

Right to Information and Good Governance

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Lecture-27

Roles and Responsibilities of the Chief Information Commissioner-II.

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Penalties. Sec. 20



- This enactment anticipates the possibility of deliberate infringement or violation or noncompliance 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.
- Sub-section (1) of the Act provides that at the time of deciding any complaint or appeal, the Central/State Information Commission shall impose a penalty, of **Rs. 250** each day till application is received or information is furnished, however, the total amount of such penalty shall not exceed **Rs. 25,000**, if the Central/State Information Commission is of the opinion that the Central/State Public Information Officer-
 - has, without any reasonable cause, refused to receive an application for information; or
 - has not furnished information within the time specified under sub-section (1) of section 7; or
 - malafidely denied the request for information; or
 - knowingly given incorrect, incomplete or misleading information; or
 - destroyed information which was the subject of the request; or
 - obstructed in any manner in furnishing the information.



Subsection 1 of Section 20 of the Right to Information Act provides that at the time of deciding any complaint or appeal, the Central or the State Information Commission shall impose a penalty of 250 rupees each day till application is received or the information is furnished. However, the total amount of penalty shall not exceed 25,000 Indian rupees. So, you will notice that an officer who is responsible for delaying the receipt of an RTI application or who delays in providing the said information shall be imposed with the penalty of 250 rupees per day.

However, the maximum penalty in every case cannot exceed 25,000. Now, you will notice that the time frame to provide information is given under Section 7 of the Right to Information and that time frame is 30 days in the normal circumstances when an application is made to the Public Information Officer. And hence, if the information is not furnished within the prescribed time frame, then for each day of delay, a Public Information Officer can be imposed with a penalty of 250 rupees per day to a maximum of 25,000.

This is the provision that is provided in Section 20. And you will notice that the opinion of the Information Commission should be based on the following factors. First and foremost, if

the Public Information Officer has without reasonable cause refused to receive an application for information. Now, there are basis on which the application will not be received and there may be some kind of a reasonable cause for the same.

Now, this is something that the Public Information Officer, himself or herself may have to justify. So, wherever there is a delay in receiving an application, the Public Information Officer may be exposing himself to the penalty provision, and it is up to the Public Information Officer to justify.

So, the burden of proof is on the PIO to justify whether he has had a reasonable cause for the refusal to receive the application or the Information Commissioner may then feel that the reasonable cause not being there, may proceed to impose the penalty as prescribed by law. So, has without reasonable cause refused to receive an application for information, is 1 of the grounds on which penalty under Section 20 can be in imposed.

Second, penalty can be imposed On a PIO, if the PIO has not furnished information within time, specified in Section 7, subsection 1. Three, if malafidely denied the request of information. Now the word is not a normal simple denial of information, but where there is a malafide intent, a bad intent, something that is done with a bad motive or an ill motive is what can be defined under the term malafide.

So, if malafidely the information is denied, in those circumstances as well, the PIO may face the penalty under section 20. Fourth, it is not about giving incorrect information. But if the information that is given incorrectly is done so by the PIO deliberately, that means knowingly giving incorrect, please note, it is not only that incomplete information, you know that what is being asked is something else and you give something else, you know what being asked is quite substantial, but you only keep a portion of it, that is incomplete information or misleading information that is trying to evade the actual information from being given to the citizen, in all these three cases incorrect, incomplete and misleading information, if the PIO has done so, that it is knowingly, then only the penalty under Section 20 will be imposed. The PIO may actually enter into certain actions of destroying the information, which was the subject matter of request, in these circumstances as well a penalty of 250 rupees per day to a maximum of 25,000 can be imposed.

Destroying information is actually a criminal act. It can be a subject of criminal investigation, it is a very serious misconduct by the PIO as the case may be if he goes ahead and does the same and it is also punishable under the Right to Information Act. So, destroying information which is the subject matter of the state can also attract a PIO with a penalty of 25,000.

If the PIO obstructs in any manner in furnishing the information, so if he impedes the process of RTI, if he creates a hurdle in the exercise of the Right to Information Act or the duties and the functions of the Right to Information Act, even then, a penalty can be imposed under Section 20.

