

Right to Information and Good Governance

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Lecture 26

The Roles and Responsibilities of the Chief Information Commissioner-I

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THE ROLE AND RESPONSIBILITIES OF THE CHIEF INFORMATION COMMISSIONER



- The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.
- Undoubtedly grant senior status to the Central Chief Information Commissioner by way of entrusting him powers of superintendence, direction and management.
- Whenever and wherever the Central Chief Information Commissioner notices any malfunctioning, he has the powers as well as the responsibility to take the remedial measures. **He can direct anybody within the Commission for its smooth functioning.**
- The job of Central Information Commissioners is to assist the Central Chief Information Commissioner in disposing of the appeals and complaints received in the Commission under Section 19 and 18 of the Act.



Friends, today we will move to understanding the role and responsibilities of the Chief Information Commissioner. As you are aware, Information Commissions have been established at the central level as well as at various state government levels and the Chief Information Commissioner is supposed to head the Information Commission. He is empowered to exercise the power of supervision, direction and management of the affairs of the Information Commission and he may exercise all such powers or do all such acts and things which may be exercised by the Central Information Commission.

The chief is in charge of the Information Commission. He monitors and supervises the various activities of the Information Commission as well. You will notice that the central Chief Information Commissioner is granted a senior status. The reason for granting that senior status is to have a head of the Information Commission. And hence, being the head, he is entrusted with all the powers that are required for allocating cases within the Information Commissioners, supervising the staff of the Information Commission and managing the affairs of the Information Commission as the case may be.

You would also notice that the Central Chief Information Commissioner will look into the malfunctioning if there are any, and he would also be taking responsibility for any remedial measures if need be. The chief is also responsible for the smooth functioning of the Information Commission. And hence, you will notice that the Chief Information Commissioner under the RTI Act is the head of the Information Commission, he manages and directs the affairs of the Information Commission and he also looks at allocation of role and responsibility among the various Information Commissioners and the staff that manage the Information Commission.

The Chief Information Commissioner as the case may be, and as you are aware of, is appointed by the President of India, in the case of the Central Information Commission, and by the governor of the state in the case of the State Information Commission. The job of the Central Information Commissioner is to assist the commission in disposing of appeals and complaints received under Section 19 and section 18 of the Act. These are some of the responsibilities that can be identified to the Chief Information Commissioner.

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THE DIVISION OF WORK

- The Central Chief Information Commissioner may distribute and assign such work among the Central Information Commissioners and during this process, the Central Chief Information Commissioner may reassign such work by way of constituting and reconstituting division benches or special division benches of the Commission as per the requirement of appropriate disposal.
- The Central Chief Information Commissioner may seek assistance of the Central Information Commissioners in other affairs of the Commission also in the process of management, like the process of monitoring and supervision of the enforcement of the Act by the public authorities.
- The common object before all members of the Commission is to actualize the spirit and objectives of the Act and for this limited purpose the personal egos have to be shed off, to help making the Commission really autonomous.



Next, let us look at the division of work. The division of work in the Information Commission is something that will be assigned by the Chief Information Commissioner. He may assign such work among the Information Commissioners and also decide the process within which all the Information Commissioners will be adhering to. He may re assign such work if necessary, he may constitute and reconstitute divisional benches or special benches of

the Commission, if the requirement is of such nature.

And hence, the chief actually manages both administrative as well as the quasi judicial functions within the Information Commission. You will also notice that the central Chief Information Commissioner may seek the assistance of any Information Commissioner in the affairs of the Commission, in also the process of management and monitoring the supervision of enforcement of that by public authorities.

Hence it will be the duty of the Information Commissioners to assist the chief in managing the affairs of the Commission in looking at enforcement of the RTI Act, in trying to monitor and supervise the functioning of public authorities under the Right to Information Act. Finally, you will notice that the chief and all other Information Commissioners are there to fulfill the common objectives of the RTI Act. And hence, it is the duty of all the members of the commission to actually live up to the spirit and objective of the RTI Act and to achieve the goals stated under this legislation.

