

To  
The Registrar  
Central Information Commission  
B-Wing, August Kranti Bhawan, Bhikaji Cama Place,  
New Delhi

Date: August 20, 2010

**Subject: Second Appeal under Section 19(3) of the Right to Information Act, 2005; matter pertaining to larger public interest**

1. Name and address of the appellant : Anil Bairwal,  
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2. Details of PIOs/CPIOs

S No.	Name and address of the CPIO	Date of submission of RTI request	Order Number and Date of Reply from CPIO	Name & Address of First Appellate authority	Date of First Appeal Application	Order Number and Date of Order from First Appellate Authority
2.1	Amit Kumar Singh, CPIO and Asstt Commissioner of Income Tax- 7(2), Room No - 624 Aayakar Bhavan, M.K Road Mumbai - 400020	22-Feb-10	No.ACIT - 7(2)/RTI/2010 - 11  7-Apr-10	Vijay Verma, Addl. Commissioner of Income Authority - Tax Range – 7(2), Room No. 626, Aayakar Bhavan, M.K.Road, Mumbai – 400 020.	6-May-10	20-May-10

S No.	Name and address of the CPIO	Date of submission of RTI request	Order Number and Date of Reply from CPIO	Name & Address of First Appellate authority	Date of First Appeal Application	Order Number and Date of Order from First Appellate Authority
2.2	Monika Rana, CPIO/Assistant Commisisoner of Income Tax, Circle 40(1), Room No 303, Mayur Bhawan, Shanker Market, Connaught Place, New Delhi – 110001	22-Feb-10	F.No.ACIT/Cir-40(1)/ND/RTI-AB/2009-10  7-Apr-10	Rajeev Kumar, Add. Commisisoner of -Income Tax, Range – , 40, Room No 301, Mayur Bhawan, Shanker Market, Connaught Circus, New Delhi - 110001	6-May-10	F.No.Addl.CIT/R-40/RTI/10-11/66  25-May-10
2.3	R.P. Dhandu Dy.Commissioner of Income Tax cum CPIO, Hisar	22-Feb-10	22-Mar-10	Kartar Singh, Addl. Commissioner of Income Tax, Hisar Range, Hisar	22-Apr-10	26-May-10
2.4	B.K Dixit, Public Information Officer & DCIT, Circle 31(1), Room No - 217, C.R Building, I.P Estate, New Delhi	22-Feb-10	F.No.DCIT/Circle 31(1)/2009-10/21  7-Apr-10	Surender Pal, CPIO – cum – Joint Commissioner of Income Tax Range – 31, New Delhi	12-Apr-10	F.No.JCIT/Range - 31/RTI/2010-11/114  7-Jun-10
2.5	K.L Kanak, Deputy Commissioner of Income Tax, Central Circle – 2, Patna, 6th Floor, Central Revenue(annexe) Building, Bir Chand Patel Path, Patna	22-Mar-10	F.No : DCIT/CC - II/Pat/2010-11/RTI/49  21-Apr-10	Vijay Kumar, Office of the Additional Commissioner of Income Tax, Central Range – 1, 6th floor, C.R (annexe) Building, Bir Chand Patel Path, Patna	13-May-10	F.No.Addl.CIT/CR-1/Pat/RTI/Matetr/2010-11/513-14  15-Jun-10
2.6	Suman Luthra ,Office of the Income Tax Officer,Ward – 3(1),(CPIO),SCO	22-Feb-10	No ITO/Ward 3(1)/2010 – 11/234  26-Apr-10	Kalpna Kataria Addl. Commissioner of Income Tax, Authority	6-May-10	No:Addl.CIT/R - III/CHD/10-11/1085  21-Jun-10



