CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/VS/A/2014/000989-SA
CIC/SS/C/2013/000507-SA
CIC/SS/C/2013/000509-SA
CIC/SS/C/2013/000389-SA
CIC/SS/C/2013/000510-SA

Subhash Chandra Agrawal v. CPIO, Department of Justice

Hearing:	07.03.2016
Addl. submissions:	31.12.2016
Decision:	03.05.2017

CIC/VS/A/2014/000989-SA

Parties Present:

1. Appellant is present. Mr. K. C. Thang and Mr. S. Vijay Gopal represented Public authority.

Facts

2. Mr. Subhash Chandra Agrawal, the appellant, holder of Guinness-World-Record in publishing highest number of "Letters to the Editor" on socio-political issues, filed a request dated 24.7.2013 referring to news items: (1) "**take action against judges suspect of moral deviance: V R Krishna Iyer** (ET 16.7.2013), news-report from Jagran dated 23.7.2013, and (2) "**Supreme Court Judgment on NEET needs to be immediately stayed *suo motto* by Supreme Court itself**", dated 20/23.7.2013. He claimed that submission about news item (2) was forwarded to Departments of Justice, Legislative and legal respectively through Public Grievance portal. His 11-point RTI request includes:

a) action or correspondence on these matters from the public authority.
b) copies of **complaints received at Union Law Ministry against retired Chief Justice of India Mr Justice Altamas Kabir**, including one dated 25.5.20`13 by Mr Justice (Rtd) V R Krishna Iyer, and complaint by Dr M Furquan as forwarded from President's Secretariat to Union Law Ministry as referred in news report.
c) action taken related to probe into **leakage of SC verdict dated 18.7.2013 in matter "Christian Medical College, Vellore & others v Union of India"**, on a private website several hours before its pronouncement in the court, which was also brought before Hon'ble Chief Justice of India Mr. Justice P Sathasivam as per news report dated 23.7.2013.
d) remedial action taken to counter SC verdict dated 18.7.2013
e) name of the authority before whom complaints against CJI can be lodged
f) **measures taken to check corruption, misconduct and other irregularities in higher judiciary**, etc.

3. There was a huge delay in response by CPIO. While RTI is dated 24th July, the reply was on 19th December 2013, in which the CPIO has stated that the complaints received against judges of Supreme Court and High Courts are forwarded by the Government to the Supreme Court or the concerned High Courts, and that the Central Government does not maintain records of such complaints nor does it monitor action taken on them. He added further that the Government has moved the "**Judicial Standards and Accountability Bill"**, to provide for a comprehensive mechanism for handling complaints against judges. The appellant filed first appeal and the Appellate Authority stated on 6.3.2014, that the CPIO has given the information based on available office records and hence the appeal is disposed of. The appellant filed second appeal before this Commission under section 19 (3) of RTI Act.

CIC/SS/C/2013/000389-SA

4. In RTI Application dated 30.7.2013, following information was sought:

a) File notings/correspondence with reference to action taken on his submission dated 20.3.2013 made through PG portal on "Supreme Court Judgment on NEET to be stayed by SC *suo-motu*"
b) Copy of complaints received against former CJI- Mr. Justice Altamas Kabir , including complaint of Justice VR Krishna Iyer and Mr. Furquan
c) Action taken on all such complaints against Justice Altamas Kabir,
d) Action taken to probe leakage of SC verdict dated 18.7.2013 in "CMC Vellore & ors. Vs UOI" before its pronouncement.
e) **Rules for probing against a retired CJI for act done during subsistence of his tenure**.
f) Name of authority before which complaint against a CJI can be filed.

5. The CPIO, Department of Legal Affairs transferred it to Department of Justice for reply. On 23.9.2013, the FAA, Department of Law and Justice upheld CPIO response dated 16.8.2013, and directed CPIO to provide copy of this reply to the appellant as he did not receive it earlier. The CPIO complied with the FAO, and provided copy of reply dated 16.8.2013 to the appellant. The CPIO also stated that his on-line grievance-petition dated 23.7.2013 (based on news report) is transferred to DoPT and Union Ministry of Health & FW on 26.8.2013. Copy of status report was also provided.

CIC/SS/C/2013/000507-SA

6. In RTI Application dated 22.7.2013, following information was sought:
   a) File notings/correspondence with reference to his submission dated 20.7.2013, "Supreme Court judgment on NEET needs to be immediately stayed *suo-moto* by Supreme Court itself".
   b) Action taken by President of India on complaints received against former CJI- Mr. Justice Altamas Kabir, including complaint filed by Justice Krishna Iyer, Mr. Furquan, Gujarat HC Chief justice –Mr. Justice Bhaskar Bhattacharya and Mr. Arvind Kejriwal.
   c) Action taken to check corruption and misconduct in higher judiciary.

d) Action taken to probe leakage of SC verdict dated 18.7.2013 in "CMC Vellore & ors. Vs UOI" before its pronouncement

7. CPIO, President Secretariat transferred the application to Department of Law and Justice on 7.8.2013, and further transferred to Mr. KC Thang, CPIO, Department of Justice on 2.9.2013. No reply was received.

CIC/SS/C/2013/000509-SA

8. In RTI Application dated 24.7.2013, following information was sought:
   a) File notings/correspondences/copy of complaints received against former CJI- Mr. Justice Altamas Kabir , including complaint of Mr. Arvind Kejriwal dated 30.5.2013
   b) Action taken on all such complaints against Justice Altamas Kabir
   c) Action taken to probe leakage of SC verdict dated 18.7.2013 in "CMC Vellore & ors. Vs UOI" before its pronouncement.
   d) Rules for probing against a retired CJI for act done during subsistence of his tenure.
   e) Name of authority before which complaint against a CJI can be filed
9. The CPIO, Intelligence Bureau on 16.9.2013 transferred it to Union Ministry of Law and Justice for reply. No reply received from Union Ministry of Law and Justice. On 23.9.2013, the FAA, Department of Law and Justice upheld CPIO's response dated 16.9.2013, and directed CPIO to provide copy of this reply to the appellant as he did not receive it earlier. The CPIO, Intelligence Bureau complied with the FAO, and provided copy of the reply dated 16.9.2013 to the appellant. The CPIO also stated that his on-line grievance-petition dated 23.7.2013 (based on news-report) is transferred to DoPT and Union Ministry of Health & FW on 26.8.2013. Copy of status-report was also provided.

CIC/SS/C/2013/000510-SA

10. In RTI Application dated 27.8.2013, following information was sought:

a) File notings/correspondence with reference to action taken on complaints filed against Mr. J. Altamas Kabir as received by Leader of Opposition of Lok Sabha, including complaint of Mr. Furquan dated 6.5.2013 along with action taken by authorities to which such complaints have been forwarded.
b) Copy of complaints received against any sitting or retired judge by Leader of Opposition of Lok Sabha in last one year.
c) Action taken to check corruption and misconduct in higher judiciary.

