

# **INFORMATION COMMISSION(S)**

**Right to Information Act, 2005**

# Learning Objectives of the Module

- The Constitution, Structure & Organisation of the Information Commissions
- **The Powers & Functions** of the Information Commissions
  - Inquiry (by ICs) into 'Complaints'
  - Admitting and Disposing 'Second Appeal'
  - Imposition of Penalties
- Miscellaneous Provisions concerning ICs including Monitoring Procedure followed by the ICs

# An IC is thus

## An

- adjudicator (as the “Second Appellate Authority”)
- interpreter of “Public Interest” as it bears on either disclosing / providing information and withholding / denying it
- authority to receive and inquire into complaints about non-compliance and a counsel for remedial action
- autonomous entity in exercising its mandate

# What the Act Says?

Constitution, Structure & Organisation of C/SIC

# State Information Commission

## Constitution of SIC (sec.15)–

- State Chief Information Commissioner (entrusted with general supervision, direction and management of the affairs of the Commission) and assisted by...
- State Information Commissioner (s) (as may be considered necessary, not exceeding ten)

# State Information Commission

## Mode & Procedure of Appointment (sec.15)–

Appointed by the Governor on

- Recommendation of a Committee consisting of:
  - the Chief Minister (as Chairperson)
  - the Leader of the Opposition in the Legislative Assembly &
  - a Cabinet Minister nominated by the CM

# Other Important Stipulations

- Information Commissioners (Central / State)  
Shall:

- be persons of eminence in public life.....
- with wide knowledge and experience in law, science and technology.....

## Information Commissioners (Central / State) Shall Not :

- be a Member of Parliament or Member of Legislature of any State or Union Territory... hold any other office of profit...(be) connected with any political party...

# State Information Commission

## (Sec.16)Term of Office –

- All SIC Commissioners are to:
  - hold office for a period of five years (from the date of entering upon office)
  - or till attainment of 65 years of age (whichever is earlier)



# Governments' Responsibility

- **The Central / State Governments (as the case may be) are bound to:**
  - provide the Commissioners with officers and employees **necessary for efficient performance**
    - provide for the payment of their salaries, allowances etc.
    - provide for the terms and conditions of service of the officers and employees, **as prescribed**

# State Information Commission

## (Sec.17)Provisions for Removal (of Information Commissioners) —

- Any Commissioner can be removed from Office:
  - for proved misbehaviour or incapacity;
  - only by an order of the Governor (of the State concerned);
  - if the Supreme Court of India, on a reference made to it by the Governor, after an inquiry, recommends removal on the said grounds

# State Information Commission

- The State Information Commissioners may also be removed from office by the Governor on grounds of:
  - insolvency
  - conviction in an offence involving moral turpitude
  - engagement in paid employment other than his / her office duty
  - infirmity of body or mind
  - acquiring financial /other interests prejudicial to the functions of a State Information Commissioner.

# C/SICs: Functions & Powers(Sec.18): Inquiry into Complaints

Citizens can complain on reasonable grounds about

- inability to submit request to PIO due to:
  - non-appointment of such officer
  - APIO's refusal to accept an application / appeal
- being refused access to any information requested under the Act

## **C/SICs: Functions & Powers: Inquiry into Complaints**

- not having received any response for a request for information
- for having being given incomplete, misleading or false information
- any other matter relating request to or obtaining access to records under the Act

# C/SICs: Functions & Powers: Inquiry into Complaints

In exercising this authority:

ICs have same powers as civil courts while inquiring any matter u/s 18

& can

- summon and enforce attendance of persons and compel them to provide evidence (oral / written) & produce documents / things
- require discovery & inspection of documents
- receive evidence on affidavit
- requisition any public record / copies thereof from any court / office
- Issue summons for examination of witnesses / documents
- Any other matter which may be prescribed

They can also examine any record to which the Act applies – which is under the control of a Public Authority and no such record can be withheld from it on any grounds

# C/SICs: Functions & Powers: Second Appeals(Sec.19)

- A Second Appeal against the decision of the AO can be preferred to the Information Commission:
  - The appellant has to prefer the appeal within 90 days of the decision being made or actually received by the applicant (the IC may, however, admit the appeal after 90 days if it is satisfied of a sufficient cause preventing the appellant from filing the appeal in time)
  - If a 'Third Party' is involved (because the information relates to it) the IC shall give it a reasonable opportunity of being heard
  - They are also to give the PIO a reasonable opportunity to be heard, yet the onus to prove that the denial of request was justified shall be on the PIO who denied the request

## C/SICs: Functions & Powers: Second Appeals

- ICs shall decide appeals in accordance with such procedure as may be prescribed (However, no time limit has been stipulated for disposal of second appeal by ICs)
- ICs also have to accord due consideration to the principles of public interest and natural justice
- ICs are also legally bound to give notice of their decisions to the complainant and the public authority



