

SYNOPSIS AND LIST OF DATES

The present petition is being filed in public interest for the effective implementation of the Right to Information Act, 2005, for securing the fundamental right of citizens to access information from public authorities. Under the Right to Information (RTI) Act, the Central Information Commission (CIC) and State Information Commissions have been created as statutory bodies to decide appeals and complaints against public authorities for non-compliance with the RTI law. The proper functioning of these institutions is essential for effective implementation of the RTI Act. The RTI law provides that the CIC to consist of a Chief Information Commissioner and ten information commissioners.

The Government of India and state governments have attempted to stifle the functioning of the RTI Act by failing to do their statutory duty of ensuring appointment of commissioners in the Central Information Commission and State Information Commissions, in a timely manner. This is despite huge backlogs of appeals and complaints in many information commissions across the country. Due to non-appointment of information commissioners, several information commissions take many months, and in some cases even years, to decide appeals and complaints due to accumulation of pending appeals/complaints, thus defeating the entire object of the RTI Act, 2005. Currently there are four vacancies in the Central Information Commission, even though more than 23,500 appeals and complaints are pending. The SIC of Andhra Pradesh is completely non-functional as not a single information commissioner has been appointed to the commission. The State Information Commission (SIC) of Maharashtra

which has a backlog of more than 40,000 appeals and complaints, has four vacancies. The SIC of Kerala is functioning with only a single commissioner and has more than 14,000 pending appeals and complaints. Similarly, there are 6 vacancies in the SIC of Karnataka even though nearly 33,000 appeals and complaints are pending. Odisha is functioning with only 3 commissioners and Telangana with 2 commissioners and their backlogs are more than 10,000 and 15,000 appeals/complaints respectively. The SIC of West Bengal is functioning with only two commissioners and is today hearing appeals/complaints which were filed 10 years ago. Further, several information commissions like that of Gujarat, Nagaland and Maharashtra are functioning without the Chief Information Commissioner, even though the RTI Act envisages a crucial role for the chief commissioner, with the administration and superintendence of the commission vesting with the Chief.

The RTI Act, 2005 prescribes statutory timelines of 30 days for providing the information from the date of application (ordinarily) and disposal of first appeal within maximum period of 45 days. The objective of disclosure of information in a time-bound manner is being defeated as the CIC and SICs are taking several months, and in some cases several years, to dispose appeals/complaints, due to non-appointment of Information Commissioners. The effective functioning of Information Commissions, the final adjudicators under the RTI Act, is critical for the health of the transparency regime in the country.

Further, lack of transparency in the appointment of information commissioners, and the violation of directions of the Supreme Court regarding the procedure for appointment of information

commissioners, is undermining the institution of the information commission. In several cases, courts have set aside the appointment of commissioners due to deficiencies in the selection process.

Therefore, through this petition, the petitioners pray for a direction for immediate filling of posts of information commissions in the CIC and in the various SICs. The said appointments must be made transparently, in accordance with the judgments of the Hon'ble Supreme Court of India.

12.10.2005 The Right to Information Act, 2005 came into force. The said Act provides a legal framework for the implementation of citizen's fundamental right to information.

November 2015 State Information Commission of West Bengal was non-functional and did not hear any appeals or complaints from November 2015 to July 2016 as there was only one commissioner in the SIC during this time.

2.9.2016 Central government invited applications for the post of two information commissioners of CIC vide their circular/communication dated 2/9/2016 in anticipation of the vacancies occurring in December 2016 and February 2017. However, till date none of the vacancies have been filled.

31.12.2016 Central Information Commissioner Shri M.A. Khan Yusufi finished his term and retired. Uptil

- 31.12.2016, CIC was functioning at full strength of 1 Chief and 10 information commissioners
- 15.2.2017 Central Information Commissioner Shri Basant Seth finished his term and retired. 2 vacancies arose in the CIC.
- April 2017 Chief State Information Commissioner of Maharashtra Information Commission finished his term and retired. Till date, no new Chief has been appointed.
- April 2017 State Information Commission of West Bengal was non-functional and did not hear any appeals or complaints from April 2017 to July 2017 as there was only one commissioner in the SIC during this time.
- May 2017 State Information Commission of Andhra Pradesh became defunct after the retirement of the serving information commissioners.
- 5.6.2017 Petitioners were signatories to a letter by the National Campaign of Peoples' Right to Information addressed to the Prime Minister urging him to fill the vacancies in the Central Information Commission by appointing information commissioners.
- August 2017 Andhra Pradesh government issued an order regarding the constitution of the SIC of Andhra Pradesh, but till date not a single commissioner has been appointed to the commission.

