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Fixation of Criminal Liability on Public Servant for Violation of RTI Law

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Abstract:

This article looks closely at whether public officials should face criminal consequences when they deliberately violate the Right to Information Act, 2005 (RTI). It highlights a clear gap between what the law provides—penalties and disciplinary action under Sections 19 and 20—and what actually happens in practice. Despite these provisions, the Central and State Information Commissions have used them sparingly, which has contributed to a growing backlog of appeals and a sense that such violations often go unpunished.

Drawing on empirical studies and annual data from the Central Information Commission, the paper argues that civil penalties alone have not been enough to discourage officials from intentionally withholding, destroying, or even falsifying information. To address this, it explores how provisions under the Bharatiya Nyaya Sanhita, 2023 (BNS) could be applied to hold public servants criminally accountable for such conduct.

The article then explains what needs to be proven to establish criminal liability—such as the official's status as a public servant, the existence of a legal duty, deliberate disobedience, and an intention to cause harm. At the same time, it acknowledges concerns about possible misuse of criminal law and suggests safeguards to ensure that accountability measures remain fair and balanced.

Keywords: Right to Information, Public Servant, Criminal Liability, Bharatiya Nyaya Sanhita.

INTRODUCTION

The Right to Information Act, 2005 (hereinafter referred as RTI Act) envisages to set out a "practical regime of right to information for citizen to secure access to information". One of the objects of the Act was to 'ensure greater and effective access to information' as articulated in the

statement of objects in the Right to Information Bill, 2004. It is more than 20 years, when it was introduced in the Lok Sabha, yet we cannot claim that we have attained the desired objectives. This assertion can be inferred from two facts. One, status of poor implementation of provisions of Section 4 of the RTI Act, which speaks about *suo moto* disclosure of information[1]. Second, enormous appeals/complaints are being filed before the Central and State Information Commissions (CIC /SICs)[2].

The ascending numbers of RTI Applications suggest two things – first, people have tremendous confidence in the system and second, the regime of 'access to information' is at the first and second tier is not operating efficiently. Considering hooping numbers of pending appeal / complaint cases in CIC[3] as well as in the State Information Commissions (SNS, Report Card on the Performance of Information Commissions in India, 2024-25, 2025)[4] and time needs to be taken for its disposal, the inference of confidence on the system is ebbing out. As per the reports of Satark Nagark Sangathan (SNS), one prominent bottleneck for implementation of RTI is inordinate delay in disposal of appeal and complaint at the level of Information Commissions (IC), causing huge backlog of such cases[5].

In 2013 and 2019, bills were introduced to amend the RTI Act. In 2013, bill was introduced to exclude political parties from the ambit of RTI Act; but the bill was lapsed. In 2019, the Bill, which subsequently became an Act, was introduced to deal with the service conditions of 'Information Commission'. In 2023, the Digital Personal Data Protection Act, 2023 was passed, wherein a sweeping substitution to Section 8(1) (j) have been made[6], whereby supply of information is exempted on the ground of 'personal information'. It is alleged that these are efforts of dilution of the RTI movement in India (Chakraborty, 2023)[7]. The present article is not about that; it is more about brooding on the existing legal framework to buttress the movement of RTI in India.

Jurisprudentially, by reading the provision of Section 3 of RTI Act, all the 'public servants' are under a public duty to allow citizen to access to information, which is held by or under their control. Failure to perform or discharge such duty results in commission of wrong. As it is popularly said, a wrong is not a wrong unless a remedy is available against it. Section 19 of the RTI Act has conferred power on the State and Central RTI Commissioner to provide remedy in the form of allowing access to information, to direct the public authority to compensate the loss incurred by the complainant or/and impose penalty under Section 20 of the RTI Act on the erring Public Information Officer (PIO). These are the remedial actions which are civil in nature. The present article is not about it; it is on the criminal liability arising out of *mala fide* withholding from information seekers or fabrication of information. Not many literatures are available on this.

[1] Kishna Chand Jain v. Union of India, 2023 INSC 741: The hon'ble Supreme Court of India has given direction to the Central Information Commission as well to the State Information Commissions to ensure proper implementation of the mandate of Section 4 of the RTI Act.

[2] It is evident from the last Five years of Annual Reports of the Central Information Commission. On average more than 19000 second appeals or complaints are being registered in CIC.

