

## **Right to Information and Good Governance**

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**Lecture - 58**

### **Information Commissions Under the RTI Act - 1**

In today's module, we are going to discuss about the power and functions that Information Commissions usually exercise under the Right to Information Act, 2005. We all know that under the Right to Information Act, we have created a body, empowered with enough powers to adjudicate upon matters that are dealing under the Right to Information Act.

And these are called as the Information Commissions, and the Information Commissions, as we all know and are aware of have been created under the central government and also under various state governments.

And I think, the Information Commissions got themselves established through the RTI Act, their role is specifically to govern the Right to Information legal regime in India as concerned under the Right to Information Act, 2005 and over the last few years, they have done extremely well in trying to implement this law, so as to fulfill the objectives behind the enactment of this legislation.

So, we will try and analyse and discuss the powers and functions of the Information Commission. And we will try and see who can be the Information Commission, what is the qualification, and what kind of role do they play, and you know, what is the hierarchy of the adjudicatory process under the Right to Information Act.

I think these are some of the features of this module. And I am sure this module will give you a great insight and also critical perspective on the functioning and working of the Information Commission. So let us go forward.

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The slide features the National Law School of India University logo in the top right corner. The main title is 'Tribunalization in India'. Below the title is a quote by James Madison: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself" and then "Authority has to exist before it can be limited". In the bottom right corner, there is a small video inset showing a man in a light blue shirt speaking.

And in moving forward, I have to start with the issue of tribunalization in India. Friends, in the last few years or the last few decades in India, we have seen increased creation of tribunals. This has been kind of the feature of legislative making India.

We all know that tribunals are alternate dispute forums, tribunals are created as alternate to the proper or regular court system. We know, in India, that the courts are the adjudicatory bodies. We know that there is the district court at the district level, then there is the high court at the state level, and there is a Supreme Court at the national level.

The hierarchy of the proper court system means that the courts can adjudicate both civil as well as criminal disputes. And hence, in India, either it is, unfortunately, I must say that due to the increased number of litigations, the ordinary courts are burdened with a lot of pending cases and litigations.

Though the courts have done a fantastic job in trying to bring about social and legal reform in this country, in trying to ensure equitable justice to its people, I think time has been a major factor in the adjudicatory process and courts have failed to deliver justice in time. Because of the number of cases that have piled up in these courts, it is taking a lot of time for the courts to give their final decision. It is also because of the fact that the courts have an internal review process, which seems to be never-ending.

These few factors have contributed to the realization of the fact that it need not be the proper court always to adjudicate matters. We can create tribunals, under specific legislations, who can be the first adjudicatory forums before the courts actually take up interpretation of this law. And hence, to create a system where specialized agencies unlike the courts, which are the general agencies, I think in India, there is a process of creating tribunals through every new legislation probably that has been enacted.

We know, in India, if you can take certain instance or examples of tribunals being created, I can remember of the consumer forum; the district consumer forum at the district level, the state commission at the state and the national commission and the central level being created under the Consumer Protection Act 1986. The idea of the consumer forums was that the consumer forums will decide consumer disputes. They will become specialized bodies, expert bodies and probably because they are only dealing with those cases that are arising from the Consumer Protection Act, they will probably be able to adjudicate the dispute within the reasonable time frame that is expected and fixed by law.

And hence, tribunal and their functioning in India has been a part of very interesting study over the period of time. The fact remains to be answered whether tribunals have been successful or not. However, it all depends upon the intention of the legislature, the powers entrusted to such tribunals. And finally, the quality and competency of the members of tribunals that will actually finally determine whether the tribunal has been successful or otherwise.

We have seen tribunals being created under legislations like the Competition Act, where the Competition Commission of India gets power to decide about the violations that may be challenged under the Competition Law of 2002. We have seen several tribunals, be it in the area of tax, be it in the area of land acquisition where tribunals have been created, we see these tribunals performing extreme functions of that of an administrative and adjudicatory role.