11. CPIO, O/o. LOP, Lok Sabha transferred to Mr. KC Thang, CPIO, Department of Justice on 4.9.2013. No reply received.
12. As all the five RTI applications are regarding similar matters and issues, the Commission heard them together and passes the following common order.

Proceedings Before the Commission:

13. The CPIO said that his Ministry was not appropriate authority to comment on judgment of Supreme Court, and also they did not have any opinion on the matter. Appellant stated that he wants working-sheets on action taken on his representation based on his grievances, and claimed that complete working-sheets can be provided as held by the CIC in case file No. CIC/BS/A/2014/001442.
14. On point No. 2, 3 & 4 the CPIO said representation dated 06.05.2013 was forwarded to PPS of the Chief Justice to India for appropriate action in the matter. CPIO explained that the Government does not monitor action taken on them. On point No. 5 & 6, CPIO said no information is available with them, and that the department has no information with respect to internal working of Supreme Court. On point No. 8, the CPIO said that names of former Chief Justice of India against whom complaints are received, were forwarded forthwith as it is to the office of Chief Justice of India.
15. He also stated that disclosure of name of former Chief Justice of India against whom complaints are filed will be improper, and might have serious repercussions as it might become a subject of discussion in media. He said

that **at most they can provide number of complaints received and forwarded**.

16. The CPIO explained that they cannot disclose the names of judges to ensure media interventions. He said all sorts of complaints have been filed by several people including some of dissatisfied litigants. Such complaints are sent to the concerned PPS to the Chief Justice of Supreme Court and High Courts respectively. They maintain only forwarding letters of such complaints, as the complaints run into numerous pages and they are not in a position to maintain record of whole complaint. Giving point-wise replies, Mr. K.C. Thang, CPIO of Union Ministry of Law and Justice, on 5th March 2014 stated that representation dated 06.05.2013 of Dr. M. Furquan against Shri Justice Altamas Kabir was forwarded to PPS to Chief Justice of India on 27.6.2013 for appropriate action. The CPIO stated that the complaints received against serving/retired judges of the Supreme Court and High Courts are also forwarded to the Supreme Court and concerned High Courts for action and as originals were forwarded, they do not have those copies.

17. Appellant wanted copies of all documents regarding complaints against Justice Altmas Kabir from any division of Union Law Ministry, if forwarded. He sought names of other former CJI's, against whom complaints were lodged and outcome of probe on such complaints if any. He contended that the CPIO should have given him the copies of forwarding letters of complaint against former CJI Justice Altamas Kabir which forms part of 'information' under RTI Act. He said that the PMO and Lok Sabha Secretariat had provided such copies of complaint against former CJI. He should have given at least number of complaints and number of judges against whom complaints were made. He said that he was not asking for copies of the complaints.

18. The CPIO explained about limitations of their Ministry in order to respect the independence of judiciary, in giving this huge information. He said if they provided forwarding-letters, or names of former CJI or former/retired judges against whom complaints were made, or their number, it would immediately land in the hands of the media to hit headlines. He was also apprehensive of

increased number of harassing RTI requests if such disclosures are allowed. The CPIO asked: why the contents of complaints which were not substantiated should be disclosed? If dissatisfied litigants file all sorts of complaints, others might seek under RTI their copies, names of judges and contents that might be discussed in public with far reaching consequences like demoralizing the judges. He also said that Union Ministry of Law and Justice has no authority to take action, or ask Supreme Court to take action on news-reports, complaints and representations like those mentioned in this RTI application.

19. The CPIO has not given copies of forwarding letters, names of ex CJIs, retired or serving judges against whom complaints came, or the number of such complaints. Though it appears that his apprehensions were quite genuine, he could not explain under what exceptions such information could be denied.

20. First Appellate Authority Sri H. C. Bhatia upheld the CPIO's reply dated 6.3.2014. Appellant reiterated before the Commission that information on number of judges against whom complaints were filed would be enough.

21. Later, the appellant has filed following letters, he received through RTI:

F. No. 15011/29/2009-HR-III
Ministry of Home Affairs,
Human Rights Division

1st Floor, A Wing, Lok Nayak Bhawan,
Khan Market, New Delhi, the 15th March, 2010.

To

Shri Subhash Chandra Agrawal
1775, Kucha Lattushah, Dariba,
Chandni Chowk,
DELHI-110006.

Subject:- Appointment of NHRC Chairperson.

Sir,

Reference is invited to your e-mail dated 18th December, 2009 on the subject cited above. It is true that both Mr. Justice R.C. Lahoti and Mr. Justice Y.K. Sabharwal were eligible for appointment to the post of Chairperson, NHRC as per the provisions of the Protection of Human Rights Act, 1993. However, it was recorded in our notes, that their acceptance to the post is doubtful. In the case of Justice R.C. Lahoti the then Home Secretary had spoken to the learned Judge enquiring about his availability for the post. It appears that Mr. Justice Lahoti indicated that he was otherwise very busy and would not be in a position to accept the offer.

Because of the adverse media and other reports with regard to Mr. Justice Y.K.

Sabharwal, it was felt that the highly sensitive post of Chairperson NHRC may not be offered to him. Accordingly, it was rerecorded on the file that Mr. Justice R.C. Lahoti and Mr. Justice Y.K. Sabharwal 'are not inclined/not available for different reasons'. As the offer of the post was made to Mr. Justice Lahoti orally there is no correspondence recorded between the Union Government and Mr. Justice Lahoti. However, the conversation between them had been reported by the then Home Secretary to the Home Minister.

Yours faithfully,

Sd/-
(T.K. Sarkar)
Section Officer
Tel:24616775

Hemant Sampat
Registrar

SUPREME COURT OF INDIA
NEW DELHI-110001

PH:23385265(OFF.)
23384533(FAX)

Dated: April 21, 2006

To

Shri Suhash Chandra Agrawal,
1775, Kucha Lattushan,
Dariba,
Delhi.

Sub:- Order of Central Information Commission in Review of Appeal No. CIC/A/3/2006.

Sir,

I am to inform you that pursuant to the Order passed by Central Information Commission in the above referred matter, which was received in the Supreme Court Registry by fax on 12th April, 2006, the matter was placed before Hon'ble the Chief Justice of India for orders. The following Order was thereupon passed by Hon'ble the Chief Justice of India.

"The matter of accessing the information, coming within the purview of Right to Information Act, has been provided in the Act itself. The Act also provides remedial machinery in case any person is aggrieved from the order passed or information provided by Central Public Information of a public authority.

As far as the present case is concerned, the record shows that the complaint made by Shri Subhash Chandra Agrawal was placed before Hon'ble Shri R.C. Lahoti the then Chief Justice of India, on 5th October, 2005. No action on the complaint was directed and it was ordered to be kept in the file of Delhi High Court maintained in the office of Chief Justice of India. A letter dated 10th February, 2005 written by Shri Subhash Chandra Agrawal was received from the Secretary to President of India. It was placed before my learned predecessor on 24th February, 2005. No action on this letter was, however, directed. A reminder dated 30th September, 2005 from Shri Subhash Chandra Agrawal was also placed before my learned predecessor and was directed to be kept in Delhi High Court file.