And hence, the Information Commissioners must not have any personal egos, or if they do, shed them off, so that they can make the RTI Act a really successful legislation. It is also important that all of them collectively work together to keep the commission an autonomous, independent body which will truly fulfill the purpose and objective behind the enactment of the Right to Information Act.

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THE HEADQUARTER

- It provides for opening of offices of the Central Information Commission in other parts of the country apart from its headquarters at Delhi.
- If at any time in future the work requirement so demands, keeping in view the public convenience, the offices of the Central Information Commission may be established at the required places. Such requirement may actually arise with the growing use of the right provided under the Act.
- With due approval of the Central Government, additional offices may be established as provided therein.



Kindly note, the headquarters of the Information Commission, especially the Central Information Commission is stated to be in Delhi. However, the law also looks at futuristic vision and it states that in case at any point of time, the work requirements or demands and of course, keeping in view the public convenience that is required, the Office of the Central Information Commission will be established at the designated required places.

If such requirement arises with the growth of the legislation, and it is necessary to protect the Right to Information Act of the citizens, then the Central Information Commission may have its offices outside New Delhi. However, establishing offices beyond the place of Delhi would require the approval of the central government. However as of now, the Central Information Commission has not established any such offices beyond the capital city of New Delhi.

However, this is a possibility, as we see in other tribunals, for example, under the National Green Tribunal Act, there are regional benches that are situated in Bombay sorry, in Puna, in Chennai, in Bhopal and apart from Delhi. And one would assume that in other quasi judicial forums, that is for example, in the Consumer Forum, you have district Consumer Forums in every district. So, that kind of distribution of work if necessitated in other cities can also be something that can be looked into by the Central Information Commission.

However as of now, this has not been necessitated, and this has not been implemented as well.

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OATH OR AFFIRMATION



- This provides for oath of office before entering upon the office by such members of the Commission. It involves both the status and the responsibility attached to the job assigned. Whenever any authority is assigned autonomy of functioning, it goes out of purview of any formal control and monitoring.
- What controls such authority is his true dedication and commitment to the job or his sincerity in the name of God. Therefore, to ensure sincerity and dedication to the job assigned to such person and to ensure self-discipline in him, such oath is administered.
- Therefore, the oath to be administered under this subsection signifies the status and responsibility attached to the members of the Information Commission.



Oath and affirmation of the Information Commissions, the commissioners. The oath is very important, this provides for a member of the commission to enter into office and the oath also is important, as it involves the status and responsibility attached to the job of the Information Commissioner. Whenever a person is appointed to any authority, as such he is assigned with numerous roles, he is assigned with the autonomy of function. And hence, it is important to understand, control and monitor those persons who have such role and responsibilities.

And hence, while being appointed by the President of India, all the Information Commissioners would take an oath, it would be relevant to check the true dedication and commitment to the job and who actually affirm the sincerity towards the job in the name of God. Therefore, to ensure this, such kind of sincerity and dedication to the job assigned to such person and to ensure self discipline, normally Information Commissioners are administered with the necessary oath before they assume the Office of the Information Commission.

It is like Members of Parliament or Members of Legislative Assembly taking a oath before they assume their tenure after elections. You will also notice that the oath to be administered under this section signifies the status and responsibility attached to the members of the Information Commission. So, prior to the amendment in 2019 to the RTI Act, you will notice that the status of the Information Commission was to the level of the Election Commission.

However, post 2019 this seems to have been slightly altered, and the status of the Information Commission is as good as any other quasi judicial forum, any quasi judicial member who occupies office under different administrative as well as quasi judicial tribunals. So oath and affirmation are an important integral part of the assumption of Office of the Information Commissioner.

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THE RESIGNATION AND REMOVAL

- The Central Chief Information Commissioner or Central Information Commissioners can part with his job before the completion of his term by way of his resignation to the President of India. Such resignation has to be written under their hand so as to avoid any possibility of manipulation of such resignation.
- The liberty of resignation indicates that the fixed term as mentioned in sub-section (1) and (2) does not operate by way of compulsion. The fixed term is to his convenience and at his will. He is not obliged to serve the term against his wishes.