# C/SICs: Functions & Powers: Second Appeals

- Information Commissions can require the Public Authority to:
  - a) take such steps to secure compliance as:
    - providing information in the form requested
    - appointing PIOs
    - publishing certain information or categories of information
    - making necessary changes in its practices relating to maintenance, management and destruction of records
    - enhancing the provision for training on the RTI for its officials
    - providing annual report with respect to compliance under section 4(1)(b)

## **C/SICs: Functions & Powers: Second Appeals**

- b)** compensate the complainant for any loss or other detriment suffered
- c)** impose any of the penalties provided under the Act
- d)** reject the application

# C/SICs: Functions & Powers: Penalties

- The C/SIC shall, while deciding any complaint / appeal, impose a penalty on PIO, if he has without any reasonable cause:
  - refused to receive an application for information
  - not furnished information within the specified time
  - malafidely denied request for information
  - knowingly given incorrect, incomplete or misleading information
  - destroyed requested information
  - obstructed in any manner furnishing the information
- The penalty to be so imposed shall be Rs. 250/- for each day till the application is received or information is furnished, yet not exceed Rs. 25,000/-

# C/SICs: Functions & Powers: Penalties

## Furthermore...

The C/SICs shall recommend **disciplinary action** against the C/SAPIO **under the service rules** applicable to him / her, **who without any reasonable cause, persistently fails**

**by way of committing the same acts** (as mentioned earlier) that make him / her liable for imposition of penalty

# What the Act Says?

Miscellaneous Provisions

# Miscellaneous Provisions...

Several provisions in Chapter VI have a direct or an indirect bearing on the functioning of the ICs

These are:

- An action of any person in good faith or intended to be done under the RTI Act or any rule made thereunder will not lead to any suit / prosecution / legal proceeding against that person
- No court shall entertain any suit, application or any proceeding in respect of any order made under the RTI Act and no order shall be called in question otherwise than by way of appeal under the said Act

# Miscellaneous Provisions...

- The RTI Act does not apply to:
  - Intelligence & security organisations established by the Central Government (as specified in the 2<sup>nd</sup> Schedule of the Act)
  - Any other Organisation (s) that the Central Government may include in the 2<sup>nd</sup> Schedule
  - Such intelligence & security organisations established by State Government as may be specified by such Government

# Miscellaneous Provisions...

- Yet,
  - the information pertaining to allegations of corruption and human rights violations is not so exempted,
  - and further, if the information sought for pertains to allegations of violation of human rights, then, such information shall be provided within 45 days from the date of the receipt of such request



# Miscellaneous Provisions...

## Reporting by C/SICs

- The C/SIC, as the case may be, shall as soon as practicable, after the end of each year, prepare a report on the implementation of the Act during that year and forward a copy to the appropriate Government
- The Central / State Government may send a report to each House of the Parliament and each house of the State Legislature - where the State Legislature has only one house, before that House

# Miscellaneous Provisions...

- Each report shall state with respect to the relevant year
  - (a) the number of requests made to each public authority
  - (b) the number of decisions where applicants were not entitled to access to the documents, the relevant provisions of this Act the number of times such decisions were invoked
  - (c) the number of appeals referred to the C/SIC for review, the nature of the appeals and the outcome of the appeals
  - (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act

# Miscellaneous Provisions...

- (e) the amount of charges collected by each public authority under this Act;
- (f) any facts indicating an effort by the public authorities to administer and implement the spirit and intention of this Act
- (g) recommendations for reform for the development, improvement, modernisation, reform or amendment to this Act or other legislation etc relevant for operationalising the right to access information

# Miscellaneous Provisions...

## [Section 25 (2)]

- Each Ministry / Department shall (in relation to the relevant public authorities) collect and provide C/SIC the information required to prepare the report...  
and
- comply with the requirements concerning the furnishing of that information and keeping of records for such monitoring & reporting

# Miscellaneous Provisions...

## [Section 25 (5)]

- If it appears to the C/SIC that the practice of a public authority in relation to the exercise of its functions does not conform to the provisions or the spirit of this Act, it may give to the authority a recommendation specifying the steps for promoting such conformity.

## To conclude...

- The RTI Act, 2005, though a simple Act, is quite elaborate in its provisions...this applies to provisions related to ICs and their constitution, powers & functions as well
- The conception of the role of ICs under is thus rather eclectic. They are expected to play the role of remedy provider, enforcer, and educator

## Note: Important Information Sources

- It would be appropriate and useful to refer to the 'Right to Information Act, 2005' and to the Rules made thereunder, for further clarifications
- You can also refer to [www.wbic.gov.in](http://www.wbic.gov.in) to stay updated on the various decisions (including interpretations) of Central Information and State Information Commissions (**contact details for which are available on the CIC website**)

**Thank You**