

BEFORE THE CENTRAL INFORMATION COMMISSION

EXTRA SUBMISSIONS IN RESPECT OF COMPLAINT NO. CIC/DS/A/2011/00431/4218

FOLLOWING A HEARING TO BE CONVENED ON 22.11.2012

At the outset, I would like to invite the attention of the Commission to my first Submission, and urge it to please take the contents of that petition in to consideration before coming to any decision on the complaints being decided. The present concern of this submission before the Hon'ble Commission is that the information asked by us on IT Returns of the said MPs involves **LARGER PUBLIC INTERSET**.

1) Judicial backdrop behind Public Interest:

1.1.) Although it is admitted that the expression 'public interest' is not capable of precise definition and it has no rigid meaning, it takes color from the statute in which the expression has been used. It varies from case to case and **as observed by Hon'ble Supreme Court in State of Bihar Vs. Kameshwar Singh (AIR 1952 SC 252)** what is 'public interest' today may not remain so a decade later. Public interest therefore, can be taken to be what is the opposite of a private interest of a person. Public interest must concern either the public in general or at least a section of the public. It cannot be the solitary interest of one single individual.

1.2.) In State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat & others, AIR 2006 Supreme Court 212, the Supreme Court held "the interest of general public (public interest) is of a wide import covering public order, public health, public security, **morals**, economic welfare of the community, and the objects mentioned in Part IV of the Constitution (i.e. Directive Principles of State Policy)".

2)) Important observations made by the courts around the globe regarding public interest vis-à-vis the Right to be informed:

American, U.K, Australia and Scottish courts:

- 1) The only relevant public interest under the Act remains "The Citizens right to be informed about what their government is up to."
- 2) Furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government or a local authority
- 3) Promoting accountability and transparency in the spending of public money. The public interest is likely to be served, for instance if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials

- 4) The general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation

3) Public function, Public purpose and Larger Public interest:

3.1) Quoting the lexis from the judgment of Justice Shah J ;

“Is there any necessity of keeping in dark the voter that their candidate was involved in criminal cases of murder, dacoity or rape? Or has acquired the wealth by unjustified means? May be that he is acquitted because Investigating Officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them.

Is there any necessity of permitting candidates or his supporters to use unaccounted money during elections? If assets are declared, would it not amount to having some control on unaccounted election expenditure?”

3.2) It is to be stated that similar views are expressed in the report submitted in March 2002 by **the National Commission to Review the Working of the Constitution** appointed by the Union Government for reviewing the working of the Constitution in Para 4.14.3 as also referred by Supreme Court in writ petition 490 of 2002;

*“Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities. **The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.** The EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission”*

3.3) Commission in CIC/AT/A/2007/01029 & 01263-01270130, para 45 has referred to the Preamble of the RTI Act while talking about transparency and accountability and held;

“45. The scheme of the Act makes it abundantly clear that disclosure of information to a citizen is the norm and non-disclosure by a Public Authority an exception and it necessitates justification for any decision not to disclose information.”

3.4) Supreme Court in writ petition no. 490 of 2002 took view as held in **State of Uttar Pradesh v. Raj Narain and Others** [(1975) 4 SCC 428], the Court pertinently observed as under:-

*“31 In 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 public functionaries.** They are entitled to know the particulars of every public transaction in all its bearing...”*

3.5) The Supreme Court further in writ petition 490 of 2002 referring to the need of public interest took view as observed in Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal (1995)2SCC161:-

“82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organizations....”

3.6) Supreme Court in writ petition no 490 of 2002 also narrated some observations made by **Bhagwati, J.** (as he then was) in **S.P. Gupta v. Union of India** [1981 Supp. SCC 87], while dealing with the contention of right to secrecy that ***“ there can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration”***.

3.7) Further in para 64 of the S.P Gupta v. UOI, as also mentioned by Supreme court in writ petition no. 490 of 2002 para 64 has laid down that; “Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing. ***The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government.....*** “Knowledge” said James Madison, “will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both.” The citizens’ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world”

3.8) It was further observed,

“67 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)... 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. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act.”

3.9) It was also held in **State of U.P. v. Raj Narain and Others** [1975 (4) SCC 428] that ***“Freedom of speech and expression includes the right to know every public act, everything that is done in a public way, by their public functionaries.”***

3.10) It has been also laid down by The Supreme Court in writ petition no. 490 of 2002 that, ***“.....Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not***

only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right of privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above."

