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The Statutory Position of Information Commissioners under RTI Act, 2005 with Special Reference to Right to Information Amendment Bill, 2019

*Varun Chhabhar**

Introduction

The first two decades of the post-Indian independence era witnessed relatively clean, smooth and foresighted governance, mainly because of the fact that those who were at the helm of the government were the top leaders and the persons who had actively participated in the Indian freedom movement and sacrificed their lives for the cause of the nation. They were genuinely concerned with the welfare of the people and upliftment of the downtrodden and margined sections of the society. The socio-economic, industrial and agricultural development during 1950's and 1960's and the socio-welfare legislations that evolved during this era amply testify this trend in the realm of the governance of the country.

The path set by the framers of the Indian Constitution and followed by their illustrious successors such as Dr. Ambedkar, Moraraji Desai, Lal Bahadur Shastri and Dr. Zakir Hussain to name a few, gradually started drowning in cynicism and hopelessness which touched its climax during the Emergency period from 25 June 1975 to 21 March, 1979 under the Late. Prime Minister Smt. Indira Gandhi's regime.¹ Gradually, political manoeuvring of power, corrupt practices, use of musclemen, violence and criminalization of politics threw the ideals of democracy to the winds and people participation remain utopian to the society in the absence of fair and transparent election process. The concentration

* Dr. Varun Chhabhar is an Assistant Professor at Faculty of Law, University of Lucknow and can be reached at chhabhar.varun@gmail.com.

¹ *ADM Jabalpur v. Shriani Shakti* [1976] SC 1207.

of political and administrative power in the management of the country's economic and social resources led to wide spread corruption jeopardizing the universally acknowledged principle of good governance namely democracy, liberty and rule of law. Democracy in turn requires Accountability, and transparency through devolution of information and effective participation citizens in decision making. The ideals of democracy and of political participation remain utopian to the society in the absence of fair, transparent and regular elections. The voters have the elementary right to know the full details of the candidates who represents them in the Parliament or Assemblies, as the case may be. The right know about the candidate is natural right flowing from the concept of democracy and is an integral part of Article 19(1) (a) of the Constitution of India. The candidate must ensure that they provide maximum information about themselves, on the basis of which the electorate may select worthy and public-spirited persons representing them in the governance of the country.²

While taking over the reign of the Union Government of India, Hon'ble Prime Minister Shri Narendra Modi on 27 May, 2014 addressing the nation observed that it is time to move from politics to perform and therefore, it is necessary to break barriers within the system. The Ministries of the Union Government should send a message of clarity, transparency and accountability in the system of governance. He exhorted bureaucrats to work with vision and follow seven Cs- commitment, compassion, confidence, communication, competitiveness, consistency and creativity as key principles to prosperity and innovation in the governance of the country. The need of the time is to move beyond officialdom and work a part of movement for nation building.³ This truly reflects on the commitment of the new government to transparency and good governance.

The Right to Information law which was implemented in India nine years ago remains a potent weapon to fight opacity in public offices and politicians continue to fear its unwarranted brake on their freedom of arbitrary decisions or actions. Central Information Commission time and again played an important role in realizing the dream of right to

² *Resurgence India v. Election Commission of India* [2013] 11 SCALE 348.

³ 'Sapark', *Samanyata* and *Sawad* were the Essential Attribute of Good Governance", Times of India. (Delhi, 2 June, 2014) 4.

know through its Judgements. Let us understand the role and position of Central Information Commission as tool of administration of justice in India.

Central Information Commission

The Central Information Commission (CIC) is responsible for general supervision, direction and management of the Central Information Commission.⁴ There shall be Central Information Commission.⁵ There shall be a Chief Information Commissioner and 10 members as Information Commissioner's in Central Information Commission.⁶ The Chief Information Commissioner & other Information Commissioner's shall be appointed by the President of India.⁷ The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.⁸ The Chief Information Commissioner and Information Commissioner shall be a person of eminence in public life wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. The Chief Information Commissioner shall hold office for a term of five years on the date he or she assumes office or till the age of 65 years, whichever is earlier.⁹ 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, Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.¹⁰ The Chief Information Commissioner or any Information Commissioner can be removed by the President of India on the ground of proved misbehaviour or incapacity, after a Presidential Reference to the

⁴ Right to Information Act 2005, s 12(4).

⁵ *Id.*, s 12(1).

⁶ *Id.*, s 12(2).

⁷ *Id.*, s 12(3).

⁸ *Id.*, s 12(6).

⁹ *Id.*, s 13 (1).

¹⁰ *Id.*, s 13(4).