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Hearing before imposing penalty



- The Central/State Public Information Commission shall give a reasonable opportunity of being heard before imposing any penalty on the Central/State Public Information Officers. This section provides that the burden of proving that he acted reasonably and diligently shall be on the Central/State Public Information Officer.
- **PERSONAL LIABILITY**
- The penalty to be imposed under sub-section (1) does not mention whether it would be paid in person or in the official capacity. The intention of the Act is to impose this
- penalty in personal capacity to be recovered from the personal pocket of the concerned officer.
- It is justified also because the mala fide and deliberate lapse could occur only due to the personal lapse which the officer should suffer in person.
- The time limit for such payment of penalty has not been prescribed under the Act. The Commission may pass such orders requiring the concerned officer to pay the penalty under sub-section (1) from their personal pocket within a stipulated time as mentioned in such order.



Should the PIO be heard before imposing a penalty? The Information Commission shall give a reasonable opportunity of being heard before imposing any penalty on any PIO. This section provides that the burden of proving that he acted reasonably and diligently should be squarely on the PIO. And hence to prove that he has acted reasonably and diligently and to show his innocence and to prove that the penalty should not be imposed upon him, the PIO must be given a fair opportunity of being heard before the penalty is being imposed.

You will notice that the imposition of this penalty is a personal liability on the PIO. As I told you in the previous slide, this penalty is not going to be paid by the public authority, is not going to be paid by the government or shall also not be reimbursed by the public authority or by the government. So, there is no shifting of the penalty provision to the government or its agency and the imposition of penalty is a personal liability on the individual Public

Information Officer as the case may be.

The penalty that is going to be imposed is not something that the individual pays in his official capacity. So, being a personal liability, it is for the officer to himself pay and to himself actually bear the burden of that penalty as well. So, the imposition of the penalty is in a personal capacity and should be recovered from the personal pocket of the concerned officer. And that is what is the purpose of imposing 25,000 as penalty under the Right to Information.

So, the PIO is personally liable, personally responsible, and he cannot shift this responsibility on his employer or public authority or the government, which clearly is the changing trend in the Indian legal system. Probably prior to the RTI Act of 2005 you will notice that there was no such personal liability that is imposed on government officers.

This is probably the first of its kind of legislation under which a personal liability is imposed on a government officer and the government officer as a PIO is accountable to pay the penalty out of his own pocket and cannot get the same reimbursed from government funds or the taxpayers' money.

And this probably has brought in the required effectiveness, the required impetus to create a successful model of legislation that protects rights in India. And hence there is a huge deviation from the common law principle, which always said that the master is liable for the act of the servant. Here the servant himself is liable and he cannot make the master liable. So, the principle of vicarious liability here or vicarious responsibility does not apply at all.

Penalty is definitely not a civil action, it is a criminal action, it is a fine and it has severe consequences in terms of the imposition of the same and I think prima facie if the penalty is imposed on a PIO, it surely establishes negligence, it surely establishes carelessness, and it will definitely amount to serious misconduct which probably will have serious ramifications on the employment of the concerned officer as the case may be.

Why is penalty justified? Penalty is justified because it is often seen that Government officers deliberately defeat the intent of any legislation by their inactions or missions and their careless attitude. And hence to change the kind of attitude in public servants, to change the kind of response that government agencies give towards its citizens, I think the penalty

provision is completely justified. And the penalty you would notice, applies only in case of malafide and deliberate lapse.

It is not an ordinary misinterpretation of the law for which a penalty is going to be imposed. So, when officers of the Government act negligently or in a malafide deliberate manner, I think a penalty of such nature, for their personal lapse in their services is something that is often justified under the Right to Information Act. So, such kind of deliberate action, I do not think the government must take responsibility for the officer, neither the government must reimburse the officer, I think the officer must stop on his own account on his own instance.

This probably helps in bringing a great attitudinal shift in government offices, in a sense that I personally feel that from a government servant, officers now have started acting as public servants. They know that there are accountabilities to the public, they know they have to be answerable to the public, and they know if they are found short of their response to act as a public servant, they may be held liable, they may be held responsible, and they may have to pay a penalty from their own personal pocket to the extent of 25,000.

Interestingly, when penalty is imposed by the Information Commission, it is the duty of the officer to pay the penalty as soon as possible. There is no time limit that is fixed for such penalty under the Act. However, the commission may pass an order requiring the concerned officer to pay the penalty within a stipulated time. So, this is something that the Act has not prescribed, but the commission in its order and judgment may definitely insist that the penalty money be paid in a time bound manner.

And if he does not meet the penalties in the time bound manner as prescribed in the order of the Commission, then possibly you could notice that the Commission may proceed to take other kinds of actions that are necessary against the concerned delinquent officer.

