

UNIT 6

INSTRUMENTALITIES OF PUBLIC AUTHORITIES

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6.1 INTRODUCTION

Where a information seeker is aggrieved by the decision of first appellant authority or the information seeker wants to file a complaint either against the public information authority or the complaint of not getting the information asked for he may approach the authority known as information authority. The RTI Act provides for two information commissions- Central Information Commission and State Information Commission. Both the Commissions are independent and autonomous body of persons empowered to deal with matters under RTI Act.

6.2 OBJECTIVES

After reading this unit you will be able to:

- Explain the Constitution of Central and State Information Commission.
- Know about the qualifications, term of office and conditions of service, oath , salaries and allowances of the Commissioners
- Understand the process of removal of Information Commissioner from office
- Know about the Powers and functions of the Information Commissions
- Learn about the remedies available under Right to Information Act, 2005.

6.3 SUBJECT

The Central Information Commission or the CIC is appointed by the Central Government and the State Information Commission or SIC is appointed by the State Government. However there is no hierarchy between CIC or SIC.

6.3.1 Central Information Commission

6.3.1.1 Constitution of Central Information Commission

Chapter III of the RTI Act deals with Central Information Commission from Section 12 to Section 14. Section 12 sub section 1 of RTI Act empowers the Central Government to constitute Central Information Commission to exercise the powers conferred on and to perform the functions assigned to it under the Act. The Central Government shall issue a notification in this behalf in Official Gazette.

The Central Information Commission shall be a multi member body autonomous body. The Commission consists of the Chief Information Commissioner and Information Commissioners not exceeding ten(Section 15(2)).

As specified in Section 12(3), the Chief Information Commissioner and Information Commissioners are appointed by the President of India on the recommendation of a committee including the following members:

- a) the Prime Minister, who shall be the Chairperson of the committee;
- b) the Leader of Opposition in the Lok Sabha; and
- c) a Union Cabinet Minister to be nominated by the Prime Minister

6.3.1. 2 Qualification of a Commissioner

According to Section 12, sub-sections (5) and (6), the Chief Information Commissioner and Information Commissioners:

- a) shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance;
- b) shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory;
- c) shall not hold any other office of profit or
- d) shall not be connected with any political party; or
- e) shall not be carrying on any business or pursuing any profession.

6.3.1. 3 Term of office and conditions of service

According to section 13(1) and section 13(2) the Chief Information Commissioner and Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years, respectively, whichever is earlier from the date on which he enters into the office. The Chief Information Commissioner shall not be eligible for reappointment. The Information Commissioner as provided in Section 13(2) shall not be eligible for re-appointment as such Information Commissioner. However every Information Commissioner shall be eligible for appointment as Chief Information Commissioner on vacating his office. Where the Information Commissioner is appointed as Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and Chief Information Commissioner.

6.3.1. 4 Oath before entering into office

Section 13(3) provides that the Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

6.3.1. 5 Salaries and allowances of Commissioner

According to Section 13 (5) the salaries and allowances payable to Commissioners are as under:

- a) The salary, allowances and other terms and conditions of service of the Chief Information Commissioner shall be the same as that of Chief Election Commissioner;
- b) The salary, allowances and other terms and conditions of service of the Information Commissioner shall be the same as that of Election Commissioner;

If the Chief Information Commissioner or Information Commissioner, at the time of his appointment is, in receipt of a pension other than a disability pension or a wound pension under the Government of India or the Government of the State, the salary as Chief Information Commissioner or Information Commissioner shall be reduced by the amount of that pension.

The amount of pension which is commuted and the pension equivalent of other forms of retirement benefits shall also be reduced from the salary as Chief Information Commissioner or Information Commissioner. However the pension equivalent of retirement gratuity shall not be reduced from the said salary.

In case the Chief Information Commissioner or Information Commissioner, at the time of his appointment, is receiving retirement benefits as a result of any previous service rendered in a corporation or a company owned or controlled by the Central Government or the State Government or an Information Commissioner, his salary shall be reduced by amount of pension equivalent to retirement benefits.

The salaries, allowance and other conditions of service of the Chief Information Commissioner and the Information Commissioner shall not be changed to their disadvantage after their appointment.

