

1. Petitioner is an Advocate practicing in this Hon'ble Court. He is a Social activist. He is also a Human Rights activist. He has been associated with various social and human right activities beneficial to the members of the public. The Petitioner is the President of RTI Kerala Federation, an organization of RTI activists in Kerala. The Petitioner has successfully filed Public Interest Litigations challenging the Constitutionality of S.6 of The Kerala Essential Services Maintenance Act, 1994 (Kerala). The judgment of this Honourable Court in the said case has been reported in 2002 KHC 745, 2002 (3) KLT 133, ILR 2002 (3) Ker.323. The petitioner is a citizen of India and he is a public spirited person. The RTI Kerala Federation has always been striving hard and effectively creating an institutionalized framework for eliminating rampant corruption in the society, by invoking the provisions of the Right to Information Act 2005 (herein after referred to as "the Act").
2. The petitioner has made several applications, complaints and appeals before the statutory authorities under the Act, including appeals and petitions before the Chief Information Commissioner and Information Commissioners under the Act. Several of these applications, complaints and appeals are pending before the Statutory Authorities. The petitioner is entitled to effective consideration and just decisions on the aforesaid petitions and appeals by the Statutory authorities under the Act based on independent and transparent exercise of statutory powers under the Act

for effectuating his fundamental rights under Article 19 of the Constitution of India to get information requested by him.

3. In this Writ Petition, the petitioner seeks to challenge the Right to Information (Amendment) Act 2019 (Act No. 24 of 2019) whereby the 1st respondent has amended Sections 13, 16 and 27 of the Act to the detriment of the practical regime of the Right to Information for the citizens to secure access to information and the control of Public Authorities, which is meant to promote transparency and accountability in the working of public authority. The entire independence and autonomy of the Central Information Commission and State Information Commission have been taken away in a most undemocratic manner and in violation of the Rule of Law rendering the amendment unconstitutional being in violation of Articles 14, 19 and 21 of the Constitution of India.
4. It is submitted that since the petitioner has filed a number of applications, complaints and appeals before the authorities under the Act including the Central Information Commission and the State Information Commissioners, the petitioner is personally affected by the amendment Act and therefore is personally aggrieved by the said amendment. The petitioner has therefore locus standi to file this Writ Petition as an aggrieved person under Article 226 of the Constitution of India. A true copy of the computer printout containing the details of the applications filed by the petitioner online to various

Central Public Information Officers under the 1st respondent and the status thereof is produced herewith and marked for reference as **Exhibit P1**. True copy of the letter dated 16-08-2019 received by the petitioner in complaint petition no. 653(1)/2019/SIC from the State Information Commission, Kerala regarding his application under Section 18(1) of the Act before the said Commission is produced herewith marked for reference as **Exhibit P2**. True copy of letter dated 10-06-2019 issued by the State Information Commission, Kerala regarding hearing on his complaint is produced herewith marked for reference as **Exhibit P3**. Exhibit P2 and P3 are only few of letters received by the petitioner in respect of various complaints and appeals filed by the petitioner before the State Information Commission, Kerala.

5. It is submitted that the Act was brought into force for setting out a practical regime of Right to Information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority and to provide for constitution of a Central Information Commission and State Information Commission to ensure that information is made available to the citizens by promoting transparency and accountability. Right to Information had always been a **F**undamental Right flowing from Article 19 of the Constitution of India. The Honourable Supreme Court has held so in a number of Judicial Decisions. The Act is

therefore meant to implement and effectuate the fundamental Right of the citizens as a fundamental right.

