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“ROLE OF RIGHT OF INFORMATION AND TRANSPARENCY IN
GOVERNMENT”

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ABSTRACT

India has been the largest democracy and with the passing of the RTI Act, 2005, it has also promoted transparency and accountability. The RTI Act was developed through various judicial decisions and eventually got recognized as a Fundamental Right under Article 19(1)(a) of the Indian Constitution. Implemented with the concept of Good Governance, the Act promises to create a transparent form of governance by allowing its citizens access to the information regarding the working of the Government so that there must be a 'check and balance' of the power given to its citizens. Transparency is an essential part of Good Governance. In a country like India, the Government should be accountable to its citizen and disclose the information required by them on request. Without access to information, citizens cannot exercise their rights adequately. Hence, in this research paper, the authors focus on the role of transparency in Government and study the direct link between RTI, transparency, corruption and Government. Along with these, they also discuss the limitations and the issues which are deteriorating the value of RTI Act.

KEYWORDS: Right to Information, Transparency, Government, Accountability, Good Governance, Corruption

INTRODUCTION

RTI is not only a fundamental right but also basic human and democratic right. People are an integral part of a country. Their faith in the system should be of utmost importance. Once a Ghanaian diplomat named Kofi Annan said, "Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family". Information makes the human being aware, makes them wise so that they can cope with the changing world. Transparency, responsiveness, accountability and legitimacy form the four pillars of good governance. Hence, if any law is created by the Parliament, it should be allowed to be scrutinized publicly. To make this possible, the Parliament of India passed the Right to Information Act in 2002 but over time the Act was revoked as a barrier to the accomplishment of the goal and the RTI Bill passed in 2004 by both Houses of Parliament.

In 2005, the RTI Act came into force. It lent a voice to every ordinary citizen of India. It gave the common people the power to seek information, the power to question, examine, and review the acts passed by the Parliament. Every act passed, every amendment made, people have the right to have basic knowledge about it. Right to Information bounds everything in it. Imagine a country where the Right to Information has not been recognized. There will be chaos in society. People will not be able to live a dignified life, there will be a rise in the level of corruption. If a law has been passed which makes certain changes in the tax system and if the taxpayers are not aware of those changes and if they do not the freedom to ask questions regarding the same, it will harm them. Maintaining secrecy at the Governmental level will only disrupt democracy. Thus, the RTI Act, 2005 implemented to ensure such power is not misused. However, when the power is centralized, the freedom of speech and expression is taken away. RTI(Amendment) Bill, 2019 has been scrutinized by many RTI activist. In the need of the hour, maintaining transparency in Government is important.

BACKGROUND AND ORIGIN OF RTI

Right to Information is an implied fundamental right guaranteed under Article 19(1)(a) of the Constitution, that is Right to freedom of speech and expression. It gives citizens the right to access information from public authorities. Without access to relevant information, it is difficult for a citizen to participate in any debate concerning the political, social, or economic issues of the country.

LAW ET JUSTICIA LAW REVIEW
VOLUME 1 ISSUE 2

The progress of a nation depends on the free flow of the information within the Government and its citizen¹. If we go through the background of the right to information, there are various landmark events and decisions taken which led RTI to be recognized as a fundamental right. Thus, the concept of RTI first arose in the 1970s by the interpretation done by the Judiciary. In the case of *Bennett Coleman Vs. Union of India*² in 1973, it was the first time, right to know was realized as a fundamental right and the Supreme Court also opined Right to Know is included under Article 19(1)(a). This was the first case where Right to Know was considered a fundamental right. Where the society has chosen for themselves a democratic form of government, the citizens have every right to know what their government is doing. Justice Mathew, in the 1975 case of the UP state Vs. Raj Narain³, correctly claimed that in a democracy there should be not so many secrets and all public actors accountable for their actions. It was also claimed that freedom of speech derives the right to information.

It was further upheld by the Apex Court that the right to access information has been the base of the democratic process and in the case of *S. P. Gupta Vs. Union of India*⁴ in 1982, Justice Bhagwati stated that an open and effective government requires accountability and the right to access information by the public about Government performance. The notion of an open government, according to Article 19(1)(a) of the constitution, was a clear deviation from the right to information. Following in the year 1985, an intervention application was filed by the NGOs following the Bhopal Gas Tragedy in the Supreme Court and asking for access to information regarding environmental hazards. In fact, under free speech and expression, the High Court again reaffirmed that the RTI is a constitutional right.