The next comes up resignation and removal. You will notice that Information Commissioners can resign from their position before the tenure expires. This is something that they can act upon themselves if they wish, they do not want to continue as an Information Commissioner. In the case of Central Information Commissioners, they have to send their resignation to the President of India. Why? Because the President of India is the appointing authority and hence the resignation must go to the president as well.

The normal process of submitting a resignation is to be in writing and it has to be sent to the President and the President would have the subjectivity of accepting the resignation or rejecting the same. You will also notice that resignation is required because it is a fixed term or fixed tenure or in the age of 65 years, and hence the Office of the Information Commissioner is something that is left to his convenience or his will.

And if the Information Commission thinks that it is not convenient for him to continue his office, or he is not interested anymore in continuing in the same office, there is a possibility of him resigning from that particular job as well. So he is not completely obligated to continue for the tenure as the case may be, and he can resign if he wishes to do the same.

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SALARY AND ALLOWANCES [pre 2019 amendment]



- Under the provisions of section 13(5) of the RTI Act, the salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner shall be the same as that of the **Chief Election Commissioner and salaries and allowances payable to and other terms and conditions of service of the Information Commissioner shall be the same as that of an Election Commissioner.**
- Election Commission of India who in their term are placed in this regard equivalent to the Chief Justice and Judges of the Supreme Court.
- In case, if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, such pension would be deducted from such salary.
- Now fixed at 2.5 lakh and 2.25 lakh respectively



Salary and allowances of the Information Commissioners. Kindly note, pre 2019 amendment to the RTI Act, you will notice that the Information Commissioners were given the same status as the Election Commission of India or the Election Commissioner of India. And the salaries and the allowance payable to the Chief Election Commissioner was payable to the Information Commissioners. Interestingly, most of the terms and conditions of the Chief Election Commissioner were applicable to the Chief Information Commissioner.

This was important to bring in the independence, the autonomy to the functioning of the Information Commission and to elevate the status of the Information Commission to a constitutional status which the chief Election Commissioner usually enjoys. So the Election Commission and the Information Commission were given equal status, equal responsibility and equal salary and allowance.

However, and you know when you speak about the Election Commission of India, the Election Commission is equated to the Supreme Court of India, and hence the Information Commissions enjoyed the status of the judges of the apex court. Now this slightly has changed over the 2019 amendment and after the post 2019 amendment, there are two most significant changes that have been brought about. First and foremost, the tenure of the Information Commissioners has been reduced from 5 years to 3 years and 3 years or the age of 65, whichever is earlier.

This is in tune, because the government justified and said that it is tuned with the appointment of all other quasi judicial members, and they wanted to bring the Information

Commission as equal to other judicial authorities and not equate it with the constitutional bodies like the Supreme Court and the Election Commission. And hence, this is a very significant change that has been brought about through an RTI Amendment Act of 2019 enacted by the parliament.

You would also notice that the salary of the Chief Information Commissioner is capped at 2.5 lakhs. And the salary of the Information Commission is capped at 2.25 lakhs. So this cap in the salary has meant that the status, the salary and the allowance of the Information Commissioners is now equal to the members of other tribunals and not to the Election Commission. That is the slightest change that will have to be attributed to the first ever amendment to the RTI Act in the year 2019.

Last but not the least, if you see, at the time of appointment, if the Information Commissioner is in receipt of any pension or disability or wound pension as the case may be with his previous employment to the Government of India, then such pension will be deducted from the salary as well.

This is a normal process for all officers who retire from the government, that if they get post retirement appointments, their pension would be adjusted to the new salary or allowance they are slated to receive under their post retirement appointments. So that is normally the case with all appointments and the same is continued to be extended to the Information Commissions.

