**IN THE SUPREME COURT OF INDIA**

(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. \_\_\_\_\_\_\_ OF 2021

**(PUBLIC INTEREST LITIGATION)**

IN THE MATTER OF:

COMMON CAUSE .....PETITIONER

VERSUS

UNION OF INDIA & Ors. ....RESPONDENT

**PAPERBOOK**

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COUNSEL FOR THE PETITIONER: **PRASHANT BHUSHAN**

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**SYNOPSIS & LIST OF DATES**

The present petition is being filed in public interest by the Petitioner under Article 32 of the Constitution of India, seeking appropriate directions in the form of writ of *mandamus* or any other appropriate writ/orders or directions to the Respondents to restrain them from using public funds on government advertisements in ways that are completely malafide and arbitrary and amount to breach of trust, abuse of office, violation of the directions/guidelines issued by this court and violation of fundamental rights of citizens under Article 14 and 21 of the Constitution of India.

It is submitted that this Hon’ble Court in its judgment dated 13-05-2015 in **Common Cause vs. Union of India** (**2015) 7 SCC 1,** had issued several guidelines aimed at regulating government advertisements in order to check the misuse of public funds by central and state governments. The five principles of those guidelines were as follows:

1. *Advertising campaigns are to be related to government responsibilities,*
2. *Materials should be presented in an objective, fair and accessible manner and designed to meet objectives of the campaign,*
3. *Not directed at promoting political interests of a Party,*
4. *Campaigns must be justified and undertaken in an efficient and cost-effective manner and*
5. *Advertisements must comply with legal requirements and financial regulations and procedures*

The objectives behind rolling out these guidelines, as pointed out in the judgment dated 13-05-2015, were as follows:

1. *To prevent arbitrary use of public funds for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest*
2. *neither to belittle the need nor to deny the authority of the Union and State Governments and its agencies to disseminate information necessary for public to know on the policies and programmes of Government but only to exclude the possibility of any misuse of public funds on advertisement campaigns in order to gain political mileage by the political establishment;*
3. *to address the gap in the existing DAVP Guidelines which only deal with the eligibility and empanelment of newspapers/journals or other media, their rates of payment, and such like matters and not on how to regulate the content of Government advertisements;*
4. *to ensure that “all government activities satisfy the test of reasonableness and public interest, particularly while dealing with public funds and property”;*
5. *to ensure that government messaging is well co-ordinate, effectively managed in the best democratic traditions and is responsive to the diverse information needs of the public.*

In its judgment dated 13-05-2015, this Hon’ble Court had also mandated the government to set up a three member committee to oversee the implementation of the recommendations and for ironing out the creases that are bound to show from time to time in the implementation of the guidelines.

Subsequently, in its order dated 06-04-2016, the Government of India formally published “Guidelines of Three Member Committee” i.e. the Committee on Content Regulation of Government Advertisements (CCRGA), as directed by the Supreme Court.

It is submitted that the sole intention behind the judgment dated 13-05-2015 of this Hon’ble Court was to restrain/prohibit public authorities from misusing public funds and to avoid unproductive expenditure of public funds on government advertisements.

It is further submitted that the respondents have now devised ways and means through which government advertisements are being presently published and rolled out thereby effectively failing the very objective behind the judgment passed by this Hon’ble Court.

It is submitted that six specific issues that are being brought to the notice of this Hon’ble Court by way of this petition are as follows:

1. **Publication of advertisements by state governments outside the territorial limits of their respective states**

It is submitted that it is now a common practise for state governments across the country to roll out extensive advertisement campaigns outside the territory of their respective states. This is done with the sole intention and purpose of projecting personalities and promoting particular governments without any attendant public interest. It is submitted that the target audience of government advertisements are the targeted/prime beneficiaries of that government’s achievements, policies and welfare measures. The target audience, therefore, of advertisements that are funded by state governments are the residents of that state who are the beneficiaries of that government’s policies, achievements and welfare measures. Therefore, the exercise of rolling out advertisements outside the territory of the state is disproportionate, unreasonable, not need-based, arbitrary and does not amount to obtaining maximum value for the taxpayer’s money, all of which are clear violations of the guidelines formulated by this court in its judgment dated 13-05-2015.

1. **Publication of government advertisements in the form of ‘advertorials’**

It is submitted before this Hon’ble Court that several governments across the country are publishing advertisements in the form of ‘advertorials’ that are, by their very nature, designed to be deceptive and misleading, are against all journalistic ethics and therefore give rise to serious constitutional concerns and equally raises ethical and moral questions. Key features of advertorials are as follows:

1. Advertorials are disguised to look like real news and read like news articles. They are dressed up as editorial content suggesting that someone else has endorsed it as opposed to advertisements. This is done to convey greater authority and persuasiveness. Implicit in advertorials is a certain amount of subterfuge.
2. They lack readily visible markers and have no prominent disclaimers. Most of the times there are umbrella disclaimers on the front page only. Disclaimers, if any, are deceptively referred as “Consumer Connect Initiative, Brand Connect, Open Avenue, Focus, Media Marketing Initiative, An Impact Feature, Media Solution Initiative, etc.”
3. Their content isn’t regulated and is therefore biased and mostly presented in the form of a “feel-good campaign”.
4. **Publication of government advertisements during/prior to the elections**

It is submitted that allowing government advertisements to be published during the run up to elections is undemocratic, prone to severe misuse and creates a highly unequal playing field for political parties, both big and small, contesting in the election. It strikes at the very concept of free and fair elections. Government advertisements in the run up to an election undoubtedly helps the party in power reach out to the voter easily, selectively extol its policies and measures, create favourable perceptions, influence the voter’s minds and encourage a certain kind of political environment.

It is submitted that in the run up to any election, the political party/parties who are part of the government vis-à-vis those in the opposition are unevenly placed in terms of their ability to reach out to the electorate. This is primarily because of the government’s power to use funds from the public exchequer to roll out massive advertisement campaigns. Advertisements that are presently published before elections are of two kinds. One is government advertisements, funded by the public exchequer and the other is advertisements funded by political parties themselves. It is submitted that while the government has the ability to use both these kinds of advertisements to its favor, the opposition is only left with the second choice i.e. party funded advertisement. This anomaly and the inherent dichotomy creates a highly unequal playing field and negatively impacts the prospects of the opposition in the election because of their obvious financial limitations.

It is submitted that allowing government advertisements during the run up to an election is also prone to severe misuse in atleast three following ways.

1. Governments have the tendency of disproportionately increasing their publicity budget during their last year in power.
2. Another misuse is the allocation of huge sums of public money by the central government towards advertisements/publicity in poll bound states as compared to the allocation in non-poll bound states.
3. Finally, government advertisements published before elections have the tendency of being extremely communal and biased.
4. **Issues concerning the ‘Committee on Content Regulation of Government Advertisements’ (CCRGA)**

It is submitted before this Hon’ble Court that the main purpose behind mandating the government to set up an independent committee of three members “consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields” was to “oversee the implementation of the direction” issued by this court in its judgment dated 13-05-2015 and to “iron out the creases that are bound to show from time to time” in the implementation of those directions.