[3] As per the Annual Reports of the Central information Commission for the year 2020-21, 2021-22, 2022-23, 2023-24 and 2024-25 number of pending cases before the CIC is 38116, 29219,19233, 23078 and 23146, respectively.

[4] As per the report of Satark Nagarik Sangathan (SNS), "Report Card on the Performance of Information Commission in India, 2024-25", 389872 Complaint Cases and Second Appeal Cases are pending before the 28 State Information Commissions.

[5] Satark Nagarik Sangathan (SNS), "Report Card on the Performance of Information Commission in India, 2024-25"

[6] The suggested amendment came into effect from 13/11/2025

[7] Chakraborty, S. (2023). RTI, data protection, and dilution of transparency. *NUJS Law Review, 16*(2), 145-168.

REASONS FOR FIXATION OF CRIMINAL LIABILITY ON ERRING PUBLIC AUTHORITY

When the Right to Information Bill, 2004 was introduced in the Lok Sabha, the Bill had the provision that against the erring officer Commission might direct to initiate criminal action by filing a complaint before the Judicial Magistrate First Class (JMFC). It suggested a punishment of Rs 25000/- or imprisonment which might be extended up to 5 years[8]. Subsequently, this provision was omitted from the bill[9]. Dr Man Mohan Singh, then Prime Minister of India, while defending the bill on the floor of the Lok Sabha, argued that penalty in the form of imprisonment was omitted as it might not appear to be "a draconian law" [10] to the public servants; in retaliation it might have the effect of paralysing the Government functioning. This speculation was not entirely without a basis. But those who are holding public offices and abuse their position to withhold information, purposefully, from citizen, are they not be held accountable for their (mis)deed? Against such mala fide action, is it enough to impose pecuniary liability only? Whether fixation of such punishment is good enough to deter prospective violators of RTI Act? Policy makers need to brood on this aspect of RTI Act. Unfortunately, this aspect is not featured in the Parliamentary debates or discussed by policy makers during amendments to RTI Act.

Before dwelling with the notion of imputing criminal liability for erring public servants, it would be prudent to evaluate why at all there is a requirement impute criminal liability for violation of Right to Information on the erring public servants. The scholar is of strong opinion that for setting up a practical regime of right to access to information, measures for deterrent law is imperative. One may argue that existing RTI law has all the armoury for deterrence. Those who are debating on this are not wrong; but whether those provisions are being used adequately for triggering the desired effect?

As per section 20(1), if the PIO has violated the RTI Act in any of the below given grounds, it is mandatory on the part of the Commission to impose penalty on the erring PIO.

i. Without any reasonable cause refused to receive any application
ii. Without any reasonable cause refused to receive an application
iii. Without any reasonable cause delayed in furnishing information
iv. With mala fide intention denied the request for information
v. knowingly given incorrect information
vi. knowingly given incomplete information
vii. knowingly given misleading information
viii. destroyed information which was the subject of any request
ix. obstructed in any manner the furnishing of information

The next question is, how often these provisions are being invoked by the concerned authority / Information Commission? The Research Assessment and Analysis Group (RaaG), Samya-Centre for Equity Studies (CES), and Satark *Nagrik Sangathan* (SNS) had carried out number of studies on

[8] Section 17 of the Right to Information Bill, 2004 : (1) "Notwithstanding anything contained in Section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate First Class.
(2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.`

[9] The amendment was made on the recommendation of the Parliamentary Standing Committee and the same was accepted by the members of the Lok Sabha without any debate on it.

[10] https://eparlib.nic.in/bitstream/123456789/785673/1/lsd_14_04_11-05-2005.pdf (last accessed on 02/02/2026)

assessing the application of RTIs at different times. The study of 2014 (SNS, Peoples' monitoring of the RTI regime, 2014)[11] has concluded that only 45% of RTI applications were successful in terms of obtaining the information requested. Further, it was noted that out of the rest 55%, only less than 10% of such RTI applications end up in filing second appeal or complaint (SNS R. &., 2017)[12]. The study taken up by SNS in 2017 had noted that 59% of sample orders of the Central Information Commission (CIC), where the PIO were liable to be penalised for any of the laid down grounds enumerated in Section 18 or 19 of the RTI Act. However, only 24% of such cases show cause notice were issued to the errant officer in terms of Section 20 (1) (proviso) of the RTI Act and out of that only against 5% of cases follow up actions were taken up and ultimately only in 1.3% of the cases, penalties were imposed. This clearly indicates there is hesitation on the part of CIC to use the penal provisions of the RTI Act against the erring PIOs. The study taken up in 2017 was of the view that 98% of the cases of their sample, wherein the ICs violated the law regarding imposition of penalties. The researchers have noticed that there were occasions where the ICs had not bother to record the reasons for not imposition of penalty even if there is considerable delay or violation of RTI Act in furnishing information[13]. The report has indicated that there is 'loss of deterrence value'[14] because of non-imposition or hesitation of the ICs to impose penalty. It has resulted in PIOs denying information, late supply of information, not responding to the RTI applications, sometimes transferring RTI applications to a host of other PIOs, etc..