- 8.9.2017 An application under the RTI Act was filed by petitioner no. 1, seeking information on the action taken on the letter, the file notings related to the letter sent to the Prime Minister on June 5, 2017. In response, the information received showed that the Prime Minister's Office had treated the letter as a grievance and registered it on the online grievance portal of the central government. Upon tracking the grievance on the online portal, the status showed that the case was closed as the matter was pending.
- 22.9.2017 Central Information Commissioner Shri Sharat Sabharwal finished his term and retired. 3 vacancies arose in the CIC.
- 28.09.2017 Shri. Toshi Aier, Chief State Information Commissioner of Nagaland SIC retired. Since then SIC of Nagaland has been functioning without a Chief State Information Commissioner.
- 31.10.2017 More than 8000 appeals and complaints pending before the State Information Commission of West Bengal as per information obtained under the RTI Act
- 31.10.2017 Kerala SIC functioning with only 1 commissioner even though nearly 14,000 appeals and complaints pending with the commission as per information obtained under the RTI Act.

- 31.10.2017 Telangana SIC functioning with only two commissioners in the commission, despite more than 15,500 appeals and complaints pending before the commission as per information obtained under the RTI Act
- 15.1.2018 Central Information Commissioner Ms. Manjula Prasher finished her term and retired. 4 vacancies arose in the CIC.
- 19.01.2018 Gujarat Chief State Information Commissioner retired and the position is currently vacant.
- February 2018 Maharashtra SIC is functioning with only seven commissioners as against a sanctioned strength of eleven commissioners. Information accessed from the website of the Maharashtra SIC shows that at the end of February 2018, more than 40,000 appeals and complaints are pending before the commission.
- April 4, 2018 Backlogs of more than 23,500 appeals and complaints pending before Central Information Commission. The CIC website shows that even appeals and complaints filed in 2016 are currently pending for disposal by the commission.
- April 2018 Information available on the website of the Karnataka SIC shows that the commission is functioning with only five commissioners (including the chief). Information obtained under the RTI Act shows that as of October 31, 2017 nearly 33,000 appeals and complaints were pending before the

SIC. Odisha SIC functioning with only three commissioners (including the Chief). Information obtained the RTI Act shows that as of October 31, 2017, more than 10,000 appeals and complaints were pending before the SIC

24th April 2018 Hence the instant writ petition.

IN THE SUPREME COURT AT NEW DELHI

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. Of 2018

PUBLIC INTEREST LITIGATION

In the matter of:

1. Anjali Bhardwaj

D/o Nileema Bhardwaj

R/o C- 2/30 SDA New Delhi- 110016 Petitioner No. 1

2. Commodore Lokesh K Batra (Retd.)

S/o Late Shri Khushwaqt Rai Batra

H-02, Sector-25, Jalvayu Vihar

Noida-201301, U.P. Petitioner No. 2

3. Amrita Johri

D/o Meera Johri

C- 407, IInd Floor,

Defence Colony, New Delhi- 110024 Petitioner No. 3

VERSUS

1. Union of India

Through its Cabinet Secretary

Cabinet Secretariat

Rashtrapati Bhawan,

New Delhi-110001 Respondent No. 1

2. Government of West Bengal

Through its Chief Secretary

Government of West Bengal,

Kolkata700001 Respondent No. 2

3. Government of Andhra Pradesh

Through its Chief Secretary

Government of Andhra Pradesh

Velagapudi Amaravati-522503 Respondent No. 3

4. Government of Maharashtra
Through its Chief Secretary
Government of Maharashtra,
Mantralaya, Mumbai400032 Respondent No. 4
5. Government of Kerala
Through its Chief Secretary
Government of Kerala,
Thiruvananthapuram 695001 Respondent No. 5
6. Government of Gujarat
Through its Chief Secretary
Government of Gujarat
New Sachivalaya Complex
Block No.5/1, 1st Floor,
Gandhi Nagar 382010 Respondent No. 6
7. Government of Odisha
Through its Chief Secretary
Government of Odisha,
Bhubaneshwar795001 Respondent No. 7
8. Government of Karnataka
Through its Chief Secretary
Government of Karnataka
Bangalore-560001 Respondent No. 8
9. Government of Telangana
Through its Chief Secretary
Government of Telangana
Secretariat,
Hyderabad-500022 Respondent No. 9
10. Government of Nagaland
Through its Chief Secretary

Government of Nagaland,

Kohima – 797001

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Respondent No. 10

A Writ Petition in Public Interest under Article 32 of the Constitution of India, for the enforcement of rights guaranteed under Article 14, 19(1)(a) and 21 of the Constitution of India, highlighting how the Government of India and various state governments are making the RTI Act, 2005 dysfunctional by not appointing Information Commissioners in the Central Information Commission and in various State Information Commissions across the country

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA**

The Humble Petition of
the Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1. That the petitioners are filing the instant writ petition in public interest under Article 32 of the Constitution of India, for the enforcement of rights guaranteed under Article 14, 19(1)(a) and 21 of the Constitution of India, highlighting how the Government of India and various state governments are making the RTI Act, 2005 dysfunctional by not appointing Information Commissioners in the Central Information Commission and in various State Information Commissions across the country.

