

RIGHT TO INFORMATION (AMENDMENT) BILL, 2019: DEATHBLOW TO THE LAW

*-Manu Sharma**

Abstract:

India is the largest democracy in the world and in context of that the Right of Information is one of the most powerful tools in the hands of every single citizen. It did what was much needed for democracy, making the public offices accountable and increased transparency. It helped in the exposure of massive scams and corruption in government offices. It ensures transparency even when the public officers do not want it. It empowers a common citizen to examine and question the government's decisions and assess if they are in larger public interest. However the Act is going to lose its essence as the central government has proposed an amendment Bill i.e. The Right to Information (Amendment) Bill, 2019 which, if passed, will curb the independence of the Chief Information Commissioner and other Information Commissioners which are the implementing authorities under the Act and play a major role in dissemination of information. The Bill not only reduces the status of the authority merely to a department that sing accordingly to the will of government but is also an attack on citizen's Right to Information and participate in Political Discourse. The paper deals with the concept of Public Accountability, its application in India and how this doctrine led to the introduction of Right to Information. Furthermore, the author also highlighted the famous instances that make us question the proposals in the recent amendment Bill and how is it going to effect the common man, if passed in the parliament.

I. PRINCIPLE OF PUBLIC ACCOUNTABILITY

Accountability refers to the process of holding persons or organizations responsible for performance as objectively as possible.¹ India, being a parliamentary democracy, has elected legislatures that have oversight functions over the Executive and an independent judiciary that

* Manu Sharma is a 3rd year student at Symbiosis Law School, Pune.

¹Henly v. Lyme Corporation,[1828] 130 ER 995; Conway v. Rimmer, [1968] UKHL 2; New York Times v. Unites State, 43 U.S, 713 (1971).

can hold both the legislative and executive arms of the State accountable. It has variety of independent authorities and commissions that perform accountability functions vis-à-vis different parts of the government.

In a federal system like ours, the concept of public accountability is a two way process involving upward accountability and downward accountability. Upward accountability comes through the governmental control over the administrative authorities like power to dissolve them, approving and auditing of budget etc. Downward accountability is to public which is a relatively weak and comes primarily through their mandate in elections². However, all is not well with public accountability in India. There are systems that are put in place for most of the part, but they are not necessarily made to work. Many good laws have been enacted, but either they are not enforced or their implementation has been poorly monitored. Many Public agencies are given mandates and funds, but their performance is not properly assessed and no suitable actions have been taken to hold them accountable. Public audits of accounts and parliamentary reviews are done, but follow up actions may leave much to be desired. From the above discussion it is quite clear that even the existence of formal mechanism of accountability does not guarantee actual accountability on the ground level.

II. EVOLUTION OF THE DOCTRINE IN INDIA

The concept of doctrine of Public Accountability was first elaborated in the landmark case of A.G. Hong Kong v. Reid,³ wherein Reid who was the prosecutor in case against Crown took bribe to suppress certain criminal cases and purchased properties with that money. The Government claimed these properties justifying that the owners thereof are the constructive trustees of the Crown. The Court upheld the justification and observed that a gift taken by a public officer as an incentive for breach constituted a bribe. The fiduciary owes the money to the person to whom he owed that duty and he hold the bribe acquired therewith on constructive trust

²Goetz, A. and Jenkins, R., 2001, 'Hybrid forms of accountability: citizen engagement in institutions of publicsector oversight in India', Public Management Review 3(3): 363-383

³A.G. Hong Kong v. Reid, [1993] UKPC 2.

for that person. The case also applies to the situation where the fiduciary relationship does not exist.

The Indian Supreme Court followed the same reasoning in the case of Attorney General of India v. Amritlal Prajivandas,⁴ where the Court upheld the validity of SAFEMA Act which provided for forfeiture of properties gained by smuggling or other mala fide and illegal activities. The scope of this doctrine was further amplified in DDA v. Skipper Construction Co. Ltd.⁵ case where the Court observed that wherever the general public is defrauded by the illegal acquirement of properties, the Court can pass necessary orders irrespective of the fact that there was a fiduciary relationship or not or whether a holder of public office was involved or not. The Court further pronounced that Courts in India are not only courts of law but also court of Equity.⁶

III. WHY ACCOUNTABILITY IS THE NEED OF HOUR?

Affixing liability on the wrongdoer is the need of the hour, which means that the public official needs to be held accountable for their actions.⁷ The judicial activism has reached to a point where courts have now started to award compensation as well as impose exemplary fines for violation of citizen's fundamental rights and for the abuse of power on the guilty public officer. One such example is the landmark case of Nilabati Behera v. State of Orissa⁸, wherein the Apex Court held that compensation for violation of human rights and abuse of power is a recognized claim under Public Law. It was also observed that it is the duty of the Courts to provide constitutional protection to the victims of human rights under Article 226 and 32.⁹ The judicial activism is evident from the fact that the courts have evolved the principle of "polluter pay" in

⁴Attorney General of India v. Amritlal Prajivandas, (1994) 5 SCC 54.