Supreme Court in writ petition no. 490/509/515 of 2002 observed what was held in **P.V. Narasimha Rao Vs. State(1998) 4 SCC 626**); *"They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz., spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for selfaggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money--a malady which nobody can deny, has been pervading the political spectrum of our democratic nation...."*

3.11) Further, Supreme Court while dealing with the election expenses in writ petition no. 490 of 2002 as also observed in **Common Cause v. Union of India and others** [(1996) 2 SCC 752] observed thus:—

*"18 ... Flags go up, walls are painted and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxies. **The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and not audit. From where does the money come nobody knows.** In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."*

3.12) In para 40 of CIC/AT/A/2007/01029 & 01263-01270130, the Commission has held that

" 40. What this Section states is that any information in the hands of the Income Tax authorities would be ordinarily held as confidential, but can be made public, if in the judgement of the Commissioner of Income Tax, it serves public purpose. Therefore, the contention that all Income Tax Returns — an information provided by assesseees to Income Tax authorities — are permanently barred from disclosure, is not correct. This information can be disclosed in public interest, either in a given case, or a class of cases, under Income Tax laws. As has been shown in the preceding paragraphs there is public interest in disclosing the class of information, viz. Income Tax Returns of the Political Parties."

4) Asking for the IT Returns of our MPs/MLAs indeed serves Larger Public Interest:

4.1) Again in para 35 in CIC/AT/A/2007/01029 & 01263-01270130 , CIC observed

"35 In Common Cause (A Registered Society) Vs. Union of India (AIR 1996 SC 3081), the Apex Court has further observed that to combat this naked display of unaccounted/black money by the candidates, declaration of assets was likely to check violation of the provisions of the P.R. Act and other relevant Acts including Income Tax Act. The Apex Court did not agree that the declaration of assets would result in infringement of the right of privacy."

4.2) The following observations of the Court in this context are quite relevant:-

“35 Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right or privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above.”

4.3) The Supreme Court writ petition 490/509/515 of 2002 while throwing light on the corruption as among our elected representatives also relied the case of *P.V. Narasimha Rao Vs. State* [(1998) 4 SCC 626].

“They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz., spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money--a malady which nobody can deny, has been pervading the political spectrum of our democratic nation.....”

5) Role of citizens in Democracy and Rule of Law- People's right to know:

5.1) The role of citizens in a democracy is not just exhausted by the act of electing their MP or MLA, who, in turn, plays a role in the formation of the government in accordance with the directions of the party on whose ticket s/he has been elected. A fundamental dimension of a democracy consists of representative and accountable government, which together determine the laws and policies for society and secure respect for the **'Rule of law.'**

5.2) CIC again in para 34 in *CIC/AT/A/2007/01029 & 01263-01270130* took notice of observations as made in *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081);

“34. In Common Cause (A Registered Society) Vs. Union of India (AIR 1996 SC 3081), Supreme Court dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293A of the Companies Act, 1956, Section 13A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, was to bring transparency in the election funding. The people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended before the Supreme Court that elections in the country were fought with the help of money power which was gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle had polluted the wellspring of democracy in the country. The Court held that purity of election was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party.”

5.3) The Apex Court summed up the position thus:-

"...The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

5.4) The Hon'ble supreme court also took notice of the words as observed in Lily Thomas Vs. Speaker, Lok Sabha [(1993) 4 SCC 234] quoting from Black's Law Dictionary in writ petition no. 490/509/515 of 2002,

"The citizens of the country are enabled to take part in the Government through their chosen representatives. In a Parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The people's representatives fill the role of law-makers and custodians of Government. People look to them for ventilation and redressal of their grievances. They are the focal point of the will and authority of the people at large. The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny....."

5.5) The Supreme Court while stressing on the importance of Right to Information with the changing times also held in writ petition 490/509/515 of 2002, "It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnated....."

5.6) The Supreme Court in writ petition 490/509/515 of 2002 also recalled the apt words of Mathew J in *Gobind Vs. State of M.P.* [(1975) 2 SCC 148] and observed;

The Supreme Court also held that, *"When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given....."*

6) Miscellaneous :

6.1) Election Commission of India (ECI), in 2011, has added a new section in the affidavit for contesting candidates which makes it mandatory for them to disclose the last Annual Income Tax that they have filed for a financial year and also for dependents and spouse. **(Annexure 19)**

6.2) Form of Rajya Sabha's Register of Interest to show what all information is already in public domain and Lok Sabha Speaker has also given a positive affirmation. The second report of the Ethics Committee of Rajya Sabha has also stated that every member may be required to notify changes, if

any, in the information so furnished by him within 90 ninety days of such changes occurring to the committee or the official authorized by it. Information furnished by the member will be laid on the table of the House at the commencement of the next session. **(Annexure 15)**

6.3) The committee in its report also pointed out that the provision of law in regard to the economic offences were also found to be weak and there were insurmountable legal difficulties in attaching/ confiscating the properties acquired through mafia activities. **(Annexure 14)**

6.4) CIC (in June 2011) had directed the Rajya Sabha Secretariat to disclose the copies of the Form of Pecuniary Interest of Rajya Sabha MPs to ADR after a two year struggle. This Form constitutes the Register of Interest of Rajya Sabha MPs which contains details of their financial and business interests. **(Annexure 12)**