6. It is submitted that Right to Information is part of social and educational empowerment of the citizens and therefore is an integral part of their fundamental right under Article 21 of the Constitution of India. The Act has been brought into force as a part of the constitutional duty of the State to give effect to the fundamental right of the citizens to get information from public authorities in a transparent manner with due accountability. The autonomy and independence of the Central Information Commission and State Information Commission is therefore the foundation stone on which the entire structure of the practical regime has been built up for implementing and ensuring the fundamental rights of the citizens. In the absence of requisite independence and autonomy of these two institutions, the practical regime of Right to Information to citizens will have no meaning. The Act of 24 of 2019 which takes away the independence and autonomy of Central Information Commission and State Information Commission is therefore highly unconstitutional and is in violation of Articles 14, 19 and 21 of the Constitution of India. It is submitted that the independence and autonomy of Central Information Commission and State Information Commission are taken away under Act 24 of 2019 in the following manner:

- i. Section 13 of the Act has been amended replacing the words “for a term of five years

from the date on which he enters upon his office” with the words “for such term as may be prescribed by the Central Government”.

ii. Section 13 of the Act has been amended substituting for Sub Section (5) clause (c) as follows:

“ (5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and Information Commissioner shall be such as may be prescribed by the Central Government”

iii. Section 16 of the Act has been amended inserting the words “for such term as may be prescribed by the Central Government” in place of “for term of five years from the date on which the enters upon his office”.

iv. Section 16 has been amended substituting in Clause (c) of Sub Section (5) of Section 16 as follows;

“The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government”

v. Section 27 of the Act has been amended by inserting the following in Sub Section (2) of the Clause (c) of the Act

“ (ca) the term of office of the Chief Information commissioner and the Information commissioners under Sub Sections (1) and (2) of Section 13 and the State Chief Informational Commissioner and State Information Commissioners under Sub Sections (1) and (2) of Section (cb) the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and State Information Commissioners under Sub Section (5) of Section 13 and the State Chief Information Commissioner and the State Information Commissioners under Sub Section (5) of Section 16”.

7. A comparative table of Sections 13, 16 and 27 of the Act prior to the amendment is given below;

The Act prior to the amendment	The Act after the amendment
<p>13. Term of office and conditions of service.— <u>(1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no Chief</u></p>	<p>13. Term of office and conditions of service.— <u>(1) The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such</u></p>

<p>Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p><u>(2) Every Information Commissioner shall hold office for a term of five years</u> from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12: Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.</p> <p><u>(3) The Chief Information Commissioner or an Information Commissioner shall, before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</u></p> <p><u>(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.</u></p> <p><u>(5) The salaries and allowances payable to and other terms and conditions of service of—</u></p> <p><u>(a) the Chief Information</u></p>	<p>after he has attained the age of sixty-five years.</p> <p><u>(2) Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government</u> or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12: Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.</p> <p><u>(3) The Chief Information Commissioner or an Information Commissioner shall, before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</u></p> <p><u>(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.</u></p> <p><u>(5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government: Provided that the salaries, allowances and other conditions of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment: Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019</u></p>
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Commissioner shall be the same as that of the Chief Election Commissioner;
(b) an Information Commissioner shall be the same as that of an Election Commissioner: Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the Chief Information

shall continue to be govern by the provisions of this Act and the rules made there under as if Right to Information(Amendment) Act, 2019 had not come into force.

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

<p>Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.</p> <p>(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.</p>	
<p>16. Term of office and conditions of service.—</p> <p>(1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15: Provided further that where the State Information Commissioner is appointed as the State Chief</p>	<p>16. Term of office and conditions of service.—</p> <p>(1) The State Chief Information Commissioner shall hold office <u>for such term as may be prescribed by the Central Government</u> and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2) Every State Information Commissioner shall hold office <u>for such term as may be prescribed by the Central Government</u> or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15: Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.</p> <p>(3) The State Chief Information Commissioner or a State Information</p>

<p>Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.</p> <p>(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</p> <p>(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.</p> <p>(5) <u>The salaries and allowances payable to and other terms and conditions of service of—</u></p> <p>(a) <u>the State Chief Information Commissioner shall be the same as that of an Election Commissioner;</u></p> <p>(b) <u>the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government: Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information</u></p>	<p>Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</p> <p>(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.</p> <p>(5) <u>The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government: Provided that the salaries, allowances and other conditions of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment: Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be govern by the provisions of this Act and the rules made there under as if Right to Information (Amendment) Act, 2019 had not come into force.</u></p> <p>(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.</p>
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Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