⁵DDA v. Skipper Construction Co. Ltd., 1995 SCC (3) 507.

⁶Pomal Kanji v. Vrajlal Karsandas Purohit, 1989 AIR 436; Motilal Padampat Sugar Mills v. State of U.P., 1979 AIR 621.

⁷S.S. Dhanoa v. Union of India, 1991 SCC (3) 567; Arvind Dattatraya Dhande v. State of Maharashtra, 1952 AIR 181; G.B. Mahajan v. Jalgaon Municipal Corporation, 1991 AIR 1153.

⁸Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.

⁹Vishaka v. State of Rajasthan, AIR 1997 SC 301141; Sunil Batra v. Delhi Administration, (1978) 4 SCC 409.

cases of environmental pollution and that every administrative authority shall be held to be accountable for the proper and efficient discharge of its statutory duty.¹⁰

Secondly, the problem of administrative corruption is perhaps as old as public administration itself. The enormous decentralization of the governmental bureaucracy, both in size and range, has highlighted the problem of effective public checks and control on public administration. The adoption of the goals of a social welfare state in India has resulted in an extension of bureaucracy in size and number which resulted in the increase in the volume of work where administrative power and discretion can be used. Where there is power and discretion, there is always the possibility of abuse. The Law Commission in its 14th report pointed out that there is a vast sphere of administrative action in India in which the bureaucracy can exercise discretionary authority without being accountable to citizens in any way in case of abuse of authority.¹¹ There has been rapid increase in number of administrative tribunals which also led to rise in administrative adjudication. The problems of executive discretion, delegated legislation and administrative adjudication are vitally connected with the problem of public accountability of administration.

IV. INTRODUCTION OF RIGHT TO INFORMATION ACT, 2005 & ITS IMPORTANCE

One important factor that was responsible for the absence of popular participation in the governance process is the lack of information. The need for an open government was realized by the Supreme Court which observed that the demand of openness is based on the principle that democracy does not merely consist in people exercising their franchise once in five years to choose their rulers and once the votes are cast, then returning into passivity and not taking interest in the political discourse.¹²

¹⁰Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715; M.C Mehta v. Union of India, AIR 1987 SC 965; Indian Council for Enviro- Legal Action v. Union of India, 2011 (8) SCC 161.

¹¹Law Commission of India, Reforms of Judicial Administration- Vol (1) , Report No. 14, <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>, (last visited on 15 January,2020)

¹² Brij Bhushan v. State of Delhi, AIR 1950 SC 129; Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd., (1995) 5 SCC 139

The Right to Information Act, 2005 came into force on October 13, 2005 and it covers within its ambit all central, state and local government bodies and in addition to this, it also applies to the judiciary as well as legislature. Moreover it covers all bodies owned, controlled or substantially financed, either directly or indirectly by the government, and non- governmental organizations and other private bodies substantially funded, directly or indirectly by the government. It cover right to inspect work, documents and records held by the government and allows for the extraction of certified samples for verification.¹³ The purpose of introducing the act was to empower the citizens to know the particulars of all public information in all its bearing Their right to know, which is derived from the fundamental right of freedom of speech, and expression, though not absolute, is a big factor, which should make one wary when secrecy is claimed for any transaction.¹⁴ Elaborating the scope of right to information or right to now the Apex Court in *Reliance Petrochemicals Case*¹⁵ has recognized the same as a fundamental right under Article 21 of the Constitution. This gives the right to know a new dimension and puts greater responsibility on those who take upon themselves the responsibility to inform.¹⁶

The Act also allows the people to obtain information about the cabinet deliberations so that people know how any governmental decision is reached.¹⁷ Instead of lamenting about the exposure RTI act could give to any public officer, they should consider it a boon. It will help them in expressing their opinion fearlessly and objectively and provide them an effective shield against the pressures of higher authority for manipulating the public notings. While on one hand RTI gives immense powers to citizens to keep a check on the government' action, it is also a reality that the Act does not provide for any protection to the applicants for use of the RTI.¹⁸ Though the CIC is empowered to award compensation for any harassment, threat or intimidation caused to the applicants for seeking information, in practice this provision is not being utilized in full swing instances of suppression of information and harassment of the employees and

¹³ The Right to Information Act, 2005, s.2, cl.(j).

¹⁴ *State of Uttar Pradesh v. Raj Narain*, AIR 1975 SC 865; *SP Gupta v. Union of India*.AIR 1982 SC 149; *Union of India v.Assn. for Democratic Rights*, (2002) 5 SCC 294; *Secy., Ministry of Information & Broadcasting, Govt. of India v.Cricket Assn.of Bengal*, (1995) 2 SCC 161; *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399.

