

Constitutional Law and Public Administration in India

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Week- 12

Lecture- 02

Non-Constitutional Bodies - IV (Information Commission)

You have learned about Article 19(1)(a) which talks about freedom of speech and expression. You have learned about Article 21 which talks about right to life. You have also learned about right to information which is not an express fundamental right guaranteed by the constitution. However, the courts have time and again held that this is an indispensable part of Article 19(1)(a) as well as Article 21. As early as in 1975 the Supreme Court had solidified or affirmed that right to information is a very important fundamental right. So, this happened in the case of *State of UP v. Raj Narain*. What happened in this case? So Raj Naren filed an election petition in Allahabad High Court alleging that there is misuse of public money happening with respect to the re-election of Prime Minister of India and this is committed by a certain political party.

So Raj Naren wanted state of UP to submit a particular document known as the blue book as evidence in this matter. So whenever a Prime Minister travels in and out of the country there are certain security protocols or guidelines that have to be followed right. So this blue book essentially contained all of these security guidelines and protocols. Whereas Raj Naren wanted state of UP to submit this particular document as evidence in this election petition. In response state of UP submitted before the court that they won't be able to produce this particular document as evidence because they are exempted from doing so under Section 123 of Evidence Act.

What does 123 of Evidence Act say? Now this provision is related to certain privileges that government have with respect to submitting evidence in the court. So this section says that no one shall be permitted to give evidence on an unpublished official record relating to any affairs of the state unless with the permission of the head of the department or head of the concerned department. So there will be many records of the government that are not known to the public right. So those are unpublished official records. And if such records relate to any affairs of the state you know these might be highly confidential documents relating to security of the state or other related matters.

So in such cases the government might not want to make them public knowledge. So if head of the department gives permission to any person to give evidence on such document they can go to the court and give evidence. However if the head of the department does not give permission in this regard then no evidence can be given on such document. So this is the justification that state of UP took in this court to not submit blue book as an evidence in this matter. However the High Court was not satisfied with this justification and they said that you failed to prove how this particular document relate to an affairs of the state.

So state of UP filed an appeal to Supreme Court. Supreme Court also upheld the decision of High Court and they wanted the government to disclose this particular document. So yes right to information is an indispensable part of freedom of speech and expression as well as right to life. So I have already mentioned how RTI is an important role in the fight against corruption and how RTI activists file RTI to obtain vital information regarding public authorities. So the Right to Information Act is concerned with public authorities.

So public authorities are institutions or bodies including institutions of cell government which are established by the constitution or through a central legislation or through a state legislation or maybe through a notification by the appropriate government. So these public authorities are mandated by the Act to designate certain number of officers as central in public information officer or state public information officers. So if you want to file an RTI application you are supposed to file such application to either a central public information officer or a state public information officer depending upon which public authority you know which information regarding which public authority you want to obtain. So if you are interested in filing an RTI application and the government department or the public authority says they have not yet designated any officer as a public information officer or such public information officer refuses to accept your particular application or in a situation where you want to file an RTI application and this particular public information officer is asking for an unreasonable amount as fees for processing that particular application or suppose in some case you have already filed an RTI application but you have not received any response to it within the time that is specified by the Act or you have filed an RTI application and you have received a reply as well but you believe that such information that is provided to you is either inadequate or misleading or false or any other related complaint you know maybe with respect to the RTI application or with respect to the public information officer or state public information officer all such complaints will be either made to the central information commission or state information commission. So these are two bodies that are established by the RTI Act of 2005.

So they are non-constitutional but statutory bodies. So coming to central information commission it is a high powered independent body which looks into complaints received to it and central information commission's jurisdiction extends to all central public authorities. So essentially CIC is the watchdog of information secrecy and denial of information. So central information commission and state information commissions are bodies established by the RTI Act to ensure that the public receives proper and adequate information in a timely manner under the RTI applications made by them. Coming to the composition of chief information commission it consists of one chief information commissioner and not more than 10 information commissioners.