6.5) ADR had written a letter to the Lok Sabha regarding introduction of a Register of Interest for Lok Sabha MPs and it was said that the matter was under consideration and has been referred to the Ethics Committee by the Lok Sabha Speaker. **(Annexure 13)**

6.6) The first report of the Committee of Ethics (Thirteen Lok Sabha) also proposed it mandatory for each member of Lok Sabha to disclose his/her income, assets and liabilities. For this purpose members may be required to file a financial disclosures statement immediately after their election to Lok Sabha. All presiding officers and Legislature Secretaraitis had favoured mandatory disclosure if income, assets and liabilities by the members. **(Annexure 16)**

6.7) Assets and liabilities of a public servant is not a private or confidential document and as such may be requisitioned by any citizen. Knowledge of details about the financial interests of the Members of Parliament is clearly in public interest as the citizens have the right to know about their elected representatives in order to make an informed decision.

6.8) We are not considered about the IT Returns of one particular individual. Here we are asking for the IT Returns of the whole political class that is to say: our MPs and MLAs. We have already filed RTIs asking for the IT Returns of as maximum as 20 tainted MPs/MLAs. **(Annexure 11)**

6.9) In the present case, the information that we are seeking is that information which the Department has received from members of the public as a result of their statutory obligation to file tax returns. Members of the public who have sent this information to the Department did not have any **choice** with regard to who they would like to send this information to. In fact, as there is a legal obligation to file these returns, members of the public have **no choice** with regard to the disclosure of this information to the Department. The Department makes a tax assessment or takes any other action on this information based on the law and regulations relating to income tax. The Department does not take this action for the benefit of the tax assesseees or in their personal interest. If the department were to take action for the benefit of the assesseees, it would be considered a corrupt practice. The element of trust involve in such a situation is not the one required for a fiduciary relationship

6.10) Income Tax Returns are filed under the mandate of law and therefore the question of fiduciary relationship between the assessee and IT Department does not arise.

- 6.11)** It also needs to be emphasized that parliamentarians are in public domain by their own choice and transparency in their working and financial operation is essential in larger public interest. The disclosure of Tax Returns and Assessment orders of Parliamentarians to the general public would promote such transparency and is in public interest.
- 6.12)** Importance of disclosure outweighs any possible harm or injury to the interest of third party.
- 6.13)** Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.
- 6.14)** This information which ADR is asking for involves larger public interest. ADR has no motive of seeking such information for personal use as ADR is a public interest organization which aims at increasing transparency and accountability in the political and electoral system of the country. Earlier also, ADR had filed Public Interest Litigations (PIL) in Delhi High Court which resulted in the landmark and historic judgment of Supreme Court (March 13, 2003) making it mandatory for candidates contesting elections of State Assemblies and Parliament to disclose their criminal and financial antecedents, by way of a sworn affidavit to be filed as an essential part of the nomination form.
- 6.15)** Election commission has included IT details into the affidavit which is already public. Then what is the rationale with our MPs that they can't provide their IT returns in public. **(Annexure 18)**
- 6.16)** The information in the Tax Returns & Assessment Orders is not the information the disclosure of which would violate commercial confidence, trade secrets or intellectual property. Most of the information requested is already available from a variety of diverse sources. The information about the Assets and Liabilities is easily available from the affidavits that they submit to Election Commission as part of the election processes. The same information is also available on an annual basis from the Lok Sabha/Rajya Sabha Secretariat under the Declaration of Assets and Liabilities Rules 2004. In view of this, it is unreasonable to claim that disclosure of the requested information would in any way violate commercial confidence, trade secrets or intellectual property.
- 6.17)** Which information our MPs want to keep off from the public in an Income tax form.
(Annexure12)
- 6.18)** The second appeal pertaining to the disclosure of Income Tax Returns (ITR) of MPs had been filed two years back in 2010. In the time period ranging from 2010 till present, a number of developments have taken place to bring about transparency in the financial matters of the elected representatives. The following points reiterate the fact that more steps need to be taken to bring about transparency and disclosure of such information is in public interest.

7. Conclusion:

7.1)The complainants in this instance are also “public spirited person, are not claiming any monetary benefit. They are only praying for the information. Strange enough to observe that why the (respondents) are feeling shy and are so scared in imparting the information to them.”

7.2)It is, therefore, submitted before this Commission that the IT Returns of the MPs/MLAs be made public under the RTI Act as that would promote transparency and encourage public debate. Political representatives being an integral part of the larger governance structure in a democracy, a democratic governance set up is not likely to succeed unless and until they are accountable to the public. Hence, there is a need to attain more transparency regarding the financial sources of our MPs and MLAs.