It is submitted that the government of India formally published the guidelines for the functioning of the three member committee i.e. the ‘Committee on Content Regulation of Government Advertisements’ (CCRGA) through an order dated 06-04-2016. The guidelines contained the selection procedure of the committee, its jurisdiction, functions and powers, duties, responsibilities, tenure of the committee, the procedures of resignation and removal, remuneration of the members of the committee, etc.

It is further submitted that a bare perusal of the guidelines coupled with the functioning of the committee in the last several years ever since it was constituted, go on to show that the CCRGA is a body with effectively no powers. The following are the concerns surrounding the CCRGA:

1. CCRGA is a body with only recommendatory powers.
2. CCRGA is a closed door body and no information regarding its proceedings, reports, decisions, list of cases taken up by the committee, number of complaints received, number of complaints finally disposed of, number of suo motu cases taken up by the committee, recommendations, minutes of the meetings, number of meetings held, etc, are made available in public domain.
3. CCRGA is a body completely dependent on the central government for remuneration, allocation of budget, and any other financial provisions.
4. The selection committee of CCRGA comprises of three members – Chairman, Press Council of India, Secretary (information and Broadcasting) and an Independent Expert. Except the Chairman Press Council of India, the other two members are either employees of the central government or are appointed by the central government. This makes the committee prone to bias.
5. Several state governments have still not constituted state level CCRGA as mandated by this Hon’ble court. This is despite the judgment being rendered by this court way back in 2015 and that it has already been more than 6 years since it was passed.
6. **Publication of Photographs of functionaries on Government Advertisements**

In its 2015 judgment, the Hon’ble court passed an order allowing only the President, Prime Minister and Chief Justice’s photographs to be published on government advertisements which was thereafter modified to allow photographs of Governors, Chief Ministers, Cabinet Ministers and Minister In-Charge in both Central and State governments. After this order, however, it has been seen that the photographs of these functionaries are being very liberally used in government advertisements for personality projection. The malaise has become such that even rations are being distributed in sacks with photos of PM. Vaccine certificates are being issued with the photos of the PM. CM’s of states are also similarly misusing this leeway given to them.

1. **Advertisements in the name of Awareness Campaigns**

A closer analysis of expenditure on government schemes incurred by the government, shows that the allocated funds in schemes are being disproportionately poured into advertisements. For instance, the Beti Bachao Beti Padhao scheme, where the government has spent a whopping 79% towards advertising as opposed to carrying out several other activities that were envisaged in the scheme. This shows that the government did not just exceed the quota of “50% for innovation/ awareness generation activities”, but this also goes against the 2015 judgment by using the public money unreasonably and disproportionately. Exceeding the quota also indicates that such expenditure on advertisement is not need-based and it does not amount to using public funds in a manner to obtain maximum value for taxpayers’ money.

**LIST OF DATES**

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| --- | --- |
| 23-04-2014  | The Hon’ble Supreme Court of India passed its judgment in **Common Cause vs. Union of India (2014 6 SCC 552)** wherein it heard the issue of misuse of public funds on government advertisements. The court appointed a three member committee to suggest guidelines after conducting an intricate study of all the best practices in public advertisements in different jurisdictions.  |
| 26-09-2014  | The three-member committee released a set of exhaustive recommendations on content regulation of government advertisements. The five principles of content regulation of government advertisements as stated in the recommendations were as follows: *i)  advertising campaigns are to be related to government responsibilities,* *ii)  materials should be presented in an objective, fair and accessible manner and designed to meet objectives of the campaign,* *iii)  not directed at promoting political interests of a Party,* *iv)  campaigns must be justified and undertaken in an efficient and cost-effective manner and* *v)  advertisements must comply with legal requirements and financial regulations and procedures.*  |
| 13-05-2015  | The Supreme Court upheld most of the recommendations of the three member committee in its judgment in **Common Cause vs. Union of India** (**2015 7 SCC 1)** dated 13-05-2015. The court also mandated setting up of a three member committee to oversee the implementation of the recommendations. The court held *“that for ironing out the creases that are bound to show from time to time in the implementation of the present directions and to oversee such implementation the government should constitute a three member body consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields”.*   |
| 18-03-2016  | The Hon’ble Supreme Court reviewed its judgment dated 13-05-2015 in **Review Petition (C) No. 1879-1881/2015** and permitted the publication of photographs of Governors, Chief Ministers, Cabinet Ministers and Ministers In-charge in government advertisements. Earlier in its judgment dated 13-05-2015, the Supreme Court had only allowed photographs of the President, Prime Minister and Chief Justice of India to be published on government advertisements.  |
| 06-04-2016  | Government of India appointed the three member committee and formally published Guidelines for the working of the committee as directed by the Supreme Court. This committee was named the ‘Committee on Content Regulation of Government Advertisements’ (CCRGA). The guidelines contained the selection procedure of the committee, its jurisdiction, functions and powers, duties, responsibilities, tenure of the committee, the procedures of resignation and removal, remuneration of the members of the committee, etc.  |
| 2016-2021  | Post the judgment dated 13-05-2015 of this Hon’ble Court, the Respondents have devised ways and means through which government advertisements are being presently published and rolled out thereby effectively failing the very objective behind the judgment passed by this Hon’ble Court. Six specific issues that are being brought to the notice of this Hon’ble Court by way of this petition are as follows:1. Publication of advertisements by state governments outside the territorial limits of their respective state
2. Publication of government advertisements in the form of ‘advertorials’
3. Publication of government advertisements during/prior to the elections
4. Issues concerning the ‘Committee on Content Regulation of Government Advertisements’ (CCRGA)
5. Publication of Photographs of functionaries on Government Advertisements
6. Advertisements in the name of Awareness Campaigns
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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2022

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. COMMON CAUSE
THROUGH IT’S DIRECTOR
MR. VIPUL MUDGAL
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ- 110070
E-MAIL: commoncauseindia@gmail.com PH: 9818399055

VERSUS

1. UNION OF INDIA,

THROUGH IT'S SECRETARY,

MINISTRY OF INFORMATION AND BROADCASTING,

NORTH BLOCK, NEW DELHI – 110001

1. STATE OF ANDHRA PRADESH

THROUGH IT'S CHIEF SECRETARY,

GOVERNMENT OF ANDHRA PRADESH,

1ST BLOCK,1ST FLOOR, INTERIM GOVERNMENT COMPLEX,

A.P SECRETARIAT OFFICE, VELAGAPUDI - 522503

CS@AP.GOV.IN

1. STATE OF ARUNACHAL PRADESH

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF ARUNACHAL PRADESH

CIVIL SECRETARIAT, ITANAGAR - 791111

CS-ARUNACHAL@NIC.IN

1. STATE OF ASSAM

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF ASSAM BLOCK- C, 3RD FLOOR,

ASSAM SACHIVALAYA DISPUR - 781006, GUWAHATI

CS-ASSAM@NIC.IN

1. STATE OF BIHAR

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF BIHAR MAIN SECRETARIAT, PATNA - 800015

