

**EXAMINING THE DILUTED FEDERAL SPIRIT OF THE RTI ACT THROUGH  
THE 2019 AMENDMENT**

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**ABSTRACT:**

The following paper seeks to draw a brief comparative analysis between the Right to Information Act of 2005 and 2019 respectively, with the objective of finding out if, the recent amendment to the Right to Information Act has weakened its federalistic essence and can be one of the many instances of excessive delegation of powers by the Legislature. Various academics, authors and jurists have shed light upon the incumbent issue of saving the spirit of the Right to Information Act; but have had varied opinions. In this paper, we make comparisons between the original Act and the amendment which was brought about by the government in 2019 and examine how the amendment can be deemed as exercising excessive delegation while also transgressing the limits of the separation of powers among the organs of the government. This has been done by highlighting the significance of the Right to Information, and its growing need in the present and the future; while features of the 2005 and the 2019 act have also been briefly stated. It is impossible to undermine the importance of the Right to Information and its ever rising relevance in the country. The 2019 amendment of the RTI Act is not only diluting the spirit of RTI itself, but also needs to be considered in violation of the permissible limits of delegation of powers by the authorities. By indirectly curtailing the freedom of the Information Commission and subduing its powers, the amendment seeks to bring the Statutory body under the Government hence endangering the very independence of the Commission. The main focus of this paper is to draw a contrast between the two, focussing on how the changes brought about by the Amendment may dilute the spirit of the act, while dealing with the issue of excessive delegation of power by the Legislature.

**INTRODUCTION:**

Transparency and Accountability are essential for the smooth working of any democratic country, and the Right to information is presently more important than ever, with increasing government interference in public affairs and the pressing need to maintain sincerity and integrity in government work. The Right to Information Act helps in creating a framework where the general public are afforded clarity and details of government action, plans, Yojana, schemes, etc., which aids in enhancing the responsiveness of government towards society. Before 2005, Indian citizens had little to no access to information regarding the work of the Governmental Authorities, and matters of public interest. Right to Information (RTI) thus works as an indicator of the growth and development of a country, while augmenting the spirit of a true democracy. With globalization and technological advancements at their peak, the need for information has become pertinent to the citizens, and thus the need for an Act to rectify a procedure for the citizens to obtain such information became a further necessity. This need for accessibility was felt all over the world, especially in Sweden in 1766 after which a lot of western countries followed suit. The Swedish example was consequentially followed by the US, which enacted its first law in 1966 and then by Norway in 1970. Similarly, several western democracies enacted their own laws (France and Netherlands 1978, Australia, New Zealand and Canada 1982, Denmark 1985, Greece 1986, Austria 1987, Italy 1990).<sup>1</sup>

Right to Information in India has developed through a number of Judicial pronouncements and has distinguished itself as a Fundamental Right under Article 19 (1) (a) of the Constitution of India. After a substantial period of time, it was established as an Act in 2005, which thus came to be known as the Right to Information Act. Before that, the Right to Information was indirectly guaranteed under the Right to Know but was eclipsed by the Official Secrets Act, 1923; ensuring absolute secrecy to the work of the Government officials. Owing to these circumstances, the Indian Judiciary played an important role in establishing a framework for citizens to demand information. After a substantial period of time, it was established as an Act in 2005, which thus came to be known as the Right to Information Act.

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<sup>1</sup> Briefing Paper, Analysing the Right to Information Act in India, CUTS International, [https://cuts-cart.org/pdf/Analysing\\_the\\_Right\\_to\\_Information\\_Act\\_in\\_India.pdf](https://cuts-cart.org/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf)

## **Significance of RTI:**

The RTI is now a fundamental right under Article 19 of the Constitution which adequately elucidates its importance in the public and private sphere of governance. It has widely been regarded as the backbone of good governance and thus, it cannot be undermined. The **significance** of the law on RTI is:

- a. To operationalise the fundamental right to information;
- b. To set up systems and mechanisms that facilitate people's easy access to information; to promote transparency, and
- c. Ensuring Accountability in governance; minimizing corruption and inefficiency in public offices and increasing people's participation in governance and decision making.<sup>2</sup>