And hence, it is important to look at the growth, the evolution, and the performance of tribunals in India in general context or in a general perspective, before we evaluate the function of the Information Commission as another tribunal that has been created under the Right to Information Act, 2005.

I think, I remember the statement, and that is why I put it in the slide, where Mr. James Madison had said that in framing of government, which is to be administered by men over men, the great difficulty lies in this - you must first enable the government to control the government and in the next place, oblige it to control itself.

And then the authority has to exist before it can be limited, which clearly depicts the fact that once a law is put in place, once an authority is put in place I think, to check the functioning of this authority, to check whether the authority is able to govern the government and its people becomes the most important part of the framing of any such tribunal.

I think in India, we have a lot of bodies that perform the quasi-judicial functions. Tribunals are supposed to perform these quasi-judicial functions. They are not supposed to be judicial authorities, they are only quasi-judicial authorities, which means they are semi-judicial.

However, they almost have the same and equal powers that of a judge or the judiciary. And hence, in terms of exercising the power to implement or enforce the act, I think the tribunals play a very significant role.

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**Authorities created/defined/  
empowered under RTI Act**

- i. Appropriate Government [Sec. 2(a)]
- ii. Central Information Commission [Sec. 2(b)]
- iii. Central Public Information Officer [Sec. 2(c)]
- iv. Chief Information Commissioner [Sec. 2 (d)]
- v. Competent authority [Sec. 2(e)]
- vi. Public Authority [Sec. 2 (h)]
- vii. Other Officers [Sec. 5(4)]
- viii Appellate Authority [Sec. 19(1)]

After this preliminary discussion, let us look and see what are the authorities that are created under this Act, that is, the Right to Information Act. It is important for us to analyse and understand that how many and which authorities have been created under the Right to

Information Act. Is it that the Right to Information has created only Information Commissions or have they created other bodies and authorities as well.

Though the Information Commission is the most important body that is created under the RTI Act, please note, there are other authorities that have been created under the RTI Act. The first among them is what is known as an Appropriate Government. Section 2(a) of the Right to Information Act defines an appropriate government to state that it means a relation to a public authority, which is established, constituted, own, controlled, or substantially financed by the funds provided directly or indirectly by the central government, by the state government, by the Information Commission, and so on, and so forth.

So, you will notice that an appropriate government is one that is created by the centre of state government, and this is defined under Section 2(a), I think the definition of an appropriate government becomes irrelevant in reading the law. In several places, you will notice that an appropriate government can actually frame rules and regulations for the implementation of the Act.

Sometimes an appropriate government can also decide whether an information can be exempted or not. And hence, the definition of an appropriate government becomes relevant. It is also one of those that have been defined under the law as an authority that is recognized. Section 2(b) defines a Central Information Commission and it also defines the Central Information Commissioner, as is that in Section 2(d). So, you will notice that this has been created and it has been empowered as well.

Then to see talks about the Central Public Information Officer. This means the public information officer who is in charge of providing the same information and who has been designated to do so by the law. This is 2(d), which defines Central Information Commissioner. So, the Central Information Commissioner is the chief of the Information Commission and is assisted by others who may be designated and called as Information Commissioners.

Further the definition of the Chief Information Commissioner, under Section 2(d), we have the definition of what is known as the Competent Authority under Section 2€€. A competent

authority, I think under this RTI law assumes greater level of significance, we will deal with what is the role of the competent authority.

But it states like this, that a competent authority can be the Speaker of the House of the People or of the Legislative Assembly, competent authority can be the Chief Justice of India in the case of Supreme Court, it can be the Chief Justice of the High Court in the case of High Court, it can be the President and the Governor as the case may be or it could be the administrator is appointed under Article 239 of the Constitution of India.