¹⁵ *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*, (1988) 4 SCC 592.

¹⁶ *Id.*,¶ 34.; *Dinesh Trivedi v. Union of India*,

¹⁷ The Right to Information Act, 2005, s.8, cl. (a) (i)

¹⁸ *Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) New Delhi Dated the 24th June, 2008. Para 1 No.4/9/2008-IR* www.rti.gov.in, (last visited on 15.01.2020).

applicants are on the increase. It is evident from the incidents that has been occurred in past that the public authority has been trying to suppress the information and coerce the applicant in case the applicant is employed in that organization. Since the introduction of this Act in 2005, regimes till date were launching a two- pronged attack on the RTI Act. On the one hand, they were trying to bring new amendments in the Act, while on the other there have been instances of rampant assaults and murders of RTI activists. In the recent times there was a huge demand to incorporate new amendments to make the Act more citizens' friendly and versatile. However the recent amendment in proposed Right to Information (Amendment) Bill, 2019 proves to be as an assault on the citizen's Right to Know. The author has further discussed about the same below-

V. THE RIGHT TO INFORMATION BILL, 2019

“Power tends to corrupt and absolute power corrupts absolutely”

This quote by English politician and historian Baron Acton fits perfectly for the recent amendment bill passed by both the houses of Indian Parliament. The Right to Information Bill (hereinafter referred as “RTI Bill”) was introduced by the Minister of State for Personnel Grievances and Pensions on July 19, 2019 and passed on July 22, 2019. In the upper house it was passed on July 25, 2019. RTI Act is one of the instruments which have greatly empowered the ordinary citizens of India to question the governmental authorities and machineries for their acts. It provides for the setting out the practical regime of the RTI for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability. Not only this, the Act also deals with the constitution of a Central Information Commission (CIC) and State Information Commission (SIC) and for matted connected with therewith.

A. Analysis

1) Key Highlight of the Bill

- i. *Term*; The term of the Central Chief Information Commissioner (CIC), State- level Chief Information Commissioner (SCIC) and Information

Commissioners(IC's) is proposed to be amended in the current bill. Previously, the term was fixed for 5 years or until the age of 65 years whichever is earlier,¹⁹ but the amendment specifies that the appointment will be for such term as may be prescribed by central government.²⁰

- ii. *Salary*; The salaries, allowances and other terms and conditions of services of Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners are proposed to be decided by the central government in new bill,²¹ which as per the RTI Act, 2005 was equivalent to the salary of Chief Election Commissioner for CIC and that of Chief Secretary of the State for SCIC and the IC's.²²
- iii. *Deductions*; The proposed amendment Bill also removes the provisions that provides for the pension or any other retirement benefit being received by CIC and IC's from their previous government service shall be reduced by an amount equal to that pension.²³

2) Impact on the functionaries of CIC and other IC's?

- a) It would grant arbitrary powers to the government at centre as everything is now under their control, which would directly effect the quality of information provided. The neutrality of the IC's would be crippled and they will tend to become more loyal to the government for which they can decide to withhold information that can go against the interest of government, if they wish so.

¹⁹ The Right to Information Act, 2005, s. 13 & 16.

²⁰The Right to Information (Amendment) Bill, 2019, s. 2 & 3.

²¹*Id.*

²²*supra* note 19.

²³*Id.*

- b) The amendment in terms of interference of government in deciding the tenures, salaries, appointment will lead appointment decided on a case to case basis, which will lead to corruption and nepotism.
- c) The proposed amendment diminished the status of the CIC, SCIC and IC from that of the judges of Supreme Court and High Courts as they are now being controlled by the government at centre that will result in diminishing authority to issue the directives and guidelines to the senior government officers.
- d) The proposed Bill was introduced as well as passed without any public consultation which will hamper the citizen's right to information and know as the Act was introduced to give effect to such rights in democratic state of India. When such an important right is in question, the drafting of the legislation cannot be left to the elected representative alone.
- e) Looking at the current situation in India where major constitutional and policy changes have taken place in recent time like demonetisation, implementation of GST, revocation of Article 370 with huge numbers of internet shutdown and presently the economy is going under dogs leading to high inflation rates, unemployment, disinvestment, NPA's, the information on such issues is of significant importance to every citizens which the IC's got the government to disclose- something it can only do if it has both authority as well as independence.
- f) The amendment will take away the transparency as it will empower the central government to unilaterally decide which will fundamentally weaken the foundational idea and structure of the RTI.

3) Violative of Indian Constitution?