Neither Supreme Court nor Chief Justice of India is the appointing or disciplinary authority in respect of judges of superior Courts, including Judges of High Courts. Be that as it may, I have also examined the complaints made by Shri Subhash Chandra Agrawal and find no merit in them."

Please acknowledge the receipt of this communication.

Thanking you,

Yours faithfully,

Sd/-21.04.06
(Hemant Sampat)
Appellate Authority
under RTI,
Supreme Court of India.

Copy:

The Registrar,
Central Information Commission,
Block-4, Vth Floor,
Old JNU Campus,
New Delhi-110067.

22. With reference to these RTI appeals, the appellant submitted on 31.12.2016:

> "Supreme Court registry in its reply dated 21.04.2006 subsequent to CIC-verdict in petition-number CIC/A/3/2006 quoting the then Chief Justice of India had stated "*Neither Supreme Court nor Chief Justice of India is the appointing or disciplinary authority in respect of Judges of superior Courts, including Judges of High Courts*". The version needs to be studied for its correctness both for matters of appointment of judges at superior courts including High Courts, and also in respect of dealing complaints received at Supreme Court against Judges of superior courts including High Courts.
>
> A communication dated 12.08.2010 from Supreme Court while responding to a Parliamentary question confirms that Supreme Court considers 'Restatement of Values of Judicial Life' as adopted by full-bench of Supreme Court on 07.05.1997, an authentic document for all practical purposes for fixing conduct-code for Judges of superior courts including High Courts. Another similar resolution dated 17.12.1999 mentions about 'In-House Procedure' to deal with complaints received Judges of superior courts including High Courts as received by Supreme Court and/or Chief Justice of India. Copies of both the documents were duly provided also by Supreme Court registry in response to RTI petitions. Both these documents do confirm that Supreme Court and/or Chief Justice of India are disciplinary authority in respect of Judges of superior Courts, including Judges of High Courts.
>
> Likewise it is also a matter of deep consideration if Supreme Court collegium headed by the Chief Justice of India under present system **is or not** appointing authority for Judges of superior courts including of High Courts. Present system of appointment of Judges at superior courts including High Courts is prevailing on basis of 1993-judgement of Supreme court in the matter 'Supreme Court Advocates-on–Record Association vs Union of India'. Reports indicate about presently existence of a system where judiciary has primary role in appointment of Judges at superior courts including High Courts".

The analysis

23. The five RTI applications, responses and contentions by both the parties, besides the letters above, which were obtained through RTI applications,

indicate that appellant is asking for accountability, answerability, including the appointment process, and transparency related governance issues of the Judiciary from Ministry of Law and Justice. Question who is appointing & disciplining authority for judges, who will receive and handle the complaints against sitting and retired judges of Constitutional Courts, etc. Referring to representations/letters sent by eminent jurists like Justice V R Krishna Iyer, and clippings in newspapers, the appellant wanted to know the measures initiated to prevent corruption, and action on the representations.

24. During the hearings, the appellant pruned his demand for information saying copies of complaints and the names of judges against whom the complaints are made need not be given, but he wanted to know where the complaint against the judges sitting or retired could be filed, the complaints before appointment and after, or impact of complaints on functioning and post retirement assignments. As the accountability includes in its wide sense the selection process also, appellant's information request also is wide enough demanding policy issues, systems or mechanisms in place.

25. Referring to statement of former CJI Justice Sadashivam about probe into the leakage of judgment of Supreme Court in NEET matter, the appellant stated that it being a statement made by a sitting CJI (then), the citizen has a right to know action on leakage, if any. The CPIO should have transferred that part of the RTI question within five days from date of receipt of RTI request, to the CPIO of Supreme Court of India and informed applicant.

26. The CPIO stated that they do not hold the copies of complaints or representations by citizens or eminent persons, which are sent to Supreme Court and the President's office also forwards such letters to Supreme Court or Chief Justice of India.

Independence of Judiciary & RTI

27. Substantial part of RTI requests is the subject of the independence of judiciary and accountability. Ministry expressed apprehension that accountability should not mean to open flood gates for frivolous and unsubstantiated allegations reaching media from the dissatisfied litigants.

The independence should be protected from vengeance of such rejected parties. Their baseless allegations cannot be allowed to demoralize the judges and obstruct fearless functioning of the judiciary, which is the only resort for a common man when Executive and Legislature acted in unconstitutional manner.

28. The appellant pointed out that the then Chief Justice of India Mr. Justice Y K Sabharwal stated that "*neither the Supreme Court nor the Chief Justice of India is the appointing or disciplinary authority in respect of the judges of Superior courts including Judges of High Courts…*" Whereas the in-house procedure MoP adopted by the Full Court of Apex Court on 15.12.1999 outlined a mechanism to deal with the complaints against judges of High Courts and Supreme Court, the Chief Justice of High Courts if received by the Chief Justice of India. Appellant wanted clarification as to who the appointing authority and who can hear complaints of misconduct and corruption against judges. The MoP does not clarify whether Supreme Court is appointing or disciplining authority.

29. He brought to the notice of the Commission that the PMO vide its letter No. RTI/3441/2013-PMR Dated 23.08.2013 provided a copy of complaint, which mentions serious allegations of corruption against Mr. Justice Altamas Kabir (who was holding office of Chief Justice of India at that time) besides saying "the present chief justice is indulging in corrupt practice to much higher level than the former Chief Justice Sri K G Balakrishnan". The Lok Sabha Secretariat vide letter No. 1(1046)/IC/13 dated 31.12.2013 has also furnished the copies of complaints filed against the then Chief Justice Mr. Justice Altamas Kabir in response to RTI applications of the appellant. In some of those complaints there were allegations also against other former Chief Justices and other judges who were later elevated to the office of Chief Justice of India.

30. The CPIO's contention that giving information sought in these appeals would be embarrassing may not be reasonable. Appellant pointed out that when the Ministry chose to give the name of one former Justice CJI Mr. Justice Altamas Kabir, stating that it was sent to PPS of CJI for action, 'what stops them from

giving the names of other judges or other ex CJI's, complaints against whom were forwarded?'

31. The CPIO resisted saying that the disclosure of complaints without substantial evidence against judges will lead to unhealthy discussion affecting dignity of Judiciary. As the complaints against former CJI Justice Altamas Kabir were forwarded for appropriate action, this part of RTI application also should have been forwarded to the Supreme Court. The Registry of the Supreme Court could have acted appropriately on this request for complaints if rejected or admitted for inquiry etc.

32. It is relevant to mention that in letter dated 15.03.2010, the Human Rights Division of Union Ministry of Home Affairs stated "*because of the adverse media and other reports with regard to Mr Justice Y K Sabharwal, it was felt that the highly sensitive post of Chairperson NHRC may not be offered to him*".