These are all competent authorities and interestingly, even competent authorities can frame rules for the implementation of RTI Act. We will discuss this in another module, what is the role and position of the competent authority vis-a-vis the RTI Act.

The next authority that is there is the Public Authority which again we have discussed, it is defined under Section 2(h). A public authority means an authority or a body institution of self-government established or constituted by the Constitution or by any other law made that the Parliament, by the state legislature as the case may be or by any notification that is made by the appropriate government, and includes anybody owned, control, or substantially financed, or any non-governmental organization substantially financed directly or indirectly by the funds provided by the appropriate government. So, this is also an authority that you see under the RTI Act.

Then there are other officers that are defined under Section 5(4), which is also relevant in terms of internal functioning within a public authority and an organization. And that also is a body that is necessary and important in the implementation of the RTI Act.



Then you have what is known as an Appellate Authority. An Appellate Authority is one that actually can be addressed as the First Appellate Authority so that in case anybody or any citizen is aggrieved from the order of the public information officer, you can take an appeal to the Appellate Authority. And Appellate Authority is somebody who is senior, somebody who heads the organization, or a public authority to whom such a presentation or a grievance can be made.

After the decision of the First Appellate Authority, then the decision can be taken ahead to the Information Commission. So, these are some of the authorities created, defined, or empowered under the RTI Act, and they all play their own significant role in governing the RTI legal regime in India.

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**Information Commission: Adjudicatory powers in a Quasi Judicial Body?**

- Further, the Act also creates Institutions with quasi judicial powers. Hence the redressal of grievances on the denial of information will have to be addressed to the Information Commission before it would be dealt by the Courts
- Sec. 23 bars the jurisdiction to the Courts in the matters relating to or arising from the provision of the RTI Act.



The next question for us to arise is whether the adjudicatory powers of the Information Commission, which is a quasi-judicial body? If so, what is this quasi-judicial body do in terms of its adjudicatory functions? Now, if you see, information or the denial of information is a kind of a grievance that needs to be redressed.

And suppose a citizen seeks an information and the same is not provided, this results in some kind of grievance. A grievance redressal forum is the most important forum for the state to address the concerns of its citizens. A grievance redressal forum is also a body that determines what is the right and the duty co-relationship that exists under a given law. If a citizen has a right to information, it is the duty of the state not to infringe that right, not to deny that right, and not to see that the right is actually interfered with.

And hence, this kind of grievance redressal mechanism is necessary function of the Information Commission. The Information Commission is there not only to interpret the right but also to redress the kind of issues, challenges, or probably the misapplication of the law that maybe their vis-a-vis being the government or its citizens.

So, I think what it does is to bridge the gap, what it does is to satisfy the citizen about the right and about the kind of nature and function that the state owes towards him. So, Information Commission, basically, if I may say so, the first and the foremost role that it should play is to redress the grievance of the citizen, those kinds of grievances that may arise



from the Right to Information Act. That I think is the most important function and an adjudicatory role that is paid by a quasi-judicial body called the Information Commission.

Kindly note, the powers of the Information Commission are so significant and important that the Right to Information Act in Section 23 bars the jurisdiction of the courts in matters relating to or arising from the provisions of this Act, which means if a citizen has to redress grievances that arise from the RTI Act, he has to inevitably go to the Information Commission, and he cannot approach the proper courts, which means proper courts are barred from entertaining any plea, any petition, any complaint that may arise from the citizen's grievances from the denial of information under the Right to Information Act.

This is important, which means the primary function of the Information Commission is that of a court. The primary function is replacing the court to the Information Commission. And hence, the Information Commission is alternate to the court system, is alternate to the proper court in terms of providing remedies for any redressal of grievances that a citizen may have from the implementation of the Right to Information Act.

Kindly know, Section 23 bars the jurisdiction of the lower court, it does not bar the jurisdiction of the constitutional courts of the High Court or the Supreme Court as in Article 226 or Article 32.