a) Petitioner No. 1, Anjali Bhardwaj, is a co-convenor of the National Campaign for Peoples' Right to Information (NCPRI) and a founding member of Satark Nagrik Sangathan. She has been closely associated with the Right to Information movement in India since the year 2000 and has worked extensively on issues related to transparency, RTI Act and anticorruption for the last two decades. As part of the NCPRI, Anjali Bhardwaj was involved in drafting and giving suggestions to the government for the enactment of an effective Right to Information Act in India. She has co-authored three national studies on the implementation of the RTI Act, titled 'Peoples' Monitoring of the RTI Regime in India 2011-13', 'Tilting the Balance of Power - Adjudicating the RTI Act, 2017' and 'Report Card on the Functioning of Information Commissions in India', March 2018. Her UID number is XXXXXX. Her PAN number is XXXXXX. Her annual income is XXXXXX.

b) Petitioner No. 2, is a retired Commodore of Indian Navy. The Applicant is a 'Transparency Campaigner' achieving the same through active use of RTI Law and is much concerned about governments not appointing 'Information Commissioners' in 'timely and transparent' manner, that is having adverse impact on the very objectives of 'transparency law'. He has been a petitioner in PIL regarding vacancies in the Central Information Commission. Commodore Batra has also authored a book "OUTREACH' – *an approach to voluntary action on Community Development Programmes*". His UID number is XXXXXX. His PAN number is XXXXXX. His annual income is XXXXXX.

c) Petitioner No. 3, Amrita Johri, is a member of the working committee of National Campaign for Peoples' Right to Information (NCPRI) and works with Satark Nagrik Sangathan. She has worked extensively on issues related to transparency, RTI Act and anticorruption for the last 11 years. She has co-authored three national studies on the implementation of the RTI Act, titled 'Peoples' Monitoring of the RTI Regime in India 2011-13', 'Tilting the Balance of Power - Adjudicating the RTI Act, 2017' and 'Report Card on the Functioning of Information Commissions in India', March 2018. She does not have an UID number. Her PAN number is XXXXXX. Her annual income is XXXXXX.

The petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL.

The petitioners were signatories to a representation to the Prime Minister of India made as far back as June 5, 2017 regarding the matter of vacancies in the Central Information Commission, but no action was taken. A copy of the letter dated 05.06.2017 sent to the PM is annexed as **Annexure P1** (Pg _____). In fact, an application under the RTI Act was filed to seek information on the action taken on the representation made to the PM, which showed that the representation was treated as a public grievance, registered on the online portal and then closed with the status showing as 'disposed'

within a few days without any appointments being made. A copy of the reply dated 21.09.2017 received from PMO by Petitioner No. 1 along with its enclosures is annexed as **Annexure P2** (Pg _____). Another representation was sent by petitioner no. 2 to the concerned Minister of State in the Department of Personnel and Training regarding the vacancies in the Central Information Commission dated September 30, 2017, a copy of the same is annexed as **Annexure P3** (Pg _____). In terms of the vacancies in state information commissions, petitioners number 1 and 3 were signatories to letters sent to the Chief Ministers of Andhra Pradesh & Telangana regarding appointment of Chief Information Commissioner & other information commissioners in the respective State Information Commissions. A copy of the letter dated 03.05.2017 sent to CM Telengana is annexed as **Annexure P4** (Pg _____) and a copy of letter dated 03.05.2017 sent to CM Andhra Pradesh is is annexed as **Annexure P5** (Pg _____). But no response has been received to these representations and no action has been taken.

THE CASE IN BRIEF

RIGHT TO INFORMATION - A FUNDAMENTAL RIGHT:

2. In successive judgments, the Supreme Court of India has held that the Right to Information is a fundamental right and flows from article 19(1)(a) (the fundamental constitutional right to free speech), and article 21 (right to life and liberty) of the Constitution of India. The Courts of the country have declared in a plethora of cases that transparency is key for the functioning of a healthy democracy. In the

matter of *State of UP v. Raj Narain*, AIR 1975 SC 865, a constitution bench of this Hon'ble Court held that:

"[I]n a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries...The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public." (Para 74)

3. In the case of *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149, a 7 Judge Bench of the Hon'ble Supreme Court of India made the following observations regarding the Right to Information:

"The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest..."

4. In the case of Reliance Petrochemicals Ltd vs Proprietors Of Indian Express 1989 AIR 190, a 2 judge bench of the Supreme Court observed:

"34...We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."

5. In the case of the *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2002, while declaring that it is part of the fundamental right of citizens, under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to Parliament or the State Legislatures, a 3 judge bench of the Hon'ble Supreme Court of India, held unequivocally that:

"The right to get information in a democracy is recognised all throughout and is a natural right flowing from the concept of democracy." (Para 56)

6. In Reserve Bank of India Versus Jayantilal N. Mistry Transferred Case (Civil) No. 91 Of 2015, a 2 judge bench of the Supreme Court while upholding peoples' right to access information, made the following observations regarding the Right to Information:

“Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights Under Article 19 of the Constitution but also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005.”...“The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy.”

7. The Right to Information Act, 2005 (henceforth referred to as 'RTI Act') provides a practical regime for people to exercise their fundamental right to information and to access information from public authorities. The preamble of the RTI Act states:

“...democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed”.