S No.	Name and address of the CPIO	Date of submission of RTI request	Order Number and Date of Reply from CPIO	Name & Address of First Appellate authority	Date of First Appeal Application	Order Number and Date of Order from First Appellate Authority
	73-75, Sector – 17 D, Chandigarh			Range –III, SCO 73-74-75, Sector 17 D Chandigarh - 160017		
2.7	Prashant P Gadekar Dy. Commissioner of Income Tax Circle 7 Pune, 60/61 Praptikar Sadan, Erandawane, Karve Road, Pune-411004	11-May-10	No:PN/RTI/Pawar S.G/2010 – 11/35  3-Jun-10	Pavan Kumar Beerla CPIO and Assistant Commissioner of Income Tax, Circle 7 Pune, 60/61 Praptikar Sadan, Erandawane, Karve Road, Pune-411004	14-Jun-10	No.PN/ACIT/Cir – 7/RTI/Anil Bairwal/2010-11  15-Jul-10
2.8	S.L Dang CPIO & Income Tax Officer, Ward 47(1) New Delhi Room 425, 4th Floor Mayur Bhawan, CP New Delhi, 110001	15-May-10	F.No. ITO/Ward-47(1)/RTI/2010-11/  9-Jun-10	Dr. Devender Singh Addl Commissioner of Income Tax, Range 47, 4 <sup>th</sup> Floor, Room 428 Mayur Bhawan, CP New Delhi, 110001	24-Jun-10	F.No. Addl.CIT R – 47/2010 – 11/173  22-Jul-10

### 3. Brief facts leading to the appeal

3.1.1 Applications under Section 6(1) of the Right to Information Act, 2005 were filed by the applicant before (Attached as Annexure 1):

- PIO Office of Commissioner of Income Tax Bhopal, forwarded to CPIO and Assistant Commissioner of Income Tax- 7(2), Mumbai,
- CPIO/Assistant Commissioner of Income Tax, Circle 40(1), New Delhi
- PIO Commissioner of Income Tax Chandigarh forwarded to Dy. Commissioner of Income Tax cum CPIO, Hisar

- d. PIO Commissioner of Income Tax Jaipur, forwarded to PIO & DCIT, Circle 31(1), New Delhi
- e. Deputy Commissioner of Income Tax, Central Circle – 2, Patna
- f. CPIO, Ward 3(1) SCO 73-75, Chandigarh
- g. Dy. Commissioner of Income Tax Circle 7 Pune
- h. CPIO & Income Tax Officer, Ward 47(1) New Delhi

The applications were filed seeking the following information:

- A. Whether Members of Parliament (MP) falling in your Jurisdiction (list provided) have filed their Income Tax returns for the five years 2004 to 2009.
- B. The years for which these MPs have not filed their Income Tax Returns.
- C. The details/copies of Income Tax Returns & Assessment Orders for all the years for which these MPs have filed their returns

**3.2** With reference to ADR's RTI application, first replies from CPIO/PIO(s) were received (**Attached as Annexure 2**). All CPIOs/PIOs refused to provide details/copies of Income Tax/Assessment orders.

- a. CPIO and Assistant Commissioner of Income Tax- 7(2), Mumbai, refused to disclose any information citing sections 8(1) (j) of the RTI Act 2005.
- b. CPIO/Assistant Commissioner of Income Tax, Circle 40(1), New Delhi refused to disclose any information stating "it has been found that there is no overriding public interest involved in the matter and it relates to the personal information of the assessee. Further, the third parties have raised objections against the disclosure of information sought by the applicant. Since, the required information relates to personal information, the disclosure of which has no relation to any public activity or interest, the same is particularly exempted from disclosure in accordance with section 8(1)(j) [likewise under section 8(1)(e)] of the RTI Act 2005, as the disclosure of such information would cause unwarranted invasion of privacy of the assessee."
- c. Dy. Commissioner of Income Tax cum CPIO, Hisar, refused to provide information pertaining to details of Income Tax Returns & Assessment Orders stating that "The details of the income tax returns or copies of the assessment orders of the assessee cannot be supplied; as the information sought is third party information and supply of the same will tantamount to invasion of privacy of the said individual. Section 8(1)(j) of the RTI Act, 2005 specifically prohibits to furnish any information which relates to personal information of a person which has no relationship to any public activity or interest or which would cause invasion of privacy of an individual. Provisions of Section 138(1)(b) of the Act also place specific bar upon supply of any information of the assessee to any other person unless the Commissioner of Income Tax is satisfied that it is in public interest to do so." However information related to whether or not Member of Parliament had filed tax returns for the given years was provided.



- d. PIO & DCIT, Circle 31(1), New Delhi refused to disclose any of the above information citing sections 8(1)(d) of the RTI Act 2005.
- e. Deputy Commissioner of Income Tax, Central Circle – 2, Patna provided no information citing section 8(1)(e) of the RTI Act.
- f. CPIO, Ward 3(1) SCO 73-75, Chandigarh denied to provide any information stating “In view of section 8 j of the RTI act information of any individual is not to be disclosed. The applicant may enquire only for his own matters, or the matters of public interest. This information is not covered under any conditions of the Right to Information Act. “
- g. Dy. Commissioner of Income Tax Circle 7 Pune refused to provide any information stating “kindly confirm as to whether the required information is in the public interest or not, and if yes, please state the reasons, in order to enable this office to take cognizance of your case”
- h. CPIO & Income Tax Officer, Ward 47(1) New Delhi refused to provide any information saying that the information sought has no relationship to any public activity or interest and thus it does not qualify under provisions of Section 8(1)(j) of the RTI Act.