However, when the courts are primarily barred, it means they cannot be the primary forums for dispute resolution. They cannot be the primary forum that the citizen can approach for redressal of their grievances that arise from those special legislations. And hence, special adjudicatory tribunals that are created under a law get kind of a prominence for citizens to approach and redress their grievances.

This means that the Information Commission has a lot to do, they have a lot of complaints to receive, they have a lot of adjudicatory roles to play, and citizens can approach only them and not the court in case they have issues regarding the Right to Information Act. So, Section 23 is an important empowerment that the Information Commission gets in a negative way by taking it away from the proper courts.

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## Quasi Judicial body

- The Central Information Commission [sec. 12] is constituted by the Central government after a notification in the Official Gazette. CIC shall consist of a Chief Information Commissioner and not more than 10 Central Information Commissioners
- On the recommendation a committee consisting of the Prime Minister, the leader of the largest opposition party in the House of the People and a Union Cabinet Minister to be nominated by the Prime Minister.
- The President of India appoints the CIC and ICs
- Sec. 12(1).
- Sec.12(6).
- Sec.12(3).



So, what is a quasi-judicial body in the Information Commission? Kindly note, if one reads Section 12 of the Right to Information Act, I think Section 12 is an important provision which talks about the Central Information Commission. If you look at this, Section 12 is part of Chapter 3 of the Right to Information Act and it goes about to state something like this in Section 12(1). Let me read Section 12(1).

The Central Government shall, by notification in the official gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on and to perform the functions assigned to it under the act. Which means the Central Information Commission is something that should be constituted by the central government, it has to be notified to an official gazette, its primary duty is to exercise the powers conferred to and perform the functions as assigned to it under this act.

So, this is the kind of body that has been created and please note, the Central Information Commission has both administrative roles as well as judicial role. We will discuss this as we go forward. But that is something that will be created by the central government. Kindly note, if one goes by reading the provisions of Section 12, one will come to know that the members of the Central Information Commission are appointed on the recommendation of a committee consisting of the Prime Minister, the leader of the opposition party, and the Union Cabinet member; cabinet minister, I am sorry, to be nominated by the Prime Minister.

So, a committee of these individuals make the recommendation about who shall be the Information Commission and who shall be appointed by the central government for the same. And interestingly, kindly note, it is not the government that issues the appointment for the Information Commissioners, it is the President of India who appoints the Chief Information Commissioner or the Information Commissioners in general. So that is the process that is established under this law and that is a process that has to be followed as well.

Please note, under Section 12(6), the central government shall provide the Information Commissioners and the Chief Information Commissioners with such officers and employees as may be necessary. Which means that the Central Information Commissioners are not the only and sole persons who would be employed in the Information Commissioners, but they can actually employ other employees to see that the Information Commission functions efficiently as well.

Interestingly, the salaries and allowances payable and the terms and conditions of service of those officers and other employees appointed for this purpose shall be as such prescribed. So, it can be prescribed and hence, Information Commissions can actually get into employment as necessary for discharging their own functions. So Central Information Commission, if you ask me, consists of the following.

First, the Chief Information Commissioner, he heads the Information Commission. Two, it consists of other commissioners who may be called as Information Commissioners. But kindly note, the Act says that not more than 10 Information Commissioners can be appointed at the central level. So Chief plus 10 is what can be attributed to; up to 10 Central Information Commission.

Three, the Central Information Commission can have its own employees and they can be hired and their salary and pay can be fixed and prescribed and this would be important to improve the efficient performance of the Central Information Commissions and this can be the total structure under which the Central Information Commission can be established.

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So, if one looks at the hierarchy of the adjudicatory institutions under RTI, one will come to this conclusion that at the lowest adjudicatory role is the Public Information Officer. He is a person to whom the citizen goes and applies for information, he has been designated as the public information officer, it is his role and duty to actually provide for the information or decide whether the information cannot be given.