CONSTITUTION & ROLE OF INFORMATION COMMISSIONS UNDER THE RTI ACT:

8. The RTI Act is a self-contained legislation and provides a comprehensive framework for people to exercise their right to

information. Under the RTI Act, Information Commissions have been set up at the Centre (Central Information Commission) and in all the states (State Information Commissions) to adjudicate on appeals and complaints of persons who have been unable to secure information in accordance with the RTI Act or are aggrieved by violations of the Act. Chapter III titled, 'The Central Information Commission', containing Sections 12 to 14 of the RTI Act, lays down the provisions related to the constitution of Central Information Commission (henceforth referred to as 'CIC'), the term of office and conditions of service of the Chief and the Central Information Commissioners and the procedure and grounds for removal of Chief Information Commissioner or Information Commissioners. Similarly, Chapter IV titled, 'The State Information Commission', containing Sections 15 to 17, lays down the provisions related to the constitution of State Information Commissions (henceforth referred to as 'SICs'), the term of office and conditions of service of the Chief and the State Information Commissioners and the procedure and grounds of removal of Chief Information Commissioner or State Information Commissioners. As per the RTI Act, the commissions consist of the chief information commissioner and up to 10 information commissioners, appointed by the President of India at the Central level and by the governor in the states, on the recommendation of a committee. For appointing the Chief and the Information Commissioners of the CIC, the selection committee consists of the Prime Minister (Chairperson of the committee), the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister. For appointing the Chief and the Information Commissioners of the SICs,

the selection committee consists of the Chief Minister (Chairperson of the committee), the Leader of Opposition in the Legislative Assembly and a Cabinet Minister to be nominated by the Chief Minister. The relevant provisions are reproduced below-

“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 this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.”

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“15. (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister”

9. Section 12(5) of the RTI Act defines the criteria for selection of information commissioners of the CIC, while Section 15(5), which is in *pari materia* with Section 12(5), similarly defines the criteria for selection of information commissioners of the SICs. It states:

“12(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.”

10. Further, the RTI Act and the directions of the Supreme Court in *Union of India vs. Namit Sharma* (2013) 10 SCC 359, carve out a critical and unique role for the Chief Information Commissioner in the functioning of the CIC and the State Chief Information Commissioner in the functioning of SICs. The administration and superintendence of the commission vests with the Chief. Further the Delhi High Court in *W.P.(C) 3386/2015 R.K. Jain & Ors versus Union of India* had observed that it is an *“undisputed fact that the non-appointment of the*

Chief Information Commissioner has virtually frustrated the very purpose of the Right to Information Act, 2005...". The powers, functions and duties of the Chief Information Commissioner are enshrined in Section 12 (4) for the CIC and correspondingly in Section 15(4) for SICs under the Right to Information Act, 2005 which provides that:

"12(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act."

Further, in *Union of India vs. Namit Sharma* (2013) 10 SCC 359, the Supreme Court directed that:

"...wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law."

[para 32(vi)]

11. The Central and State Governments are therefore statutorily obligated to ensure that the Information Commissions are constituted as per the provisions of the RTI Act and Supreme Court directions and are functional at all times.

12. The information commissions have wide-ranging powers as enumerated in sections 18,19, and 20 of the RTI Act, including the power to require public authorities to provide access to information, appoint Public Information Officers (PIOs), publish certain categories of information and make changes to practices of information maintenance. The commissions have the power to order an inquiry if there are reasonable grounds for one, and also have the powers of a civil court for enforcing attendance of persons, discovery of documents, receiving evidence or affidavits, issuing summons for examination of witnesses or documents. Section 19(8)(b) of the RTI Act empowers information commissions to “*require the public authority to compensate the complainant for any loss or other detriment suffered*”. Further, under section 19(8) and section 20 of the RTI Act, information commissions are given powers to impose penalties on erring officials, while under Section 20(2), commissions are empowered to recommend disciplinary action against a PIO for “persistent” violation of one or more provisions of the Act. Thus, a properly constituted Information Commission is critical to the working of the Right to Information Act, 2005 and to effectively exercise the fundamental right to information guaranteed in Article 19(1)(a) of the Constitution of India.

VACANCIES IN INFORMATION COMMISSIONS LEADING TO HUGE BACKLOGS AND CONCOMITANT LONG WAITING TIME FOR DISPOSAL OF APPEALS/COMPLAINTS:

13. The RTI Act is a time-bound legislation and prescribes statutory timelines for providing the information from the date of application (ordinarily 30 days). In case information is not granted, or the applicant is aggrieved by the nature of response received, she/he is also entitled to file a first appeal with the designated First Appellate authority. The First Appellate Authority is obligated to dispose of such an appeal within maximum period of 45 days. The reading of the sections 7 and 19 of the Right to Information Act, 2005, makes it clear that the RTI is a time-bound legislation for effectively exercising the fundamental right to information guaranteed in Article 19 of the Constitution of India.

