).

<sup>2</sup> Priyanshi Bhartiya, *Knowledge, Power, Policy: Tracing The RTI Act's Role in Catalysing India's Political Transformation*, INTERNATIONAL JOURNAL OF SOCIAL SCIENCE AND ECONOMIC RESEARCH, Oct. 10, 2019 at 6391.

<sup>3</sup> Right to Information 6

<sup>4</sup>Bennet Coleman & Co. v. Union of India, (1973) 2 SCR 757.

<sup>5</sup>Bennet Coleman & Co. v. Union of India, (1973) 2 SCR 757.

<sup>5</sup> Supra note 2.

It is imperative to note here- this Act only sought to promote the freedom to demand information, but was not a vested fundamental right<sup>6</sup>. Thus, to ensure the effectiveness of this law, the National Advisory Council instead suggested a few additional changes to be made. The report, which was prepared by Aruna Roy highlighted that the law had exempted too many institutions and details from the purview of the act, the lack of presence of an independent appellate authority for enforcement, and recommended provisions such as strict fines for authorities that failed to comply with the act, and annual publishing of information on the activities of the government and its departments<sup>7</sup>.

All these suggestions were taken into consideration and the Freedom of Information Act, 2002 was repealed and instead replaced by the Right to Information Act, 2005.

The Right to Information Act, 2005 was sought to be amended only twice before; once in 2006 in an attempt to exempt File Notings<sup>8</sup> from the Right to Information Act but was dismissed due to the harsh outcry by Right to Information Activists, and again in 2013 to exempt all the political parties from scrutiny of the information held by the regulatory authorities about them but the Bill lapsed due to the 14<sup>th</sup> Lok Sabha standing dissolved. The Right to Information (Amendment) Bill, 2018 was introduced in the Monsoon session of the Parliament on 18<sup>th</sup> July, 2018.

The Right to Information Act, 2005 comprises of 31 sections. The Right to Information (Amendment) Act, 2019 amended Section 13(1), Section 13(2), Section 13(5), Section 16(1), Section 16(2) and Section 16(5), and Section 27(2)(ca) and Section 27(2)(cb) were added.

## **2. Legal Analysis of Right to Information (Amendment) 2019**

This section of the study on the Right to Information (Amendment) Act, 2019 will be further divided into 3 main parts, based on the effect of the amendment. The first is the Amendment of Tenure, second is Amendment of Salary, and Rules for Enforcing Determined Salary and Tenure.

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<sup>6</sup> YASH BORANA, IMPEDIMENTS IN THE IMPLEMENTATION OF RTI ACT (2019).

<sup>7</sup> Supra note 2.

<sup>8</sup> G. Seetharaman, *File Note: How Rafale Row has turned the spotlight on file notings*, THE ECONOMIC TIMES, Feb. 16, 2019.

## 2.1 Amendment of Tenure

After the amendment,

Section 13(1)

*“The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government.”*

Section 13(2)

*“Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government.”*

Section 16(1)

*The State Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government.”*

Section 16(2)

*Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government.”*

These amendments mean, therefore, that the Chief Information Commissioner, which is the highest position of power in the Right to Information conferred authority hierarchy, will no longer serve for a fixed term of 5 years. Instead, it is at the discretion of the central government as to the tenure of the Chief Information Commissioner. This implies that, essentially, the Central Government is free to choose the Chief Information Commissioner according to their needs by simply dismissing those candidates who do not comply with the Central Government<sup>9</sup>. This means that the Chief Information Commissioner will have no choice but to be a candidate who is willing to work with the government rather than with the people, else his position of power will

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<sup>9</sup> “RTI Amendment Bill: Explained”, TIMES OF INDIA, Jul. 23, 2019.

be taken away from him. This makes the seat of the Chief Information Commissioner merely another bargaining chip<sup>10</sup>, rather than the people's source for transparency and accountability. Whether it be the State Chief Information Commissioner or the Central Chief Information Commissioner, there is the widening of the scope of misuse that the political paRight to Informations could exploit.

The Information Commissioners, too, all report to the Chief Information Commissioner.

By influencing and puppeteering the Chief Information Commissioner, be it of a State or of the Centre, this automatically ensures that even the subordinate Information Commissioners comply. The clauses regarding Information Commissioner that have been amended so ensures that the Information Commission is seized and brought under the control of the central government not only at the top, but also at the next subordinate level. It essentially provides the government the perfect strategy to avoid transparency and henceforth, accountability<sup>11</sup>.

## **2.2 Amendment of Salaries**

### Section 13(5)

*“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.”*

### Section 16(5)

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<sup>10</sup> Supra note 17.

<sup>11</sup> Aruna Roy, *The Tremor of unwelcome amendments to RTI Act*, THE HINDU, Jul. 22, 2019.

*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.*

Prior to this amendment, the salaries of the posts of the Chief Information Commissioner, the Information Commissioners, the State Chief Information Commissioner and State Information Commissioners were equal to the salaries of the respective analogous positions of the Election Commission: Chief Election Commissioner, the Election Commissioners, the State Chief Election Commissioner and State Election Commissioners.

The reason these amendments to the salaries of the Information Commission members is so controversial and arbitrary in the eyes of the public is that, leaving the determination of salary of these members to the Central Government wholly changes the nature of the institution created by the Right to Information. The Information Commission was created as a statutory body that was independent of all three organs of the government, be it the executive, legislative, or the judiciary. It was the tool of the people to keep a check on the government.