In the case of *Bennett Coleman vs. Union of India*, the Supreme Court stated that the Right to information is our fundamental right, falling within the meaning of article 19(1)(a) of the Constitution of India. In the case of *SP Gupta vs. Union of India*, it was observed that it was a right of the citizens to acquire information regarding public affairs and functions of the government and public authorities; while authorizing them to access this information related to public transactions performed within the purview of the public act. Further, in *RP Ltd. vs. Indian Express Newspaper*, the court held that Right to information is a basic right and falling within the scope of Article 21 i.e. right to life and personal liberty. Finally, in 2003, in *People Union for Civil Liberties vs. Union of India*, the Supreme Court analysed right to information in the light of human rights which is requisite for making administration and governance accountable and more transparent. Therefore, from these pronouncements by the Supreme Court of India, it can be seen that the Right to Information is an essential part of the rights enshrined under Part III of the Constitution of India. These cases not only reaffirmed the faith of the citizens in the judiciary, but also led to a landmark enactment by the Government, which came to be known as the The Freedom of Information Act of 2002. But this act failed to achieve its intended purpose and was replaced in 2005 by the Right to Information Act under which it became mandatory for the government to keep records of all

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<sup>2</sup> J. N. Pandey, The Constitutional Law of India, 175 (46th ed. 2009)

their work and provide these official documents when needed. RTI is thus, crucial in ensuring proper democratic functioning of the government.

### **Objectives and Features of the Act:**

RTI is pertinent in the smooth functioning of any democracy and serves as a prerequisite for sincere and honest governance. The main objectives of the law on RTI are:

- To operationalise the fundamental right to information;
- To set up mechanisms to facilitate easy access of information to the public; to promote transparency, and
- To maintain accountability in government work; and minimizing corruption and inefficiency in public offices to ensure people's participation in democracy.<sup>3</sup>

For an enhanced understanding of the comparative analysis, it is important to keep in mind that with the emergence of the Right to Information Bill in 2005, the governance and process of RTI has been statistically governed by two main, independent bodies, which are the **Central Information Commission (CIC) and the State Information Commission (SIS)**.

### **CIS- Central Information Commission:**

The CIC is a statutory body constituted by the Central government under Section 12 of the Right to Information Act (2005), which consists of a Chief Information Commissioner, and up to 10 Central Information Commissioners. These officials are appointed on the recommendations of a committee consisting of the *Prime Minister, Leader of the Opposition in the Lok Sabha*, and a *Union Minister* appointed by the Prime Minister.

The primary functions of the Chief Information Commissioner comprise of receiving complaints, admitting appeals from aggrieved persons under the Act and imposing penalties.

### **SIS- State Information Commission:**

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<sup>3</sup> M. M. Ansari, Impact of Right to Information on Development: A Perspective on India's Recent Experiences, <http://cccindia.org.in/A+perspective.pdf>

The SIC is a statutory body constituted by the State government under Section 16 of the Right to Information Act (2005), which consists of a State Chief Information Commissioner, and up to 10 State Information Commissioners. These officials are appointed on the recommendations of a committee consisting of the *Chief Minister, Leader of the Opposition in the State Legislative Assembly*, and a *Cabinet Minister* appointed by the Chief Minister.

### **Features of the 2005 Act:**

The Right to Information Act 2005 is characterized with provisions for bridging the gap between Bureaucracy and the populace. Some key features of the act are:

- Possession of the right of every citizen to acquire information.
- The Right to information includes inspection of work, document, record and its certified copy and information in any other electronic mode.
- Any citizen, trying to acquire such information can obtain it within 30 days from the date of request in a normal case.
- In case of a matter relating to the Right of Life and Liberty of a citizen, the required information can be obtained within 48 hours from time of filing the request.
- It puts an obligation upon every public authority to provide information on written request or request by electronic means.
- The RTI also makes certain information exempt from the public by virtue of Section 8 of the Act; in matters concerning the integrity and sovereignty of the country, foreign policy, intellectual property including security and defence.
- The Act also provides for a Penalty for not providing information which amounts to Rs. 250/ per day, with the total amount not exceeding Rs. 25,000.
- It also confers special powers upon Courts for not entertaining any suits, applications or other proceedings in respect of any order made under the Act.