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THE SUPPORTING STAFF

- It provides for necessary assistance to the Central Chief Information Commissioner and the Central Information Commissioners by way of officials and employees required by them for efficient performance of the functions entrusted to them under the Act. Such assistance also be granted by the Government even without such provision because without the ministerial support, the Commission cannot function, but such assistance has been made a statutory provision to grant it a legal force.
- This assistance has been made a part of the terms and conditions of service of the Central Chief Information Commissioner and the Central Information Commissioners. It means that they would get such assistance by way of statutory privilege rather than depending on the discretion of the Government.
- In the democratic process, the change of political power is a routine affair. Sometimes with the change of power the priority of the Government for the Commission and the attitude towards it may also change. In such a situation, the mandatory provision of providing assistance to the Commission may help in avoiding possibility of inconvenience to the Commission.



The supporting staff. The supporting staff is a very essential component of the working of the Information Commission. And you will notice that the Information Commissioners can go about appointing officials or hiring employees as required for the efficient process and the functioning of the RTI Act. And hence, any such assistance that may be required by the Information Commissions should be granted by the government and the government has to make provision for ministerial support to the Information Commission.

And hence, without such assistance or staff, the Information Commission probably cannot function to its full capacity and to the full expectation of citizens, Vis-a-vis the Right to Information Act. And hence, providing such assistance is provided in the statute and has no legal force. So the government is or shall be obligated to provide that supporting staff, as the case may be, to the Information Commissions both at the Central and the state level.

You will also notice that the supporting staff can be extended with statutory privileges. The reason being that because the Act provides for such appointments, the Act also gives discretion to The Information Commission to fix their terms and conditions, however subject to government approvals, you will notice that the staff have certain kinds of statutory recognition as the case is and they are not completely always depending on the discretion of the government.

This was essential to bring in the autonomy and independence of the Information Commission and hence, supporting staff get their due recognition from the government and

the government is supposed to support the appointment of the supporting staff as well. What this does is this will ensure that the Information Commissions are not affected by the change of political power.

The change of political power often affects the functioning of various quasi judicial bodies, because the change of political power, in turn, replaces the members of the quasi judicial authorities and they are subject to the privileges of appointment of the government to which they Actually serve. However, under the Right to Information Act, this is completely secure and you will notice that Information Commissions are not affected by the change of power either at the state level or at the center level.

They have been given the sense of autonomy, independence, not only in the appointment of the Information Commissioners with fixed tenure and security of tenure, but also in the fact of getting supporting staff as the case may be, so that there is a mandatory government support to the Information Commission on a continuous basis. This helps the functioning of the Commission, this helps the smooth functioning of the affairs of the Information Commission.

And it largely will avoid any kind of public inconvenience in managing the affairs of the Information Commission and will actually get a lot of public support to how the Information Commission goes about exercising the various functions including the complaint and the appealing provisions and to look at an effective implementation of the Right To Information act as the matter goes forward.

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State Information Commission



- Chapter IV of the Right to Information Act, 2005, deals with State Information Commission. Every State Government is empowered to constitute a body to be known as State Information Commission.
- Sec. 15 deals with the constitution of SIC.



You will also note that the State Information Commissions have similar rights, similar powers, similar appointment process and also the kind of status and responsibility as the Central Information Commission. And hence, without repeating the aspect of the State Information Commissions, I think one would just say that it is a ditto kind of a mechanism for the State Information Commission and the State Information Commissioners.

Which means if we read chapter 4 of the Right to Information Act, it deals with the powers, duties and functions responsibilities of the State Information Commissioners, which is very similar to the Central Information Commission. Kindly note, every state government is empowered to constitute a body for the State Information Commission and the same has been done by various state governments at the state levels. Naturally, most of the State Information Commissions are situated in the capital of the state and they function from that part itself.

So, there is no requirement to additionally deal with all the aspects in terms of appointment, removal, resignation, suspension, salaries and allowances of the State Information Commission, because they are very similar to the Central Information Commission and the same has already been discussed in this module.