33. It could be unreasonable to give copies of the complaints, when those were rejected as not substantial or frivolous or not worth considering because of any reasons including that those were filed by disgruntled litigants. If the complaints or representations are rejected for any reason, the fact of rejection could have been shared without disclosing the names and contents of the allegations. At the same time if any complaints were taken up for further probe or follow-up action after prima facie inquiry, it could be in public interest to disclose the copies of the complaints along with status of action taken etc. Secrecy on such matters give rise to doubts or strengthen rumours or kick up unwarranted discussions in public and media. If some of complaints if proved prima facie are taken up for inquiry, sharing that could be in public interest.

34. Despite delay and deficiencies, the CPIO reasonably responded on the "issue of independence of Judiciary from executive action which help judges to give judicial decisions in a free and fair manner without any fear or inducements and that Constitution also provided checks against misbehavior by judges and the process is laid down in the Judges (inquiry) Act, 1968 etc" (as stated by CPIO). He explained that Government has moved a Bill - Judicial

Standards and Accountability Bill which proposed a "comprehensive mechanism for handling complaints made by citizens on grounds of alleged misbehavior and incapacity against judges of the Supreme Court and High Courts and for taking action against those found guilty after investigation" (language taken from reply of CPIO).

Constitutional Process

35. According to the Indian Constitution, the only way through which the constitutional judges receive consequences for their (mis)conduct is impeachment. Under Article 124(4), the process of impeachment can be initiated only on the grounds of proven misbehavior or incapacity. Professor Faizan Mustafa, Vice Chancellor of NALSAR University felt judicial accountability is as important as accountability of the executive or legislature - Judicial accountability promotes at least three discrete values: the rule of law, public confidence in the judiciary, and institutional responsibility. In fact, neither judicial independence nor judicial accountability is an absolute ideal. Both are purposive devices designed to serve greater constitutional objectives….no judge has so far been impeached, in spite of serious charges of misconduct or corruption'. Chief Justice of Madras High Court K Veeraswami, his son in law and Supreme Court Judge V Ramaswami, Chief Justice of Sikkim High Court PD Dinakaran and Justice Soumitra Sen of Calcutta High Court escaped impeachment provision is, thus, not an effective tool to ensure judicial accountability. Professor Mustafa gave certain examples from different jurisdictions:

> Under Roman law, a judge could be held liable for damages if he failed: to appear in court at the agreed time; to adjourn for just cause; to hear both sides equitably; to give judgment in good faith, without animosity or favour. In Sweden, till 1976, judges were subjected to mild criminal sanctions for breach of duty, and the ombudsman could initiate action or even prosecute them. Today, though the ombudsman's criminal jurisdiction has been drastically curtailed, the authority of admonition is very much there. Denmark has had a Special Court of Complaints since 1939 to hear complaints against

judges…. (June 20, 2015, The Hindu *http://www.thehindu.com/opinion/op-ed/allowing-judges-to-be-judged/article7333969.ece*).

36. The Judges Inquiry Act, 1968 states that a complaint against a judge is to be made through a resolution signed either by 100 members of the Lok Sabha or 50 members of the Rajya Sabha to their respective presiding officers. There is a three member committee comprising two judges one from SC and the other Chief Justice of India if it is against a HC judge; and two SC judges if it is against a sitting judge at the apex court. Investigations are carried out before making a recommendation to the House. If the committee has concluded for the impeachment process to take place, the matter is discussed in both the Houses. The alleged judge will also be given opportunity to rebut the charges. After the debate and judge is heard, if the House decides to put the motion to vote by 2/3rds majority in both Houses, the process of which has to be completed in a single session, President might remove the Judge based on resolution. Many regard such an impeachment almost impossible and it appears that accountability is also impossible. From the NJAC order and debate it is clear that appointments process is not fool-proof. And because of impossibility of accountability, the person who enters somehow, remain unquestioned with all immunity which is totally against the rule of law. *As far as people are concerned they do not know where primarily the complaint against the judge has to be sent. Should that be sent to office of President, office of Chief Justice, office of Parliament? Who will register, who acknowledges and who informs him about follow-up? There is right to information at least to this extent, which should have been made known to the public either by Judiciary or Executive, whether any law or MoP provided for it?*

Judges Inquiry Act

37. In furtherance of judicial independence, the Judiciary itself has to set up an "in-house mechanism" to investigate complaints against its functioning. This was proposed in the Judges Inquiry Amendment Bill 2006 providing for a National Judicial Council consisting of the CJI, two senior-most judges of the

SC and two CJ's of HCs as members to enquire allegations. Section 33 mandates not to disclose any information relating to the complaint to any person in any proceeding except when directed by the Council. The positive feature of the bill is it makes possible to initiate an enquiry into the allegations of misconduct of a judge. Professor Mustafa suggested a mechanism for judicial performance evaluation. (referred above). Though "accountability" demands this also, the Appellant did not ask to this extent. David Pannick, a scholar of this field had written: "The value of the principle of judicial independence is that it protects the judge from dismissal or other sanctions imposed by the Government or by others who disapprove of the contents of his decisions. But judicial independence was not designed as, and should not be allowed to become, a shield for judicial misbehavior or incompetence or a barrier to examination of complaints about injudicious conduct on apolitical criteria...That a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible" (*D Pannick, Judges, Oxford University Press 1987, p 99)*

38. Lord Denning in one of his profound writings ("The Family Story" Page 162) observed:

> When a judge sits to try a case, he is himself on trial before his fellow countrymen. It is in his behavior that they will form their opinion on our system of justice….Thus, the great guarantee of justice is not law but the personality of the judge and the way he discharges his duties and functions. It certainly places him under an obligation to dispose justice without fear or favour, affection or ill-will in consequence of his oath of office and not to go out of his way to on the right side of the establishment which is the biggest litigant in any country.

39. Lord Donaldson the former English Master of Rolls says: "Judges are without constituency and answerable to no one except their consciences and the law." *(Sturges & Chubb, Judging the world, Butterworth's, 1988 at pg. 182).* Great historian Lord Acton said: "All power tends to corrupt. Absolute power corrupts absolutely". (Acton wrote this in a letter to Bishop Mandell Creighton in 1887) Who is to control the exercise of power? On a different occasion the Supreme

Court observed: "Society is entitled to expect the highest and most exacting standards of propriety in judicial conduct". [Judgments Today, 1991 (6) SC 184] A judge is an angel who should not be made accountable to anybody except to himself, but when the self discipline is eroded and judicial officer becomes a threat to the judicial system, he ceases to be an angel and ought not to escape accountability. (Editorial, 'Judicial indiscipline and miscarriage of justice', Excise Law Times Vol 56 A 138). This was further explained by Supreme Court(in C Ravichandran v AM Bhattacharyajee, 1995 SCC (5) 457 https://indiankanoon.org/doc/686645/):

> To keep the stream of justice clean and pure, the judge must be endowed with sterling character, impeccable integrity and upright behavior……The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of judiciary. In short, the behavior of the judge is the bastion for the people to reap the fruits of the democracy.