<p>27. Power to make rules by Appropriate Government.—</p> <p>(1) The Appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <p>(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(b) the fee payable under sub-section (1) of section 6;</p> <p>(c) the fee payable under sub-sections (1) and (5) of section 7;</p> <p>(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;</p> <p>(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and</p> <p>(f) any other matter which is required to be, or may be, prescribed.</p>	<p>27. Power to make rules by Appropriate Government.—</p> <p>(1) The Appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <p>(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(b) the fee payable under sub-section (1) of section 6;</p> <p>(c) the fee payable under sub-sections (1) and (5) of section 7;</p> <p>(ca) <u>the term of office of the Chief Information Commissioner and Information Commissioners under Sub Sections (1) and (2) of Section 13 and the State Chief Information Commissioner and State Information Commissioners under Sub Sections (1) and (2) of Section 16;</u></p> <p>(cb) <u>The salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and Information Commissioners under Sub Section (5) of Section 13 and the State Chief Information Commissioner and the State Information Commissioners under Sub Section (5) of Section 16;</u></p> <p>(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;</p> <p>(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and</p> <p>(f) any other matter which is required to be, or may be, prescribed.</p>
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8. It is submitted that prior to the amendment, the salaries and allowances payable to Chief Information

Commissioner and other terms and conditions of the service were the same as that of the Chief Election Commissioner. The salaries and allowances payable to and other terms and condition of service the State Chief Information Commissioner was that of an Election commissioner. Prior to the amendment the salaries and allowances payable to and other terms and conditions of the service of the Information Commissioner at the centre was has that of and Election Commissioner. The salaries and allowances and other terms and conditions of service of the State Information Commissioners were that of the Chief Secretary of the State Government.

9. Prior to the amendment the term of service of Chief Information Commissioner, Information Commissioners and State Chief Information Commissioner and State Information Commissioners was five years from their on entering office.
10. A true copy of the notification dated 01-08-2019 of the 1st respondent notifying the Right to Information (Amendment) Act, 2019 (Act no. 24 of 2019) is produced herewith and marked for reference as **Exhibit P4**.
11. It is submitted that as is evident from the Act the institution of Central Information Commission and State Information Commission are independent autonomous bodies. The Parliament has no power or authority to take away the independence and autonomy of the aforesaid institutions by bringing these institutions as an appendage of the executive by allowing the executive to decide the tenure of the Chief Information Commissioner,

Information Commissioners, State Chief Information Commissioner and State Information Commissioners at the whims and fancy of the executive. If such unbridled power is granted to the executive the aforesaid officers who are to independently control the two vital institutions under the Act will become subordinate officers of the executive who are to act under the dictate of the executive. This will result in complete erosion of independence and autonomy of the aforesaid two institutions. This in turn will affect the efficiency of these officers to promote transparency and accountability in the working of public authority, which include the executive also.

12. The Honourable Supreme Court in the case of the police department was held that the police has to be free from the domination of executive and give a series of directions in **Prakash Singh Vs. Union of India(2006 (12) SCC 225)**. The Honourable Supreme Court has directed that every police officer in charge of law and order should be given minimum tenure of office. The said principle is applicable in much more force to the Chief Information Commissioners, State Chief Information Commissioner and State Information Commissioner also.
13. The Honourable Supreme Court in **Supreme Court Advocates-on-Record - Association and another versus Union of India2016 SCC (5)** was held that :-

“In addition to having dealt with various psychological reasons which influenced the personality of an individual, reference was also made to the “legitimate power of reciprocity”. It

was pointed out, that the reciprocity norm envisaged, that if someone does something beneficial for another, the recipient would feel an obligation to reciprocate (“I helped you when you needed it, so you should feel obliged to do this for me.”– Goranson and Berkowitz, 1966; Gouldner, 1960). In the view expressed by the author, the inherent need of power, is universally available in the subconscious of the individual. On the satisfaction and achievement of the desired power, there is a similar unconscious desire to reciprocate the favour.”