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Penalties. Sec. 20

- This enactment anticipates the possibility of deliberate infringement or violation or non-compliance of the provisions of the Act and prescribes penalty on that account. ***The enforcement of a law has to be coupled with its capability to force the institutions or persons responsible for such execution to perform the functions assigned to them.*** The Act specifies certain statutory provisions to impart information and concerned officers are duty bound to provide such information as required by the information seeker. Such officers have to be penalized under the RTI Act, 2005, if such officer deliberately, wilfully or knowingly refuses to perform the duties under the Act or knowingly violates the statutory provisions.



Next is the aspect of penalties. As you are aware of, we have discussed the two essential powers and functions exercised by the Information Commissions. First we discussed under Section 18 the power to receive complaints, second, we discussed under Section 19 the power of appeal. These are two essential powers that are exercised by the Information Commissions. However, you will notice that the most effective power that the Information Commissions have is imposing penalties on the Public Information Officer for the violation of the Right to Information Act.

And that power to impose penalty is stated in Section 20 of the RTI Act. If one goes by the enactment, one would definitely anticipate that when any legislation is made, the biggest fear for the draftsman is to ensure that violations and non-compliance of the law should be addressed adequately. Now, the Right to Information Act has seen various violations. The Right to Information Act continues to see various non-compliances as the case may be.

However, please note the effectiveness of every legislation can only be assessed or tested on the fact that how is the punishment, how is the sanction described. If the sanction and the punishment are those that are designed effectively, then the success of the legislation is possibly ensured. And hence the threat of punishment for non-compliance is probably one of the important mechanisms for every Act to make it either successful legislation or otherwise.

And hence, you will notice that it is important for institutions to bring in responsibility, it is important for institutions to identify violations, it is important for institutions to impose sanction for infringement and non-compliance of the provisions of the law. And hence,

section 20 is an empowering section. It is an empowering section because the statute tends to give the Information Commission the power to impose penalties on such officers who have failed in their duty to protect the Right to Information.

And hence, you will notice that when a citizen has a Right to Information, he is an information seeker, his right is very important, his rights need adequate recognition, adequate protection. And when you look at the right duty correlation, if a citizen has a right, the state has a duty. Now the state does not have a face of its own, the duty of the state is represented by the public information officer or such other officers who Actually represent the public bodies or the public authorities.

Interestingly, for the first time, in a legislation in India, you will find that it is not the vicarious liability that is imposed, which means for the fault of the servant, the master of the government is not held responsible, whereas the officer or the servant himself is irresponsible. So he cannot shift that responsibility to the state. He has to take the responsibility for any violations or infringement and hence, you will notice under Section 20 of the RTI Act, the penalty is not on the public authority, as is the case in other Acts.

For example, under the Companies Act, when penalty is imposed, it is on the company. It is not on individual managing directors or directors. However, under Right to Information Act, the penalty for the violation of the Right to Information Act, if the duty to protect the information is violated, the officer who is responsible, the officer who represents the public authority shall be penalized.

And please note, penalty is a very serious word, it has connotations that do not apply in civil law, it has those connotations that look at a very high imposition of criminal fines. And hence when a penalty is done, you will notice it is the duty of the Information Commission to check before imposition of penalty, whether this was done intentionally, as against unintentionally, whether this was done deliberately as against innocent people. Was it done willfully as against a non willfully or was it done knowingly?

I think when you emphasize the words under Section 20, which include in the word even malafide, so the words intentional, malafide, deliberate, willful or knowing clearly depicts a negligent mind of the officer. It clearly depicts a mind which very clearly states that here is a

Public Information Officer who knew what he was supposed to do, but deliberately chose not to do so.

It is the duty of the Information Commissioner to actually check whether the penalty has to be imposed in a particular case or whether some other sanction has to be imposed in that case. However, the mind, the attitude and the intention of the officer is probably the prima facie reason why a penalty under Section 20 will probably be enforced.

Kindly note, the penalties under Section 20 are to be used for the failure in the performance of the duty of the Information Officer, the Public Information Officer. And it also clearly depicts the fact that this is something generally imposed in case of knowingly violating the statutory provisions under the Right to Information Act.