During the period where people used to knock at the doors of the courts to enforce and exercise their rights, one remarkable movement took place in the year 1990. An Indian political organization formed whose name was Mazdoor Kisan Shakti Sangathan(MKSS) in Rajasthan which launched a movement demanding the village level information. This movement is best known for access to RTI which grew out of the nationwide demand for minimum wages for workers. The most distinguishing feature of this movement was it concerned for the struggle of disadvantaged rural people against corruption.⁵ After this case, in 1996, another movement

¹ Anshu Jain, *GOOD GOVERNANCE AND RIGHT TO INFORMATION: A PERSPECTIVE*, 54 J. INDIAN LAW INST. 506–519 (2012).

² 1973 AIR 106

³ *State of Uttar Pradesh v. Raj Narain*, 3 SCR (1975).

⁴ AIR 1982 SC 146

⁵ Sahina Mumtaz Laskar, *IMPORTANCE OF RIGHT TO INFORMATION FOR GOOD GOVERNANCE IN INDIA* 14 (2016).

was formed on behalf of the NPRI, a national campaign to draught an RTI bill and forwarded it to the Government with the help of the Indian Press Council.

Then in the year 2000, a case was filed in the Supreme Court which demanded the institutionalization of RTI and in 2002, the Supreme Court gives its ultimatum to the Government regarding RTI. Right of Information Act was passed in both, Lok Sabha and Rajya Sabha. It got the assent of the President but by the course of time, the Act did not fulfil the desire of the citizens in the field of right to access information and hence it was felt that the Act needed to be more participatory and progressive.⁶ In 2004 National elections were announced and the Congress Party included in their manifesto the strengthening of the RTI Act. As a part of the UPA coalition government, Congress came into power, and under the leadership of Mrs Sonia Gandhi, a council was formed, namely, the National Advisory Council(NAC). NAC gave its recommendations to the Government and finally RTI bill was introduced in Parliament. The Bill was considered by the Committees and the Group of Ministers and in June 2005 the RTI Bill got the President's assent and in October 2005 the Act came into force.

ESSENTIAL FEATURES OF RTI ACT, 2005

When the Act came into force on 12 October 2005, its application extended to the entire of India except for the State of Jammu and Kashmir, but with the revocation of Article 370 of the Constitution, it is now also applicable to the later State. This Act turned out to be advantageous by holding the Government accountable and promoting transparency. There is a clear-cut connection between RTI, transparency, and Government. Various features put light on this link. They are: -

- It allows people the right to request information from public bodies, such as government agencies, associations, etc.
- Non-governmental organizations(NGOs) can be brought under the ambit of the Act,
- Information, as defined under the Act, includes documents, press release, records, emails, etc.,
- No public authority can deny the information sought, they are under an obligation to provide the information,

⁶ Dr. Ritu Salaria, *ISSUES AND CONSTRAINTS IN IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT, 2005*, BHARATI LAW REV. 35–48 (2014).

LAW ET JUSTICIA LAW REVIEW
VOLUME 1 ISSUE 2

- It also refers to the inspection of the record, jobs, paper and approved copies of the paper, etc.,
- The information sought is free of cost when it comes to the citizens who are below the poverty line but for the citizens above the poverty line, fees have been prescribed for them in the Act,
- As prescribed under the Act, an ample amount of information must be provided in public by the public authorities and they cannot ask reasons for seeking such information,
- This Act provides the establishment of the Central Information Commission(CIC) and State Information Commission(SIC),
- In normal cases, an applicant can obtain the information within 30 days but in some exceptional cases like when the matter is about life or liberty, the applicant can get information in 48 hours,
- If there is any case where the public authorities failed to provide the sought information, there is a penalty of Rs. 250/- per day which may extend to a total amount of Rs. 25,000/- and not more than that.
- The jurisdiction under Article 32 and Article 226 does not affect the Act, therefore, courts are barred from entertaining suits or applications under the Act.