6.3.1. 6 Removal of Information Commissioner from office

Section 14 provides that the Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office. This section empowers the President of India to remove the Chief Information Commissioner or Information Commissioner on ground of proved misbehaviour or incapacity. In case of allegations of misbehaviour or incapacity directed against Chief Information Commissioner or Information Commissioner, the President shall make a reference to the Supreme Court. The President may suspend from office and may also prohibit from attending the office, the Chief Information Commissioner or an Information Commissioner in respect of whom reference has been made to Supreme Court, until the President has passed orders on the receipt of the report of the Supreme Court on such reference. After conducting an inquiry, the Supreme Court shall submit a report to the President. If the Supreme Court recommends the removal of the Chief Information Commissioner or an Information Commissioner, as the case may be, on ground of misbehaviour or incapacity, he, ought on such grounds be removed by the President.

The Chief Information Commissioner or an Information Commissioner shall be deemed to be guilty of misbehaviour if he is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

The President may also order the removal of Chief Information Commissioner or an Information Commissioner from office if the Chief Information Commissioner or a Information Commissioner, as the case may be,—

- a) is adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
- c) engages during his term of office in any paid employment outside the duties of his office; or
- d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

- e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or Information Commissioner.

6.3.2 State Information Commission

Chapter IV of the RTI Act deals with State Information Commission from Section 15 to Section 17.

6.3.2.1 Constitution of State Information Commission

Section 15(1) of RTI Act empowers the State Government to constitute State Information Commission to exercise the powers conferred on and to perform the functions assigned to it under the Act. The State Government shall issue a notification in this behalf in Official Gazette.

The State Information Commission shall be a multi member body autonomous body. The Commission consists of the State Chief Information Commissioner and State Information Commissioners not exceeding ten(Section 15(2)).

As specified in Section 15(3), the State Chief Information Commissioner and State Information Commissioners are appointed by the Governor of the State on the recommendation of a committee including the following members:

- a) the Chief Minister, who shall be the Chairperson of the committee;
- b) the Leader of Opposition in the Legislative Assembly; and
- c) a Cabinet Minister to be nominated by the Chief Minister

6.3.2.2 Qualification of a Commissioner

According to Section 15, sub-section (5) and (6), the State Chief Information Commissioner and State Information Commissioners:

- a) shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance;
- b) shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory;
- c) shall not hold any other office of profit or
- d) shall not be connected with any political party; or
- e) shall not be carrying on any business or pursuing any profession.

6.3.2.3 Term of office and conditions of service

According to section 16(1) and section 16(2) the State Chief Information Commissioner and State Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years, whichever is earlier from the date on which he enters into the office. The State Chief Information Commissioner shall not be eligible for

reappointment. The State Information Commissioner as provided in Section 16(2) shall not be eligible for re-appointment as such Information Commissioner. However every State Information Commissioner shall be eligible for appointment as State Chief Information Commissioner on vacating his office. Where the State Information Commissioner is appointed as State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and State Chief Information Commissioner.

6.3.2.4 Oath before entering into office

Section 16(3) provides that the State Chief Information Commissioner or State Information Commissioner shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule

6.3.2.5 Salaries and allowances of Commissioner

According to Section 16 (5) the salaries and allowances payable to Commissioners are as under:

- c) The salary, allowances and other terms and conditions of service of the State Chief Information Commissioner shall be the same as that of Election Commissioner;
- d) The salary, allowances and other terms and conditions of service of the State Information Commissioner shall be the same as that of Chief Secretary to the State Government;

If the State Chief Information Commissioner or State Information Commissioner, at the time of his appointment is, in receipt of a pension other than a disability pension or a wound pension under the Government of India or the Government of the State, the salary as State Chief Information Commissioner or State Information Commissioner shall be reduced by the amount of that pension. The amount of pension which is commuted and the pension equivalent of other forms of retirement benefits shall also be reduced from the salary as State Chief Information Commissioner or State Information Commissioner. However the pension equivalent of retirement gratuity shall not be reduced from the said salary.

In case the State Chief Information Commissioner or State Information Commissioner, at the time of his appointment, is receiving retirement benefits as a result of any previous service rendered in a corporation or a company owned or controlled by the Central Government or the State Government his salary shall be reduced by amount of pension equivalent to retirement benefits.

The salaries, allowance sand other conditions of service of the State Chief Information Commissioner and the State Information Commissioner shall not be changed to their disadvantage after their appointment.