14. However, the CICs and SICs which are the final appellate authority under the RTI Act, and are the guardians of the Act are taking many months, and in some cases even years, to decide appeals and complaints due to accumulation of pending appeals/complaints because of a large number of vacancies in information commissions across India.

15. A report published in March 2018 titled, 'Report Card on the Performance of Information Commissions in India' found that 8 information commissions had a waiting time of more than one year for an appeal/complaint to be heard, which was calculated on the basis of the number of appeals and complaints pending as of October 31, 2017 and the monthly disposal rate. Further, several information commissions are functioning without a Chief Information Commissioner thereby undermining the autonomy of the Commission

and hampering its smooth functioning including its ability to comply with the directions of the Supreme Court regarding the power of the Chief Information Commissioner to decide formation of special benches to hear matters involving complex questions of law. By not filling up vacancies in information commissions in a timely manner, the Central and State governments are frustrating the very purpose of the RTI Act as receiving information in a time-bound manner is the essence of the law. A copy of the report on the performance of Information Commissions dated March 2018 is annexed as **Annexure P6** (Pg _____).

16. The fundamental right of citizens to access information from public authorities is being hindered by the non-appointment of commissioners in the CIC and various SICs across the country. The commission wise status is given below:

Central Information Commission (CIC):

17. At present, four posts of information commissioners are lying vacant in the CIC. As of April 4, 2018, more than 23,500 appeals and complaints were pending before the commission. All the four vacancies arose out of routine and scheduled retirement of information commissioners upon the expiry of their five year tenure or upon them attaining the age of sixty five years. Despite the first vacancy occurring more than 15 months ago, the Central government has failed to appoint information commissioners to the vacant posts.

18. Till December 2016, the CIC was functioning at full strength of eleven commissioners (1 chief and 10 information commissioners). Shri M.A. Khan Yusufi finished his term on 31/12/2016, Shri Basant Seth on 15/2/2017, Shri Sharat Sabharwal on 22/09/2017 and Ms. Manjula Prasher on 15/01/2018, resulting in four vacancies till date. The government has failed to fill these vacancies and as a result a large number of appeals and complaints are pending before the commission. The CIC website shows that even appeals and complaints filed in 2016 are currently pending for disposal by the commission. In a recent interview to a national daily, the Chief Information Commissioner of the CIC that filling up vacancies in the CIC is crucial to ensure effective functioning of the commission.

19. While the Central government had invited applications for the post of two information commissioners vide their circular/communication dated 2/9/2016 in anticipation of the vacancies occurring in December 2016 and February 2017, till date none of the vacancies have been filled. A copy of communication dated 2/9/2016 regarding the appointment of two information commissioners is annexed as **Annexure P7** (Pg _____).

20. The petitioners in the current case were signatories to a letter by the National Campaign of Peoples' Right to Information addressed to the Prime Minister on June 5, 2017 urging him to fill the vacancies in the Central Information Commission by appointing information commissioners. Subsequently, an application under the RTI Act was filed by petitioner no. 1, seeking information on the action taken on the

letter, the file notings related to the letter etc. In response, the information received showed that the Prime Minister's Office had treated the letter as a grievance and registered it on the online grievance portal of the central government. Upon tracking the grievance on the online portal, the status showed that the case was closed as the matter was pending. No information was provided in terms of where the matter was pending, who it was pending with, what was the status of appointments etc. It is pertinent to highlight that another four information commissioners including the Chief Information Commissioner are set to retire in 2018. Even in the past, the central government has failed to fill up vacancies occurring in the CIC in a timely manner. The previous Chief Information Commissioner, Mr. Vijai Sharma was appointed in June 2015 only after RTI activists including the present petitioners approached the Delhi High Court regarding the post of the Chief Information Commissioner being vacant. The post was vacant for a period of more than 9 months. Three other vacancies in the CIC were filled in February 2016, only on the directions of the courts. Therefore, over the last 3 years, the Central government has not made appointments to the CIC until concerned citizens have approached the courts for relief.

21. Orders/Judgments passed by the Delhi High Court and this Hon'ble Court shows that there is a consistent pattern in the Central Government dragging its feet in making appointments at CIC. A copy of judgment dated 15.02.2012 passed by the Delhi High Court in WPC 8688 of 2011 is annexed as **Annexure P8** (Pg _____). A

copy of the judgment dated 06.11.2015 passed by the Delhi High Court in WPC 3386 of 2015 is annexed as **Annexure P9** (Pg _____), and a copy of the order dated 08.01.2016 passed by this Hon'ble Court in SLP (C) 34495 of 2015 is annexed as **Annexure P10** (Pg _____).

22. Andhra Pradesh State Information Commission: After the bifurcation of the state of Andhra Pradesh in 2014, for several months the SIC of Andhra Pradesh continued to function as the information commission for both Telangana and Andhra Pradesh. However, the commission became defunct in May 2017 after the retirement of the serving information commissioners. In August 2017, the High Court of Hyderabad directed that information commissions be set up in Telangana and Andhra Pradesh. The Andhra Pradesh government issued an order regarding the constitution of the SIC of Andhra Pradesh in August 2017, but till date not a single commissioner has been appointed to the commission. The SIC of the state of Andhra Pradesh is yet to become functional. For over 10 months, people seeking information from public authorities under the jurisdiction of the AP SIC have had no recourse to the independent appellate mechanism prescribed under the RTI Act, if their right to information is violated.

