

Highlights of the Right to Information (Amendment) Bill, 2019

Rajya Sabha had approved the Right to Information (Amendment) Bill, 2019 on July 25, 2019. The Bill seeks to amend the Right to Information Act, 2005.

The major changes brought by this Bill in the RTI Act, 2005, are with respect to term, pay and service conditions of the Information Commissioners which are now being subject to the executive rules to be made by the Central Government.

According to the RTI Act, 2005, the salary and allowances of Chief Information Commissioner and Information Commissioner were the same as that of the Chief Election Commissioner and Election Commissioner respectively which are fixed as per provisions of the Constitution for that matter. Also, the status and privileges enjoyed by the Information Commission were same as that of the Election Commissioner, for the purpose of ensuring their independent and autonomous existence.

The Amendment Bill states that the Election Commission is a Constitutional body (Article 324 of the Constitution of India) whereas the Central and state information Commissions are statutory bodies made under the RTI Act, therefore, the mandate of the Election Commission and the Central and State Information Commission are different and thus their status and services need to be rationalized accordingly. However, while passing the RTI Act, 2005 all the provisions related to the tenure and appointment were carefully scrutinized by a parliamentary standing committee and the statute was passed unanimously. It was recommended by the Parliamentary Standing Committee that the Information Commissioner and CIC were made on a par with the Election Commissioner and the CEC, respectively.

Under **Section 13 and Section 16** of the Act, the CIC and other ICs (appointed at the Central level and State level respectively) hold office for a term of five years and are not eligible for reappointment. However, under the Bill, these provisions have been amended and the power has been given to the Central Government to notify the term of office for the CIC and the ICs. Similarly, the salary and allowances of the CIC and ICs appointed at the Central and State level

and the other terms and conditions of services shall be such as may be prescribed by the Central Government.

The Bill removes provisions in the Act (under Section 13(5) and Section 16(5)) which state that at the time of the appointment of the CIC and ICs (at the central and state level respectively), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Section 27 which deals with Power to make rules by the appropriate Government have been amended accordingly. This is an advantage to the interest of the Information Commissioners.

The Bill had been opposed on the ground that the provision of powers to prescribe terms and salaries of the CIC and ICs to the Central Government defeats the purpose of the Act and also dilutes transparency and efficiency of the Commissions. The Bill states that tenure and the salary of the State Information Commissioners will also be decided by the Central Government. Through the RTI amendment Bill, the Centre seeks control of the rule-making power to determine the salaries, allowances and tenure of State Information Commissioners too. After the amendment, two sets of laws will be applicable to salaries paid in the State Information Commissions; one which are made by the State Governments for staff of SICs under Section 27(2) of the RTI Act and the other which the Centre will make by virtue of the powers under the Bill for the State Information Commissioners.

Salaries drawn by the Chief Election Commissioners and the Election Commissioners are voted charges i.e. through the Union budget. At the time of drafting of this provision which put the Information Commissioners at par with the Election Commissioners in terms of salary, it was discussed at length and was recommended by the Parliamentary Standing Committee that it will be an important step towards maintaining independence and transparency in the system.

Earlier, the Central Government with the intent to harmonize the status, salaries, and allowances of members of various tribunals made the salaries of chairpersons' of those tribunals equal to the election/information commissioners; those of the members was made equivalent to those of high court judges. The Law Commission of India (LCI), in its *272nd Report on Assessment of Statutory Frameworks of Tribunals in India 2017*, also recommended for the harmonization of

salaries and allowances of many of the statutory tribunals mentioned above. Some argue that these recommendations of LCI apply equally to the information commissions and there is no reason to treat them differently. However, whether the Information Commission is a quasi judicial body/ tribunal or an administrative body is not clear since Supreme Court in the case of *Namit Sharma v. Union of India* (2012) held that IC is a Judicial Tribunal, whereas the Supreme Court in the case of *Union of India v. Namit Sharma* (2013) has reversed this position holding that Information Commission is not a quasi judicial body but an administrative body. It stated that:

“Although Information Commissions are required to act in a fair and just manner following the procedure laid down under the RTI Act, this does not mean Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen.”

Thus, the argument stating that the Information Commissioners must be treated as members of the other Tribunals lacks judicial support and comes back to the question of whether Information Commission is a tribunal or an administrative body. The question also is whether all tribunals must compulsorily have former judicial officers as members or heads.

Supreme Court has time and again stated that right to information falls under the ambit of Right to free speech and expression under Article 19(a) of the Constitution of India and is equally important as is the Right to fair elections. The agency which deals with disputes involving Government bodies is required to be independent from governmental domination and prying. Information Commission decides disputes between citizens and the Government, thus it is very important for the Information Commission to be free from Governmental Control.

According to the Bill, now the executive and not the legislature will determine the terms and conditions of the Information Commissioners. The major apprehension is that the Bill tends to take away the legislative safeguard provided in term of fixed tenure of the Information Commissioners in the Act of 2005. However, the Bill does not amend the provisions which deal with the removal of CIC and ICs i.e. Section 14 and 17. The apprehension felt by the public is that the Government will be able to change the term of the Information commissioners on their whims which have the tendency to make the Information Commission a subordinate department

of Government. However, the proviso clearly states that the Central Government cannot set salaries, allowances and other conditions of service to disadvantage of ICs after appointment.

In some other countries like United Kingdom, the Information Commissioner is an independent authority directly answerable to the parliament. In Scotland, the Scottish Information Commissioner is an independent public official responsible for promoting and enforcing Scotland's freedom of information (FOI) law. The Information Commissioner there is appointed by Her Majesty the Queen, on the nomination of the Scottish Parliament, has a fixed term of six years. The Scottish Parliament meets the Commissioner's salary and provides funding for the Commissioner's office.

The seeds of doubt have been implanted in the minds of the people by the abrupt actions of the Government in moving and passing of the Bill without any consultation or discussions or any feedback from the public which is the major benefactor of the legislation. The said bill was not referred to the Standing Committee or Select Committee. Amendments in legislations like Lokpal Bill had been scrutinized by Parliamentary Committees and followed the measure of public consultation before proceeding with the said Bills.

Also the major stumbling block in the Bill is that it does not deal with the real deficiencies in the RTI institution such as low public awareness, lack of user guides, lack of standard format for drafting RTI application, and poor quality of Information provided etc.

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August 2019|Bonum Lex| Bonumlex.com