6.3.2.6 Removal of State Information Commissioner from office

Section 16 (4) provides that the State Chief Information Commissioner or the State Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office. Section 17(1) of the RTI Act empowers the Governor to

remove the State Chief Information Commissioner or State Information Commissioner on ground of proved misbehaviour or incapacity. In case of allegations of misbehaviour or incapacity directed against State Chief Information Commissioner or State Information Commissioner, the Governor shall make a reference to the Supreme Court. The Governor may suspend from office and may also prohibit from attending the office, the State Chief Information Commissioner or the State Information Commissioner in respect of whom reference has been made to Supreme Court, until the Governor has passed orders on the receipt of the report of the Supreme Court on such reference. After conducting an inquiry, the Supreme Court shall submit a report to the President. If the Supreme Court recommends the removal of the State Chief Information Commissioner or the State Information Commissioner, as the case may be, on ground of misbehaviour or incapacity, he, ought on such grounds be removed by the Governor.

Section 17(4) provides that the State Chief Information Commissioner or the State Information Commissioner shall be deemed to be guilty of misbehaviour if he is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

Governor(as provided in Section 17 (3), RTI Act, 2005) may also order the removal of State Chief Information Commissioner or State Information Commissioner from office if the State Chief Information Commissioner or State Information Commissioner, as the case may be,—

- a) is adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
- c) engages during his term of office in any paid employment outside the duties of his office; or
- d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
- e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or State Information Commissioner.

6.3.3 Powers and functions of the Information Commissions

Section 18 in Chapter V of the RTI Act. Section 18 empowers the Information Commissions to receive and inquire into a complaint from the aggrieved person under the RTI Act. Section 18(1) limits the scope of authority . Power vested in Information Commission under Section 18 of RTI Act is supervisory in nature.

6.3.3 .1 Complainants

According to Section 18 (1) the Central Information Commission or State Information Commission may receive and inquire into a complaint from any of the following person:

1. Any person who has been unable to submit a request to Public Information Officer (either of Centre or of State) by reason that no such officer has been appointed under this Act.
2. Any person who has been unable to submit a request Assistant Public Information Officer (either of Centre or of State) because of the refusal of Assistant Public Information Officer to accept his or her application for information or appeal under this Act for forwarding the same to the Public Information Officer (either of Centre or of State) or First Appellate Authority or Information Commission.
3. Any person who has been refused access to any information requested under this Act
4. Any person who has not been given a response to a request for information or access to information within the time limit specified under this Act.
5. Any person who has been required to pay an amount of fee which he or she considers unreasonable.
6. Any person who believes that he or she has been given incomplete, misleading or false information under this Act.
7. Any person in respect of any other matter relating to requesting or obtaining access to records under this Act.

Where the Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. This is provided in Section 18(2).

6.3.3 .2 Powers of Information Commission while inquiring

Section 18(3) states that the Information Commission while inquiring into any matter under section 18 , shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters:

- a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- b) requiring the discovery and inspection of documents;
- c) receiving evidence on affidavit;
- d) requisitioning any public record or copies thereof from any court or office;
- e) issuing summons for examination of witnesses or documents; and
- f) any other matter which may be prescribed.

Section 18 (4) of the RTI Act provides that in case of any inconsistency contained in any other Act of Parliament or State Legislature, the respective Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

Section 18 clearly provides that Information Commission shall conduct the inquiry itself without delegating such power to any committee or officer.

6.3.3 .3 Remedies

Where the Public Information Officer rejects an application for information or refuses to act on such application within the specified time limit, the aggrieved person has two remedies under the RTI Act. The aggrieved information seeker may either approach the First Appellate Authority or make a complaint to the Information Commissions stating therein that either he has been denied the requested information or there has been inaction on his request for information.

6.3.3 .4 First Appeal

The First Appellate Authority is generally the Head of the Department or Organisation or senior officer thereof who is declared as the first appellate authority under the RTI Act. The First Appeal may be filed within a period of thirty days. It may be allowed from the expiry of such period or from the receipt of such a decision. It may be allowed after the expiry of the period of thirty days if First Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The First appeal shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

6.3.3 .5 Second Appeal

A person aggrieved by the decision of first appellate authority may file a second appeal to Information Commission against the First Appellate Authority. According to Section 19 (3) the second appeal against the decision under section 19 (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Information Commission. The second appeal may be admitted after the expiry of the period of ninety days if Information Commission is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 19(7) provides that the decision of the Information Commission shall be binding. Further Section 19(8) provides that while deciding matters under Chapter V the Information Commission has the power to:

1. require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including:-
 - a) by providing access to information, if so requested, in a particular form
 - b) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - c) by publishing certain information or categories of information;
 - d) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - e) by enhancing the provision of training on the right to information for its officials;
 - f) by providing it with an annual report.
2. require the public authority to compensate the complainant for any loss or other detriment suffered;
3. impose any of the penalties provided under this Act;
4. reject the application.