“The point sought to be made was, that in understanding loyalty one understands, who we are in our friendships, loves, family bonds, national ties, and religious devotion. Insofar as the patterns of behaviour in the Indian cultural system is concerned, a child is always obligated to his parents for his upbringing, and it is the child’s inbuilt moral obligation, to reciprocate to his parents by extending unimpeachable loyalty and gratitude. The above position finds replication in relationships of teacher and taught, master and servant, and the like. In the existing Indian cultural scenario, an act of not reciprocating towards a benefactor, would more often than not, be treated as an act of grave moral deprivation. When the favour extended is as important as the position of judgeship in the higher judiciary, one would best leave it to individual imagination, to determine the enormity of the reciprocal gratitude and loyalty.”

The above principle laid down by the Honourable Supreme Court applies to the case of Chief Information Commissioners, State Chief Information Commissioner and State Information Commissioners also. If the tenure

and salary and other allowance and other service conditions of these authorities are made subject to the whims and fancies of the executive the appointment of these authorities by the executive shall be in the nature of a gift to the persons so appointed. The principle of legitimate power of reciprocate will apply in such cases. Every appointment made for a period to be fixed by the executive and the salary and service conditions depends upon the attitude of the executive towards these authorities will make these authorities to feel that they will not get better tenure of office and better salary and service condition unless they legitimately reciprocate to the favor shown to them by the executive. This will make these authorities to come under the dictate of the executive adversely affecting their independent and autonomous functioning making the whole practical regime of Right to Information under the control of the Public Authorities and the transparency and accountability of their functioning redundant. It is submitted that after the amendment a wide discussion has been given to the executive to fix the tenure of the Chief Information commissioner and others as they deem fit. Different tenures can nor be fixed for Chief Information commissioner and Information commissioners. Different tenures can also be fixed for State Chief Information commissioner and State Information commissioners. Similarly different scales of pay can also be fix by the Central Government for these statutory authorities. This will create a feeling among

these authorities that unless they obliged the Central Government they will not get better salary, allowances and service conditions.

14. It is submitted that, fixing of tenure of Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners who are statutory authorities under the Act, is an essential legislative function. The fixing in prescribing of salary, allowances and service conditions of this authorities are also essential legislative functions. It is well settle that the legislature cannot delegate its essential legislative function. the Honourable Supreme Court in **In Re Delhi laws (AIR 1951 SC 332)** has held that the legislature is not competent to delegate its essential legislative functions to the executive. In **Municipal Corporation of Delhi Vs. Biral Cotton, Spinning and Weaving Mills and others (AIR 1968 SC 1232)** has held that the legislature must retain in its own hand the essential legislative function which consists of the determination of legislative policy and its formulation as a binding rule of conduct. Thus where the law passed by the legislature declares the legislative policy and its formulation and lays down standards which is enacted into a rule of law it can leave the task of subordinate legislation which by its very nature is ancillary to the statue to the subordinate bodies. The parliament while leaving to the Central Government the power of fixing the tenure of the Chief Information Commissioner and other authorities under the Act and the power of prescribing

their salary, allowances and service conditions have not formulated any legislative policy and has not formulated any standard to act as guidance for the Central Government to carry out the same as ancillary to the legislative policy. The parliament has delegated its essential legislative function and therefore Act of 24 of 2019 is bad for excessive delegated legislation and is in violation of Article 14 of the Constitution of India.

