

# THE TREMOR OF UNWELCOME AMENDMENTS TO THE RTI ACT

Relevant for: Developmental Issues | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

“Amendments” have haunted the Right to Information (RTI) community ever since the RTI Act came into effect almost 14 years ago. Rarely has a law been so stoutly defended by activists. It is not possible to pass a perfect law. But it was a popular opinion strongly held by most RTI activists that a demand for progressive amendments could be used as a smokescreen by the establishment to usher in regressive changes.

Nevertheless, the sword of Damocles of regressive amendments has hung over the RTI with successive governments. Amendments have been proposed since 2006, just six months after the law was implemented and many times thereafter. Peoples’ campaigns, through reasoned protest and popular appeal, have managed to have them withdrawn.

The proposed amendments tabled in Parliament on July 19, 2019 have been in the offing for some time now. In the form of the Right to Information (Amendment) Bill, 2019, they seek to amend Sections 13, 16, and 27 of the RTI Act which carefully links, and thereby equates, the status of the Central Information Commissioners (CICs) with the Election Commissioners and the State Information Commissioners with the Chief Secretary in the States, so that they can function in an independent and effective manner. The deliberate dismantling of this architecture empowers the Central government to unilaterally decide the tenure, salary, allowances and other terms of service of Information Commissioners, both at the Centre and the States. Introducing the Bill in the Lok Sabha, the Minister of State for Personnel, Public Grievances and Pensions, Jitendra Singh, asserted that this was a benevolent and minor mechanism of rule-making rather than a basic amendment to the RTI law.

Why is there unseemly haste and determination to amend the law? Some feel that it is because the RTI helped with the cross-verification of the affidavits of powerful electoral candidates with official documents and certain Information Commissioners having ruled in favour of disclosure. It is unlikely to be a set of instances but more the fact that the RTI is a constant challenge to the misuse of power. In a country where the rule of law hangs by a slender thread and corruption and the arbitrary use of power is a daily norm, the RTI has resulted in a fundamental shift — empowering a citizen’s access to power and decision-making. It has been a lifeline for many of the 40 to 60 lakh ordinary users, many of them for survival. It has also been a threat to arbitrariness, privilege, and corrupt governance. More than 80 RTI users have been murdered because their courage and determination using the RTI was a challenge to unaccountable power.

The RTI has been used brilliantly and persistently to ask a million questions across the spectrum — from the village ration shop, the Reserve Bank of India, the Finance Ministry, on demonetisation, non-performing assets, the Rafale fighter aircraft deal, electoral bonds, unemployment figures, the appointment of the Central Vigilance Commissioner (CVC), Election Commissioners, and the (non)-appointment of the Information Commissioners themselves. The information related to decision-making at the highest level has in most cases eventually been accessed because of the independence and high status of the Information Commission. That is what the government is trying to amend.

The RTI movement has struggled to access information and through it, a share of governance

and democratic power. The Indian RTI law has been a breakthrough in creating mechanisms and platforms for the practice of continual public vigilance that are fundamental to democratic citizenship. The mostly unequal struggle to extract information from vested interests in government needed an institutional and legal mechanism which would not only be independent but also function with a transparency mandate and be empowered to over-ride the traditional structures of secrecy and exclusive control. An independent Information Commission which is the highest authority on information along with the powers to penalise errant officials has been a cornerstone of India's celebrated RTI legislation.

The task of the Information Commission is therefore different but no less important than that of the Election Commission of India. Independent structures set up to regulate and monitor the government are vital to a democratic state committed to deliver justice and constitutional guarantees. The separation of powers is a concept which underscores this independence and is vital to our democratic checks and balances. When power is centralised and the freedom of expression threatened no matter what the context, democracy is definitely in peril. That is perhaps why these set of amendments have to be understood as a deliberate architectural change to affect, in a regressive manner, power equations, the freedom of expression and democracy. The Commission which is vested by law with status, independence and authority, will now function like a department of the Central government, and be subject to the same hierarchy and demand for obeisance. The decision of the government to usurp the powers to set the terms and conditions of service and salaries of an independent body must be understood as an obvious attempt to weaken the independence and authority granted by the law.

Apart from Section 13 which deals with the terms and conditions for the Central information Commission, in amending Section 16, the Central government will also control through rules, the terms and conditions of appointment of Commissioners in the States. This is an assault on the idea of federalism.

All the provisions related to appointment were carefully examined by a parliamentary standing committee and the law was passed unanimously. It has been acknowledged that one of the most important structural constituents of any independent oversight institution, i.e. the CVC, the Chief Election Commission (CEC), the Lokpal, and the CIC is a basic guarantee of tenure. In the case of the Information Commissioners they are appointed for five years subject to the age limit of 65 years. It was on the recommendation of the parliamentary standing committee that the Information Commissioner and CIC were made on a par with the Election Commissioner and the CEC, respectively. The manner in which the amendments are being pushed through without any citizen consultation, bypassing examination by the standing committee demonstrates the desperation to pass the amendments without even proper parliamentary scrutiny. The mandatory pre-legislative consultative policy of the government has been ignored. Previous governments eventually introduced a measure of public consultation before proceeding with the amendments. In fact, both the United Progressive Alliance and the National Democratic Alliance put out proposed amendments to the RTI rules on the website for public deliberation. But the present regime seems determined to pass these amendments to the law itself without any consultation.

The reason is not far to seek. If the amendments are discussed by citizens and RTI activists in the public domain, it would be apparent that these amendments fundamentally weaken an important part of the RTI architecture. They violate the constitutional principles of federalism, undermine the independence of Information Commissions, and thereby significantly dilute the widely used framework for transparency in India.

The RTI community is worried. But the sword of Damocles is double-edged. It is an idiom originally used to define the hidden insecurity of an autocrat. Questions are threats to

unaccountable power. The RTI has unshackled millions of users who will continue to use this democratic right creatively and to dismantle exclusive power. The RTI has been and will be used to withstand attacks on itself and strengthen the movement for transparency and accountability in India. Eventually, the Narendra Modi government will realise that while it might be able to amend a law, it cannot stop a movement.

*Aruna Roy and Nikhil Dey are social activists who work with the Mazdoor Kisan Shakti Sangathan and the National Campaign for People's Right to Information*

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