Section 19 (9) provides that Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

6.3.3 .6 Penalties in case of Complaint

According to Section 20 (1), where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has, without any reasonable cause:

- a) refused to receive an application for information; or
- b) has not furnished information within time; or
- c) malafidely denied the request for information; or
- d) knowingly given incorrect, incomplete or misleading information; or
- e) destroyed information which was the subject of the request; or
- f) obstructed in any manner in furnishing the information

it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

6.3.3 .7 Recommendation for Disciplinary Action

According to Section 20(2) of the RTI Act, if Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has without any reasonable cause and persistently:

- a) failed to receive an application for information; or
- b) has not furnished information within the time specified under sub-section (1) of section 7; or malafidely denied the request for information; or
- c) knowingly given incorrect, incomplete or misleading information; or
- d) destroyed information which was the subject of the request; or
- e) obstructed in any manner in furnishing the information,

it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

6.4 SUMMARY

The Right to Information Act, 2005 provides for the constitution of two Information Commissions - Central and State. The RTI Act lays down the qualification, term of office and condition of service, oath before entering into office and salaries and allowances of the Commissioners. It also provides for the removal of the Commissioners. Apart from this the powers and functions of the Information Commissions have also been laid down.

6.5 GLOSSARY

1. Central Information Commission: Section 2(b) of RTI Act, 2005 provides that "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;

2. Central Public Information Officer: Section 2(c) of RTI Act, 2005 provides that “Central Public Information Officer ” means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;

3. Chief Information Commissioner and Information Commissioner: Section 2(d) of RTI Act, 2005 provides that “Chief Information Commissioner” and “Information Commissioner” mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

4. Information: Section 2(f) of RTI Act, 2005 provides that “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

5. Prescribed: Section 2(g) of RTI Act, 2005 provides that “prescribed” means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

6. Record: Section 2(i) of RTI Act, 2005 provides that “record” includes—

- a) any document, manuscript and file;
- b) any microfilm, microfiche and facsimile copy of a document;
- c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- d) any other material produced by a computer or any other device;

7. Right to information: Section 2(j) of RTI Act, 2005 provides that “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- a) inspection of work, documents, records;
- b) taking certified samples of material, notes, extracts or certified copies of documents or records;
- c) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

8. State Information Commission: Section 2(k) of RTI Act, 2005 provides that “State Information Commission” means the State Information Commission constituted under sub-section (1) of section 15

9. State Chief Information Commissioner and State Information Commissioner: Section 2(l) of RTI Act, 2005 provides that “State Chief Information Commissioner” and “State Information Commissioner” mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 15;

10. State Public Information Officer: Section 2(m) of RTI Act, 2005 provides that “State Public Information Officer” means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;

6.6 SAQS

1. Short Answer Question.

a. What is the qualification of the Chief State Information Commissioner under the Right to Information Act, 2005?

b. Give constitution of Central Information Commission under the Right to Information Act, 2005.

2. Fill in the blanks

a. Chapter _____ of the RTI Act deals with Central Information Commission

b. The First Appeal may be filed within a period of _____ days.

3. True or False

a. A person aggrieved by the decision of first appellate authority may file a second appeal to Information Commission within ninety days from the date on which the decision was actually received.

b. State Chief Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years

6.7 REFERENCES

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

6.8 SUGGESTED READINGS

Right to Information Law in India by [N.V. Paranjape](#)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

6.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

a. Explain the Powers and Functions of Information Commissions under Right to Information Act, 2005.

b. Discuss the process of removal of the State Information Commissioners. How is this process different from the process of removal of Central Information Commissioners?

6.10 ANSWERS

SAQs

1. a. refer 4.3.1 b. refer 4.3.2

2. a. III b. thirty

3. a True b. True

TERMINAL QUESTIONS AND ANSWERS

a. refer 6.3.3

b. refer 6.3.1. 6 and 6.3.2. 6