

Note on the Right to Information (Amendment) Bill, 2019

On July 19, 2019, the government introduced the Right to Information (Amendment) Bill, 2019 in the Lok Sabha. The amendment bill was brought to Lok Sabha without any public debate on the contents of the bill. The text of the amendment bill was publicly known only on July 18, 2019, when it was circulated to MPs of Lok Sabha on the eve of its introduction. During the debate in the Lok Sabha, MPs from various parties objected to the dilution of the law and many of them asked for the bill to be referred to a Standing Committee. However, their request was ignored and the bill was passed by the Lok Sabha on July 22, 2019.

The proposed amendments are regressive and are aimed at undermining the independence of information commissions, thereby diluting India's strongest and most widely used law for transparency.

Instead of taking steps to ensure proper implementation of the Right to Information Act, 2005 (RTI Act, 2005), the government has moved the amendment bill in Parliament which seeks to dilute peoples' fundamental right to information. In fact, since 2014 the government has repeatedly tried to dilute the RTI Act, first through proposed changes to rules in 2017 and then through proposed amendments to the Act in 2018. The government has also failed to fill vacancies in the Central Information Commission (CIC) in a timely manner leading to huge backlogs and delays in disposal of appeals/complaints. Since 2014, no appointments to the CIC have been made unless the matter was agitated in the courts. Currently, 4 posts of information commissioners are lying vacant in the Central Information Commission while nearly 32,000 cases are pending.

The RTI (Amendment) Bill, 2019 is mentioned on the list of business of Rajya Sabha for consideration and passage on July 24, 2019. As the bill severely dilutes the provisions of the RTI Act, 2005 and there has been no public consultation on it, we believe that the **RTI Amendment Bill should be referred to a Select Committee**. Referring the bill to the Committee will enable detailed clause-by-clause deliberations on the bill and will also provide a chance for citizens to present their views on it.

The note below highlights the key problems with the RTI (Amendment) Bill, 2019.

1. Removing statutory protection of tenure, salaries, allowances and conditions of service of Chief and Information Commissioners of Central Information Commission (Clause 2 of the Amendment Bill read with Clause 4)

Clause 2 of the Amendment Bill states:

2. In the Right to Information Act, 2005 (hereinafter referred to as the principal Act), in section 13, — (a) in sub-section (1), for the words "for a term of five years from the date on which he enters upon his office", the words "for such term as may be prescribed by the Central Government" shall be substituted;

(b) in sub-section (2), for the words "for a term of five years from the date on which he enters upon his office", the words "for such term as may be prescribed by the Central Government" shall be substituted;

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

"(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:

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force."

Critique

Section 13(1) and 13(2) of the RTI Act, 2005 fix the term of the office of the Chief Information Commissioner and other information commissioners of the CIC at five years, subject to the age limit of sixty-five years. Section 13(5) of the RTI Act, 2005 states that the salaries and allowances payable to, and other terms and conditions of service of, the Chief and the Information Commissioners of the CIC shall be the same as that of the Chief Election Commissioner and Election Commissioners respectively.

Clause 2 of the Amendment Bill seeks to modify these sections to empower the central government to prescribe rules to decide the tenure, salaries and allowances payable to, and other terms and conditions of service of, the Chief and the Information Commissioners of the CIC.

Information commissions are the final authorities to adjudicate on claims of access to information which is a deemed fundamental right under the Constitution. Statutory guarantee of tenure and status is crucial to ensure that the information commissioners function independently and without political interference.

The fixed tenure and high status conferred on Commissioners under the RTI Act, 2005 empower them to carry out their functions autonomously, without fear or favour, and direct even the highest offices to comply with the provisions of the law. The salaries of the Chief and Information Commissioners of the CIC are pegged at those of the Chief and other election commissioners, who are paid a salary equal to that of a judge of the Supreme Court, which is decided by Parliament. **Enabling the central government to determine the tenure and salaries of the Commissioners will fundamentally weaken the institution of the Information Commissions and will effectively make them function like 'caged parrots'. Commissioners will be wary of passing directions to disclose information that the central government does not wish to provide.**

Contrary to the charge made by the minister that the RTI Act was clumsily drafted in haste, the issue of the status to be accorded to information commissioners was extensively discussed during the formulation of the law, including in the Standing Committee which examined the RTI Act (then known as the RTI Bill, 2004). The original proposal pegged the salaries and allowances of the central chief information commissioner at the level of a secretary to the government of India, and of the information commissioners at the level of a joint secretary or an additional secretary to the government of India. However, the Standing Committee opined, *"Information Commission is an important creation under the Act which will execute the laudable scheme of the legislation ...It should, therefore, be ensured that it functions with utmost independence and autonomy."* The committee recommended that to achieve this objective, it would be desirable to confer on the central chief information commissioner and information commissioners, status of the chief election commissioner and election commissioners respectively. The committee's recommendation to elevate the status of information commissioners was accepted and passed by Parliament in 2005 unanimously through an extensive process of public and Parliamentary consultation.

The statement of objects and reasons appended to the RTI Amendment Bill, 2019 states that the amendments are necessary as treating information commissioners on par with election commissioners is incorrect, as the election commission is a constitutional body while information commissions are statutory bodies. It further states that as the mandate of Election Commission of India and Central and State Information Commissions are different, hence, their status and service conditions need to be rationalised accordingly. However, this contention is inherently flawed. The principle of according a high stature, and protecting the terms of service by equating it to functionaries of constitutional bodies, is routinely adopted for independent statutory oversight bodies, including the Central Vigilance Commission and the Lokpal. In the last 14 years of the implementation of the RTI Act, this provision has not hindered the functioning of the institutional framework of the country. Therefore, there is no rationale for amending the provision.