40. When regulation is impossible or left to 'self', public performance should be subjected to public scrutiny and criticism. In any democracy, the people's opinion cannot be curbed. The Supreme Court in case of Re DC Saxena explained: [In Re D.C.Saxena AIR (1996) SC 2481]

> ….administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right.

41. As these second appeals revolve around question who is appointing and disciplining authority for judges, the dabate in Constituent Assembly while considering primacy to Judiciary/CJI is relevant. Introducing draft of the original Article 124, Dr. B.R. Ambedkar observed: [Constituent Assembly Debates, Tuesday, the 24th May, 1949]-

> …The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are ex hypothesi, well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.
>
> With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto in the President or the Government of the day. I therefore, think that is also a dangerous proposition.

Judicial Standards and Accountability Bill

42. After Supreme Courts verdicts in Judges cases considering the above views, there are several efforts to introduce accountability, like Judicial Standards and Accountability Bill, which was proposed to replace the Judges Inquiry Act, wherein a committee was proposed headed by a former Chief Justice of India, comprising of the Chief Justice of India and the Chief Justices of the High Courts, where the public can lodge complaints against judges. The five-member committee will be appointed by the President, who is bound to accept PM's recommendation. A recommendation is to be made by a three member committee- two from government and one recommended by the leader of the opposition, which accommodates other view. On receiving a complaint, the committee will forward it to scrutiny panels having the powers of a civil court. If the charges are serious, the committee can request the judge concerned to resign, if the judge does not do so, the 'oversight committee' will forward the case to the President with an advisory for his removal. The bill also mandates that the judges should not have any close association with the individual members of the bar. **This bill contains a proposal for transparency that mandates all the details concerning the investigations to be put up in the SC and HC websites.** The accountability bill was passed by Lok Sabha in 2012 but it lapsed with the

dissolution of the 15th House. The complaints or representations reaching the President of Ministry of Law or any other high office in Union of India will get forwarded to CJI.

MoP 1999

43. As the bill did not have support of 'will' of two Estates, alternatively the Committee has devised an **in-House Procedure-**1999 for appropriate remedial action against Judges who, by their acts or commission, do not follow universally accepted values of judicial life mentioned in *Reinstatement of Values of Judicial Life*. The Report of the Committee on in-House Procedure signed by SC Agrawal, AS Anand, SP Bharucha, PS Mishra and DP Mohapatra JJ, says:

> Complaints are often received containing allegations against a Judge pertaining to the discharge of his judicial functions. Sometimes complaints are received with regard to the conduct and behaviour of the Judge outside the court. The complaints are generally made by a party to the proceedings who feel dissatisfied with the adverse order passed by the Judge or by persons having a personal grudge against the Judge. Most of these complaints are found to be false and frivolous. But there may be complaints which cannot be regarded as baseless and may require deeper probe. A complaint casting reflection on the independence and integrity of a Judge is bound to have a prejudicial effect on the image of the higher judiciary of which the Judge is an honoured member. The adoption of In-House Procedure would enable a complaint against a Judge being dealt with at the appropriate level within the institution. Such a procedure will serve a dual purpose. In the first place, the allegations against a Judge would be examined by his peers and not by an outside agency and thereby the independence of the judiciary would be maintained. ***Secondly, the awareness that there exists a machinery for examination of complaints against a Judge would preserve the faith of the people in the independence and impartiality of the judicial process. The Committee has approached the task assigned to it in perspective***. (emphasis is added)

44. This is section 4(1)(b) aspect of the RTI Act, that there should be a machinery, which needs to be voluntarily disclosed. The MoP 1999 recognized the fact that announcing machinery to examine complaints against judges would preserve the faith of the people in the judiciary. This report has prescribed a procedure for complaining against High Court judges, and the judges of Supreme Court including the Chiefs. **Appellant pointed out that there was no mention about complaints against former judges, former Chief Justice of High Courts and Supreme Court.** This has to be specifically included in the draft of Memorandum of Procedure.

New Memorandum of Procedure (2016-17):

45. This effort is revived recently. In December 2015, the Supreme Court struck down as unconstitutional an enactment to set up a National Judicial Appointments Commission (NJAC), observing that "the Memorandum of Procedure (1999) provides for a participatory role to the judiciary as well as the political-executive" and this procedure "now needs fine tuning." The Court directed the government to draft a Memorandum of Procedure but with the final stamp of approval from the collegium. On May 28, 2016, it was reported in the Economic Times that the Supreme Court has turned down a new MoP and returned it to the government, two months after the Centre prepared it. Quoting government sources the report said the collegiums undesirability of certain clauses which were not in harmony with the tenets of independent functioning of judiciary. This report says that the government contended that the **current system of selection was opaque and that transparency was imperative**, and that the government felt that the **draft could not instill transparency** in the process of selections. The media report also stated that the government had decided to keep appointment of top judges **out of purview of Right to Information Act**. Earlier it was contending constantly before the Supreme Court that the collegium system was opaque, also asserting that any appointment should be open to scrutiny under the RTI Act. **However the government had later took the stand that transparency could be achieved 'even without' RTI.** (Emphasis

added.) *(http://economictimes.indiatimes.com/news/politics-and-nation/sc-returns-government-memorandum-of-procedure-for-selection-of-high-court-judges/articleshow/52473923.cms)*

46. The Government proposed following aspects in the MoP: *a) Seniority & Merit* - While promoting a High Court Chief Justice or a judge to the Supreme Court, the criteria of seniority, merit and integrity would be followed. Preference should be given to Chief Justices of the High Courts keeping in view their "inter-se seniority", *b) Reasons in writing* - In case a senior Chief Justice being overlooked for elevation to the Supreme Court, the reasons for the same be recorded in writing", *c) Three-judge quota* - Up to three judges may be appointed from the Bar or from distinguished jurists with proven track records, *d) Committee & Secretariat* - To set up an institutional mechanism in the form of a committee to assist the collegium in evaluation of the suitability of prospective candidates. There should be a secretariat that maintains a database of judges, schedules collegium meetings, maintains records and receives recommendations and complaints related to judges' postings, and *e) National Security* - A criteria of "national security" and "larger public interests" for rejection of recommendation by the collegium.

47. The collegium's counter-argument is that recordings of reasons for overlooking a Chief Justice or a senior judge will be counter-productive as the reasons specified may mar his/her prospects of being elevated to the Supreme Court at a "future point of time". Judiciary also said that the "upto three" judges from bar is equivalent to either restricting the intake from the bar or fixing a quota of the bar. And in neither case does it fall within the framework of the Constitutional provisions.

48. The Parliamentary Standing Committee on Law and Justice noted on 8.12.2016 that the government may assume a "veto power" and reject any name recommended by the Collegium for appointment of judges if it succeeds in inserting clauses of "national security" and "larger public interests" in the proposed Memorandum of Procedure (MoP). This power is not available for the executive in the Constitution.