CS-BIHAR@NIC.IN

1. STATE OF CHATTISGARH

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF CHHATTISGARH, MAHANADI BHAWAN, MANTRALAYA NAYA RAIPUR – 492002

CSOFFICE.SQ@GOV.IN

1. STATE OF GOA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF GOA SECRETARIAT, PORVORIM, BARDEZ, GOA – 403521

CS-GOA@NIC.IN

1. STATE OF GUJARAT

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF GUJARAT 1ST BLOCK, 5TH FLOOR SACHIVALAYA, GANDHINAGAR – 382010

CSGUJ@GUJARAT.GOV.IN

1. STATE OF HARYANA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF HARYANA ROOM NO. 4, 4TH FLOOR HARYANA CIVIL SECRETARIAT, SECTOR-1, CHANDIGARH – 160019

CS-HARYANA@NIC.IN

1. STATE OF HIMACHAL PRADESH

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF HIMACHAL PRADESH H P SECRETARIAT, SHIMLA – 171002

CS-HP@NIC.IN

1. STATE OF JHARKHAND

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF JHARKHAND 1ST FLOOR,

PROJECT BUILDING, DHURWA, RANCHI- 834004

CS-JHARKHAND@NIC.IN

1. STATE OF KARNATAKA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF KARNATAKA ROOM NO. 320, 3RD FLOOR VIDHANA SOUDHA, BENGALURU - 560 001

CS@KARNATAKA.GOV.IN

1. STATE OF KERALA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF KERALA SECRETARIAT, THIRUVANANTHAPURAM - 695001

CHIEFSECY@KERALA.GOV.IN

1. STATE OF MADHYA PRADESH

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF MADHYA PRADESH MP MANTRALAYA, VALLABH BHAVAN BHOPAL - 462004

CS@MP.NIC.IN

1. STATE OF MAHARASHTRA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF MAHARASHTRA CS OFFICE MAIN BUILDING, MANTRALAYA 6TH FLOOR, MADAME CAMA ROAD, MUMBAI – 400032

CHIEFSECY@MAHARASHTRA.GOV.IN

1. STATE OF MANIPUR

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF MANIPUR SOUTH BLOCK, OLD SECRETARIAT IMPHAL-795001

CS-MANIPUR@NIC.IN

1. STATE OF MEGHALAYA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF MEGHALAYA MAIN SECRETARIAT BUILDING RILANG BUILDING, ROOM NO. 321

MEGHALAYA SECRETARIAT, SHILLONG - 793001

CSO-MEG@NIC.IN

1. STATE OF MIZORAM

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF MIZORAM NEW SECRETARIAT COMPLEX, AIZAWL - 796001

1. STATE OF NAGALAND

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF NAGALAND CIVIL SECRETARIAT, KOHIMA- 797004

CSNGL@NIC.IN

1. STATE OF ORISSA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF ODISHA GENERAL ADMINISTRATION DEPARTMENT

ODISHA SECRETARIAT BHUBANESWAR - 751001

CSORI@NIC.IN

1. STATE OF PUNJAB

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF PUNJAB CHANDIGARH - 160001

CS@PUNJAB.GOV.IN

1. STATE OF RAJASTHAN

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF RAJASTHAN SECRETARIAT, JAIPUR – 302005

CSRAJ@RAJASTHAN.GOV.IN

1. STATE OF SIKKIM

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF SIKKIM NEW SECRETARIAT, GANGTOK - 737101

CS-SKM@HUB.NIC.IN

1. STATE OF TAMIL NADU

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF TAMIL NADU SECRETARIAT, CHENNAI – 600009

CS@TN.GOV.IN

1. STATE OF TELANGANA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF TELANGANA BURGULA RAMA KRISHNA RAO BHAVAN. 9TH FLOOR, ADARSH NAGAR, HYDERABAD5000063

CS@TELANGANA.GOV.IN

1. STATE OF TRIPURA

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF TRIPURA NEW SECRETARIAT COMPLEX SECRETARIAT,

AGARTALA-799010 WEST TRIPURA

CS-TRIPURA@NIC.IN

1. STATE OF UTTAR PRADESH

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF UTTAR PRADESH 1ST FLOOR, ROOM NO. 110 LALBAHADUR SASTRI BHAWAN UTTAR PRADESH SECRETARIAT, LUCKNOW - 226001

CSUP@NIC.IN

1. STATE OF UTTARAKHAND

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF UTTARAKHAND 4 SUBHASH ROAD, UTTARAKHAND SECRETARIAT DEHRADUN - 248001

CS-UTTARANCHAL@NIC.IN

1. STATE OF WEST BENGAL

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF WEST BENGAL NABANNA, 13TH FLOOR, 325, SARAT CHATTERJEE ROAD, MANDIRTALA SHIBPUR, HOWRAH - 711102

CS-WESTBENGAL@NIC.IN

1. STATE OF JAMMU AND KASHMIR

THROUGH IT'S CHIEF SECRETARY

GOVERNMENT OF JAMMU & KASHMIR R. NO. 2/7, 2ND, FLOOR MAIN BUILDING, CIVIL SECRETARIAT, JAMMU - 180001 R. NO. 307, 3RD FLOOR, CIVIL SECRETARIAT, SRINAGAR - 190001

CS-JANDK@NIC.IN

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT/ORDERS OR DIRECTIONS TO THE RESPONDENTS TO RESTRAIN THEM FROM USING PUBLIC FUNDS ON GOVERNMENT ADVERTISEMENTS IN WAYS THAT ARE MALAFIDE, ARBITRARY, AMOUNTS TO BREACH OF TRUST, ABUSE OF OFFICE, VIOLATION OF THE DIRECTIONS/GUIDELINES ISSUED BY THIS COURT AND VIOLATION OF FUNDAMENTAL RIGHTS OF CITIZENS UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA.

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition
Of the Petitioner above named

#### MOST RESPECTFULLY SHOWETH: -

1. That the present Petition is being filed in public interest by the Petitioner under Article 32 of the Constitution of India, seeking appropriate directions in the form of writ of *mandamus* or any other appropriate writ/orders or directions to the Respondents to restrain them from using public funds on government advertisements in ways that are completely malafide, arbitrary, amount to breach of trust, abuse of office, violation of the directions/guidelines issued by this court and violation of fundamental rights of citizens under Article 14 and 21 of the Constitution of India. It is submitted that this Hon’ble Court in Common Cause vs. Union of India [W.P. (Civil) No. 13 of 2003] while exercising its jurisdiction under Article 32 and 142 of the Constitution of India had issued several guidelines aimed at regulating government advertisements in order to check the misuse of public funds by central and state governments. It is submitted that ever since that judgment was passed, the Respondents have devised new ways and means to misuse public funds on government advertisements.

 1A. The Petitioner is Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon’ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along.

1B. The Petitioner has no personal interest, or any private or oblique motive, in filing the instant petition. There is no civil, criminal, revenue or any other litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in this PIL.