The reason for lack of effectiveness of the RTI Act is 'non-imposition of penalties in deserving cases by respective Commission' (Kumar, 2021)[15]. In the recent studies carried out by the SNS on the performance of the Information Commissions, it is noticed that penalty was imposed in just 3% of the cases disposed by the ICs[16]. In an estimation, it was observed that nearly in 95% of the cases where penalties were imposable, penalty were not imposed by the Information Commission[17] (SNS, 2022) . It has its natural implication which promotes a culture of impunity.

Further, as per Section 20(2) of the RTI Act, the CIC /State IC can also recommend for disciplinary action against the erring officials for 'persistent' violation of the provisions of the Act. Information Commissions are reluctant to use the explicit power given to them under the Act. This observation can very well be substantiated the below given table:

YEAR	TOTAL N0. OF CASES DISPOSED OFF BY CIC	TOTAL AMOUNT OF PENALTY IMPOSED BY CIC	NO. OF CASES WHERE DISCIPLINARY ACTIONS RECOMMENDED BY CIC
2020-21	17017	1486750	16
2021-22	28793	655300	16
2022-23	29208	731500	222
2023-24	16790	378000	36
2024-25	19415	156750	61

(Source: Annual Reports of the CIC from 2020-21 to 2024-25)

[11]RaaG, C. &. (2014). *Peoples' Monitoring of the RTI Regime in India: 2011-13.* New Delhi: CES & RaaG., p. 63

[12] Ibid, p.50

[13] SNS, RaaG. &. (2017). *Titling the Balance of Power: Adjudicating the RTI Act for the Oppressed and the Marginalised People.* New Delhi: RaaG, SNS & Rjapal & Sons, P. 226

[14] Ibid, p.231

[15] Kumar, V. (2021). RTI and Public Servants: A Study of penalty provisions and enforcement. *Law and Society Review, 12*(1), 55-2.

[16] SNS. (2022). *Report Card of Information Commission 2020-21.* New Delhi: Satark Nagrik Sangathan. Retrieved from www.snsindia.org, p.37

[17] Ibid

The said reluctance of the ICs of the State is well established from the report (SNS, 2022) of the SNS.

Considering the facts that there is visible reluctance on the part of CIC and SICs to use the remedial punitive provisions against erring public servants, it became imperative to look for an alternative to buttress the deterrence of RTI law. One immediate possible alternative measure would be to look for provisions of Bharatiya Nyaya Sanhita, 2023 (BNS) for fixation of criminal liability on the 'erring officials' who have violated the RTI Act.

PROVISIONS FOR FIXATION OF CRIMINAL LIABILITY ON PUBLIC SERVANTS UNDER BHARATIYA NYAYA SANHITA, 2023

The notion 'liability' is used to explain the condition of a person who is under a primary duty or obligation and on breach of the same he must suffer. Liability arises on a person out of wrong committed by him or on his instance wrong is committed by others. An action or omission is wrong when a laid down duty is breached. As we know, liability can be civil or criminal. A person criminally becomes liable, when infringement of such law is expressly declared as 'offence'[18]. Since, RTI Act is silent in declaring an act or omission under the Act, one needs to look at the primary substantive law dealing with such 'Offence'. In the case of India, it is Bharatiya Nyaya Sanhita, 2023 (herein after referred as BNS).

There are few penal provisions under BNS under Chapter XII (Of Offences by or Relating to Public Servants), wherein criminal liability can be fixed on designated PIO and referred PIO. Such provisions are given below in the tabular form.