49. On March 16, 2017, Bloomberg web-media-portal reported: "The Supreme Court collegium has finalised the Memorandum of Procedure (MoP)

for appointment of judges in the higher judiciary resolving a year-long impasse with the executive by agreeing to include the contentious clause of national security in selection of judges" *(https://www.bloombergquint.com/law-and-policy/2017/03/15/supreme-court-collegium-finalises-memorandum-of-procedure-for-higher-judiciary-appointments)*. It also reported: "The national security clause, which gave veto power to the government to reject a name recommended by the collegium, and the issue of setting up of secretariats in the apex court and all the high courts, were among the two key clauses in the MoP on which the Centre and the judiciary had differences. … after deliberations, the collegium agreed on setting up secretariats in the apex court and the High Courts to collate data about judges and assist in the selection procedure for their appointment to the higher judiciary".

50. While striking down the NJAC Act, the Constitution Bench of SC directed the Centre to frame a new MoP in consultation with the Chief Justice of India. The apex court decided to consider the incorporation of additional appropriate measures, if any, for an improved working of the collegium system. Striking a dissent note, Justice J Chelameswar said that the collegium system for the appointment of judges is "opaque" and needs "transparency". He opined that contending "primacy of the judiciary" in the appointment of judges is a basic feature of the Constitution "is empirically flawed." A webportal www.BloombergQuint, quoting a highly placed official in the higher judiciary said that Justice Chelameshwar, one of the five members of the collegium, did not attend one collegium meeting in protest against the current process of appointing judges. Justice Chelameshwar has urged for a more transparent system of appointments and has made recommendations to the Chief Justice of India (CJI) on the same. *(https://www.bloombergquint.com/business/2016/09/02/judge-skips-collegium-meeting-in-protest-as-judiciary-and-government-battle-appointments-issue)*

51. National Lawyers Campaign for Judicial Transparency and Reforms filed PIL seeking an alternative mechanism to collegiums for the appointment of judges in High Courts and the Supreme Court, which was dismissed on 20.9.2016. Another lawyers' Association filed PIL seeking transparency in judicial appointments, which was also dismissed. The Supreme Court stated

that the demand for a committee may not be constitutionally tenable, and the Union Government is already preparing Memorandum of Procedure (MOP) in this regard. *(http://www.dnaindia.com/india/report-sc-dismisses-pil-seeking-mechanism-other-than-collegium-for-judges-appointment-2256982)*

52. Mr. PP Chaudhary, Union Minister of State for Law, told the Rajya Sabha recently, that the response of the Supreme Court to proposed MoP was received on 25.5.2016 and 01.07.2016, reflecting their views on various clauses given on the basis of the constitutional provisions and earlier judicial pronouncements.

53. A final draft of the MoP, appears to have been sent to the Supreme Court in March 2017 making it mandatory for **the collegium to record dissenting opinions** of judges and record the minutes of the discussion. This draft was reportedly opposed on the ground that it will impinge on independence of judiciary.

54. Explaining the dire necessity of independence of judiciary, present Chief Justice of India, J S Khehar, while presiding over the bench of five judges, said:

> It is difficult to hold that the wisdom of appointment of judges can be shared with the political-executive. In India, the organic development of civil society, has not as yet sufficiently evolved. The expectation from the judiciary, to safeguard the rights of the citizens of this country, can only be ensured, by keeping it absolutely insulated and independent, from the other organs of governance.

55. The SC Bench admitted that not everything was okay with the collegiums system of "judges appointing judges", and it was time to improve upon the 21-year-old-system of judicial appointments. "Help us improve and better the system. You see the mind is a wonderful instrument. The variance of opinions when different minds and interests meet or collide is wonderful," Justice Khehar told the government. "The sensitivity of selecting judges is so enormous, and the consequences of making inappropriate appointments so dangerous, that if those involved in the process of selection and appointment of judges to the higher judiciary, make wrongful selections, it may well lead the nation into a chaos of sorts," said Justice Khehar.

56. Justice Khehar warned consequences of condemning collegiums, saying: "It was further pointed out, that the collegium system has been under criticism, on account of lack of transparency. It was submitted, that taking advantage of the above criticism, political parties across the political spectrum, have been condemning and denouncing the "collegium system". Yet again, it was pointed out, that the Parliament in its effort to build inroads into the judicial system, had enacted the impugned constitutional amendment, for interfering with the judicial process. This oblique motive, it was asserted, could not be described as the will of the people, or the will of the nation". (PP 341-2)

57. Justice Chalameshwar, who opined the NJAC as constitutional, presented an emphatic dissent, and explained how transparency and accountability was the need in judiciary:

> Transparency is a vital factor in constitutional governance....Transparency is an aspect of rationality. The need for transparency is more in the case of appointment process. Proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks…..There is no accountability in this regard. The records are absolutely beyond the reach of any person including the judges of this Court who are not lucky enough to become the Chief Justice of India. Such a state of affairs does not either enhance the credibility of the institution or good for the people of this country…. He held that ever-rising pendency of cases warranted a "comprehensive reform of the system.

58. Yes, the transparency is a vital factor in constitutional governance. This Court in innumerable cases noted that constitutionalism demands rationality in every sphere of State action. In the context of judicial proceedings, Supreme Court held in *Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr.* (AIR 1967 SC 1, para 20)

> 20. ……Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. As Bentham has observed: "In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps

the Judge himself while trying under trial (in the sense that) the security of securities is publicity." (Para 106 of Justice Chalameshwar dissent judgment)

59. Justice Chalameshwar quoted Ruma Pal, J. saying:

> Consensus within the collegium is sometimes resolved through a trade-off resulting in dubious appointments with disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional independence has also been compromised by growing sycophancy and 'lobbying' within the system. (Para 195)

60. Justice Kurien Joseph, saw the need for perestroika and glasnost in judiciary; he said:

> ….. The trust deficit has affected the credibility of the Collegium system, as sometimes observed by the civic society. Quite often, very serious allegations and many a time not unfounded too, have been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons, social and other national realities were overlooked, certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the less patronised, selection of patronised or favoured persons were made in blatant violation of the guidelines resulting in unmerited, if not, bad appointments, the dictatorial attitude of the collegium seriously affecting the self-respect and dignity, if not, independence of Judges, the court, particularly the Supreme Court, often being styled as the Court of the collegium, the looking forward syndrome affecting impartial assessment, etc., have been some of the other allegations in the air for quite some time. These allegations certainly call for a deep introspection as to whether the institutional trusteeship has kept up the expectations of the framers of the Constitution. …. **To me, it is a curable situation yet.** There is no healthy system in practice. No doubt, the fault is not wholly of the collegium. The active silence of the Executive in not preventing such unworthy appointments was actually one of the major problems…..The Second and Third Judges Case had provided effective tools in the hands of the Executive to prevent such aberrations. Whether 'Joint venture', as observed by Chelameswar, J., or not, the Executive seldom effectively used those tools. Therefore, the collegium system needs to be improved requiring a 'glasnost' and a 'perestroika', and hence the case needs to be heard further in this regard."