Supreme Court. The Supreme Court inquired into the matter and reported that the Chief Information Commissioner or any Information Commissioner, may be removed on the ground.¹¹

The President may by order the removal of the Chief Information Commissioner or any Information Commissioner, if the Chief Information Commissioner or an Information Commissioner, as the case may be, –

- (a) is declared as an insolvent; or
- (b) has been sentenced in an offence which, as per the opinion of the President of India, includes moral turpitude; or
- (c) engages in an Office of Profit; or
- (d) is, in the opinion of the President of India, is declared as unfit to continue because 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 an Information Commissioner.¹²

State Information Commission

There shall be a State Information Commission.¹³ The State Chief Information Commissioner and Other State Information Commissioner shall be appointed by the Governor of the State.¹⁴ The State Chief Information Commissioner and the State Information Commissioners 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.¹⁵ The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit connected with any political party or carrying on any business or pursuing any profession.¹⁶ The term for the State Chief Information Commissioner or an Information Commissioner shall be of five years from the date of appointment or till he/she attains 65 years of age,

¹¹ *Id.*, s 14(1).

¹² *Id.*, s 14(3).

¹³ *Id.*, s 15 (1).

¹⁴ *Id.*, s 15(3).

¹⁵ *Id.*, s 15 (5).

¹⁶ *Id.*, s 15 (6).

whichever is earlier. There shall be no reappointment of the State Chief Information Commissioner or an Information commissioner. He/She shall be eligible to get appointed as the State Chief Information Commissioner after evacuating office, by the procedure mentioned in sub-section (3) of section 15.¹⁷

The resignation of the State Chief Information Commissioner may be connoted to the Governor, at any time, such that he/she is relieved of his/her services by a procedure mentioned under section 17.¹⁸ The removal of the State Chief Information Commissioner or a State Information Commissioner can only be done by an order of the Governor in cases of proved misbehaviour or incapacity, following a prescription by the Supreme Court, on a recommendation of the Governor, in an inspection, that the State Chief Information Commissioner or the State Information Commission, whichever the case be, ought to be removed on these grounds.¹⁹

There shall be full independence given to State Information Commission. The State Information Commissioner shall be endowed with the ordinary supervision, authority and administration of the business of State Information Commission. He/she may carry out all the powers and perform all those actions and affairs, which are to be performed by the State Information Commission and shall not be bound by the mandates of any other body mentioned under this Act.²⁰

However, the rules relating to the procedure to be adopted by the Commission are to be framed by the respective State Governments as per section 27 (e).

Power and Function of Information Commission, Appeal and Penalty

The Commissioners can receive complaints and appeals and enquire into them. It can pass suitable orders for ensuring compliance of the Act. It shall be the duty of the Central Information Commission or State Information Commission to receive and enquire into a complaint

¹⁷ *Id.*, s 16(2).

¹⁸ *Id.*, s 16(4).

¹⁹ *Id.*, s 17(3).

²⁰ *Id.*, s 15(4).

received from, any person.[Section 18(1)]²¹. The power of Civil Court has been vested in the Central Information Commission and the State Information Commission under Code of Civil Procedure, 1980.²² For example, it calls for and obligates the attendance of the persons and urge them for giving evidence on oath, orally or in written, and to generate before them the documents or other entities, necessitating the revelation and analysing of the written records, collecting affidavits of the evidences, demanding from any office or court, the public record or copies of such documents, for scrutinising the documents or witnesses, issue summons.

In cases when a person has not received any particulars from the Central Information Commission or the State Information Commission, whichever the case be, they may advance an appeal to an officer, who, in post, is higher to the Central Public Information Officer or State Public Information Officer.²³ The appeal should be preferred within thirty days of expiry of the period thereof or from the time such a decision was received. Under sub-section (1), an appeal, subsequent to the first one, against the decision, may be advanced to the Central Information Commission or State Information Commission, within ninety days' date from when the decision was actually received or should have been pronounced.²⁴ Binding shall be the decision given by the Central Information Commission or State Information Commission, whichever the case be.²⁵

In cases where, while deciding a given appeal or grievance, the Central Information Commission or the State Information Commission, whichever the case be, opines that the Central Public Information Officer or the State Public Information Officer, whichever the case be, has, with no just reason, denied to accept a plea for particulars regarding an issue or refrained from providing certain details in a period of time mentioned under sub-section (1) of section 7 or with ill intent, turned down a demand for furnishing some details or deliberately provided wrong, inadequate or deceitful particulars or

²¹ *Id.*, s 18(3).

²² *Id.*, s 19 (1).

²³ *Id.*, s 19 (3).

²⁴ *Id.*, s 19 (7).