**3.3 Aggrieved by the orders received in response to ADR’s RTI applications, First Appeals under the RTI Act were filed with: (Attached as Annexure 3)**

- a. Addl. Commissioner of Income Authority -Tax Range –7(2) Mumbai
- b. Add. Commissioner of -Income Tax, Range – 40, New Delhi
- c. Addl. Commissioner of Income Tax, Hisar Range, Hisar
- d. CPIO – cum – Joint Commissioner of Income Tax Range – 31, New Delhi
- e. Additional Commissioner of Income Tax, Central Range – 1, Patna
- f. Commissioner of Income Tax, Authority Range –III, SCO 73-74-75 Chandigarh
- g. CPIO and Assistant Commissioner of Income Tax, Circle 7 Pune,
- h. Addl. Commissioner of Income Tax, Range 47, New Delhi

The first appeal applications contained arguments explaining as to why sections 8(1)(j), 8(1)(d) and 8(1)(e) of the RTI Act and Section 138(1)(b) of the IT Act cannot be used to withhold information from being provided to the appellant in this case.

**3.4 All Appellate Authorities rejected the applicant’s appeal stating that disclosure of the information requested for is prohibited under Sections 8(1)(j), 8(1)(d) and 8(1)(e) of the RTI Act (Attached as Annexure 4)**

- a. Addl. Commissioner of Income Authority -Tax Range –7(2) Mumbai, provided information pertaining to the years for which the Member of Parliament has filed tax returns but refused to provide details/copies of Income Tax Returns and Assessment orders citing section 8(1)(e) and 8(1)(j).

- b. Addl. Commissioner of Income Tax, Range – 40, New Delhi refused to provide information u/s 8(1)(j) and 8(1)(d).
- c. Addl. Commissioner of Income Tax, Hisar Range, Hisar refused to provide information u/s 8(1)(j).
- d. CPIO – cum – Joint Commissioner of Income Tax Range – 31, New Delhi upheld the decision of PIO & DCIT, Circle 31(1), New Delhi.
- e. Additional Commissioner of Income Tax, Central Range – 1, Patna refused to provide information u/s 8(1)(j) and 8(1)(e).
- f. Commissioner of Income Tax, Authority Range –III, SCO 73-74-75 Chandigarh refused to provide information u/s 8(1)(j).
- g. CPIO and Assistant Commissioner of Income Tax, Circle 7 Pune, provided information pertaining to the years for which the Member of Parliament has filed tax returns but refused to provide details/copies of Income Tax Returns and Assessment orders citing section 8(1)(j).
- h. Addl. Commissioner of Income Tax, Range 47, New Delhi refused to provide information u/s 8(1)(j).

#### **4. About the Appellant:**

Anil Bairwal works with Association for Democratic Reforms (ADR) which works for improving governance, democratic, political and electoral process in 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.

Also, based on an RTI application filed by it to get Income Tax details of the Political Parties, the Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270*; *Date of Decision: 29.04.2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant.

#### **5. Prayers or Relief Sought:**

As I am aggrieved and dissatisfied with the responses received and grounds given for dismissal of my appeals by various Appellate Authorities, I am filing an appeal against the orders of the aforementioned Appellate Authorities. Since the orders of various CPIOs and Appellate Authorities have given similar grounds for rejection of my applications, this appeal may kindly be treated as an integrated appeal against the orders by all the Appellate authorities in the interest of convenience and to avoid unnecessary replication of appeals.



The appeal is against the following orders of the aforementioned Appellate Authorities:

1. Information sought is covered under Section 8(1) (d) of the RTI Act, 2005.
2. Information sought is covered under Section 8(1) (e) of the RTI Act, 2005.
3. Information sought has no relationship to any public purpose and the disclosure would be unwarranted invasion of the individual and furnishing of information about an individual assessee is prohibited under Section 8(1) (j) of the RTI Act, 2005.