Section	Offence	Punishment	Cognizable / Non-Cognizable	Bailable / Non-Bailable	By what court triable
198[19]	Public servant disobeying a direction of the law with intent to cause injury to any person	Simple imprisonment for 1 year, or fine or both	**Non-Cognizable**	**Bailable**	Magistrate of the First Class
210 (a)	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document	Simple imprisonment for one month, or fine of Rs5000/- or both	**Non-Cognizable**	**Bailable**	Any Magistrate
211(a)	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such a notice or information	Simple imprisonment for one month, or fine of Rs500/- or both	**Non-Cognizable**	**Bailable**	Any Magistrate
255	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture	Simple imprisonment for 2 years, or fine or both	**Non-Cognizable**	**Bailable**	Any Magistrate

[18] Section 2(24) of the BNS defines offence as 'a thing made punishable by this Sanhita (BNS)'. Corresponding provisions of IPC is Section 40.

[19] Corresponding provisions of IPC is Section 166. There is no change to the said provision.

256	Public servant framing incorrect record or writing with intent to save person from punishment, or property from forfeiture	Simple imprisonment for 3 years, or fine or both	**Cognizable**	Bailable	Magistrate of the First Class

For a better understanding of it, it would be appropriate to examine the basic ingredients for such offences.

Section 198 of the BNS reads as : ***"Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."*** Thus, Section 198 of BNS casts criminal liability on public servant for a wilful departure from the direction of the law and thereof intending to cause injury to any person. Followings are the essential ingredients for fixation of criminal liability under Section 198 of the BNS:

A. The accused must be a public servant at the relevant time;

B. There must be direction of law as to how such public servant should conduct himself;

C. The accused public servant must have disobeyed direction of the law; and

D. The accused public servant by such disobedience has intended to cause or has the knowledge that such action of his/her likely to cause injury to any person

In the light of the above, let's examine the position of a PIO against each of the above ingredients, who has wilfully defaulted in providing information under RTI Act.

A. Accused must be a public servant at the relevant time:

Under the scheme of RTI Act, each 'Public Authority'[20] must designate one or more officer as Public Information Officer (PIO) in their respective administrative units or offices[21]. It is the duty of the designated PIO to supply sought 'information' to the information seeker. For the said purpose, he / she (PIO) may take assistance of other public servant/s under Section 5(4) of the RTI Act. Such public servants are referred as 'Referred PIO or Deemed PIO'[22]. As per section 5 (5) of RTI Act, status of such referred PIO, in case of contravention of the RTI Act, is that of a designated PIO. In short, such referred PIO can also be held liable for such infraction of law. Section 2(28) of the BNS denotes categories of person to be tagged as 'public servant'. As per Section 2(28)(k) (i) of BNS says, 'every person in the service or pay of the Government or remunerated by fees or commission for performance of any public duty by Government' is a public servant. Needless to mention that all such officers, who are designated as PIO or performing the role of the 'referred PIO' are public servants under Section2(28) of the BNS.

[20] Section 2 (h) of the RTI Act defines 'public Authority': means any authority or body or institution of self-government established or constituted— (*a*) by or under the Constitution; (*b*) by any other law made by Parliament; (*c*) by any other law made by State Legislature; (*d*) by notification issued or order made by the appropriate Government, and includes any— (*i*) body owned, controlled or substantially financed; (*ii*) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government"

[21] Section 5(1) of the RTI Act

[22] 'Referred PIO or Deemed PIO' is not expressly defined under the RTI Act. But, these terms are used in different decisions of CIC and SICs.

Reading the above provisions with the definition of the 'public authority' as given in the Section 2(h) of the RTI Act, all the designated PIO and referred PIO of government offices are public servant on whom criminal liability can be fixed under Section 198 of the BNS. It would be pertinent to mention that the definition given to the 'public authority' under the RTI is far wider than the definition given to 'public servant' under BNS to cover all the PIOs under this heading.

B. Direction of Law to conduct in a particular way:

As we know, rights and duties are correlative. In presence of a legal right, there must be corresponding legal duty. Since Section 3 of the RTI Act[23] confers a legal right to information on citizen. It can be read that corresponding duty lies with the public servants, who are in custody of public information to share the same with the citizen as per the laid down norms of the RTI Act. It is an implicit legal direction. Furthermore, Section 7 of the RTI Act, lays down the procedure and time frame to deal with the RTI application filed under Section 6 of the RTI Act. This is an expressive direction of the law to be complied with by the designated PIO or referred PIO.