23. West Bengal State Information Commission (WB SIC): The SIC of West Bengal is currently functioning with just two information commissioners. Since 2015, for a period of nearly 12 months (November 2015 to July 2016 and April 2017 to July 2017), the SIC

was non-functional and did not hear any appeals or complaints as there was only one commissioner in the SIC during this time. Information obtained under the RTI Act shows that more than 8000 appeals and complaints were pending in the West Bengal SIC as of October 31, 2017. It is taking an inordinately long time for appeals and complaints to be disposed by the WB SIC. As per information available on the website of the WB SIC, the commission is currently hearing matters, including those filed as far back as 2008 i.e. ten years ago. A copy of order dated 12.02.2018 passed by WBIC is annexed as **Annexure P11** (Pg _____). A copy of order dated 15.02.2018 passed by WBIC is annexed as **Annexure P12** (Pg _____). A copy of order dated 07.03.2018 passed by WBIC is annexed as **Annexure P13** (Pg _____).

24. Maharashtra State Information Commission: The Maharashtra SIC has been functioning without a Chief Information Commissioner since April 2017. In the interim, one of the information commissioners has taken on the additional charge as chief, although there is no such explicit provision under the RTI Act, 2005. The commission is functioning with only seven commissioners as against a sanctioned strength of eleven commissioners. Information accessed from the website of the Maharashtra SIC shows that at the end of February 2018, more than 40,000 appeals and complaints are pending before the commission. Copy of information available on Maharashtra SIC website daten Nil regarding pendency of cases is annexed as **Annexure P14** (Pg _____).

25. Gujarat State Information Commission: The Gujarat Chief State Information Commissioner retired in January 2018 and the position is currently vacant.

26. Kerala State Information Commission: The Kerala SIC is functioning with a single commissioner (the Chief State Information Commissioner). Information obtained under the RTI Act shows that as of October 31, 2017 nearly 14,000 appeals and complaints were pending with the commission. Copy of RTI application dated 06.11.2017 is annexed as **Annexure P15** (Pg _____) and the reply received to the said application dated 28.11.2017 is annexed as **Annexure P16** (Pg _____).

27. Karnataka State Information Commission: Information available on the website of the SIC shows that the commission is functioning with only five commissioners (including the chief). Information obtained under the RTI Act shows that as of October 31, 2017 nearly 33,000 appeals and complaints were pending before the SIC. Copy of RTI application dated 06.11.2017 is annexed as **Annexure P17** (Pg _____) and the reply received to the said application dated 11.12.2017 is annexed as **Annexure P18** (Pg _____).

28. Odisha State Information Commissioner: The Odisha SIC is presently functioning with only three commissioners (including the Chief). Information obtained the RTI Act shows that as of October 31, 2017, more than 10,000 appeals and complaints were pending before the SIC. Copy of RTI application dated 28.11.2017 is annexed as

Annexure P19 (Pg _____) and the reply received to the said application dated 27.12.2017 is annexed as **Annexure P20** (Pg _____).

29. *Telangana State Information Commission:* After the bifurcation of the state of Andhra Pradesh in 2014, for several months the SIC of Andhra Pradesh continued to function as the information commission for both Telangana and Andhra Pradesh. However, the commission became defunct in May 2017 after the retirement of the serving information commissioners. In August 2017, the High Court of Hyderabad directed that information commissions be set up in Telangana and Andhra Pradesh. The Telangana government constituted the Telangana SIC on 13-09-2017 and two commissioners assumed charge on 25-9-2017. The state of Telangana, therefore, did not have a functioning SIC for a period of more than 3 months and currently there are only two commissioners in the commission, despite more than 15,500 appeals and complaints pending before the commission as of October 31, 2017 according to information obtained under the RTI Act. Copy of RTI application dated 06.11.2017 is annexed as **Annexure P21** (Pg _____) and the reply received to the said application dated 04.12.2017 is annexed as **Annexure P22** (Pg _____).

30. *Nagaland State Information Commission:* The SIC of Nagaland has been functioning without a Chief State Information Commissioner since September 2017.

31. The failure of the Central government and various state governments to fill up vacancies in a time-bound manner by appointing commissioners has led to huge backlogs of appeals and complaints, resulting in people having to wait for a long time for their matter to be heard and disposed. As highlighted above, several commissions have in the recent past been rendered completely defunct and non-functional as no commissioners have been appointed to the commission. Further, in several commissions, the non-appointment of the Chief has hindered the functioning of the commissions. The failure of the Central and state governments to address vacancies in information commissions in a time-bound manner has effectively frustrated the object of the Right to Information Act, 2005, which was to provide for a time-bound and rights-based framework for disclosure of information demanded by citizens.