#### 6. Grounds for Prayer or Relief:

##### 6.1 The disclosure of the information is in larger public interest due to the following reasons:

According to recent reports, the average increase in the assets of MPs and MLAs **based on their self declarations** with Election Commission of India (ECI) was been very high. For the Lok Sabha MPs, the average increase was 289% or Rs. 2.9 crores per MP within 5 years. For the MLAs in Haryana this increase was 388% or Rs. 4.8 crores per MLA and for MLAs in Maharashtra, it was 339% or Rs. 2.45 crores per MLA. The results are similar for other elected representatives from other states.

According 170th report of Law Commission of India on reform of the electoral laws

*"There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich overnight. Before allowing people to enter public life, the public has a right to know the antecedents of such persons. The existing conditions in which people can freely enter the political arena without demur, especially without the electorate knowing about any details of the assets possessed by the candidates are far from satisfactory. It is essential by law to provide that a candidate seeking election shall furnish the details of all his assets (movable/immovable) possessed by him/her, wife/husband, dependent relations, duly supported by an affidavit."*

Since our MLAs/MPs do not declare their sources of income anywhere, the income tax returns are the only information that people can use to vet the information regarding the asset increases. These reports have generated huge public interest and a few representative newspaper cuttings are attached as an example (**Annexure X**). The value of assets of Parliamentarians is already in the public domain. Various declarations are made by them to the Election Commission and in the Lok Sabha and Rajya Sabha. However there is no public disclosure of the source of income of Parliamentarians. Moreover an analysis of the asset increase of Members of Parliament (refer to attached report) depicts some figures which seem disproportionate and questionable. There are parliamentarians who have increased their assets more than one thousand times over while in Parliament. Thus there is a need to attain more transparency regarding financial details of parliamentarians. By bringing Tax Returns and Assessment orders of Parliamentarians to the public domain the confidence of the common man in his chosen representatives would increase.



Abnormal multiplication of assets over a short period of time raises the possibility of acquiring income from dubious/ questionable sources. In 1995, Vohra Committee Report also revealed a nexus between criminals and governance at all levels. (ANNEXURE XI) Transparency builds confidence in the democratic process. As remarked by U.S. Supreme Court Justice Louis Brandeis, "sunlight is the best disinfectant." This statement refers to the benefits of openness and transparency and its significance as being an important characteristic of democracy. Hence, creating transparency with respect to disclosure of income tax returns of the MPs will help in creating confidence of the citizens in democracy. Thus, the information of Income Tax details of our MPs and MLAs will be in great public interest and it should be provided to the applicant.

**6.2 Section 8 (1) (d) of the RTI Act is not applicable in this case due to the following reasons:**

The section reads as follows:-

*"information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;"*

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.

It also needs to be emphasized that the information provided by the taxpayer to the income tax department is a statutory requirement. It is part of taxpayer's public duty and is done in relation to public and legal activity and not in relation to commercial confidence, trade secrets or intellectual property. Hence section 8 (1) (d) is not applicable in this case and the requested information should be given to the applicant.

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. Therefore the information requested should have been provided to the applicant.

There is also the issue of "Conflict of Interest". Parliamentarians are also engaged in policy making covering wide spectrum of issues dealing with large amount of public funds. The disclosure of the information of diverse sources of income, tax exemptions & tax deductions received will help to maintain and enhance public confidence and trust in the integrity of Parliamentarians.



6.3 Section 8 (1) (e) of the RTI Act is also not applicable in this case due to the following reasons:

Section 8 (1) (e) reads as follows:-

*"information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information"*

A fiduciary relationship implies that a person voluntarily places confidence in another person (in this case, the Income Tax Department), to share the information with that person. The information provided by the taxpayer to the income tax department is a statutory requirement and is not done in fiduciary capacity. It is part of taxpayer's public duty and is done in relation to public and legal activity and not in fiduciary capacity. Hence section 8 (1) (e) is not applicable in this case and the requested information should be given to the applicant.

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. Therefore the information requested should have been provided to the applicant.

6.4 The disclosure of the information is in larger public interest and Section 8 (1) (j) of the RTI Act is not applicable in this case due to the following reasons:

The section reads as follows:-

*"Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person".*

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. In a democratic society, interested citizens should have the right to examine the operations of their government through access to documents held by government agencies.