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DISCIPLINARY PROCEEDINGS

- Section 20(2) of the Act is almost a repetition of the sub-section (1) of the section 20 ***but having a different kind of penalty under harsher circumstances of persistent default.*** Instead of imposing a penalty in terms of money, the Commission has been empowered to recommend disciplinary action against the concerned Central/State Public Information Officer under the relevant service rules applicable to them.
- The penalty under sub-section (2) may be more effective and salutary than that mentioned under sub-section (1). However, it would be pertinent to note here that penalty under sub-section (2) cannot be imposed in routine at the first instance. The persistency of default is the pre-condition before resorting to this provision. In other words, the default has to be repeated at more than one occasion.



Section 22 of the Act also states that there is a different process that can be taken, if the concerned officer defies the spirit and the objective of the Right to Information Act. It says that there are harsher circumstances, there are persistent defaulters and the commission is empowered to actually direct recommendation of disciplinary action against the relevant officer. And hence you will notice apart from imposing penalty in terms of money, the commission is empowered to recommend disciplinary action against the concerned PIO under the relevant service rules.

So, penalty can be imposed, penalty coupled with a recommendation of disciplinary action is what the Information Commissions are empowered to do, so as to ensure that the PIO conforms with the provisions of the RTI, the PIO conforms with the directions and orders of the Information Commission.

And hence, a public authority may be obligated to follow the recommendations of the Information Commission and it will be obligated to come into disciplinary inquiry as to why the actions of the PIO should not be considered as misconduct under the service rules applicable to such officers.

The penalty under the RTI Act may be more effective and however, you should notice that imposition of penalty sometimes is not routine, and hence, the persistent defaulters may only worry for disciplinary action and disciplinary action or persistent defaulters are repeated often, as we call them would be the ideal sanction that is required for adequate enforcement under the Right to Information Act.

There have been some instances where Public Information Officers have defaulted more than once. This has been what we call this habitual defaulters and disciplinary action has been recommended against such concerned officers as well.

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SECTION 20 WHEN READ WITH SECTION 5(4) AND (5)



- If an assistance is sought by the Central/State Public Information Officer from some other officer for the enforcement of the right under the Act and such other officer fails to render such assistance, he or she would be deemed to be the Central/State Public Information Officer for that purpose to the extent and the penalty would be imposed on such officer, if the default is on account of failure of such assistance.



Interestingly, section 20 talks about penalties that have to be imposed on Public Information Officers or the Assistant Public Information Officers. However, if one reads section 20 with section five, especially 5(4), and section 5(5), you will notice that under section 5 the PIO or a APIO can seek the assistance of any other officer for the implementation of the Right to Information Act. And if such other officer whose assistance has been sought under the Right to Information Act, under Section 5(5), he or she shall be deemed to be a PIO for the purpose of the Right to Information Act.

And a deemed PIO, which means any other, officer not necessarily the designated Public Information Officer, other officer who has malafidely, deliberately, knowingly violated the provisions of the Right to Information, has destroyed information, has given false information, has deliberately avoided even information on time, then, such other officer who is considered as the deemed Public Information Officer may also be imposed with the penalty of 250 rupees per day for a maximum of 25,000.

And hence, when you read section 20 with section 5(4) and section 5(5), it is very clear that whoever in a public authority is responsible for the violation, non-compliance and infringement of the provisions of the Right to Information Act and who falls within the perspective of Section 20 in terms of the intention to non-compliance, then in those circumstances, those officers may attract the penalty that is prescribed by law.

And hence, one it is very clear in the fact that it is not the PIO or APIO alone who are

susceptible to the sanctions mentioned in Section 20, it could be any other officer who has deliberately, malafidely, intentionally violated the provisions of the RTI Act, to whom the penalty provisions must be made applicable as well. This is very, very important considering the fact that within an organization it is not the sole and whole responsibility of the PIO to provide information or to fulfill the requirements of implementation of the RTI Act, it is a collective responsibility of every individual in the public authority.

The PIO is only a designated officer to liaison with the citizen, to accept the application, to process it and provide the information within a timeframe. However, it is not that all information is within the custody of the Public Information Officer. The information which would be there with the caseworker, the information would be there with the appellate authority, it could be there with any officer within that organization.

And hence, it is the collective responsibility of all officers within a public authority to facilitate the implementation of RTI in a time bound manner. If officers individually or collectively failed to fulfill their obligations through the PIO, I think all such officers including the PIO shall be responsible. However, a Public Information Officer shall not and do not take the sole responsibility of the sanctions.

I think he can distribute it through section 5(4) and section 5(5), pinning the responsibility and the liability, interestingly pinning the accountability on whose fault the RTI seems to have been violated and who is the real reason for the deliberate misfortunes to have been committed under the Right to Information Act. So, any other officer may attract the penalty under Section 20 is what we learn from the slide that is in front of us.