So when CIC was established initially it had one chief information commissioner and a total of five information commissioners including the chief information commissioner. So they are appointed by the president upon the recommendation of a committee consisting of the prime minister who is chairperson of the committee, the leader of opposition in Lok Sabha and the union cabinet minister who is nominated by the prime minister. So even though the president is appointing them it is always based on the recommendation of this committee. Coming to the qualification of chief information commissioner or information commissioners they shall be persons of eminence in public life with expertise and knowledge in various subjects such as law, social service, journalism, science, etc. They shall not be members of parliament or members of legislative assemblies and they should not hold any other office of profit or they shall not be connected with any political party and they shall not be pursuing any other profession along with being a chief information commissioner or information commissioners.

Coming to the tenure of such persons it is decided by the central government generally it's five years and or until they attain the age of 65 years and they can be removed by the president the grounds of removal are similar to the grounds of removal of a vigilance commissioner. Coming to the powers and functions of central information commission the primary function as I have already mentioned is to receive complaints regarding RTI applications made to any central public authority. So they receive complaints from those who were unable to submit an information request or from persons who were refused requested information or they did not receive any response within the time limit specified by the act or they were requested such fees such unreasonable amount as fees for processing that particular RTI application or they have received the response to their RTI application but they believe that they have received inadequate or misleading or false information. With respect to its powers the central information commission while it's conducting an inquiry into the complaint received by it has the powers of a civil court with respect to issuing summons receiving evidence requesting any public record from any court or office. Coming to the state information commission it consists of one state chief information commissioner and not more than 10 information commissioners and

they are appointed by the governor of that state upon the recommendation made by a committee consisting of chief minister as a chairperson, leader of opposition in the legislative assembly and the state cabinet minister nominated by the chief minister.

Such state information commissions receive complaints from complainants against public authorities under their jurisdiction with respect to RTI applications made to them. State information commission submits an annual report to the state government on the implementation of the provisions of RTI act and such report is placed before the state legislature. So if a complainant is not satisfied with the decision made by the central information commission or the state information commission they can make an appeal to any officer above the rank of a chief public information officer or the state public information officer. So that's all about central information commission and state information commissions. Next we will learn about inquiry commission.

Commission of Inquiry

Most of you might remember the Pegasus controversy of 2021. Pegasus project which is a collaborative investigative journalism initiative undertaken by 70 media organizations alleged that Pegasus spyware, this is a malware, or a virus was secretly deployed into mobile phones and other devices of several prominent public figures. This included politicians, supreme court judges, ministers, opposition leaders, journalists, lawyers, activists, etc. In India it was alleged that around 300 individuals were targeted. Some of the prominent figures who were alleged to be targeted by this particular spyware were Rahul Gandhi, Alok Verma who was a former director of CBI, activists such as Stan Swamy, Umar Khalid, etc. Pegasus spyware is developed by NSO Group which is an Israeli technology and cyber arm firm. And only national governments can purchase this particular spyware that too with the authorization of Israeli government. So essentially the allegation here is that the Indian government has purchased this particular spyware with the authorization of Israeli government and has been using it against certain individuals.

So when the controversy broke out, the central government denied any kind of investigation into this matter or court monitored inquiry into this particular controversy. So when there was no central effort to probe into this matter, state of West Bengal stepped up and Mamata Banerjee's cabinet approved the constitution of a two-member inquiry commission and this commission was led by former Supreme Court Judge Madan B. Lokur and the second member was former Calcutta High Court acting Chief Justice Jodhir mai Bhata Charya. Mamata Banerjee mentioned in a press conference that she wanted a central committee to look into this. However, since that was not happening, she had to constitute a state inquiry commission.

Later the Supreme Court also agreed that there should be a central investigation into this matter. So, they constituted a three-member technical committee which was also supervised by a former Supreme Court Judge. This technical committee actually found that out of the 29 devices that were submitted to them, five of them contained some sort of a malware. There was no conclusive proof that that was Pegasus spyware, but this was just a final report study of this particular committee. When this technical committee was constituted, state of West Bengal decided to discontinue the inquiry commission set up by them and later on Supreme Court also state the operations of this particular commission.