### **Revisions in 2019:**

The Right to Information (Amendment) Bill, 2019 changes the terms of service of the CIC and the Information Commissioners at the centre and the states. The changes have been discussed as follows:

- The terms of the Chief Information Commissioner (CIC), the State Information Commissioners (SIC) and the Information Commissioner was fixed at 5 years or until the age of 65 years, whichever is earlier. But the amendment suggests that the **Central Government may decide the term of the Commissioners for as long as it may deem fit.**
- The salary of the CIC and the Central Information Commissioners were similar to that of the Chief Economic Commissioners(CEC) and the Election Commissioners. The Chief State Information Commissioner's salary was similar to that of the Election Commissioners at the states and that of the SIC was similar to the Chief Secretary of the State. **The amendment gives power to the Central government to decide the salaries, allowances and other terms and conditions of service of the CIC and ICs.**<sup>4</sup>
- If the CIC and ICs are receiving any pensions and benefits from any previous government service, their salaries will be deducted by the amount equal to the pension that they are receiving.<sup>5</sup>

### **COMPARATIVE ANALYSIS:**

The Amendment has come out against the federal structure of our nation and the RTI Act, 2005. It has delegated excessive power to the Centre. The salaries of the SIC are taken from the Consolidated funds of the respective states and the Central Government should not have any authority over it.

The definition of the term "appropriate government" under the RTI Act read along with section 27 of the same Act gives power to the SIC to adjudicate upon the disputes relating to

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<sup>4</sup> Section 2 and section 3 of the RTI(amendment) Bill, 2019

<sup>5</sup> Section 4, RTI (Amendment) Bill, 2019

access to information or public records held by administrative authorities under the jurisdiction of their respective states.<sup>6</sup>

The Amendment has virtually taken away the autonomy and independence that the CIC, SIC and ICs enjoyed under the Act by removing stipulated and fixed salaries and allowances. Hence, the new bill gives unreasonable power at the hands of the centre and the Statements of Objects attached to the bill fails to answer how the SIC is constituted, and whose salaries are subject to the control of the Central government.

Further, Section 15(1) of the RTI act authorizes the State Government to set up the State Information Commission and Section 15(3) empowers the State Government to appoint the State Information Commissioner and vests power in the Governor to remove them on grounds of proven misbehaviour and incapacity.<sup>7</sup> The decisions of the SIC cannot be challenged before the CIC. Therefore, the federal nature of the act was crystal clear. According to the act, the centre had not authority over the appointments of the State Information Commissioners.

Under section 27(2) of the act, the appointment of SICs and issuing of rules and regulations lies with the state government. The state governments are supposed to decide the salaries, allowances and terms and conditions of the office bearers. With this amendment, there are two sets of rules which govern the information commissioners, with both the centre and the state having powers to determine the salaries.

Presently, under the provisions of the act, the state government is required to present an annual report and present it before the legislature with respect to the functioning of the SICs. The State Legislatures, based on this report, inspect the SICs and their functioning. With the amendment, the SICs are no longer accountable to the SICs as their salaries and tenure are going to be decided by the Central Government. Thus, “The new amendment bill by

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<sup>6</sup> Section 2(a) RTI Act, 2005

<sup>7</sup> Right To Information (Amendment) Bill, 2019: A Mock on the Autonomy of Administration, Indian Journal of Law and Public Policy (2019) <https://ijlpp.com/right-to-information-amendment-bill-2019-a-mock-on-the-autonomy-of-administration/> (last visited Oct 5, 2021).

empowering the Central Government with the powers of the State Government has annihilated the federal scheme of the RTI Act.”<sup>8</sup>

### THE ISSUE OF EXCESSIVE DELEGATION:

To fully understand the mechanism of excessive delegation of powers, it is pertinent to mention the concept of delegated legislation. Salmond defines delegated legislation as “that which emerges from any authority other than the sovereign power and is therefore reliant upon certain superior authority for its continuous existence and validity”. The concept of delegated legislation is no stranger to India, and has been consistently applied, questioned and relied upon by the law-making authorities to ease the burden of the Parliament. The first instance of the applicability and the discussion of delegated legislation can be traced back to the pre-independence era case of **Queen vs. Burrah, 1949** which was decided by the Privy Council. Post-Constitutional cases as that of **In Re Delhi Laws Act, 1912** and the **Gwalior Rayon** case, affirmed the power of delegated legislation that was vested with the Parliament; which was not explicitly granted but the application of which could be implied through Constitutional interpretation. In deciding the cases, the judges went on to carefully consider and peruse important aspects of delegated legislation. Even though the In Re Delhi case saw varying opinions of the seven judges that presided over the case; each of the opinions were pertinent in determining whether the Parliament could delegate its powers to a subordinate authority. It was concluded that delegating powers were permitted as far this delegation does not exceed a permissible limit or in any way undermines or supersedes the parent authority. The case not only construed the grey area in the legislation regarding delegation of powers but also set permissible limits for such a delegation to be deemed valid. When this permissible limits of delegating powers are transgressed, it is deemed as excessive delegation. The question of determining the validity of delegation of powers and their permissible limit, was affirmed by the In Re Delhi Laws Act case, where there were primarily two important viewpoints of the judges in this aspect. While one opinion was that the delegation should be done only in a way where the supreme authority would possess the power to withdraw the delegation in case of an overlap; and the second was that the supreme authority could

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<sup>8</sup> Ibid.



delegate only ancillary and not essential legislative functions. Another takeaway from the case was that the judges opined that the delegating authority should lay down the standard or policy and the execution of the same should be left in the hands of the delegate; provided there is no abdication of powers by the Legislature.