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TO ACHIEVE EFFECTIVENESS AND NOT TO PUNISH



- It is however clarified that penalty provided under the Act is not an end in itself. It is rather a means to achieve the impact of the Act at a desired level. It is a way of enforcement of the Act so that it could not be reduced to a voluntary exercise. Therefore, it is both up to the applicant as well as to the public authority to understand that the penal provisions are not to be invoked in normal course and rather the same may be invoked as a last resort. The CIC considered this in *Pushpa v. Guru Teg Bahadur Hospital, No. CIC/P/C/2008/00304*, and made the followings:
- "The Commission makes it clear that it seeks to ensure bringing systemic improvements in the work of the public authorities so as to bring any transparency and accountability in their working rather than routinely imposing penalties on the PIOs. The imposition of penalty cannot be a matter of course and the Commission has to arrive at a considered opinion while deciding to impose a penalty on a Government servant if he is otherwise discharging his duties to the best of his ability and competence. ***The RTI as an instrument cannot be used either to harass or to obstruct the very functioning of a Public Authority.***"



It is important to note that penalty is provided on the Right to Information Act to achieve effectiveness and penalty is not necessarily only to punish. I think the provisions of penalty under the Act are not an end, it is only a means to achieve the end. So, it is not necessarily that penalty under the Act will actually ensure the effectiveness, effectiveness comes from attitudes, effectiveness comes from adhering to the objectives of the RTI Act, effectiveness comes from understanding the real meaning of what you mean as a public servant, effectiveness comes from being transparent and being accountable much before being asked to do so.

However, please note, penalty is not an end in itself, it is rather a means to achieve the impact of the RTI Act at a desired level, penalty is a way of enforcing the Act. And hence, it could, it is something that has to be done through the justifications of either showing that it was malafidely or intentionally or deliberately or knowingly or with the fact that the PIO says that whatever was done was done unknowingly and without any deliberate intention or cause.

Therefore, it is both up to the applicant and to the public authority to understand the penal provisions, that they are not to be invoked in the normal process, and rather, the same should be invoked as a last resort. So, the Information Commissions should not impose a penalty in each and every case, they must ensure that the penalty is a last resort provision, it is only to be applicable in the rarest of rare cases, where the requirements of Section 20 are actually fulfilled.

If you consider the CIC case of 2008, that is before you in the slide, in this Guru Teg Bahadur

Hospital case it was observed, the Commission makes it clear that it seeks to ensure bringing systematic improvements in the work of the public authorities, so as to bring any transparency and accountability in their working rather than routinely imposing penalties on PIOs. The imposition of penalty cannot be a matter of course, and the Commission has to arrive at a considerate opinion while deciding to impose penalty on a government servant, if he is otherwise discharging his duty, the best of his ability and competence.

The Right to Information Act is an instrument which should not be used either to harass or obstruct the very functioning of a public authority. So, clearly there was a warning that was imposed by the CIC as early as in 2008, saying that you should not impose penalty in a routine manner, it should be used in the rarest of rare cases and it should be used in a manner to only ensure the best spirit of the RTI Act. And hence, it is not in every case where there is a dispute of providing the information that a PIO will attract the penalties under section 20.

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Is it mandatory to impose penalty?

- The Hon'ble Punjab and Haryana High Court in the case of *Ramesh Sharma and Another v. State Information Commission, Haryana and Others*, AIR 2008 P&H 126; (2008) 2 PLR 485 held that the plea that penalty provisions of the Right to Information Act could be imposed only in cases where there is repeated failure to furnish information and that too without any reasonable cause, is untenable. Even in cases of simple delay, the Commission under section 20(2) is empowered to recommend disciplinary action against the Central/State Public Information Officer under the Service Rules.
- It was also held that the imposition of penalty on the Central/State Public Information Officer under section 20(1) is mandatory and the Central/State Public Information Officer cannot avoid the mandatory provisions or seek leniency on the excuse that training programme envisaged by section 26 of the RTI Act has not been organized by the Government encouraging participation of PIO in development and organisation of programmes. The Court, in very clear terms, held the provisions as mandatory. This means that if the Central/State Public Information Officer has failed to supply the desired information on time then the Commissioners should at the outset impose penalty and then ask them why it should not be realized rather than asking them why the penalty should not be imposed. Just a minor change of language can bring drastic changes in the attitude of a non-supportive Central/State Public Information Officer.