1. It is submitted that the Hon’ble Supreme Court in **Common Cause vs. Union of India (2014) 6 SCC 552**, while hearing the issue of misuse of public funds on government advertisements had, in its judgment dated 23-04-2014, appointed a three member committee which was tasked with suggesting guidelines to this Hon’ble Court after conducting an intricate study of all the best practices in public advertisements in different jurisdictions. This Hon’ble Court, in its judgment dated 23-04-2014 had stated as follows:

*“24…In these circumstances, conceding that the existing DAVP policy/guidelines do not govern the issues raised in these writ petitions and do not lay down any criteria for the advertisements to qualify for “public purpose” as opposed to partisan ends and political mileage, there is a need for substantive guidelines to be issued by this Court until the legislature enacts a law in this regard.”*

*“25…Keeping in mind that the time available to this Court is limited and the subject matter for which guidelines are to be framed is sensational and significant, we deem it proper to constitute a Committee consisting of three members to undertake the task of suggesting guidelines to this Court after an intricate study of all the best practices in public advertisements in different jurisdictions and to submit the same before this Court.”*

(A copy of the judgement titled **Common Cause vs. Union of India (2014) 6 SCC 552** is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. On 26-09-2014, the three-member committee set up by the court submitted a set of exhaustive recommendations on content regulation of government advertisements. The objectives of these recommendations were as follows:
2. ***To prevent arbitrary use of public funds for advertising by public authorities*** *to project particular personalities, parties or governments without any attendant public interest*
3. *neither to belittle the need nor to deny the authority of the Union and State Governments and its agencies to disseminate information necessary for public to know on the policies and programmes of Government but only* ***to exclude the possibility of any misuse of public funds on advertisement campaigns in order to gain political mileage by the political establishment****;*
4. *to address the gap in the existing DAVP Guidelines which only deal with the eligibility and empanelment of newspapers/journals or other media, their rates of payment, and such like matters and not on how to regulate the content of Government advertisements;*
5. ***to ensure that “all government activities satisfy the test of reasonableness and public interest, particularly while dealing with public funds and property”****;*
6. ***to ensure that government messaging is well co-ordinate, effectively managed in the best democratic traditions*** *and is responsive to the diverse information needs of the public.*

(A copy of the report titled ‘Report of the Committee of Hon’ble Supreme Court for suggesting guidelines on government funded advertisements’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. In its judgment dated 13-05-2015 in **Common Cause vs. Union of India** (**2015 7 SCC 1)** (hereinafter referred to as the ‘2015 judgment’), the Hon’ble Supreme Court, while upholding most of ‘the recommendations, stated as follows:

*“11…The objective of these guidelines emphasize the government’s responsibility to disseminate information necessary for the public to know about the policies and programmes of government. It principally spells out five principles to regulate the contents of advertisements namely,*

1. ***Advertising campaigns are to be related to government responsibilities,***
2. ***Materials should be presented in an objective, fair and accessible manner and designed to meet objectives of the campaign,***
3. ***Not directed at promoting political interests of a Party,***
4. ***Campaigns must be justified and undertaken in an efficient and cost-effective manner and***
5. ***Advertisements must comply with legal requirements and financial regulations and procedures***

This Court had further held as follows:

*“17…The said recommendations, in our considered view, would serve public interest by enabling dissemination of information and spreading awareness amongst the citizens not only of the government policies; achievements made and targets to be reached but also the rights and entitlements of the citizens including the availability of a host of welfare measures.”*

Reiterating on the court’s power to roll out guidelines, this Hon’ble court stated as follows:

*“7…in a situation where the field is open and uncovered by any government policy, to guide and control everyday governmental action, surely, in the exercise of jurisdiction under Article 142 of the Constitution, parameters can be laid down by this court...Such an exercise would be naturally time bound i.e. till the Legislature or the Executive, as the case may be, steps in to fulfill its constitutional role and authority by framing an appropriate policy.”*

(A copy of the judgement titled Common Cause vs. Union of India (2015) 7 SCC 1is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. This Hon’ble Court, in its ‘2015 judgment’, had also mandated the government to set up a three member committee to oversee the implementation of the recommendations. The court held as follows:

*“Insofar as the recommendation with regard to the appointment of Ombudsman is concerned, we are of the view that for ironing out the creases that are bound to show from time to time in the implementation of the present directions and to oversee such implementation the* ***government should constitute a three member body consisting of persons with unimpeachable neutrality and impartiality*** *and who have excelled in their respective fields.”*

1. In its order dated 06-04-2016, the Government of India formally published “Guidelines of Three Member Committee” as directed by the Supreme Court in its ‘2015 judgment’. The objective of these guidelines was as follows:

*“As per directions of Hon'ble Supreme Court, Government of India is obliged to bring about legislation on the Content Regulation of Government funded advertisements in all media platforms. Preparation of a draft bill and passage of the same into an Act is a detailed process and likely to take time. Thus, to ensure compliance of orders of the Supreme Court in th is regard, a Three Member Committee as directed by the Supreme Court is proposed for the period till legislation is actually brought on the subject matter.”*

(A copy of the order titled ‘Guidelines of Three Member Committee’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. It is submitted that the sole intention behind the ‘2015 judgment’ of this Hon’ble Court was to restrain public authorities from misusing public funds and to avoid unproductive expenditure of public money on government advertisements.
2. It is further submitted that the respondents have now devised new means and methods through which government advertisements are being presently published thereby effectively weakening the very objective behind the ‘2015 judgment’ of this Hon’ble Court.
3. It is submitted that six specific issues that are being brought to the notice of this Hon’ble Court by way of this petition are as follows:
4. Publication of advertisements by state governments outside the territorial limits of their respective state
5. Publication of government advertisements in the form of ‘advertorials’
6. Publication of government advertisements during/prior to the elections
7. Issues concerning the ‘Committee on Content Regulation of Government Advertisements’ (CCRGA)
8. Publication of Photographs of elected public functionaries on Government Advertisements
9. Advertisements in the name of Awareness Campaigns

1. **LACK OF ANY TERRITORIAL RESTRICTIONS ON GOVERNMENT ADVERTISEMENTS**
2. It is submitted before this Hon’ble Court that the purpose of government advertisement funded by public money is to keep the citizens informed of the government’s policies, achievements, targets and welfare measures. While the central government formulates welfare measures and policies for the entire country, the state governments on the other hand are tasked with formulating such schemes and policies for the residents of their state.
3. It is submitted that the target audience, therefore, of any government advertisement are the prime beneficiaries of that government’s policies and welfare measures. The target audience of advertisements released by central government are all the citizens of this country whereas, for advertisements released by state governments the target audience are the residents of that particular state for whom the policies and welfare measures are formulated and adopted, and not the ones who are residents of another state and are therefore not the targeted/prime beneficiaries of the state’s policies and welfare measures.
4. It is submitted that by running advertisement campaigns within the territory of the state, the state government would put public funds to best use thereby serving larger public interest by keeping the residents of the state better informed about its policies and welfare measures. It also follows that advertisements outside the territory of the state would not serve any public interest or larger public purpose as they would not target their prime beneficiaries and would resultantly lead to wastage of huge sums of public money.
5. It is submitted that several state governments across the country have not followed this fundamental principle and have engaged in rolling out extensive advertisement campaigns outside the territory of the state through newspapers and billboard campaigns, incurring huge costs on the public exchequer and serving no public interest.
6. In July 2021, the Government of Delhi ran full page advertisements in several national and regional newspapers across the country. These advertisements were regarding the “Chief Minister’s COVID-19 Family Financial Assistance Scheme”. One of the conditions for availing this scheme was that the applicant had to necessarily be a resident of Delhi. To advertise a scheme whose beneficiaries were residents of Delhi, the government of Delhi ran full page advertisements in Uttar Pradesh, Bihar, Gujarat, Maharashtra, Punjab, Goa, Telangana and Chattisgarh incurring huge sums of public money. Similar full page advertisements in national newspapers across the country were published by the Delhi government during Christmas and other occasions as well.