LACK OF TRANSPARENCY IN APPOINTMENT OF INFORMATION COMMISSIONERS:

32. The central and various state governments have failed to adopt proper procedures to ensure transparency in the short-listing, selection and appointment of information commissioners. In *Union of India vs. Namit Sharma* (2013) 10 SCC 359, the Supreme Court had given specific directions to ensure transparency in the appointment of commissioners and to regulate the process. A copy of the judgment reported in *Union of India vs. Namit Sharma* (2013) 10 SCC 359 is annexed as **Annexure P23** (Pg _____). The relevant directions are reproduced below-

“32.

(iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.

(iv) We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees Under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.

(v) We further direct that the Committees Under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.”

33. However, despite the clear directive of the Supreme Court, even these minimum procedures and requirements for transparent selection are not followed by governments. In several cases, the appointments of information commissioners have been challenged for being arbitrary, illegal, unreasonable, made without application of mind, made contrary to the provisions of Section 15(3) (5) and (6) of the RTI

act or because the decision making process adopted by the Selection Committee lacked transparency & fairness. In several such cases, the appointments have been set aside by courts due to lack of transparency in the process of appointment and for being in violation of the directions of the Supreme Court. The High Court of Gujarat in *Jagte Raho Versus The Chief Minister of Gujarat Writ Petition (P.I.L.) Nos. 143 and 278 of 2014* set aside the appointments of information commissioners, because while making recommendations for appointment of information commissioners, the selection committee had failed to mention the facts to indicate the eminence in public life, knowledge in the particular field and experience in the particular field of the selected candidates. In P.I.L. Nos.28 and 38 of 2013, the High Court of Hyderabad, set aside the appointments of four information commissioners as they failed to relinquish and/or dissociate themselves from their respective political allegiance and affiliation and suspend their enrolment in the Bar Council, in violation of the directions laid down by the Supreme Court in *Union of India vs. Namit Sharma (2013) 10 SCC 359*. The directions of the High Court of Hyderabad were upheld by the Supreme Court when it dismissed the special leave petitions filed by the persons whose appointments were set aside (SLP(C) No(s).30756/2013 order dated 20.04.2017). Recently, the Kerala High Court set aside the appointment of five information commissioners as it found that the selection process was flawed. The court found no criteria had been laid out for short-listing, and the entire selection process was vitiated. The relevant portions of judgment are reproduced below-

“As we are dealing with the second issue, we do not approve of the way the committee conducted itself. The constitution of the Committee as statutorily provided is not a very democratic committee. There is the Chief Minister and a Minister of his Cabinet and then the solitary leader of opposition. Surely the decisions are known. But we may add that from the very fact that such senior persons are chosen to constitute the committee, it is expected that they would rise above party affiliations and private political interest and act as a repository of public faith and confidence. This is more so when Act 22 of 2005 was enacted by the Parliament for setting out the practical regime of right to information for citizens and to secure access to information under the control of public authorities so as to promote transparency and accountability in the working of every public authority. The State Information Commissioners are high ranking officials who are to perform various functions as contemplated under the Act for safeguarding the individual rights of citizens and so as to provide transparency and accountability in governance. If viewed in this manner, then even this Committee should function quite democratically and independent of personal biases.

Notwithstanding that, when the Committee was called for the first time to deliberate over the applications, which were about 269, the Committee was not given the details thereof and in one sitting itself it was finally concluded. This, as noted above, was objected to by the Leader of Opposition and the meeting was virtually adjourned to the next day. The next day from the 269 candidates, the number came down to four candidates for the State Chief Information Commissioner and fifteen candidates for the State Information Commissioner. It is

not on record as to who did this sorting and under whose authority. But, it is the submission of the writ petitioner in W.P.(C) No.7665 of 2016 that it was the Secretary of the General Administration Department who had short listed the candidates on orders of the Chief Minister. The criteria for short listing the candidates is still a mystery. When the individual writ petitioner/appellant contends that he does not know why he has been sifted out, there is no answer, for there has been no criteria laid out for such an elimination. This is not compatible with the status and purpose of constitution of the Selection Committee. The Selection Committee was not dealing with a domestic enquiry or a trivial issue. We do not approve of such a decision taking process, which is completely a flawed decision making process. It does not stand to judicial scrutiny. This is precisely the objection raised by the Leader of the Opposition which has been brushed aside by the brute majority in the Selection Committee. This, in our view, is sufficient to vitiate the entire selection process. We would accordingly set aside the entire selection process on this ground alone.”

34. Even in the appointment of commissioners of the Central Information Commission, the central government has been found to be functioning in a non-transparent manner. In response to an application under the RTI Act on 2/1/2017, the Department of Personnel and Training (DoPT) denied information on the names of applicants who applied for the post of information commissioners in the CIC (in response to the circular dated 2.9.2016), the reference number of files in which the names received in response to the above DoPT's reference were being processed, the procedure/criterion being

applied for processing the names of candidates/applicants for the posts of information commissioners and for shortlisting/screening the names for placing before the selection committee and the names of screening committee members. The DOPT invoked Sections 8(1)(i) & (j) of the RTI Act to deny this basic information. A copy of the RTI application dated 02.01.2017 submitted to CPIO, DoPT is annexed as **Annexure P24** (Pg _____) and response received 27.01.2017 to the said RTI application is annexed as **Annexure P25** (Pg _____).