Is it mandatory to impose a penalty? Very interesting. Or is it something kind of a discretion that the Information Commissioners can exercise? Now, no law will apply robotically, no law will apply automatically. And hence every Information Commissioner has to evaluate whether the case is a case fit for imposition of penalty or not. Every Information Commissioner will have to evaluate whether PIO, when he has acted has acted deliberately, malafidely, knowingly or willfully.

So, hence it is a judgment to be arrived at. However you will notice that the honorable Punjab and Haryana High Court in this case of Ramesh Kumar Sharma versus the Information Commission Haryana, it is a Punjab and Haryana High Court decision of 2008 held that the plea that the penalty conscience in the RTI Act could be imposed only in case where there is a repeated failure to furnish information and that too without any reasonable cause is untenable, even in cases of simple delay but knowingly.

The commission under Section 22 is empowered to recommend disciplinary action against the PIO under the service rules. So, repeated failure is not something where penalty should occur, even in the single instance where there is a deliberate action of the PIO, I think penalty is to be imposed is what the Punjab and Haryana High Court had to say in Ramesh Sharma versus the State Information Commission.

The High Court also said, it held that the imposition of penalty on the PIOs is mandatory and the Central or State Public Information Officers cannot avoid the mandatory provision or seek leniency on the excuse that training programs were not organized for them under Section 26 of the RTI. And hence, inadequacy of training is not a defense.

The court in very clear terms held the provisions of penalty are mandatory in nature, this means that the PIO who has failed to supply the desired information on time, the Information Commissioners should at the outset impose penalty and then ask them why it should not be realized, rather than asking them why the penalty should not be imposed.

So, this is a minor change of language that can bring about a drastic change in the attitude of the way the PIO functions and I think non-supporting, non-initiated PIOs were given a very strict warning in 2008 by the Punjab and Haryana High Court saying that if you do not comply with the provisions of the RTI Act and if you infringe the Right To Information, you will attract penalty.

And the Information Commissioners were duty bound to do that even if it is the first time, even if he has not got any training, he should probably be held accountable and answerable under Section 20 of the Right to Information Act.

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'Intention'

- In *Devinder Singh v. State of Punjab, Writ Petition (Civil) No. 2732 of 2010*, the Hon'ble Justice Surya Kant struck down imposition of penalty and also the recommendation for disciplinary action ordered by the State Information Commissioner on the grounds that there was no delay in furnishing information. The Hon'ble Judge observed that:
- "While imposing penalty or recommending disciplinary action, the State Information Commission is not only obliged to scrutinize the nature of information sought by an applicant and the amount of time likely to be spent in collecting or up-dating such information, it is also its bounden duty to find out as to whether there has been a deliberate or wilful attempt to suppress the information. In the absence of any such firm finding, the punitive action is wholly unwarranted."



The aspect of intention for imposition of penalty was taken up in *Devendra Singh versus State of Punjab*, it is a 2010 decision in which honorable justice Suryakant struck down the imposition of penalty in one particular case. However, he also recommended the disciplinary action by the State Information Commission, as they found that there was no delay in furnishing the information. So, I think that in this case the order of the Information Commission was struck down.

The court held in this case that while imposing penalty or recommending disciplinary action, the State Information Commissions is not only obligated to scrutinize the nature of the information sought by the applicant, and the amount of time likely to be spent in collecting or updating such information, it is also duty bound to find out as to whether there has been a deliberate and willful attempt.

This is something that should be noted, in collecting the information or in updating the information or providing the information that can be a reasonable delay and it could be an explainable delay. In those circumstances, I think it is not justified, that the penalty can be imposed on the PIO and that is why the High Court in this case says very clearly, that only deliberate, willful attempt to suppress the information should attract a penalty and hence in the absence of any search firm finding, so, if the finding of the information condition is led to that deliberateness or willfulness, then there is a justification for imposition of penalty. If there is no such finding, then punitive action is wholly unwarranted. Penalties or punitive actions and hence it should be imposed in the rarest of rare cases.

There must be a clear intention and a deliberate, a willful, knowing attempt on the PIO to violate the RTI Act, only in those circumstances, a penalty can be justified and it cannot be justified in ordinary circumstances, wherever there is delay or wherever there is denial of the Right to Information Act.

I think that the Devendra Singh versus State Punjab case is a very important case, it clearly lays the background to the Right to Information Act in the sense that when penalty is imposed, it should be imposed when there is a negligent mind, a reckless mind, a careless mind. A PIO who does not care for the law, who does not care for the protection of the right and who has failed in his basic duty to provide the said information. He will then be responsible for the penalty under the Right to Information Act.