So, he is the primary contact person to the citizen has to approach and the Public Information Officer can be assisted by another individual for the Assistant Public Information Officer. So these two agencies are, I must say the liaison officers who are responsible to speak to the citizen, interact with the citizen, and provide the said information to the citizen as well.

The role of the PIO will be dealt in another module. And the role of the APIO also will be dealt in other morning, which means the application process and the reply process is something that we deal in another module.

However, once the Public Information Officer makes a decision, then if there is a grievance, which has to be addressed, a citizen has to take the first appeal to an Appellate Authority. This is called the process of first appeal. An Appellate Authority, as I told you in the past, is somebody who is within the organization, who heads the organization or the public authority, and to whom such appeals can be preferred.

From the Appellate Authority if dissatisfied from the decision, and if the grievance still continues, a citizen can make the secondary to the Information Commission. Either he can make this to the Central Information Commission or to the State Information Commission as the case may be.

How do we decide whether the appeal has to go to the Central or the State Information Commission? The decision of the same has to be based on the fact whether the information sought is from central government public authorities or if the information is sought from the state government public authorities, which means government information is divided into two parts, central government information, and state government information. So, a citizen can either access central or state or both.

And hence, when the state government information is sought and the same is denied and there is a grievance there arises of the citizen, then the citizen has to go to the State Information Commission in second appeal. However, kindly note, if the citizen is seeking central government information and grievances is about the denial of the same, the citizen will have to approach the Central Information Commission. Kindly note, the Central Information Commission is constituted in New Delhi, its office is in New Delhi and that is where the adjudicatory process actually is.

However, the State Information Commissions are generally constituted in the state capital and hence, the citizen will have to go to the state capital to find the state appeal for those State Information Commissions. However, kindly note, after this, if there is any grievance that still remains from the adjudication of the Information Commissions, either state or centre, then the citizen can go to the High Court and he can file a writ petition under Article 226 in the concerned High Court.

For example, if the State Information Commission has given its judgment in Karnataka relating to Karnataka government information, any grievance regarding the same should go to the Karnataka High Court.

Now, because the Central Information Commission is situated in New Delhi, and if there is a grievance regarding the judgments or orders of the Central Information Commission, the

citizen may have to go to the High Court in Delhi and redress his grievance to a writ petition that is to be filed under Article 226 or 227, as the case may be.

From the decision of the High Court, there is a possibility to go to the Supreme Court of India and also get the final adjudication from the apex court as to any interpretation of law or any issue of law that may require that adjudication of the apex court of the land. So, this is kind of a slide or a presentation that gives you the hierarchy of the court structure and how a citizen can redress his or her grievance, as the case may be, in the process of the Right to Information legal regime.

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The slide features the title "State Information Commission" in a large, bold font. Below the title, there are three bullet points: the first is a detailed paragraph defining the commission's composition and appointment process; the second is "Sec.15(1)."; and the third is "Sec.15(3).". In the top right corner, there is a logo for the National Law School of India University, Bangalore. In the bottom right corner, there is a small video inset showing a man in a light blue shirt speaking.

The State Information Commission, you see the definition of State Information Commission under Section 15, Chapter 4 of the Right to Information Act. And the State Information Commission also shall be constituted through an official gazette. However, as different from the Central Information Commission, State Information Commissions are appointed by the state government. And it is the state government that is involved in appointment and in selection as well.

For example, if you look at Section 15(3), it says that the State Information Commissioners including the Chief Information Commissioner shall be appointed by the Governor on the recommendation of a committee constituting the following.

First, Chief Minister, who shall be the Chairperson of the committee. Again, it is the leader of the opposition in the Legislative Assembly, and the cabinet minister to be nominated by the

Chief Minister. So, the appointment of State Information Commissioners and the Central Information Commissioners is almost the same. However, it is the Governor appointing here in the state and it is the President of India that is appointing in the centre. So, the process and the position is almost similar and same.