However, as rightly said by Sir John Dalberg Acton, "Power tends to corrupt, absolute power corrupts absolutely."⁷ Absolute fundamental or individual rights cannot exist in a modern state. If the restrictions are not imposed, there may be an excess of use of power. There are certain sets of people who use this power arbitrarily and in wrongful means. There must be a harmonious balance between the people and the power they use. There are certain areas of Public Interest which demand some level of secrecy and hence it was felt it should be kept out of the scope of the RTI Act.

REASONABLE RESTRICTIONS AND FACTORS AFFECTING RTI

The power conferred to the citizens must have certain restrictions otherwise there is a conflict of interest. Thus, reasonable restrictions are imposed on the use of this Right to Access Information. It is subjected to the restrictions which are imposed under Article 19(2) as

⁷ Gary Martin, "*Absolute power corrupts absolutely*" - the meaning and origin of this phrase, PHRASEFINDER , <https://www.phrases.org.uk/meanings/absolute-power-corrupts-absolutely.html>.

well as under the Rules of Right to Information Act, 2005. According to Article 19(2), the privilege is limited to the protection of the dignity and reputation of India, to the secrecy of information pertaining to public order, to the welfare of the State, to a good relationship with foreign Nations, to public order, to fairness and morality, or contempt of court and defamation or incitement to an offence.

Even the Act itself prescribes certain restriction. There are 18 Intelligence Organizations established by the Central Government and are an exception to the power conferred. Apart from this Section 8 of the RTI Act states about non-disclosure of certain information

There are also certain factors which affect the free flow of information which adversely affect RTI. They are: -

- i) A legal framework like the Indian Evidence Act, 1872, Official Secrets Act, 1923, Central Civil Service Conduct Rule, 1964, etc.
- ii) Secrecy and arrogance within the system,
- iii) Low level of awareness amongst the citizen of India.

These reasonable restrictions were imposed to maintain the balance and check the power is being exercised adequately.

RECENT CASES RELATING TO RTI

Right to Information which has been derived from the Freedom of Speech and Expression, might not be absolute, but it strongly condemns the secrecy of the information which involves the private individual. It was stated in the case of *Shyamlal Yadav Vs. Department of Personnel and Training*⁸, that the property statements of a private individual serving in Government become a part of the Government record, therefore cannot be treated as confidential information and thus made it appropriate to disclose information.

Over the past few years, the Government's action has weakened the RTI regime. There is underlay delay in filling up the vacancies in the Central Information Commission(CIC). To this Anjali Bhardwaj, an RTI transparency activist filed an RTI request which was denied by the Government. Anjali Bhardwaj stated the RTI Act itself makes Government making information

⁸ (CIC/WB/A/2009/000669, 17/6/2009).

available pro-actively but she should be allowed to access information that she needs, not just the one Government want to publicize.⁹

Corruption was the government's root concern. In a country where the legislature is comprised of political parties, questions arise whether or not the political parties are controlled by the Act. An RTI proposal was made for information about the political parties in 2010 by the Organization of Electoral Reforms. However, the political parties did not release any details. A petition was then lodged with the CIC by ADR and activist Subhash Agarwal. In 2013, a noteworthy judgement was delivered by the CIC bench claiming that all six parties will fall under Section-2(h) of the RTI Act, 2005.¹⁰

Before the enactment of the Act, the political parties used the take the advantage of this and prevented the public from seeking the information about Government functionaries. It adversely affected the free flow of information. Maintaining secrecy in the Government level is giving rise to corruption. Generally, the authorities deny the sought information with the excuse that the files are missing or not traceable. Such excuse might indicate they are deliberately trying to destroy the information to cover corruption or immoral practices of public servants which is punishable under IPC, 1860. Therefore, in the case of *Shahzad Singh v Department of Posts*,¹¹ the CIC stated that repeated reference to 'missing files' as an excuse to refuse to give information is hazardous to transparency and accountability and the main reason for the violation of RTI Act. One survey suggests there are millions of cases where the information has been denied by the authorities on this ground for the past 12 years. If the Government authorities are not disclosing the information to the public domain then they are going against the objective of the RTI Act, 2005.

ROLE OF RTI AND TRANSPARENCY OF GOVERNMENT

The RTI Act enables transparency and accountability in administration which empowers the general public with the right to know and also helps in good governance. In public institutions, good governance, to preserve free human rights of abuse and corruption and in a due manner, is necessary for the conduct and management of public relations and capital.