6.5 The importance for citizens to have access to information related to public functionaries has also been stressed by The Honorable Supreme Court. The Supreme Court in its order dated 13.03.2003, on Writ

Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs. Union of India and another), has quoted from its earlier judgments as below (Attached as Annexure VI):

i) In (1975) 4 SCC 428, In the State of Uttar Pradesh v. Raj Narain & others has observed as follows:-

*"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 transaction which can, at any rate, have no repercussion on public security".*

....

*"In a Government of responsibility, where all 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....."*

ii) In Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal [(1995) 2 SCC 161]

*"True democracy cannot exist unless all citizens have a right to participate in the affairs of 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 monopolized either by a partisan Central Authority or by private individuals or oligarchic organizations."*

Thus not providing the sought information to the appellant is against the right of citizens to have access to the information related to public functionaries for effective and transparent functioning of the Indian democracy and against the orders of Honorable Supreme Court. Hence, the sought information should be made available to the appellant.

6.6 This information should be provided to the appellant as Parliamentarians are engaged in performance of public duty, therefore, their credentials and performance is a matter of public interest at large.

This clearly came out in the Supreme Court order dated 13.03.2003, on Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs. Union of India and another):

*"A Member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a 'public servant' within the meaning of Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao Vs. State [(1998) 4 SCC 626]."*

Further the order continued to state that,

*"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.*

...

*"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."*

....

*"Assets and liabilities" is one of the important aspects to which extensive reference has been made in Association for Democratic Reforms case. "*

Transparency in working and financial operation of parliamentarians is essentially in larger public interest. The disclosure of their financial interests to general public would promote such transparency. It is important that the citizens of the country are aware of the financial interests of their elected representatives. Providing the information sought by the appellant would promote spreading of such awareness among the citizens of the country.

**6.7 Importance of disclosure outweighs any possible harm or injury to the interest of assessee.** As the information has been provided by the assessee to meet his legal obligations, there is no unwarranted invasion of his privacy by the State. Therefore the disclosure of the same information to another person cannot be construed as an unwarranted invasion of the privacy of the individual. Honb'le Information Commissioner, Shailesh Gandhi in his decision, CIC/LS/A/2009/000647/SG/5887, (This has been challenged in the Delhi High Court, so should be included?) (Attached as Annexure VII) observed that "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." Also, it was observed in the present decision that information provided by individuals in fulfilment of statutory requirements will not be covered by the exemption under Section 8(1)(j).

**6.8 The information in the Tax Returns & Assessment Orders is not the information the disclosure of which would cause unwarranted invasion of the privacy of the parliamentarians.**

Disclosure of the information such as assets of public servant, which is routinely collected by public authority and routinely provided by the public servants, should be done in larger public interest. The same was also upheld by the Honorable Central Information Commission in decision No: CIC/SG/A/2009/001436/4247 (Attached as Annexure VIII), which said that –

*" We can state that disclosure of information such as assets of a Public Servant, - which is routinely collected by the Public Authority and routinely provided by the Public servants, - cannot be construed as an invasion on the privacy of an individual. "*

Thus the sought information should have been provided to the appellant as it is routinely provided by public servants (in this case members of Rajya Sabha) to the public authority.



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 would cause unwarranted invasion of the privacy of the parliamentarians. Assets and liabilities of a public servant is not a private or confidential document and as such may be requisitioned by any citizen.

It is also pertinent to note the recommendations of The National Commission to Review the Working of the Constitution in its report submitted in March 2002:-

*"..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 National Commission has further suggested that the Election Commission should devise specific formats for filing such statements so that fudging of accounts becomes difficult.

Hence Parliamentarians cannot be insulated from the demands of transparency. Parliamentarians are being allowed to escape the obligations/norms transparency imposes, and inferentially, escape accountability, even though these Parliamentarians almost always influence and, frequently control, State power. This seems like an unfair proposition— especially in a democracy — as accountability is the underpinning of the actions of all stake-holders who have anything to do with State power.

6.9 There is also the issue of **"Conflict of Interest"**. Parliamentarians are also engaged in policy making covering wide spectrum of issues dealing with large amount of public funds. Secrecy is the greatest aid to corruption. The disclosure of the information of their own interest will help to maintain and enhance public confidence and trust in the integrity of Parliamentarians.

6.10 Filing of income tax returns is done in fulfilment of the legal obligation, and there exists no fiduciary relationship between the assessee and the Department. Assessee's do not have any choice with regard to who they would like to send this information to. The information being sought is the information which the Department has received from members of the public as a result of their statutory obligation to file tax returns. 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.