(A copy of the advertisements by Delhi government is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. In July 2021, the state government of Uttar Pradesh ran massive advertisement campaign in the national capital. Billboards across Delhi, on roads, bus stops and metro stations, were covered with advertisements extolling the many achievements of the government of Uttar Pradesh. The State government of Jharkhand too has engaged in a similar exercise.

(A copy of the advertisements by government of Uttar Pradesh is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

(A copy of the advertisements by government of Jharkhand is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. It is submitted that these advertisements do not just amount to wastage of precious public money, but are also in clear violation of the guidelines formulated by this Hon’ble court in its ‘2015 judgment’.
2. It is submitted that this Hon’ble court had mandated in its ‘2015 judgment’ that government advertisements should “be justified and undertaken in an efficient and cost-effective manner”. It is further submitted that two out of the five objectives of ‘The Guidelines’ were namely:

*(a)* ***to prevent arbitrary use of public funds*** *for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest.*

*(d) to ensure that “all government activities satisfy the* ***test of reasonableness and public interest****, particularly while dealing with public funds and property”;*

It is also submitted that the fourth principle of content regulation as upheld by this Court in its ‘2015 judgment’ is as follows:

*“(4)… (a) Since it is the responsibility of government to safeguard the trust and confidence in the integrity and impartiality of public services and hence* ***it should be the policy of governments to use public funds in such a manner as to obtain maximum value for taxpayers’ money****;”*

*“(4)…(e)****Advertisement campaigns should only be need based****;”*

1. It is submitted that such an exercise of wastage of public money is disproportionate, unreasonable, not need-based, arbitrary and does not amount to obtaining maximum value for the taxpayer’s money. It is also clear that the common practise of rolling out government advertisements by state governments is done with the sole purpose of projecting personalities and promoting particular governments without any attendant public interest.
2. **ADVERTORIALS AND GOVERNMENT ADVERTISEMENTS**
3. It is submitted before this Hon’ble Court that several governments across the country are publishing advertisements in the form of ‘advertorials’ that are, by their very nature, designed to be deceptive and misleading, are against all journalistic ethics and therefore give rise to serious constitutional concerns.
4. The Cambridge Dictionary defines an ‘Advertorial’ as “an advertisement that is designed to look like a written article and seems to be giving information rather than advertising a product”. The Free Dictionary defines an ‘Advertorial’ as “an advertisement promoting the interests or opinions of a corporate sponsor, often presented in such a way as to resemble an editorial”. Thesaurus defines the term as “an advertisement that is written and presented in the style of an editorial or a journalistic report”. The Macmillan Dictionary defines the term as “an advertisement in a newspaper or magazine that looks like one of its normal articles”.

(A copy of the dictionary meanings of the term ‘advertorial’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. Several researchers have termed advertorials as “information pollution” and compared it to “paid news”. A research concluded that “the advertorial format fools readers into greater involvement with the advertising message and that the presence of advertorial labels may not be particularly effective in alerting consumers to the true nature of the message”.

(A copy of the research paper titled ‘The Advertorial as Information Pollution’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

(A copy of the research paper titled ‘Trends in Magazine Advertorial Use’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

(A copy of the research paper titled ‘On the deceptive effectiveness of labeled and unlabelled Advertorial formats’ is annexed hereto as **Annexure P at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. The major characteristic features of advertorials are as follows:
2. They are advertisements disguised to look like real news and are often packaged like a complete report thereby making them deceptive. They are dressed up as editorial content suggesting that someone else has endorsed it as opposed to advertisements. This is done to convey greater authority and persuasiveness. Implicit in advertorials is a certain amount of subterfuge.
3. They lack readily visible markers and have no prominent disclaimers. Most of the times there are umbrella disclaimers only on the front page. Disclaimers, if any, are small and deceptively referred as “Consumer Connect Initiative, Brand Connect, Open Avenue, Focus, Media Marketing Initiative, An Impact Feature, Media Solution Initiative, etc.”
4. Their content isn’t regulated and is therefore biased and is mostly presented in the form of a “feel-good campaign”. This effectively makes advertorials similar to ‘paid news’ or even ‘fake news’.
5. It is submitted that in November 2021, the Government of Uttar Pradesh released advertorials in national newspapers such as Times of India, Hindustan Times and Dainik Jagran. While Times of India called it a “consumer connect initiative”, Hindustan Times termed it as “Hindustan Times Media Marketing Initiative”. The state government’s advertorials published by Dainik Jagran was named “media marketing initiative” and was even published like a real news story with bylines of reporters. India Today Magazine’s August edition consisted of a 24 page advertorial which was referred as “An Impact Feature” or “Focus”. Amar Ujala, a Hindi newspaper, carried advertorials of the government of Uttarakhand in the name of “media solution initiative”.

(A copy of the advertisements by government of Uttar Pradesh is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

(A copy of the advertisements by government of Uttarakhand is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. It is further submitted that many of these advertorials, because of a lack of regulation, are biased and incorrect in terms of their content.

(A copy of the newspaper report titled ‘Yogi Ji is going ad crazy but are his government’s claims even true’ is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. It is therefore submitted that such advertorials, who by their very nature are designed to look like real news and read like news articles are against the guidelines framed by this Hon’ble Court in its 2015 judgment and also against journalistic ethics.
2. It is submitted that the second principle of government regulation as upheld by this Hon’ble Court in its ‘2015 judgment’ is as follows:
3. ***Advertisement materials should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign:***

*(i)  The material* ***shall be presented in a fair and objective manner*** *and shall be capable of fulfilling the intended objectives;*

*(ii)****Government shall exercise due caution while deciding the content, layout, size and design of the message including the target area*** *and the creative requirement of the intended communication in order to ensure that the maximum reach and impact are achieved in the most cost effective manner;*

*(iii)****Content of advertisement must enable the recipients of the information to distinguish between facts and analysis and where information is presented as a fact, it should be accurate and verifiable****;*

1. It is submitted that the ‘Norms of Journalistic Conduct’ published by the Press Council of India in 2010 states as follows:

*i) Commercial advertisements are information as much as social, economic or political information. What is more, advertisements shape attitude and ways of life at least as much, as other kinds of information and comment.* ***Journalistic propriety demands that advertisements must be clearly distinguishable from news content carried in the newspaper.***

*vi)* ***Journalistic propriety demands that advertisements must be clearly distinguishable from editorial matter carried in the newspaper.***

(A copy of the report titled ‘Norms of Journalistic Conduct’ is annexed hereto as **Annexure P1 at Pages \_\_\_\_ to \_\_\_\_\_\_)**

1. It is further submitted that the Code for Self-Regulation of Advertising Content in India released by the Advertising Standards Council of India states as follows:

*1.4.* ***Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions.*** *Advertisements shall not contain statements or visual presentation which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the consumer about the product advertised or the advertiser or about any other product or advertiser.*

*1.5.* ***Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge.*** *No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers.*

(A copy of the report titled ‘Code for Self-Regulation of Advertising Content in India’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. **GOVERNMENT ADVERTISEMENTS BEFORE ELECTIONS**
2. It is submitted before this Hon’ble Court that the three member committee set up by this court in its judgment dated 23-04-2014 had recommended in its Guidelines that government advertisements that are published before elections must be regulated. It had stated as follows:

*(4)(d)  Though advertising by governments should remain regulated all the time, it is particularly important to scrupulously follow these principles before and during the elections. As far as possible, during the period prior to elections, only those advertisements required by law (such as public health and safety advisories or job and contract advertisements) alone be released by governments;*

However, this Hon’ble Court had not accepted that recommendation and had held as follows:

***26.*** *If Government advertisements adhere to the objects and parameters mentioned above we do not feel the necessity of imposing a special curb on government advertisements on the eve of the elections, as suggested by the Committee.*

1. It is submitted before this Hon’ble Court that in the run up to an election, the political party/parties who are part of the government vis-à-vis those in the opposition are unevenly placed in terms of their ability to reach out to the electorate. This is primarily because of the government’s power to use funds from the public exchequer to roll out massive advertisement campaigns.
2. Government advertisements in the run up to an election helps the party in power reach out to the voter easily, selectively extol its policies and measures, create favourable perceptions, influence the voter’s mind and encourage a certain kind of political environment. They also help narrow down and shrink open spaces of political discourse for those who do not have the resources and the wherewithal to publish advertisements with the same scale and size as compared to the government.
3. Advertisements that are presently published before elections are of two kinds. One is government advertisements, funded by the public exchequer. The second kind is advertisements by political parties funded from their party funds. It is submitted that while the government has the ability to use both these kinds of advertisements to its favor, the opposition is only left with the second choice i.e. party funded advertisement. This anomaly and the inherent dichotomy creates a highly unequal playing field and negatively impacts the prospects of the opposition in the election because of their financial limitations.
4. It is submitted that the situation is far worse for smaller regional parties who fail to participate in the electoral process because of their financial inabilities which restricts them from carrying out massive paid advertisement campaigns. Although they have equal stakes in our democracy, they stand effectively sidelined.
5. It is submitted that while the government has all the right to disseminate information surrounding its policies and welfare measures, doing this through publicly funded advertisements during the run up to an election is undemocratic as it disproportionately favours the party in power thereby giving them an edge much before the election.
6. It is submitted that allowing government advertisements during the run up to an election is also prone to severe misuse in atleast three following ways. They are:
7. Governments have the tendency of disproportionately increasing their publicity budget during their last year in power. For instance, ahead of the 2018 assembly elections in Karnataka, the government increased the amount allocated towards publicising its schemes by 9 times as compared to previous years.

(A copy of the newspaper report titled ‘Karnataka Congress goes into publicity overdrive four years after taking power’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. Another misuse is the allocation of huge sums of public money by the central government towards advertisements/publicity in poll bound states as compared to the allocation in non-poll bound states. For instance, the central government spent Rs. 25 crores towards advertisements in Punjab and Uttar Pradesh in 2016-17 ahead of the Assembly elections. On the other hand, it spent only 5.30 crores towards non-poll bound states of Rajasthan, Karnataka and Tamil Nadu.

(A copy of the newspaper report titled ‘Information and Broadcasting Ministry spent Rs. 25 crore on ads in Punjab, UP’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. Finally, government advertisements published before elections have the tendency of being extremely communal and biased. They go against the judgment of this court as held in its ‘2015 judgment’ that “advertisement materials should be objective and not directed at promoting political interests of ruling party”. The ‘2015 judgment’ specifically held that government advertisements ‘must be presented in objective language’, ‘be free of political argument or partisan standpoint’, ‘shall maintain political neutrality’, ‘avoid projecting a positive impression of the party in power or a negative impression of parties critical of the government’.

(A copy of the newspaper report titled ‘A Media that publishes Islamophobic government advertising is thriving on blood money’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

(A copy of the newspaper report titled ‘Two full-page ads across newspaper editions praise Yogi govt’s handling of pandemic’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. It is therefore submitted that allowing government advertisements to be published during the run up to elections is undemocratic, prone to severe misuse and creates a highly unequal playing field for parties contesting in the election. It therefore strikes at the very concept of free and fair elections that is a hallmark of any democratic society and has been recognised as the basic structure of the Indian Constitution by this Hon’ble court in the case of **Indira Gandhi vs. Raj Narain (AIR 1975 SC 865)**.
2. **THE COMMITTEE ON CONTENT REGULATION OF GOVERNMENT ADVERTISEMENTS**
3. It is submitted that this Hon’ble Court in its ‘2015 judgment’ had mandated the constitution of a three member committee to oversee the implementation of the guidelines on content regulation framed by this court in that judgment. Thereafter, the Central Government published guidelines for the functioning of the three member committee i.e., Committee on Content Regulation of Government Advertisements (CCRGA), through an order dated 06-04-2016.
4. It is submitted before this Hon’ble Court that the guidelines dated 06-04-2016 coupled with the functioning of the CCRGA in the last four and a half years since it was formed, cumulatively go on to show that the CCRGA is a body with effectively no powers thereby failing to achieve its very objective as was mandated by this Hon’ble Court in its 2015 judgment. The following are the concerns surrounding the CCRGA:
5. It is submitted that the CCRGA is a body with only recommendatory powers. The functions and powers of CCRGA as formulated in the guidelines dated 06-04-2016 are as follows:

*IV. Functions and Powers of the Three Member Body*

*1. The Three Member Committee would address complaints from the general public of violation on the implementation of the guidelines of Hon'ble Supreme Court.* ***In cases of violation the Committee would make their recommendations to the Ministry /Department for remedial action*** *for their satisfactory settlement.*

*2. The Committee would take suo motu cognizance of any violation / deviation of the guidelines of Hon'ble Supreme Court and* ***recommend corrective action to the Ministry/Department****.*

*3. As per the Hon'ble Supreme Court order, the Three Member Body would be responsible "for ironing out the creases that are bound to show from time to time in the implementation of the present directions and to oversee such implementation".*

*4.* ***The Committee as such may recommend suitable changes to the Guidelines*** *to deal with new circumstances and situations that may arise from time to time. However, Committee shall make such recommendations, if any, without making major policy changes within the policy direction in the Supreme Court Order dated 13.5.2015.*

It is submitted that this goes against the very purpose of setting up the CCRGA. The CCRGA is supposed to send recommendations to the Ministry/Department against which it is also supposed to hear complaints regarding violations of the guidelines of this Hon’ble Court. This clearly amounts to the Ministry/Department being a judge in its own case. It is submitted that such a conflict of interest naturally gives rise to bias on the part of the Ministry which may selectively accept/not accept such recommendations.