⁹ Govt's transparency eliminating need to file RTI: Amit Shah - The Hindu, , <https://www.thehindu.com/news/national/govts-transparency-reducing-need-for-filing-rti-amit-shah/article29664744.ece/amp/>.

¹⁰ Impact of RTI on Corruption in India: A Critical Analysis, <https://www.latestlaws.com/articles/impact-of-rti-on-corruption-in-india-a-critical-analysis/>.

¹¹(CIC/POSTS/A/2016/299355).

Strong governance thus relies on the installation of constructive management virtues and the absence of dysfunctional vices.¹² Good governance makes the government operate in an administrative structure that is effective, trustworthy and legitimate and friendly to residents, value-oriented, caring and sharing people. The different roles that Right to Information plays in the development of societal, governmental and administrative level.

EMPOWERMENT OF PEOPLE

Everyone on the street is destined to fight corruption in nearly all facets of everyday life and work hopelessly. The powerful institutional regulation of corruption will be if the person has the freedom to take the initiative and collect information from the state and implement transparency and accountability.¹³

Article 19 (1)(a) empowers us with the Freedom of Right to speech and expression which already gives us the power of RTI. But it is not definitive. It doesn't specifically define the use of RTI which has made it difficult for people to demand their rights. One straightforward response to this journey particle is that despite Constitutional Provisions, which ensure key rights, we have not possessed the capacity to make a culture and atmosphere where estimations of opportunity, rights and a vote based lifestyle are regarded.¹⁴ So the introduction of RTI Act has been a big step for the particular right exclusively. Now people can question any discrepancies that they notice in the working of any Governmental or public institutions. The Act makes the Government bound to answer to the people unless and until it comes under the exceptions.

Right to information is the power assigned not just to the working class questioning about administrative actions but also the general public. The best example of this is the Mazdoor Kisan Shakti Sangathan's (MKSS) protest in 1996. When the working class came to know about the corruption in the Rajasthan Government they sat in a forty-day protest to demand their Right to Information. They were poor and were demanding for information instead of food and shelter. This case is known for the fight of people in the grass-root level demanding their rights to information. This led to an article being written with the slogan "We will know, we will live" which became the slogan for the historic RTI movement. In

¹² J.P. Arya, *Transparency and Accountability in Governance: A way Forward to "New India"*, 9 CPJLJ 29 (2019).

¹³ Aishwarya Deb & Prithwish Roy Chowdhury, *A Decade of "The Right to Information Act, 2005" - Critical Exploration of the Scope and Impact of the Act*, 6 CNLULJ 200 (2016).

¹⁴ RTI as tool to empower the citizen: Critical study in Indian perspective, Vikrant Choudhary , Shashi Kumar Ojha

consequence, the value of the right to know as a way of improving transparency and responsibility as well as inspiring vulnerable people was given greater emphasis.¹⁵

PREVENTION OF CORRUPTION

Corruption is the use of public authorities for private purposes. Public leaders, composed of both the Executive and the bureaucracies, have an unusual role in performing corruption due to their public office. The trust between the people and the Government loses its value when there is corruption. The jobs assigned to the public servants are not done the way it should be. As a result, the social budget of the government has no valuable benefit, for example, teachers do not educate, physicians, nurses don't visit health centres, ration cards don't collect subsidised grains for food and therefore subsidies for subsistence are withheld and the jobs offered to the poor who have earnings assistance are not given. In doing so, poverty is sustained and the vulnerable are affected.¹⁶

So the RTI Act, 2005 gives the power to the citizen to extract information from the Government and question the activities not performed by them. For example, road or bridges constructions are happening now and then. We can now inquire which raw material they use for the construction. We see many a time the newly made roads are destroyed and back to their original condition after one season. The bridges collapse and cause accidents and deaths. The Government must utilize the proper raw materials but when they fail to do so, we can check on them. We can ask for samples, maps of construction, the work in progress etc. These can reveal the actual materials used and the state funds which were embezzled can make the assigned officers accountable for their actions.