Now this whole back story was provided to you to make you understand that commission of inquiry can be set up by central government as well as state government under the Commission of Inquiry Act of 1952. So yes, both central government and state government can set up a commission of inquiry to look into matters of public importance. Central government can set up a inquiry commission for matters coming under list 1, 2, and 3 of 7th schedule and state governments can set up a commission of inquiry to look into matters coming under list 2 and 3 of 7th schedule. So, central government and state governments can appoint commissions of inquiry to look into any matter of public importance. For this, a resolution to that effect has to be passed by the parliament or state legislatures as the case may be and then official guess of notification should also be made.

This guess of notification will contain the functions and duration of such commissions. So, if central government has already appointed an inquiry commission to look into any particular matter and if any of the state governments wishes to appoint a parallel commission to look into the same matter, they can only do so with the approval of central government until the central government commission is operational. If state government has already appointed an inquiry commission, central government can appoint a parallel commission only if it is of the opinion that inquiry should be extended to two or more states. So, every commission should have at least one member, it can have more than one member. If it has more than one member, then one of them shall be designated as the chairman of the commission and this commission is supposed to submit a report to each house of the parliament or to the state legislature as the case may be.

The first commission of inquiry that was appointed was a one-man commission which comprised of Justice M.C. Chagla which was known as Chagla Commission, and this was appointed in 1958. This commission looked into certain alleged transactions of LIC. Next, we will learn about the powers of commission and certain other matters related aspects of inquiry commission.

Coming to the powers of the commission of inquiry, as per section 4 of the act, commission has the power of a civil court with respect to issuing summons, enforcing the

attendance of any persons, and examining them under oath. It has the power of a civil court with respect to receiving evidence, requesting any public records from courts or other offices. Commission can also issue commissions like a civil court. Under order 26 of Civil Procedure Court or CPC, court can issue commissions and these commissions are essentially advocates who are known as advocate commissioners and they might be appointed as such for examining a witness, going to a disputed land, and making local investigation regarding the land or for any other matter as has been decided by the court. Commission of Inquiry also has the power to issue such commissions like a civil court.

Additional powers are given under Section 5A and 5B. As per Section 5, the commission can require any person to furnish any information subject to the privileges that may be claimed by such persons. The commission or any other officer as authorized by the commissioner, provided that such officer is not below the rank of a guess at our officer can enter into any building or place where commission has a reason to believe that such building or place might contain books of account or documents that might be relevant to the matter of inquiry and if they find such books of account or documents, they can seize such documents or extracts and or make copies thereof. Then all proceedings before the commission is considered as judicial proceeding. As per Section 5A, commission can utilize the services of central government or state governments.

So, if it is a commission that is appointed by the central government, it can utilize the services of the investigative agencies or officers of central government and state government. If it is a commission that is appointed by a state government, it can utilize the services of officers and investigative agencies of central government and state government with the concurrence of central government and state government respectively. And these officers or investigative agencies shall submit a report to the commission and commission shall verify the contents of such report. As per Section 5B, the commission has the power to appoint persons having special knowledge with matters related to the inquiry as assessors and these assessors are appointed to assist and advise the commission. An important point to be noted is that the commission has the power to regulate its own procedure.

However, this is subject to any rules made in this regard under Section 8 of the Act. It is very pertinent to note that reports of inquiry commissions are not binding in nature. So, just because the commission of inquiry has been appointed and the commission has submitted a report before the parliament, or the state legislature does not mean that these reports are binding, and this has been appointed by various courts time and again. Most recently, commission of inquiry has been constituted in Manipur to look into the Manipur violence and this will be chaired by a retired judge of Murthy High Court. So that is all about Commission of Inquiry. Central governments and state governments can both appoint inquiry commissions to look into various matters of public importance.