1. It is further submitted that the CCRGA is a closed door body and that no information regarding its proceedings, reports, decisions, list of cases taken up by the committee, number of complaints received, number of complaints finally disposed of, number of suo motu cases taken up by the committee, recommendations, minutes of the meetings, number of meetings held, etc, are made available in public domain.
2. It is further submitted that the CCRGA as a body is completely dependent on the central government for remuneration, allocation of budget, and any other financial provisions.

*IX. Remuneration*

*A consolidated fee shall be paid to all the members of the Committee.* ***Government shall decide*** *upon the remuneration and other allowances. These may be reviewed by the Government but not before 5 years from the date of last fixation of the same.*

*XI. Miscellaneous provisions*

*1.* ***Ministry of I&B would make separate budgetary allocation*** *to DAVP for the day to day functioning of the Committee.*

1. The selection committee of CCRGA comprises of three members – Chairman, Press Council of India, Secretary (information and Broadcasting) and an Independent Expert. Except the Chairman, Press Council of India, the other two members are either employees of the central government or are appointed by the central government to the selection committee. This makes the committee naturally prone to bias.
2. It is further submitted that several state governments have still not set up their state level CCRGA as mandated by this Hon’ble court. This is despite the judgment being rendered by this court way back in 2015 and that it has already been more than 6 years since it was passed. Ministry of Information and Broadcasting’s Press Release dated 07-09-2020 stated as follows:

*“As per directions of the Hon’ble Supreme Court, states are mandated to set up their respective three member committees on Content Regulation of Government Advertisements. Karnataka, Goa, Mizoram and Nagaland States have already constituted state-level Three Member Committees. The State Government of Chhattisgarh has given its consent to the Central Committee to monitor the content of their government advertisements. The CCRGA meeting took a serious note of the fact that other states have yet to constitute their respective state level Committees. The CCRGA was of the view that some state governments’ delay in setting up the state-level committees may be construed as contempt of Hon’ble Supreme Court’s order.”*

1. **PUBLICATION OF PHOTOGRAPHS ON GOVERNMENT ADVERTISEMENTS**
2. In its ‘2015 judgment’, the Supreme Court, while taking note of the widespread publication of photographs of functionaries in government advertisements, stated as follows:

*22…There can be no manner of doubt that one government advertisement or the other coinciding with some event or occasion is published practically every day. Publication of the photograph of an individual be a State or party functionary not only has the tendency of associating that particular individual with either the achievement(s) sought to be highlighted or being the architect of the benefits in respect of which information is sought to be percolated. Alternatively, programmes/targets for the future as advertised carry the impression of being associated with the particular individual(s).* ***Photographs, therefore, have the potential of developing the personality cult and the image of a one or a few individuals which is a direct antithesis of democratic functioning.***

The Court further held as follows:

*23…****The legitimate and permissible object of an advertisement, as earlier discussed, can always be achieved without publication of the photograph of any particular functionary*** *either in the State of a political party. We are, therefore, of the view that in departure to the views of the Committee which recommended permissibility of publication of the photographs of the President and Prime Minister of the country and Governor or Chief Minister of the State alongwith the advertisements, there should be an exception only in the case of the President, Prime Minister and Chief Justice of the country who may themselves decide the question.*

1. It is clear from the ‘2015 judgment’ that this Hon’ble Court was not just apprehensive about the use of photographs in government advertisements, but it also found the practise antithesis to democracy. It therefore allowed only the photographs of the President, Prime Minister and Chief Justice of the country to be published by laying an additional moral burden on the three personalities to individually decide if they wanted their photographs to be published on government advertisements or not.
2. However, in its order dated 18-03-2016 (in Review Petition (C) No. 1879-1881/2015), the court amended its ‘2015 judgment’ and allowed the photographs of Governors, Chief Ministers, Cabinet Minister of both Central and State governments and Minister In-charge of the concerned ministry in Central and State governments, to be published.

(A copy of the order titled ‘State of Karnataka vs. Common Cause & Ors. Review Petition (C) No. 1879-1881/2015’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. The impact of this order has been such that the photographs of these functionaries are being very liberally used in government advertisements for personality projection and are clearly intended to seek political benefits. The malaise has become such that even rations are being distributed in sacks with photos of Prime Minister and Chief Minister. Vaccine certificates are being issued with the photos of the Prime Minister.CM’s of states are also similarly misusing this leeway given to them. All of the above instances of misuse have become so common that the ‘2016 order’ of the Hon’ble court (in Review Petition (C) No. 1879-1881/2015) calls for an immediate review.

(A copy of the newspaper report titled ‘MP government to print pictures of PM, CM on ration bags; Congress calls it personal branding of BJP leaders’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

(A copy of the newspaper report titled ‘Modi only world leader to use COVID vaccination certificate to push cult of personality’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

(A copy of the newspaper report titled ‘Congress, Akalis, JJP call each other out over CM photos on hand sanitisers and ration bags’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. **ADVERTISEMENTS IN THE NAME OF AWARENESS CAMPAIGNS**
2. It is submitted that the current trends in expenditure of public funds towards advertisements by the governments depict that the distinction between advertising for awareness and advertising for campaigning has been immensely blurred.
3. It is submitted that the Parliamentary Committee headed by Heena Vijaykumar Gavit released a report titled Empowerment of Women through Education with special reference to Beti Bachao Beti Padhao. In a written reply to the Committee, the Ministry of Women and Child Development (MWCD) gave the details of year-wise ratio of amount spent on Media Advocacy campaign under the Beti Bachao Beti Padhao Scheme which is as under:

(A copy of the report titled ‘Empowerment of Women through Education with special reference to Beti Bachao Beti Padhao’ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

|  |  |  |  |
| --- | --- | --- | --- |
| Financial Year | Funds Allocated (Amount in Crores) | Expenditure on Media advocacy campaign by the Ministry (Amount in Crores) | Percentage of expenditure for Media Advocacy Campaign against funds Allocated (Amount in Crores) |
| 2016-17 | 200 | 136.70 | 68% |
| 2017-18 | 280 | 150.13 | 47% |
| 2018-19 | 200 | 23.67 | 12% |

1. The committee also noted that in a reply given to the Rajya Sabha on 05.03.2020 about proportion of funds spent on advertisement of the Scheme over the last three years, MWCD gave the following response:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Financial Year | Funds Allocated (Rs. in Crore)  | Funds Released (Rs. in Crore)  | Funds used for Media Activities (Rs. in Crore)  | Proportion of advertisement fund to total funds released (Rs. in Crore)  |
| 2016-17 | 40 | 32.7 | 29.79 | 91.10% |
| 2017-18 | 200 | 169.1 | 135.7 | 80.25% |
| 2018-19 | 280 | 244.92 | 160.13 | 65.38% |

1. The above information was a response to the following questions posed by Trinamool Congress MP Md. Nadimul Haque to the MWCD:
2. *The details of total budgetary allocation and expenditure incurred on the Beti Bachao Beti Padhao (BBBP) scheme over the last three years;*
3. *Whether it is a fact that the budgetary allocation has been reduced this year and challenges faced due to the same; and*
4. *The proportion of funds spent on advertisement of the BBBP scheme over the last three years, year-wise?*

(A copy of the Rajya Sabha’s list of questions dated 28-02-2020 is **Annexed hereto as Annexure P at Pages \_\_\_ to \_\_\_\_**)