6.11 Tax Returns of Parliamentarians are voluntarily being disclosed in countries like U.S. and U.K. Presidential tax returns in the United States are available online. Like all other citizens, U.S. Presidents also enjoy the protection of their privacy, but they chose to release their tax returns publicly. Tax



returns of Barack Obama, George W. Bush and others are available online. (Presidentsusa.net). Their tax returns are open for public scrutiny and such sort of a transparency is truly commendable. Our Parliamentarians should also learn something and do likewise as this will strengthen the faith of the citizens in the representatives chosen by them. By the virtue of being a public servant they should disclose their tax returns and should not wait for a mandate of law to force them for doing so.

6.12 According to a recent reports of Association of Democratic Reforms (ADR) and National Election Watch(NEW), the average increase in the assets of MPs and MLAs **based on their self declarations** with Election Commission of India(ECI) was been very high. For the Lok Sabha MPs, the average increase was 289% or Rs. 2.9 crores per MP within 5 years (this report has been attached as **annexure IX**). For the MLAs in Haryana this increase was 388% or Rs. 4.8 crores per MLA and for MLAs in Maharashtra, it was 339% or Rs. 2.45 crores per MLA. The results are similar for other elected representatives from other states. Since our MLAs/MPs do not declare their sources of income anywhere, the income tax returns are the only information that people can use to vet the information regarding the asset increases. These reports have generated huge public interest and a few representative newspaper cuttings are attached as an example (**Annexure X**). The value of assets of Parliamentarians is already in the public domain. Various declarations are made by them to the Election Commission and in the Lok Sabha and Rajya Sabha. However there is no public disclosure of the source of income of Parliamentarians. Moreover an analysis of the asset increase of Members of Parliament (refer to attached report) depicts some figures which seem disproportionate and questionable. There are parliamentarians who have increased their assets more than one thousand times over while in Parliament. Thus there is a need to attain more transparency regarding financial details of parliamentarians. By bringing Tax Returns and Assessment orders of Parliamentarians to the public domain the confidence of the common man in his chosen representatives would increase.

Abnormal multiplication of assets over a short period of time raises the possibility of acquiring income from dubious/ questionable sources. In 1995, Vohra Committee Report also revealed a nexus between criminals and governance at all levels. (**ANNEXURE XI**) Transparency builds confidence in the democratic process. As remarked by U.S. Supreme Court Justice Louis Brandeis, "sunlight is the best disinfectant." This statement refers to the benefits of openness and transparency and its significance as being an important characteristic of democracy. Hence, creating transparency with respect to disclosure of income tax returns of the MPs will help in creating confidence of the citizens in democracy. Thus, the information of Income Tax details of our MPs and MLAs will be in great public interest and it should be provided to the applicant.

## 7. Prayer for Relief

The disclosure of information relating to Income Tax Returns of the Members of Parliament to general public would promote transparency and encourage public debate. An analysis of the asset increase of Members of Parliament (refer to attached report) depicts some figures which seem disproportionate and questionable and also raises strong possibility of conflict of interests. There are parliamentarians whose assets have increased more than 1000% while in Parliament. Thus there is a need to attain more

transparency regarding financial details of parliamentarians. By bringing Tax Returns and Assessment orders of Parliamentarians to the public domain the confidence of the common man in his chosen representatives would increase. Thus it is essentially a matter of larger public interest. It becomes all the more important to provide details of income tax returns of the Members of Parliament because:

- Larger public interest calls for disclosure of Income Tax Returns as it is likely to promote public debate.
- It is imperative to increase transparency of all financial dealings of Parliamentarians as well as maintain and enhance public confidence in them.
- Disclosure of Tax Returns and Assessment orders of Parliamentarians to the public would help increase transparency thereby maintaining and strengthening accountability of Parliamentarians towards the public.

In view of this, the Chief Information Commissioner may be pleased to decide that the information sought by the applicant in respect of the income tax returns of the Member of Parliament should be made available to the applicant in wider public interest.

8. I hereby declare that the aforementioned facts are true to the best of my knowledge. I request you that when this appeal is submitted to the respondents for their rejoinders, kindly let me have a copy of these rejoinders and that I may be given at least ten days' time before I am called for the hearing. I may also be allowed to bring another person with me during the hearing who is knowledgeable about RTI matters, to assist me in this case.



Anil Bairwal

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Verification: Verified at New Delhi on .....that paras 1-8 are true to the best of my knowledge and belief.

Annexures