²⁵ *Id.*, s 20(1).

demolished the very material, which was the subject of question or caused a hindrance of any sort in the administration of such details, they shall be liable to pay a fine amounting to two hundred and fifty rupees per day till the complaint is received or the specifics are produced. Nevertheless, the sum total of the fine thus imposed shall not be over and above twenty-five thousand rupees.²⁶

In cases where, while deciding a given appeal or grievance, the Central Information Commission or the State Information Commission, whichever the case be, opines that the Central Public Information Officer or the State Public Information Officer, whichever the case be, has, with no just reason and also obdurately and incessantly, declined from accepting a plea for particulars regarding an issue or has abstained from providing certain facts in a period of time mentioned under subsection (1) of section 7 or with ill intent, turned down a demand for furnishing some details or deliberately provided wrong, inadequate or deceitful particulars or demolished the very material, which was the subject of question or caused a hindrance of any sort in the administration of such details, it shall prescribe strict undertakings detrimental to the Central Public Information Officer or the State Public Information Officer, whichever the case be.²⁷

AMENDMENT TO THE RIGHT TO INFORMATION BILL, 2019

The Bill aims to revise the term of the Information Commissioners, which currently is fixed, and the salary and service conditions be made under the executive rules which are to be provided by the government. Currently under the unaltered Right to Information Act, the Chief Information Commissioner and the Information Commission serve 'for such term as may be prescribed by the "Central Government"'.²⁸

In the same manner, the term of office of State Information Commissioner is curtailed by the amendment. This is through amendment made in Section 16.²⁹

²⁶ *Id.*, s 20(2).

²⁷ Right to Information Amendment Bill, 2019, s 16.

²⁸ Right to Information Amendment Bill, 2019, s 16

Section 16 of the Proposed Right to Information Bill which is passed by both the Houses is as follows:

In section 16 of the principal Act, —

(a) in sub-section (1), for the words "for a term of five years from the date on which he enters upon his office", the words "for such term as may be prescribed by the Central Government" shall be substituted;

(b) in sub-section (2), for the words "for a term of five years from the date on which he enters upon his office", the words "for such term as may be prescribed by the Central Government" shall be substituted;

(c) for sub-section (5), the following sub-section shall be substituted, namely: —

"(5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force."

The State Government, in accordance with section 27 (e), has been enshrined with the responsibility to shape the principles regarding the method to be accepted and followed by the State Information Commission.

This means that the tenure of the Information Commissioner can be fixed as per the executive rules framed by the Central Government. Furthermore, by the virtue of this amendment the Central Government shall have the power to fix the salaries and allowances of Chief Information Commissioners and State Information Commissioners.

The salary and allowances of the Chief Information Commissioner and Information Commissioner are equal to the Chief Election Commissioner and Election Commissioners, respectively, and are able to become fixed by the virtue of the Constitutional provisions. To guarantee a sense of independence and autonomy in their work, the Act has provided for identical position and benefits to the Information Commissioner, to those of Election Commissioner.

But by the virtue of the reason and statement of the amendment in the Bill states "the mandate of the Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly".

The Proposed Amendment in this context is as follows:

In section 27 of the principal Act, in sub-section (2), after clause (c), the following clauses shall be inserted, namely: –

"(ca) the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (1) and (2) of section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (1) and (2) of section 16".

The terms and condition of appointment as well salaries and allowances etc, of the Chief Information Commissioner and the Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners shall be decided by the Central Government.²⁸

Conclusion

It is important to understand that Central Information Commission has six Information Commissioners. Some posts are lying vacant with that the opposition citing reason to accuse government of weakening the institution. The Original RTI Act was passed by the government, after it was discussed and passes by the parliamentary standing committee. In the original Bill at that point of time, the salaries of Chief Information Commissioner and Information Commissioners were equivalent to Secretary and Additional Secretary Govt. of India respectively. But

²⁸ *M.*, s 27.

Parliamentary committee recommended it to the level of Chief Election Commissioner and Election Commissioner respectively.

Power has an intrinsic bent to prompt governments to coax or control institutions. It is important that less interference from Government and pressures provide the necessary atmosphere where one can work with an absolute commitment to the cause of transparency. Integrity and honesty coupled with discipline in life, facilitate a constitutional functionary to be fair. Its existence depends upon numerous routinely things like security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures.

In the words of the Supreme Court, "The right to get information is a natural right flowing from the concept of democracy. That right has reached new dimension and perseverance. That right puts an important responsibility upon those who take upon the responsibility to inform".

Instead of diluting the powers, what is required is to open more access to justice. The institutions are facing real challenges of pendency of applications, vacancies and qualitative decline in adjudication standards. I feel access to justice is more often an important aspect of administration of justice and hence must be restored and protected.