1. Amongst the observations & recommendations made by the Parliamentary Committee, it points at poor utilisation of funds under the ‘Beti Bachao, Beti Padhao’ scheme and suggested that the government reconsider spending on advertisements under the scheme and instead focus on planned expenditure allocation for sectoral interventions in education and health. The committee said:

*“The Committee understand that the BBBP scheme is implemented with 100% central assistance. Rupees Fifty Lakh per year is earmarked per districts for* ***utilisation under six different components, viz. 16% for inter-sectoral consultation/ capacity building, 50 % for innovation/ awareness generation activities, 6% for monitoring and evaluation, 10% for sectoral interventions in health, 10% for sectoral interventions in education and 8% as flexi funds****. The Committee find that out of a total of Rs. 446.72 crore released during the period 2016- 2019, a whopping 78.91% was spent only on media advocacy.”*

1. It is submitted that Beti Bachao Beti Padhao (BBBP) was launched by the Prime Minister on 22nd January 2015 at Panipat, Haryana. BBBP addresses the declining Child Ratio (CSR) and related issues of women empowerment over a life-cycle continuum. It is a tri-ministerial effort of the Ministries of Women and Child Development, Health and Family Welfare and Human Resource Development. The key elements of the scheme include Enforcement of Pre-Conception and Pre-Natal Diagnostic Technique Act (PCPNDT), nation-wide awareness and advocacy campaign and multi-sectoral action in select 100 districts (low on CSR) in first phase. There is a strong emphasis on mindset change through training, sensitization, awareness raising and community mobilization. The scheme is well received and seeing the criticality of the CSR issue, it has been implemented across India covering 640 districts (as per census 2011).
2. That the MWCD stated that the Scheme’s main objective is to bring improvement in the Child Sex Ratio (CSR) across the country. The CSR in the country is collected through decennial census conducted by Registrar General of India and last CSR is held in 2011. The CSR for two consequent decade i.e. 2001 and 2011 is 927 and 918 respectively. Therefore, progress of the scheme is measured from Sex Ratio at Birth’s annual data being collected by Health Management Information System (HMIS) of Ministry of Health and Family Welfare. Sex Ratio at Birth (SRB) is showing promising trends as it has increased from 918 to 931 at National level for the time period between Financial Year 2014-15 & Financial Year 2018-19.
3. It is submitted that the CAG Report on Social, General and Economic Sectors (Non-Public Sector Undertakings) for the year ended 31 March 2016 assessed the BBBP concluded that there was a scope for improvement for improving sex-ratio & increasing girls’ enrolment in secondary education. The infrastructure to prevent gender biased sex selection under Pre-Conception and Pre-Natal Diagnostic Technique Act (PCPNDT) was not fully in place and the 100% re-enrolment of the drop-out girls in Panipat, Mahendragarh & Sonepat was not achieved.

(A copy of the CAG report titled \_\_\_\_\_\_ is annexed hereto as **Annexure P at Pages \_\_\_\_\_ to \_\_\_\_)**

1. It is submitted that the above figures on one scheme clearly demonstrates that the allocated funds in schemes are being poured into advertisements. In the present case, not only do the media advocacy expenses exceed the quota of “50 % for innovation/ awareness generation activities”, but this also goes against the ‘2015 judgment’ by using the public money unreasonably and disproportionately. Exceeding the quota also indicates that such expenditure on advertisement is not need-based and it does not amount to using public funds in a manner to obtain maximum value for taxpayers’ money. In light of observations of the abovementioned Parliamentary Committee Report and CAG Report, such expenses on advertising is pointing to advertising/campaigning rather than increasing awareness.

**GROUNDS**

1. **BECAUSE**, the use of public funds for advertising by public authorities without any attendant public interest, is malafide and arbitrary and amounts to a violation of Article 14 and 21 of the Constitution of India
2. **BECAUSE**, the exercise of rolling out advertisements by state governments outside the territory of their respective states is disproportionate, unreasonable, not ‘need-based’, arbitrary and does not amount to obtaining maximum value for the taxpayer’s money, all of which are clear violations of the guidelines formulated by this court in its judgment dated 13-05-2015 in Common Cause vs. Union of India (2015) 7 SCC 1.
3. **BECAUSE**, publishing government advertisements in the form of ‘advertorials’ that are, by their very nature, designed to be deceptive and misleading, and against all journalistic ethics is unethical, immoral and unconstitutional. It also effectively amounts to promoting ‘paid news’ and ‘fake news’.
4. **BECAUSE**, allowing government advertisements to be published during the run up to elections is undemocratic, prone to severe misuse and creates a highly unequal playing field for various parties, big and small, contesting in the election. Allowing government advertisements to be published before elections strikes at the very concept of free and fair elections which is a hallmark of any democratic society and has been recognised as the basic structure of the Indian Constitution by this Hon’ble court in the case of ‘Indira Gandhi vs. Raj Narain’ (AIR 1975 SC 865).
5. **BECAUSE**, the Committee on Content Regulation of Government Advertisements (CCRGA), as it exists today, is designed to work subservient to the central government. This makes the committee biased, effectively forcing it to take actions only selectively. That the committee lacks transparency makes the situation even worse. These are clearly against the intent of the judgment of this Hon’ble Court in Common Cause vs. Union of India (2015) 7 SCC 1.
6. **BECAUSE**, the publication of photographs of elected public functionaries on government advertisements have the potential of developing a personality cult and the image of a one or a few individuals which is a direct antithesis of democratic functioning and is in violation of the judgment of this Hon’ble Court in Common Cause vs. Union of India (2015) 7 SCC 1.

**PRAYER**

It is therefore, in the interest of justice and in the facts and circumstances of the case, most humbly and respectfully prayed that this **Hon’ble** Court may graciously be pleased to:

1. Issue a writ of *mandamus* or any other appropriate writ or order or direction prohibiting state governments from publishing advertisements outside the territory of their respective states except when they are doing so to invite stakeholders to the state for business summits/conclave or attract tourism and private investments;
2. Issue a writ of *mandamus* or any other appropriate writ or order or direction prohibiting the publication of government advertisements in the form of advertorials;
3. Issue a writ of *mandamus* or any other appropriate writ or order or direction prohibiting the publication of government advertisements atleast 3 months prior to elections;
4. Issue a writ of *mandamus* or any other appropriate writ or order or direction mandating that the CCRGA shall be appointed by a three member committee comprising of the Prime Minister, Leader of the Opposition in the Lok Sabha and the Chief Justice of India or, such other persons individually appointed by each of them as their representative;
5. Issue a writ of *mandamus* or any other appropriate writ or order or direction to the respondents to set up an independent website of the CCRGA which shall consist of all relevant information regarding the working of the committee and such other directions as this Hon’ble Court may deem fit in order to make the CCRGA a truly independent, impartial and a neutral body.
6. Issue a writ of *mandamus* or any other appropriate writ or order or direction to the respondents prohibiting them from publishing photographs on government advertisements of elected public functionaries.
7. Issue such other writs, orders or directions that this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

**DRAWN AND FILED**

**Advocate-on-Record for the Petitioner**

**Drawn On:**