35. Even in the past, when information was sought in 2015 about the process of appointment and records of the search committee, the government denied information under the RTI Act, stating that minutes of meetings of the search committee have not been recorded in the file and since minutes have not been recorded in the file, it is not known who attended the meeting. A copy of the RTI application dated 02.02.2015 submitted to CPIO, DoPT is annexed as **Annexure P26** (Pg _____) and response received 02.03.2015 to the said RTI application is annexed as **Annexure P27** (Pg _____).

36. The Hon'ble Supreme Court, in various judgements has held that the selection procedure must be carried out on the basis of rational criteria. In **Centre for PIL and Anr. Vs. Respondent: Union of India (UOI) and Anr.** in Writ Petition (C) Nos. 348 and 355 of 2010, the Hon'ble Supreme Court while hearing matters related to the appointment of the Chief of the Central Vigilance Commission held-

“33. ... Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation [see para 88 of N. Kannadasan (supra)]. The decision to recommend has got to be an informed decision ...”

“55. (iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.”

37. The petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute. The petitioners have no other better remedy available.

GROUND:

- A. That the Right to Information Act provides a legal mechanism to enforce and implement the citizen's right to information guaranteed under Article 19(1)(a) and Article 21 of the Constitution of India. The delay in disposal of the cases by the CIC frustrates the very purpose of the RTI Act.
- B. That the timely and proper appointment of the Chief Information Commissioner and Information Commissioners in the CIC and SICs is vital in terms of sections 12 and 15 of the RTI Act, 2005 and vacancies in these posts adversely affect the functioning of the information commissions.
- C. That the RTI Act mandates a time-bound provision of information to the citizens. Long delays in information commissions in disposing

appeals and complaints defeat the letter and spirit of this legislation.

- D. That Union of India and state governments are statutorily bound to make appointments of the Information Commissioners and they have failed to fulfil their statutory obligation adequately as illustrated above.
- E. That the inordinate delays in disposal of appeals/complaints by the CIC and various SICs violates the fundamental right of the citizens to access information in a time-bound manner.
- F. That the Central and various state governments have failed to adopt proper procedures to ensure transparency in the short-listing, selection and appointment of information commissioners. In *Union of India vs. Namit Sharma* (2013) 10 SCC 359, the Supreme Court had given specific directions to ensure transparency in the appointment of commissioners and to regulate the process.
- G. That in *Centre for Public Interest Litigation & Anr. Vs. Union of India & Anr.* (2011 (4) SCC 1), the court has laid down guidelines for making appointments to institutions like the Central Vigilance Commission in a transparent manner using rational criteria, and the same must be followed in selection of Chief Information Commissioner and Information Commissioners in the CIC and SICs.

PRAYERS

In the light of the aforesaid, it is humbly prayed that this Hon'ble Court may be pleased to issue appropriate writ, order or direction to:

- A. Direct the Union of India to take immediate steps to fill the vacancies in the CIC by making appointment of 4 information commissioners in a transparent and time bound manner.
- B. Direct the State Governments of Maharashtra, Gujarat, Andhra Pradesh, Nagaland, West Bengal, Kerala, Karnataka, Odisha, and Telengana to take immediate steps to appoint Chief State Information Commissioners and Information Commissioners of the respective SICs in a transparent and time bound manner.
- C. Direct the Union of India and all state governments to commence the selection process for information commissioners, including the Chief, at least three months prior to the occurrence of vacancy.
- D. Direct the Union of India and all state governments to ensure that all records of deliberations and rational criteria related to short-listing and selection of the Chief Information Commissioner and other Information Commissioners be properly recorded and made available to citizens in consonance with the provisions of the RTI Act.
- E. Direct the Union of India and all the state governments to evolve an appropriate and transparent method of selection of Chief Information Commissioner and other Information Commissioners in consonance with the provisions of the Act.
- F. Direct the Union of India and all state governments to ensure transparency in the selection process by:
 - a. Publishing advertisements to invite applications from eligible candidates.

- b. Publicly disclosing, including through the website, the eligibility criteria for appointment as information commissioner/chief.
 - c. Publicly disclosing, including through the website, the procedure and rational criteria for shortlisting candidates, if any short listing is done.
 - d. Publicly disclosing, including through the website, the composition, mandate and minutes of meetings of the screening/search committee set up.
 - e. Publicly disclosing the names of short-listed candidates so that people can inform the selection committee any significant adverse information they may have about any such candidate.
- G. Issue such other writ, direction or order, which this Hon'ble court may deem fit under the facts and circumstances of the case.

Through

Drawn By: Ms. Neha Rathi

Dated: ____ April 2018

New Delhi

PRASHANT BHUSHAN

Counsel for the Petitioners