15. It is submitted that thus can be seen from Section 12 of the Act the Chief Information Commissioner and Information Commissioners shall be persons of eminence of public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. As per Section 12 of the Act, the Chief Information Commissioner or Information Commissioner shall not be a member of parliament or member of the legislature of any state or union territory and shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. Similarly under Section 15 of the Act the State Information Commissioner and State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law science and technology, social service, management, journalism, mass media or administration and governance. they shall not be a member or parliament or member of legislature of any state or union territory or hold any other office or connected with any political party or carrying on any

business or pursuing any profession. It can thus be seen that the Act provides for over citizen's over view of the functions of public authorities in the matter of access to information by the citizens by appointing persons who are having eminence in public life and having wide knowledge and experience in the aforesaid subject. It is also clear from the scheme of the Act that the provisions of the Act are intended to provide a autonomous independent institution to over see the functions of the public authorities in the matter of access to information by citizens as a part of the constitutional duty of the State to provide fundamental right of access to information of the people under Article 19 of the Constitution of India. Therefore taking away the autonomy and independence of the Central Information Commission and State Information Commission is in violation of Article 19 of the Constitution of India.

16. It is submitted that, the State has a constitutional duty under Article 19 to provide access to information to the people. This duty is part of positive liberty of the citizens. It is also a part of democracy and rule of law as is evident from the preamble of the Act. The Honourable Supreme Court has held that the obedience to rule of law and norms of the Constitution of India is part of constitutional morality. In **Shayara Bano Vs. Union of India (2017 (9) SCC 1)** the Honourable Supreme Court has held that people have right to constitutional morality. The Honourable Supreme court has held that constitutional morality means a duty to bow down to the

norms of Constitution and not to act in a manner which would become violative of the rule of law or reflection of action in an arbitrary manner. The Honourable Supreme Court in **Mohd. Arif Vs. Supreme Court of India (2014 (9) SCC 737)** has held that substantive due process is part of Article 21 and it has to be read with articles 14 and 19 of the Constitution. The Honourable Supreme Court in **Shayara Bano Vs. Union of India (2017 (9) SCC 1)** has held that when an act is unreasonable and arbitrary the provisions of the Act are liable to be stepped down resorting to the principle of substantively process. The provisions of Act 24 of 2019 are highly arbitrary and unreasonable and is against constitutional norms and rule of law. Therefore Act 24 of 2019 is liable to be struck down as unconstitutional.

17. The Honourable Supreme Court has in **A.P Pollution Control Board Vs. Professor Nayudu (1999 (2) SC 718)** has held that good governance is accepted as principle of international and domestic laws. It comprises of rule of law, effective state institutions, transparency and accountability in public affairs and human rights are part of good governance which is a part of Article 14 of the Constitution of India. The Honourable Supreme Court in **Union of India Vs. Anil Kumar (1995 (5) SCC 743)** has held that for a welfare state healthy and energetic civil service is a guarantee for good administration system entrusted with governance for the establishment of rule of law. The Honourable Supreme Court has also held that security of tenure and service

conditions of the employees is paramount consideration to achieve the goals for having an effective and vibrant civil service in the society. The principle laid down by the Honourable Supreme Court in the decision applies with much more force in the case of statutory authorities who are entrusted with the function of civilian over view of the duties of public authorities who have a constitutional duty to provide to the citizens fundamental right of access to information. The Act of 2014 which makes the institutions under the Act weak and devoid of energy and vibrancy is in violation of Articles 14,19 and 21 of the Constitution of India.

18. It is submitted that the petitioner who is entitled to consideration and decision on his complaints and **appeals** by the Central Information Commission and State Information Commission in an independent, autonomous, energetic and vibrant manner is personally aggrieved by Act 24 of 2019.

Aggrieved and left with no efficacious and alternate remedy, the petitioner submits this memorandum of Writ Petition (Civil) under Article 226 of the Constitution of India on the following among other:

GROUND

- A. The Right to Information (Amendment Act 2019) (Act 24 of 2019) is ultra virus of the Constitution of India, violative of Article 14, 19 and 21 of the Constitution of India and is liable to be struck down.