61. Justice Madan B Lokur, said that there can be no doubt that the Government of India is a major litigant and for a Cabinet Minister to be participating (and having a veto) in the actual selection of a judge of a High Court or the Supreme Court is extremely anomalous. (Madan B Lokur J, Para 514)

62. The civil society has the right to know who is being considered for appointment. In this regard, it was held in *Indian Express Newspapers v. Union of India* (1985) 1 SCC 641 that the people have a right to know.

Reliance was placed on *Attorney General v. Times Newspapers Ltd.* 1973 (3) All E R 54 where the right to know was recognized as a fundamental principle of the freedom of expression and the freedom of discussion. In *State of U.P. v. Raj Narain* 1975 (4) 428 the right to know was reiterated. Finally, in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd.*(1988) 4 SCC 592, Supreme Court emphatically stated that the 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. (Madan B Lokur J, Paras 552, 553)

63. The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far reaching impact on his/her reputation and dignity. The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the learned Attorney-General that the proceedings of the NJAC will be completely transparent and any one can have access to information that is available with the NJAC. This is a rather sweeping generalization which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a judge of the High Court or in the first instance as a judge of the Supreme Court. The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain, but the 99th Constitution Amendment Act and the NJAC Act do not even attempt to consider, let alone achieve that balance. It is possible to argue that information voluntarily supplied by a person who is recommended for appointment as a judge might not have a right to privacy, but at the same time, since the information is supplied in confidence, it is possible to argue that it ought not to be disclosed to third party unconcerned persons. Also, if the recommendation is not accepted by the President, does the recommended person have a right to non-disclosure of the adverse information supplied by the President? These are difficult questions to which

adequate thought has not been given and merely on the basis of a right to know, the reputation of a person cannot be whitewashed in a dhobi-ghat. (Madan B Lokur, J Paras 555-556)

64. Though the five judges divided into 4:1 on the issue of constitutionality, all of them agreed on the need of transparency subject to right to privacy of the candidates recommended and independence of judiciary. This has led to the attempt to reform the process of appointment of judges. However the issue of accountability also needs to be addressed incorporating the transparency.

65. The inadequacies of Judges Inquiry Act, failed attempts to reform this Act, lapse of National Judicial Accountability Bill and its non-re-introduction, the need to improve Memorandum of Procedure etc show that there is no mechanism to receive complaints against judges or grievances about justice delivery in courts. Without a system to receive and handle the complaints, there is no scope for improving governance of any wing, including judiciary.

66. It is reported that the Ministry of Law is inundated with complaints against judiciary, 15% are allegations of corruption in courts, while 10% are against unfair judgments and 47% are about delay in delivery of judgments. The Government pointed out serious lacunae at recent regional level meeting held with the judiciary, that 'unlike other departments, grievances Redressal mechanisms are almost non-existent in case of judiciary', and that all the grievances forwarded are hardly resolved. The government has suggested creation of a public grievance portal in each High Court, upload the reply on portal. A nodal officer has to periodically review redressal and file a report. (http://epaperbeta.timesofindia.com/Article.aspx?eid=31808&articlexml= Judiciary -needs-body-to-redress-grievances-29042017016058). This report says that the Government suggested to create a public grievance portal on websites of each of the High Courts, action taken reports shall be uploaded on the portals, a petition for early hearing should be examined to tackle the complaints against the delay, a reasoned reply must be given to the petitioner, even if a grievance cannot be settled, a nodal officer must be appointed in each of the High Courts for handling public grievances, the nodal officer must periodically review the complaints received and place them before the Chief Justice. (The source: Law Ministry & PG portal the department of Administrative Reforms and Public Grievances)

67. The poor and illiterate Indians are the main clients of the justice system. It is relevant to refer to the statement of Hon'ble Chief Justice of India J S Khehar, on 29th April 2017, that "in the absence of timely help to most Indians, the credibility of the legal system and the rule of law comes under severe strain (http://indianexpress.com/article/ india/absence-of-timely-legal-help-to-poor-affects-credibility-cji-j-s-khehar-4633244/).

68. The Commission finds that the Ministry of Law and Justice has a duty to tell the people what happened to the Judicial Standards and Accountability Bill or what is alternative to it, and what action proposed in this regard, especially in response to a citizen who invoked RTI to know mechanism of making the judges accountable.

69. As per the RTI Act and the Office Memorandum issued by the DoPT, every public authority is expected to provide information about recruitments, promotions and transfers under section 4. But the origin, consideration and finalization of judicial appointments are not known. Why some were selected and why not others who were considered is discussed in the corridors of courts and Bar Association rooms. The Constitutional Bench of SC also expressed about opaque appointments.

70. It is surprising that all these 70 years the successive governments at center have not used a very important provision of the Constitution and ignored a stream of persons though eligible to be judges of Supreme Court. Article 124 (2) of the Constitution deals with three kinds of eligible persons who can be appointed as judges of Supreme Court. Article 124(2), Sub-clauses (a) and (b) say Judges of High Court in service and the practicing Advocates can be elevated to Bench of apex court, and sub-clause (c) says a distinguished jurist, in opinion of President can be appointed as Judge. At least five per cent of judges should be selected from this unexplored stream of legal academicians to bring a quality change in the judicial process. As the apex court has to deal both with appellate and original disputes with substantial questions of law it is bound to develop new legal principles and jurisprudence by interpreting the Constitution and other statutes. Legal academicians with good track record of research and writing can develop necessary concepts

and script judgments on par with experts on Bench and Bar. Almost every state today has a National Law School striving to improve the quality of legal education sending hundreds of graduates every year into research, practice and academia, besides some graduates coming from the traditional law colleges and private universities under guidance of eminent professors. New generation of lawyers are coming and most of them are spread over High Courts and the Supreme Court while some of them are pursuing academics after specialization and research. Most industrious and innovative of them could get a chance to enrich the Bench if Article 124(2)(c) is used. On May 24, 1949 Mr. H.V. Kamath, member of the Constituent Assembly, proposed the "distinguished jurist" category and said,: "The object of this little amendment of mine is to open a wider field of choice for the President in the matter of appointment of judges of the Supreme Court... I am sure that the House will realize that it is desirable, may [be] it is essential, to have men — or for the matter of that, women — who are possessed of outstanding legal and juristic learning. In my humble judgment, such are not necessarily confined to Judges or Advocates. Incidentally, I may mention that this amendment of mine is based on the provision relating to the qualifications for Judges of the International Court of Justice at The Hague." The Constituent Assembly adopted it and Article 124 (2)(c) is incorporated. Mr. Kamath referred to US example where President Roosevelt appointed Felix Frankfurter, a Professor at Harvard Law School for 25 years, as an Associate Judge of the American Supreme Court in 1939. Justice Frankfurter has a reputation of being one of the most celebrated judges of the American Supreme Court. Next example is Justice A.M. Kennedy, who was a Professor of Constitutional law for 23 years before President Reagan made him judge in 1988. Another professor who taught Law for 17 years in Columbia R.B. Ginsburg was appointed as Judge of US Supreme Court. Same necessity of legal academicians is there for the High Courts of states also. Hence there should be a similar provision in the relevant article 217(2) of the Constitution, which was omitted by the makers