During the introduction of the Amendment Bill in Lok Sabha on January 19, 2019, another justification offered by the Minister was that the amendments were being brought to address an anomaly in the status conferred on information commissioners. He said that pegging the salaries of information commissioners at par with Supreme Court judges is problematic since the orders of commissioners are subject to appeals before the High Courts. This is factually incorrect, given Section 23 of the RTI Act which states that, *“No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.”*

Challenge to the commissioner’s orders can only be made under the writ jurisdiction of the courts. In the last 14 years of the implementation of the RTI Act, hundreds of decisions of information commissions have been challenged in high courts. There is no evidence to suggest that the status of information commissioners being equivalent to that of judges of the Supreme Court have hindered the ability of high courts to examine, or even set aside, decisions of information commissions. The status of a functionary or official does not bar their decisions from being challenged under writ jurisdiction in the high court or the Supreme Court.

In February 2019, the Supreme Court gave a significant judgment on timely and transparent appointments of information commissioners (judgement dated 15.2.2019 in Anjali Bhardwaj & Ors Vs Union of India & Ors, Writ Petition (Civil) 436). The court discussed various provisions of the RTI Act related to information commissions, including section 13(5) and at no point did it opine that equating terms and conditions of information commissioners with those of election commissioners created a legal hindrance. In fact, the court directed that the government must specify the terms and conditions of appointment in the advertisement when inviting applications to the post of information commissioners. The relevant extract is given below:

“67(ii) Insofar as terms and conditions of appointment are concerned, no doubt, Section 13(5) of RTI Act states that the CIC and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well.”

It is important to note that the statement of objects and reasons appended to the RTI Amendment Bill provides **no rationale** for doing away with the statutorily defined term of office of the Chief and Information Commissioners of the CIC and to allow for it to be prescribed by the Central government.

2. Removing statutory protection of tenure, salaries, allowances and conditions of service of Chief and Information Commissioners of State Information Commission (Clause 3 of the Amendment Bill read with Clause 4)

Clause 3 of the RTI Amendment Bill, 2019 states:

3. In section 16 of the principal Act, —

(a) in sub-section (1), for the words “for a term of five years from the date on which he enters upon his office”, the words “for such term as may be prescribed by the Central Government” shall be substituted;

(b) in sub-section (2), for the words “for a term of five years from the date on which he enters upon his office”, the words “for such term as may be prescribed by the Central Government” shall be substituted;

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) 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:

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force."

Critique

As per Section 16(1) and 16(2) of the RTI Act, 2005, the State Chief Information Commissioners and all State Information Commissioners, shall hold office for a term of five years subject to attaining the age of sixty-five years. Section 16(5) provides that the salaries and allowances, and other terms and conditions of service, of the State Chief Information Commissioners and State Information Commissioners shall be the same as that of the Election Commissioner and the Chief Secretary to the State Government, respectively.

Clause 3 of the Amendment Bill seeks to modify these sections to provide that the tenure, salaries and allowances payable to, and other terms and conditions of service of, the Chief and the Information Commissioners of the State Information Commissions (SICs) shall be prescribed by the central government through rules.

As in the case of Central Information Commissioners, statutory guarantee of tenure and status is crucial to ensure that the state information commissioners function independently and without political interference. The Standing Committee which examined the RTI Act (then known as the RTI Bill, 2004) recommended to confer on the state chief information commissioner and state information commissioners, status of the Election Commissioner and the Chief Secretary to the State Government, respectively. The committee's recommendation was accepted and passed by parliament unanimously through an extensive process of public and Parliamentary consultation.

Apart from undermining the independence of SICs, the Central government usurping for itself the power to decide even the tenure, salaries and allowances of the Chief and information commissioners of the SICs, **raises key issues of federalism**. Under the RTI Act, State Governments are responsible for constituting the State Information Commission. The chief and information commissioners of the SICs are appointed by the Governor based on the recommendation of a committee consisting of the Chief Minister, Leader of Opposition of the Legislative Assembly and a Cabinet Minister of that state. Further, commissioners of SICs can be removed or suspended from office only by the Governor. Each state government is also responsible for providing officers and employees for commissioners in the SIC and are empowered to prescribe the salaries and allowances and the terms and conditions of service of the officers and employees. Therefore, the Central government taking upon itself the power to decide salaries of commissioners of SICs is a clear attempt to exercise control on state information commissions and militates against the spirit of federalism.

The RTI Amendment Bill fails to provide **any** rationale for removing statutory guarantee of salaries and allowances of information commissioners of SIC which are the same as that of a Chief Secretary to the State Government. The rationale provided in the statement of objects and reasons appended to the Amendment Bill limits itself to drawing a distinction between the mandate of Election Commission and information commissions and the fact that the former is a constitutional authority while the latter is a statutory one. However, this is not applicable in the case of state information commissioners, as their salaries and terms of service are not linked to election commissioners.

As in the case of the Central Information Commissioners, it is important to note that the statement of objects and reasons appended to the RTI Amendment Bill provides **no rationale** for doing away with the statutorily defined term of office of State Chief and other Information Commissioners and to allow for it to be prescribed by the Central government.