- B. The Act 24 of 2019 takes away the independence and autonomy of the Central Information Commission and State Information Commission and therefore is against rule of law and constitutional morality.
- C. The Act of 24 of 2019 is in violation of positive liberty guaranteed under Article 19 and 21 protection of which is a constitutional duty of the State.
- D. The Act of 24 is intended to make the statutory authorities under the Act a subordinate authority of the executive and to ensure that they act under the dictate of the executive.
- E. Act 24 of 2019 is violative of Article 14 of the Constitution of India and is incompetent for the vice of excessive delegated legislation.
- F. The Act 24 of 2019 is highly unreasonable and arbitrary and is liable to be struck down.
- G. Act 24 of 2019 is in violation of the federal structure of the Constitution of India as it erodes the dual sovereignty of concept enshrined in the Constitution of India, which is part of its basic structure, by adversely affecting the power of the State Government to provide for citizen's over view of the functions of public authorities under the State Government for access to right to information in a transparent and accountable manner.
- H. The Act 24 of 2019 is in flagrant violation of constitutional morality and therefore in violation of Article 14, 19 and 24 of the Constitution of India. The Act of 2019 is vitiated by gross factual mala fide and is

a fraud on the Constitution of India. In the object and reasons for the Right to Information (Amendment) 2019 Bill it is mentioned that the salaries and allowances of the Chief Election Commissioner and Election Commissioner are equal to Judge of Supreme Court of India because the Election Commission is a constitutional body. It is further stated that Central Information Commission and State Information Commission are statutory bodies and the mandate of Election Commission of India and Central and State Information Commission are different and therefore their status and service conditions need to be rationalized accordingly. It is submitted that this observation is factually incorrect. Status of Central and State Information Commissions vis-à-vis other authorities similar in rank and status of the Judge of Supreme Court of India has to be considered not from the point of view of their constitutional status but from the point of view of their status having regard to the knowledge, expertise, public recognition and their status in the society. It is submitted that, the National Human Rights Commission, National Consumer Disputes Redressal Commission and similar Commissions like Lok Pal are headed by eminent persons in the rank of the Judge of the Honourable Supreme Court. None of these Commissions are constitutional bodies. It can be seen from the object and reasons of the Right to Information (Amendment) Bill 2019 that no attention has been paid by the 1st

respondent to the necessity to maintain autonomy and independence of Central Information Commission and State Information Commissions.

- I. The rule of law and constitutional morality demand that the tenure of office and salary and other service conditions of the authorities under the Right to Information Act who are from among persons having eminent in public life and expertise in their respective fields should be commensurate with their status in society and their eminence in public life. Only if it is ensured that they get guarantee of tenure in office and salary and service conditions commensurate with their status the citizens will get persons of competence to over see for them the functions of public authorities to provide access to information to the citizens in a transparent and accountable manner. The Act 24 of 2019 which takes away the said constitutional right of the citizens is highly unreasonable and arbitrary and liable to be struck down.
- J. It can be seen from the provisions of Section 12 that the appointment of Chief Information Commissioner and Central Information Commissioners are to be made by the President of India on the recommendation of a high power committee consisting of Prime Minister of India, Leader of opposition in the Lok Sabha and Union Cabinet Minister to be nominated by the Prime Minister. Similarly the State Chief Information Commissioner and the State Information Commissioners are to be appointed by Governor of the

State concerned on the recommendation of a high power committee consisting of the Chief Minister, Leader of Opposition in the Legislative Assembly and a Cabinet Minister nominated by the Chief Minister. It can thus be seen that the Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners are envisaged as persons of high eminence in public life having expertise in their respective fields to be appointed by highest constitutional authorities in India and on recommendation of constitutional authorities to ensure that they are not appointed by the executive at its whims and fancies. The reasons stated in the object and reasons of the Bill are factually incorrect and founded on non existing facts and therefore a fraud on the Constitution of India.

K. The scheme of the Act clearly shows that the Act is intended for civilian over sight of functions of public authorities who are duty bound to provide access to information in transparent and accountable manner and the appointment of Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners are to be made on the principle of "citizens know". This being the scheme of the Act. It is highly arbitrary and unreasonable to amend the Act in such a way that the substratum of the Act is completely taken away and right to

information is reduced to a mere statutory right from the status of fundamental right under Article 19 of the Constitution of India.