There have been many cases where RTI has helped unveil the corruption or scam going behind the face of social development and public work. The most prominent being the Adarsh Housing Society Scam.¹⁷ The Adarsh Housing Society was a 31-storey building where 6 floors were to be used for the residence of war widows and the country's defence ministry. But a connection between the Military officials and politicians led to the flats being handed out to those politicians or bureaucrats or their relatives. This was brought forward when two activists filed an RTI application inquiring about the flats distribution. This led to much more enquiry and it was also found that the construction violated environmental norms. The aftermath was the then Chief Minister of Maharashtra, Ashok Chavan, resigning from his position.

¹⁵ COMMONWEALTH HUMAN RIGHTS INITIATIVE,
<https://humanrightsinitiative.org/programs/ai/rti/india/states/rajasthan.htm>.

¹⁶ Bharat Agrawal, *Impact of RTI Act on Corruption* 9 (2019)

¹⁷ *Adarsh Co-op. Housing Society Ltd. v. Union of India*, Writ Petition No. 369 of 2011 dated 29.04.2016

Another success story was making Indian Institute of Management, Bangalore reveal their admission criteria to the public after a visually impaired student, Vaishnavi Kasturi failed to get admission even after scoring high in the entrance examination. She filed an RTI in 2007 and as a result, IIM had to reveal its admission since then.

The factors which promote corruption in the Government are mainly lack of transparency and accountability. Due to the Official Secrets Act enacted by the British for a long period, the government has become more prone to corruption. Many politicians and officials do not pay their tax and not held accountable. Whereas on the other hand, the general public may be dragged for non-payment of tax. This creates a disparity in the society and people start losing trust in the government.¹⁸

AWARENESS AMONG PEOPLE ABOUT RIGHTS

Even though this is still not up to a satisfactory level, many people have become aware of their rights after RTI has come into force. The RTI Act allowed individuals to seek definite and direct response or lack of it from the officials of their work. RTI implementations have grown by 8 to 10 times annually. The Central Public Authorities (PAs) received about 13.70 lakh RTI applications in 2018-19, which demonstrates how people have become aware of this powerful Act. After seeing cases disclosing corrupted officials, more number of RTI activists have come forward and have started filing RTI applications.

SUO MOTO DISCLOSURE OF INFORMATION

Suo moto disclosure of information refers to the government disclosing information from their side without the involvement of RTI or the public demand. The public has become aware of their rights and gradually due to the heavy demand for certain information, now the government releases some information beforehand. But there is some information which cannot be disclosed to the public and gets rejected. The said Act, in addition to the permissible requirements, specifies the categories of information that are excluded from disclosure. However, where the public interest in transparency outweighs the risk to the protected interest, those exempted information or others exempted under the Official Secrets Act of 1923 can be revealed. Notwithstanding the exception, if twenty years had passed since the occurrence of the event to which the information refers, the information would cease to be exempted.¹⁹

¹⁸Bharat, *supra* note 16, at 5

¹⁹ Parveen Sayyed, *Exemptions from disclosure of information under Right to Information Act, 2005: A Methodical Review*, BHARATI LAW REVIEW 245 (2016).

LIMITATIONS OF THE RTI ACT

RTI is not an absolute right and is followed by limitations and restrictions. In many cases, the information can not be revealed for the sake of public safety. One reason being the availability of information with the Public Information Commissioner. If the information is not available in the official records, it will not fall under the purview of RTI Act.²⁰ Section 8 of the RTI Act states the situations where the administration is not bound to reveal the information. This includes information that would threaten national integrity, security or economic interests; would amount to court contempt; would hinder police investigations; would affect business interests such as business secrets; would affect relationships with 'fiduciary'; would physically harm the individual.

But this section has been misused by the authorities to not reveal the information favouring them. There are certain rules which forbid the disclosure of information. For example, the application has a word limit of 250 words. If it exceeds then the authorities may reject the application on that ground.

Another limitation is mentioned under Section 2(h) of RTI Act which allows only the information present in public records to be revealed and if not available, it is not a compulsion on the Information officers to search or collect the information. This was also observed in the case of Central Board of Secondary Education & another v Aditya Bandopadhyaya & others²¹.

LIMITATION UNDER RULES

Rule 4 of the RTI Act specifies the word limit of 250 words mentioned above. It is often a hidden ground of rejection and is misused by the Information Officer.