- a) The Bill fails to comply with article 14 that provides for equality before law and equal protection of law. The authorities of the Information Commission perform quasi- judicial functions much like the other Statutory Tribunals and Adjudicating bodies. Treating them differently does not pass the test of

intelligible differentia which enables different treatment of unequals under Article 14.²⁴ Hence, the new amendment in the RTI Act fails to comply with the constitutional right to every citizen to be treated equally before the law.

- b) The Bill breaks the backbone of the RTI Act that was its federal structure by vesting excessive powers with the central government.
- c) The Bill is also in the contravention to the basic principle of independence of judiciary which has also been held as one of the basic structure of Indian Constitution,²⁵ as it vests in government unfettered amount of discretion to decide the appointments, tenure, salaries and other allowances. Even though the Central and State IC's are statutory bodies established under the provisions of the RTI Act, they perform quasi-judicial process and their judgments hold values in the matter of public domain.

B. What is Government's justification?

- a) The government justifies it as an attempt to streamline the Act and enhance the transparency. It claims that the equivalence drawn between the status of Election Commission of India and the Central and State IC's is completely flawed through these amendments.
- b) While ECI is a constitutional body, established under Article 324 of the Indian Constitution, on the other hand Central and State IC's are statutory bodies established under the provisions of RTI Act, 2005. Thus the same cannot be placed on same footing.
- c) The judgments given by CIC do have a binding value but still they can be challenged in the High Courts.

C. Present Scenario

²⁴ State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75; Maneka Gandhi v. Union of India, 1978 SCR 597; Shayara Bano v. Union of India, (2017) 9 SCC 1; Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

²⁵ Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225; I.C. Golaknath & Ors. v. State of Punjab, 1967 AIR 1643.

. For quite some time now, there has been a lot of discussion and debates going around over fascism knocking India's door. Fascism has its roots in '*No Question, No Dissent and hence, No Accountability formula.*' With such snatching away of people's right to hold the ruling government accountable for its actions, it is pretty clear that it's no longer on the door but has successfully entered. Its repercussions can be seen in the recent times as for the first time, the four- senior most judges of the Apex Court held a press conference calling out to save the democracy. Most of the eminent economists like Arvind Panagariya²⁶ and Arvind Subramanian (Chief Economic Advisor to Modi Government)²⁷, holding the top position have withdrawn from their post in 2017. Two Consecutive governors of RBI resigned following the bitterness with the Centre. Raghuram Rajan left RBI in 2016²⁸ and then Urjit Patel who was handpicked by the centre, also resigned in 2018.²⁹ On the same line, CBI witnessed a tussle within the organization, between two top notch officer Alok Verma (than, CBI Director) and Rakesh Asthana (Special Director) which exposed this premier investigation agency to public ridicule.³⁰ The Election Commission also faced a serious crisis when Election Commissioner Ashok Lavasa decided to boycott the meeting pertaining to the Model Code of Conduct. He claimed that he was coerced to do so because his dissent on giving clean chit to current Prime Minister Narendra Modi and Home Minister Amit Shah was not recorded.³¹ So these instances proves the from country's Supreme Court to the Reserve Bank of India to Central Bureau of Investigation to Election Commission, the storm has now reached the Information Commission.

VI. CONCLUSION

²⁶<https://economictimes.indiatimes.com/news/politics-and-nation/arvind-panagariya-resigns-as-niti-aayog-vc/articleshow/59862083.cms>

²⁷<https://economictimes.indiatimes.com/news/politics-and-nation/chief-economic-advisor-arvind-subramanian-resigns-due-to-personal-reasons-will-move-to-us/articleshow/64662276.cms>

²⁸<https://economictimes.indiatimes.com/news/economy/policy/urjit-patels-resignation-is-a-note-of-protest-raghuram-rajan/articleshow/67035016.cms?from=mdr>

²⁹<https://www.businesstoday.in/top-story/what-made-urjit-patel-resign-as-the-rbi-governor/story/299431.html>

³⁰<https://economictimes.indiatimes.com/news/et-explains/the-war-inside-cbi-why-alok-verma-and-rakesh-asthana-are-at-each-others-throats/articleshow/66333104.cms?from=mdr>

³¹<https://scroll.in/latest/923910/ashok-lavasa-says-he-wont-attend-ec-poll-code-meetings-since-dissent-is-not-being-noted-reports>

The aim of the RTI Act, 2005 was to promote transparency and accountability in the working of every public authority which is being crippled by this amendment Bill, 2019. This is an attempt to take away the free flow of unbiased information as RTI Act served as a deterrent to the misuse of the power and has enabled the citizens to know about “ *What, How and Where*” of the decisions taken for them by the government . There is no rationale to the justifications claimed by government for incorporation of such amendment. This is definitely going to hamper the independent working of the Information Commissioner as they are now no more vested with the independence, transparency, status and authority but be merely working as one of the departments answerable to their ultimate boss i.e. Central Government.