For these and other grounds to be urged at the time of hearing it is most humbly prayed that this Honourable Court may be pleased to:

- i. Declare that Right to Information (Amendment) Act, 2019 (No. 24 of 2019) is unconstitutional, ultra virus of Articles 14, 19 and 21 of the Constitution of India and is void and inoperative;
- ii. Strike down the Right to Right to Information (Amendment) Act, 2019 (No. 24 of 2019) as unconstitutional and void;
And
- iii. Pass such further orders as this Honourable Court may be pleased to grant on the facts and circumstances of the case;

Dated this the day of August 2019.

Petitioner

Counsel for the Petitioner

PRAYER FOR INTERIM RELIEF

For the reasons stated in the Writ Petition (Civil) and in the accompanying affidavit it is most humbly prayed that this Honourable court may be pleased to stay

The Union of India & Others : Respondents

AFFIDAVIT

I, D.B.Binu , aged 51 years, S/o D. A. Bhakaran, Advocate 2nd floor, Fathima Plaza, Providence Road, Ernakulam District, Pin-682018, do hereby solemnly affirm and state as follows;

1. I am the petitioner in the above Writ Petition. The above Writ Petition has been filed under my instructions. I am conversant with the facts of the case and am capable of deposing the Writ.
2. All the facts stated in the above Writ Petition are true to the best of my knowledge, information and belief. The legal grounds raised are on the advice of my counsel.
3. The Exhibits produced in the Writ Petition are true copies of their original. I have not earlier filed any Writ Petition before this Honourable court or any other Court praying for similar or identical relief.

All the above facts are true.

Dated this the day of August 2019.

Deponent

Solemnly affirmed and signed before me by the literate deponent who is personally known to me on the day of August 2019, in my office at Ernakulam.

P. Chandrasekhar, Advocate

**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM**

WP (C) No. OF 2019

D.B Binu : Petitioner

Vs.

The Union of India & Others : Respondents

SYNOPSIS

The petitioner who is a Right to Information Activist and an Advocate challenges in this Writ Petition the Right to Information (Amendment) Act 2019 as unconstitutional and in violation of Articles 14, 19 and 21 of the Constitution of India. The petitioner is personally aggrieved since his applications and complaints before the Central Information Commission and State Information Commission have been rendered in efficacious due to the taking away of independence and autonomy of the Chief Information Commissioner and State Chief Information Commissioner and the Information Commissioners and State Information Commissioners. The Impugned Amendment Act has adversely affected the transparency and accountability in the working of public authority and the practical regime of Right to Information for citizens to secure access to information under Article 19 of the Act. The Impugned Amendment Act is ultra virus of the Constitution of India for the following reasons:

- i. The Amendment Act takes away the independence and autonomy of the Central Information Commission and State Information Commission and therefore it is against Rule of Law and Constitutional Morality.

- ii. The Amendment Act is in violation of positive liberty guaranteed under Article 19 and Article 21 protection of which is the constitutional duty of the 1st Respondent.
- iii. The impugned Amendment Act is intended to make the statutory authorities under the Act subordinate authorities of the Executive and to ensure that they act under the dictate of the executive.
- iv. The Amendment Act is unconstitutional and in violation of Article 14 since the impugned Amendment Act is bad for vice of excessive delegated legislation.
- v. The impugned Amendment Act is highly unreasonable and arbitrary and offends the substantive due process.
- vi. The impugned Amendment is bad for adversely affecting the federal feature of the constitution which is a basic feature of the Constitution of India.
- vii. The impugned Amendment is unconstitutional as it is a fraud on the constitution for the reason that there is malice on fact and since the Amendment Act is founded on non existing fact.

The Date and Chronology of Events

<u>Date</u>	<u>Chronology of Events</u>
15-06-2005	The Parliament enacted right to Information 2005.
10-06-2019	Complaint filed by the petitioner before the State