C. Disobedience of such direction

Section 7 of the RTI Act has given direction to the designated PIO to supply the sought information as expeditiously as possible, not beyond 30 days from the date of receipt of the request of information. This period has been shortened up to 48 hours when the information sought is related to 'life' or 'liberty' of a person[24]. The public authority / PIO cannot refuse request for an information except on the ground/s enumerated in the RTI Act. As per section 7(2) of the RTI Act, failure on the part of PIO to give a decision on request for an information within the statutory stipulated time, it is presumed that sought information is denied[25]. Section 8 and 9 of the RTI Act laid down the grounds on which supply of information is exempted. These provisions direct the PIO to not to deny information sought except on the grounds as laid down under the Act. Section 7 (8) of the RTI Act has given direction to the PIO that grounds of rejection be communicated to the information seeker as well as particulars of the appellate authority and time frame of appal[26]. In case sought information is related to 'third party', Section 11 of the RTI Act has laid down the procedure to be followed by the designated PIO to deal with such request for information. In short, there are specific direction under the RTI Act to designated PIO to deal with RTI Application.

D. Disobedience with intention to cause injury

Now, a very pertinent question to be dwelt is 'whether non-furnishing of information with *malafide* intention will amount 'injury' as envisaged under BNS? Reading the provision of Section 2 (14) with Section 2 (15) of the BNS will give the clarity on the said question. Section 2 (14) has defined 'injury' as 'any harm whatever illegally caused to any person, in body, mind, reputation or property'. Section 2 (15) of BNS[27] has given a wider meaning to the term 'illegal' and as per the same provision, it consists of three ingredients – (1) everything which is an offence; (2) everything

[23] **Section 3 of the RTI Act says:** Subject to the provisions of this Act, all citizens shall have the right to information.

[24] Proviso to Section 7(1) of the RTI Act

[25] Section 7(*2*) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

[26] Section 7 (*8*) Where a request has been rejected under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,— (*i*) the reasons for such rejection; (*ii*) the period within which an appeal against such rejection may be preferred; and (*iii*) the particulars of the appellate authority.

[27] Section 2(15) of BNS : The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

which is prohibited by law; and (3) everything which furnishes ground for civil action. In order to constitute a ground for a civil actions there must be the right in a party which can be enforced. Section 3 of the RTI Act confers a right on the citizen and Section 6 (1) allows person to exercise that right. And hence, non-compliance of the provisions of RTI Act amounts to injury as envisaged under BNS.

In the light of the above deliberation, one can easily conclude that when a designated PIO deliberately failed to respond to a request for information, or reject request for information without any reason as mentioned under the RTI Act or not-supply information within the statutorily stipulated time, criminal liability can be fixed on him/her as per the norms of Section 198 of the BNS.

Similarly, when designated PIO failed to issue notice to the referred PIO for collection of information, it may attract the vires of Section 210 of the BNS. Section 210 reads as *" Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished"*. Sometimes, the First Appellate Authority (FAA) and Information Commission gives direction to the designated PIO to furnish information, any failure on that will be tantamount to criminal offence under Section 210 of BNS.

Section 211 of BNS says, *"Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished"*. As per Section 5 of the RTI Act, designated PIO can take the assistance of other public officer for collection of information and for that he/she must issue notice. Non-compliance of the said provisions will attract criminal liability under the provision of Section 211 of the BNS. The public servant, from whom assistance is sought, intentionally refuse to comply with such notice, can be imputed under Section 210 of the BNS. As his/her position is that of a PIO under the RTI Act.

Apart from the above provisions of the BNS, for the purpose of present deliberation, Section 255 and 256 of BNS need attention. Any efforts from the public servant to save any person from legal punishment by way of intentional refusal to supply information will attract the provisions of Section 255 of the BNS. Section 256 is far more serious offence which is a congnizable offence, though bailable. Preparation of false record which with intent or having knowledge that it will likely cause loss or injury will attract the provisions of Section 256 of the BNS.

CONCLUSION

Long back, in one of those local newspapers from Pune, it was reported that one of the RTI activist file a criminal case for not furnishing information against a public authority. That small snippet of news led to examine this aspect of RTI and likely criminal liability to be fixed on erring public authority. So far, the scholar has not noticed any case law or incident wherein, public spirited information seekers have explored this aspect of this powerful law. The author candidly admits likely possibility of misuse of such provisions and the likely adverse impact it may cause on the government servant. But, the author believes on the possibility of likely misuse of such law should not be a ground to explore this aspect of law. As it will force the public servant to act diligently while handling RTI application.

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