Rule 5(g) of the RTI Act, 2005 states that an extra charge can be applied for the equipment used for the information to be supplied. The authorities charge Rs. 10 from the applicants as postal charge and it is an unjust fare to cut a short certain number of applications with the price hike.

Rule 16 of the RTI Act, 2005 states that the cases pending before CIC shall cease to exist after the death of the applicant and this leads to the murder of applicants to save themselves.

²⁰ Central Board of Secondary Education & another v Aditya Bandopadhyaya & others, 8 SCC 497 (2011).

²¹ (2011)8 SCC 497

LIMITATION UNDER SECTION 8 OF THE RTI ACT, 2005

Sec 8 (1) mentions ten conditions which may exempt the Information officer from giving the information. Under Section 8(1)(a), a government entity is not to report any specifics of the defence, diplomatic, scientific or economic interests of India, its association with or incitement to an offence that would have an adverse effect on India's sovereignty or integrity. Sovereignty means the supreme, utter and uncontrollable authority by which an independent state is ruled, as described in the Black Law Dictionary. The principle of sovereignty also requires independence from any external influence or dominance. The word dignity denotes the state of being whole, whole or undiminished for the purposes of Clause (a) of Section 8 (1). The Public Authority is under no duty to release details which may impact India's sovereignty and dignity prejudicially. The definition of security is certainly broad and encompasses, among other aspects, political, economic, environmental, social and human aspects which affect the concept of security. Information related to India's national security could genuinely trigger damage if it were disclosed to the media. The publication of information generating fear or threatening the quality of life may have a negative impact on the protection of the State and should therefore not be disclosed.

Relations between countries can also be delicate, such that candid evaluations and behavioural review of other countries and strategies can quickly offend India's foreign interests and, in doing so, harm them.²² In *Delhi Metro Rail Corporation Ltd. v. Sudhir Vohra*²³, since the information regarding the structural drawings were already revealed to the engineers, contractors, subcontractors and other people, it was held that the immunity from disclosure won't be attracted. And that the information had no issue with the economic and scientific interests of the Nation so it won't come under Sec 8 (1).

In *Union of India v. Central Information Commission and Anr.*²⁴, all letters submitted between 28 February 2002 and 15 March 2002 by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee²⁵, related to the "Gujarat riots" were demanded. In that case, the High Court of Delhi held that the production of all information on which ministerial advice was based enjoyed immunity from disclosure on the ground that, under the powers bestowed on it by the Constitution, the RTI Act enacted by the Legislature

²² APPLYING THE LAW. What Type of Information Can You Legitimately Withhold: Exemptions, , CHRI RIGHT TO INFORMATION , https://www.humanrightsinitiative.org/programs/ai/rti/india/officials_guide/exemption.htm.

²³ AIR 2011 Delhi 167

²⁴ 2012(284) ELT 335 (Del.)

²⁵ LAW AND PRACTICE: A DIGITAL EBOOK , <https://www.taxmanagementindia.com/> (last visited Oct 29, 2020).

could not repeal the clause, extension or modification of the bar referred to in Article 74(2). The RTI Act should also be read in view of the provisions of the Indian Constitution.

CONCLUSION

RTI Act is slowly losing its Independence and relevance due to the Central Government controlling over the affairs of Central Information Commissioner (CIC) and Information Commissioners. The salary, pensions and other terms of service "must be as specified by the Central Government" of the Chief Information Commissioner and the Information Commissioners, who were formerly similar to the Chief Election Commissioner. Under the whole scheme of the 2005 RTI Act, the Amendment Act 2019 and Rules 2019 kill the freedom given to information commissions, which cannot be taken away by amending a few sections. The Amendment Act, 2019 amends the Sections 13, 16, and 27 of the RTI Act and change the term of Central Information Commissioner (CIC) from 5 years to a term as prescribed by Central Government. The proposed amendment requires the central government to regulate, by means of laws, terms and conditions, the appointment of Commissioners in States which constitute an attack on federalism.

Sadly, the government does not want a good information officer to enforce the rules of the RTI Act, considering that file review has caused a lot of embarrassment. This a way of sabotaging the actions of the Information Commission of both Central and State. Though this Right was first made to empower people, it is gradually losing its power due to the limitation on the right and these rules and amendments giving Central Government power to manipulate or have an influence on the Information Commission.