BLOGS

Right to Information: Recent Developments for CLAT 2022

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Introduction

The right to information originates from the fundamental right to freedom of speech and expression guaranteed in the Constitution of India.[i] This right includes the right of the citizens to propagate and circulate ideas, and be informed.[ii]

This Fundamental Right gained statutory protection assistance with the enactment of Right to Information Act 2005, which intends to set out *"a practical regime for right to information for citizens to secure access to information under the control of public authorities*"[iii] and also intends to promote transparency and accountability in their functioning.[iv]

Recent Amendment: Right to Information (Amendment) Act, 2019

The latest change to the statute guaranteeing the right to information was enacted in 2019. The provisions of this Amendment Act[v] have been highly debated, both in the Parliament as well as popular legal circles.

Major changes made by the amending Act are as follows:

1. The term of the Central and State Information Commissioners were secured for a term of 5 years from the date of their entering into office. This has been altered by the amending Act.[vi] The new provision 'fixes' term in the following words: "for such term as may be prescribed by the Central Government".
2. The salary of the Central and State Information Commissioners, which were earlier in line with the Election Commissioners at the parallel level, are now fixable by the Central Government as well [vii].

Earlier provisions in this regard guaranteed the freedom of the concerned Information Officers, by securing—independent of Government intervention, their term of office and their salary.

It is now suspected that the Officers are under a substantial influence of the appointing authority, *i.e.,* the Central Government. It is, hence, alleged that the Amendment will substantially take away the independence of the Information Commissioners.

Recent Instances and Case Laws

1. RTI Inquiry on PM CARES Fund[viii]

An RTI request was filed with the Prime Minister's Office requesting the disclosure of information pursuant to the PM-CARES Fund. In its reply, it was stated that:

"*PM CARES Fund is not a Public Authority under the ambit of Section 2(h) of the RTI Act.*"

Conclusively, it not being a 'public authority', the Government is not liable to disclose information in that regard under the provisions of RTI.

Note: It may be noted here that the definition of public authority[ix] is of significance in the RTI Act, as whether an organization is liable to disclose information or not, hinges on it being a public authority.

1. Central Public Information Officer, Supreme Court of India Subhash Chandra Agarwal[x]

Bench: Ranjan Gogoi, CJI; N.V. Ramana, D.Y. Chandrachud, Deepak Gupta, Sanjiv Khanna, JJ.

Justice Khanna wrote the majority opinion for the Bench, with concurring and separate judgments by Justice Ramana and Justice Chandrachud.

The CJI was held to be a public authority under RTI Act, upholding the judgment of the Delhi High Court from which an appeal was made to the apex Court. The different judgments carved out the need for balance between the many rights and limitations related to the citizen's right to information.

This right was also linked substantially to the judicial independence and accountability. Public interest and need for confidentiality must be balanced in the disclosure of information.

Illustrative Multiple-Choice Questions for CLAT 2022

1. How did the RTI Act secure the term of Central and State Information Officers before the 2019 Amendment?

a. By allowing them to furnish information against the Government

b. By securing their tenure

c. By securing their salary

d. Both B and C

1. When did the Government intend to bring the RTI (Amendment) Act, 2019 into force?

a. July 19, 2019

b. July 22, 2019

c. August 1, 2019

d. October 24, 2019

1. Who introduced the RTI (Amendment) Bill, 2019 in the Lok Sabha?

a. Amit Shah

b. Jitendra Singh

c. Narendra Modi

d. Mahua Moitra

1. In which of the following provisions of the RTI Act did the 2019 Amendment make changes?

a. Section 13

b. Section 16

c. Section 27

d. All of These

1. Who wrote the judgments in the case of Central Public Information Officer, Supreme Court v. Subhash Chandra Agarwal?

a. Justice Sanjiv Khanna

b. Justice DY Chandrachud

c. Justice NV Ramana

d. All of the Above

[i] Article 19(1)(a), the Constitution of India

[ii] *Romesh Thappar v. State of Madras*, **AIR 1950 SC 124; Secretary, Information Broadcasting v. Cricket Association of Bengal, AIR 1996 SC 1236**

[iii] *Preamble*, the Right to Information Act 2005

[iv] *Ibid*

[v] The Right to Information (Amendment) Act, 2019, *available at* https://egazette.nic.in/writereaddata/2019/209696.pdf (last accessed October 28, 2021)

[vi] *Id.,* at Section 2,3

[vii] It was earlier phrased as, *"shall be the same as that of the … Election Commissioner*". The amending Act replaced the phrase with, *"The salaries and allowances payable to and other terms and conditions of service of the … Information Commissioners shall be such as may be prescribed by the Central Government*".

[viii] *Also See*, ***Prime Minister's National Relief Fund*** v. ***Aseem Takyar***, 2018 SCC OnLine Del 9191, dated 23-05-2018 (PMNRF also denied susceptibility to the RTI Act.)

[ix] ***Section 2(h)—***

""*public authority*" means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

[x] Civil Appeal No. 10044 of 2010, decided on 13 November 2019 (Supreme Court of India)

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