It was made in the same spirit as the Election Commission, which was made independent in its powers due to the glaring possibilities of the elections being toyed with or influenced by the organs of the government. Both these institutions served to protect the interests of the people against the State. With the passage of this Act, however, the protection offered by the Information Commission is clearly being breached and removed.

In substance, the Information Commission is now different from the Election Commission in that, it is not an independent body that performed checks and balances. It is now merely under the control of whichever parties occupy the Central Government. In practice and procedure, this

means that the Information Commissioners will divert their focus from ensuring that they obtain information, to ensuring that they have a good salary and a secure tenure.

This manipulation of salary is greatly unfair, as the salary was fixed to be equal to the of the Election commission for a reason. Ironically, and this is a point worth noting, when the change was made to the principle Act to make the salaries of the Information Commission equal to the Election Commission, prominent ex- and present BJP Members Ram Nath Kovind, Ram Jethmalani and Balavant Apte<sup>12</sup> were on the panel that pushed for these changes to be made, and now it was that very party that sought to reverse this.

### **2.3 Rules for Enforcing Determined Salary and Tenure**

Section 27(2)(ca)

*“The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act, including 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.”*

Section 27(2)(cb)

*“The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act, including 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.”*

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<sup>12</sup> Supra note 13.

These two amendments are only in furtherance of the first two amendment categories. This also means that these amendments and the opening up of the possibility of passing such amendments regarding the tenure and salary of the Information Commission can be widely misused by the Central Governments to come. Each new Central Government will have their own method of determination of tenure and salaries, and their own arbitrary rules at their own discretion to ensure that the Information is just another tool, or at the best, not an obstacle to the acquisition of power by that political party in power. This undermines the very institution and posts of the Information Commission, and will lead to the people losing trust in their Right to Information.

### **Motive behind Right to Information (Amendment) 2019**

The motive behind the Right to Information (Amendment) Act, 2019 can only be assumed based on the possible effects it might have. The motive could be to control the flow of information from the government to the people. This allows for the government to paint the picture of their schemes as desired. While the Right to Information (Amendment) Act, 2019 does not outrightly declare this, it is undeniable that when in control of a person's salary and employment tenure, the very substance of transparency on the part of the Commissioners is lost. The government will now possess the power to block or ignore Right to Information queries that they do not wish to answer. This could also have been done to protect the government from the media and the public eye. It could also serve as a bargaining chip for the government in power. The truth is that the government has no strong justification for the amendment or a convincing defence against the arguments put forth by the Opposition and various Right to Information Activists.<sup>13</sup>

The motive behind this amendment can only be speculated. The shift in powers renders the principle Act nearly pointless. Along with the Right to Information of the citizens, there is also the Duty of Publishing Informations that the Information Commissioners hold. The motive of this Act is not in furtherance of jurisprudence or legal advancement, but purely political in nature.

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<sup>13</sup> Prabhash K. Dutta, *What Makes RTI Amendment Bill So Controversial?*, INDIA TODAY, Jul. 23, 2019.

Various Right to Information activists and legal scholars have criticised the Right to Information (Amendment) Act, 2019 of eroding the independence of Indian constitutionality and citizenship.

### **Political situation during Right to Information (Amendment) 2019**

In order to understand the Amendment, it is necessary to analyse it in the context of the prevailing political situation at the time of passing of this act. The Right to Information (Amendment) Bill, 2018 cause widespread political and social unrest. It was dubbed the 'Right to Information Elimination Act'<sup>14</sup> by the Opposition government, which mainly consisted of the Indian National Congress political party. The ruling party, which was mainly the Bharatiya Janata Party, did not give any justifications as to the arbitrary nature of this amendment. It was criticised as degrading the constitutionality of the principle act<sup>15</sup>. Furthermore, it has been contended that the very discussion on the Right to Information (Amendment) Act, 2019 and the actual deliberation between the Members of Parliament was uncontrolled and dominated, and hence was doomed to be passed from its very genesis<sup>16</sup>.

### **Conclusion**

In conclusion, this research study has analysed the Right to Information (Amendment) Act, 2019 and has shown after intensive understanding, that the Amendment is not only arbitrary, discretionary and unconstitutional in nature, but will also prove to be dangerous and will erode the very fundamental Right to Information of citizens in the country. The shift of power of determination of tenure and salary and of the power to make rules to ensure such tenure and salary decisions, render the Information Commission pointless and simply render them to being a tool at the hands of the Central government. Despite the noble history with which the Right to

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<sup>14</sup> Sunil Prabhu, *RTI Amendment Bill Passed; Dilutes Transparency Law, Says Opposition*, NDTV, Jul. 22, 2010.

<sup>15</sup> *Supra* note 15.

<sup>16</sup> Pranny Dhawan, "*RTI ACT Amendment: Hasty Passage and Controversial Events*", NEWS CLICK, Aug. 8, 2019.

Information was inculcated in India, the warring political parties and ideologies have led to the erosion of this pillar of democracy. There is still further research that can be conducted which has not been touched upon this study, such as the present misuse of the Right to Information (Amendment) Act, the passive behaviour of the speaker while passing such act, or the in-depth constitutional analysis of this act.

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