of the Constitution. In fact, by 42nd Amendment to the Constitution, sub-clause (c) was included in Article 217(2) in 1976. Because several provisions subverting the basic structure of the Constitution were there in the 42nd Amendment Act, it was thoroughly amended by 44th Amendment in 1978 where in the original structure of the Constitution was restored. In the process a required provision in Article 217 (2) was also removed. There is a need to insert following clause (c) at the end of Article 217(2) after clause (b): *"(c) is, in the opinion of President, a distinguished jurist".* If eminent jurists are appointed at both Supreme Court and High Courts of different states, a new blood would enter the judiciary and if necessary researchers are provided to all judges, besides periodical training, it would be a worthy addition to our innovative judiciary. Though Constitution provided for appointing jurists as judges, the posts of HC judges are mostly filled with senior District Court judges and judges of High Courts are elevated to Supreme Court. A few Advocates are directly appointed as Judges of High Courts and Supreme Court. The tragedy is nobody even discussed in 70 years why none was selected from stream of Jurists. There are many eminent professors of law in our country, some of them should have been considered. Neither Executive nor Judiciary thought any one of them before they turned 65 years of age. They allowed the constitutional provision to remain a dead letter.

71. It is not known where proposal for jurist for judgeship is made and what the process is. Which is the entry point for an applicant to become judge? The exit for misconduct, except by way of retirement, is almost impossible as explained above. For long, the judges are not appointed and suddenly some of them take oath. The vacancies by retirement are known on the day of taking oath of judges. But significant posts lie vacant, even as crores of cases await a date of hearing for years. It is good luck of nation if many judges are honest and efficient. Should we depend on the luck or a system? Having a system that facilitates appointment of better judges is matter of governance and allowing the system to be strongly in place is the duty of Government. Hence, the transparency. Under Section 4(1)(c) of RTI Act, the public

authority has a legal duty to publish all relevant facts regarding this important policy of appointment and accountability among the judges, which was the essence of appellant's RTI request.

Role of the State, being a biggest litigant

72. The state continues to be the biggest litigant. The Government departments were involved in at least 46% of the court cases. In October 2016, Prime Minister while addressing Golden Jubilee Celebrations of the Delhi High Court mentioned how the government was biggest litigant' and called for lessening the burden on the judiciary, saying it spent the maximum time in dealing with cases in which government was a party. The Prime Minister said the load on the judiciary can be reduced if cases are filed after taking a considered view. He said if a teacher approaches court over a service matter and wins, then the judgment should be used as a yardstick to extend the benefit to thousands of others to reduce litigation at a later stage. (http://timesofindia.indiatimes.com/india/Government-biggest-litigant-need-to-lessen-load-on-judiciary- PM-Modi/articleshow/55154921.cms) In thousands of cases a wing of Government fights the citizen or with another wing of itself. This is one of the points on which a judge thought it was not proper to 'litigant' to take part in appointment process. Being a huge litigant, which prevents the common man, to that extent, from seeking justice/remedy, the state should be primarily accountable to the huge pendencies piling up before the Supreme Court, High Courts and other courts in India. It is in this context Lord Denning appears to be relevant, he famously said, "Someone must be trusted. Let it be the Judges."

73. The discussion above leads to following conclusions.

a) There is no system for redressal of grievances in any court of India, and no mechanism to receive complaints against judiciary. A comprehensive mechanism need to be put in place to ensure both answerability and access to information about administration of justice including appointments, securing ethics, enforcing probity, complaints and action on them, to ensure transparency and accountability without compromising

the basic constitutional character of the Independence of Judiciary, to be precise, it is not known who will discipline the judges or former judges, CJI or former CJI. **Union Ministry of Law and Justice is expected to inform the appellant/citizen and the Commission, what is possible time required to introduce grievance-redressal system in High Courts and Supreme Court.**

b) There is lack of basic information to the citizens as where the process of appointment of judge begins, whether a jurist could become judge, if so, where the proposal originates, where the aspirant jurist needs to file his application or how the bring their candidature to the notice collegiums, whether this constitutional provision for appointing judges from jurists will ever be implemented, what is the policy, if any. Similarly people like appellant do not know where complaint against sitting judges or retired judges could be filed. The third aspect of ignorance by lack of policy is that a petitioner or litigant also does not know when his case will be disposed of. The Supreme Court in cases referred above opined that the accountability and transparency alone could guarantee good governance systems in all the three estates. **Will Union Ministry of Law and the Judiciary inform the citizens where to file complaint against Chief Justice or former chief justice & sitting Justice in or retired, of SC & HCs and action thereon?**

c) The state continues to be the biggest litigant, in spite of policy statement and also the statements of the Government leaders assuring reduction of the cases concerning the system.

74. The Commission, in view of the facts, circumstances and contentions analyzed above, directs **Union Ministry of Law and Justice** to:

a) forward the concerned part of RTI application (what action taken on complaints made against former CJI Altamas Kabir and what action was taken on the leakage of judgment before it was pronounced) to the CPIO or appropriate authority in Supreme Court of India within five days from date of receipt of this order, under intimation to the applicant.

b) inform the appellant how many complaints (against former CJIs and former Judges) were received and forwarded, redacting the names and contents,

c) inform the appellant as to what is the current status of the Judicial Standards and Accountability Bill, and what are alternate measures proposed to ensure accountability,

d) inform action initiated to place the mechanism or MoP (procedure) explaining the receiving point of the complaints against former Chief Justices, former Judges of Supreme Court and High Courts, after duly consulting the Judiciary.

e) inform when they will finalize and implement national litigation policy to reduce state sponsored litigation against citizen,

f) inform when the new Memorandum of Procedure will be finalized and implemented, and

g) inform the response to suggestion of the Government to create mechanism for redressal of grievances in Supreme Court and High Courts. 75.The Commission directs the CPIO of Supreme Court to inform appellant, the action or follow up, on the representation dated 6.5.2013 of Dr. M. Furquan regarding Shri Justice Altamas Kabir, former CJI, which was forwarded to PPS of Hon'ble CJI on 27.3.2013, on complaints forwarded by Union Ministry of Law and Justice to the apex court, and inform the number of complaints rejected or accepted, without indicating the names or contents, besides providing information on the RTI applications transferred by this public authority.

76.All the responses shall reach the appellant within 60 days from the date of receipt of this order.

Sd/-

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Secretary

Addresses of the parties:

1. The CPIO,
   Union Ministry of Law & Justice,
   Department of Justice,
   Jaisalmer House, New Delhi-110011.

2. Shri Subhash Chandra Agrawal,
   1775, Kucha Lattushah,
   Dariba Chandni Chowk,
   Delhi-110006.

3. The CPIO,
   Supreme Court of India
   New Delhi-110001.