With respect to the RTI Amendment Act of 2019, the Central Government has been granted excessive powers to decide not only the term of the CIS and SIS officials, but also determine their salaries, allowances and conditions for service. The determination of the previously mentioned has been mandated by the amendment but what was failed to be considered was that in determining the above, there was no standard, procedure or policy provided by the Legislature. There was no mention of any guideline or a procedure for the executive to adhere to while framing the rules and conditions for the officials; which can also be deemed as an essential function of the Parliament. Endowing the Central Government with such erroneous powers, is not only an instance of excessive delegation but can also be challenged to be in violation of the Fundamental Rights enshrined under the Constitution. The grant of such wide discretionary powers to the Central Government be misused by the Government in power to serve their own vested interests, and is also a direct threat to the independence of the RTI officials and the whole objective behind the existence of the Commission. The RTI was formed to provide the general public to seek information and inquire into the workings of the Government to ensure transparency and it is clear how the amendment of such provisions would indirectly defeat its intended purpose.

The Amendment not only suffers from the loom of excessive delegation but also threatens the very doctrine of separation of powers. As previously opined by the judges in a number of landmark cases, Separation of Powers has not been explicitly mentioned in the Constitution but is implied under the Basic Structure Doctrine. It is important to mention that the Information Commission has been deemed as a judicial tribunal performing quasi-judicial functions.<sup>9</sup> Delegating the excessive authority of determining the salary, allowances and terms of service by the Legislature to the Central Government can be seen as an overlapping function fully intending to interfere with the independence of a judicial body. This will not

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<sup>9</sup> Namit Sharma vs. Union of India, (2013) 1 SCC 745

only be violating the Doctrine of Separation of Powers but also undermine the sanctity of a judicial body by placing them indirectly under the manoeuvre of the Executive.

## **CONCLUSION:**

The Right to Information Act, 2005 is a historic act in India, passed by the parliament on 15th June, 2005 and coming into effect on 12th October 2005, replacing the erstwhile Freedom of Information Act, 2002. Under the provisions of the Act, any citizen of India may request information from any “public authority” (any Government Body or “instrumentality of State”) which is required to reply expeditiously or within a period of thirty days.<sup>10</sup> The Act also requires every public authority to computerise their records for wider dissemination and to proactively certain categories of information so that citizens need minimum recourse to request information formally. The Right to Information Act is a monumental development in safeguarding access to information for the general public. It works as a unique piece of legislation that puts a common man on the same footing as a member of the government; while maintaining accountability and transparency in the working of the executive. However, the act is not free of shortcomings; including its most recent amendment, which can be seen as limiting the citizens right to access information. The 2019 Amendment of the act limits the neutrality and independence of the information commissioners which could lead to allegiance to the government in power and bias; and can be seen as a step towards diminishing the spirit of the Act. The recent amendment also places too much power in the hands of the government which could have adverse effects than intended, and weaken the structure behind the original idea of RTI. The amendment not only suffers from the loom of excessive delegation by the Legislature to the executive but also threatens the Doctrine of Separation of Powers which forms the basic structure of the Indian Constitution. Presently, RTI in India is in an indecisive state of affairs, with the amendments by the government to protect itself, and the right of the people to access information being jeopardized. Although it is correct, that through RTI, a lot of citizens have resolved their grievances. In a number of landmark judgements, the Supreme Court of India has highlighted the importance of the Right to Information and even went as far as ruling that the office of the Chief Justice of India would

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<sup>10</sup> Central Public Information Officer vs. Subhash Chandra Agarwal, AIR 2010 Delhi 159

come under the purview of RTI; Declaring that "transparency doesn't undermine judicial independence". Even though the RTI Act itself, is a historic piece of legislation, the 2019 Amendment has diluted its spirit as it endows the Executive with erroneous discretionary power and continues to suffer from the vices of excessive delegation and violating the doctrinal separation of powers.

