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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2021

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India & Ors.

... .. Respondent/s

With

Civil Writ Jurisdiction Case No.17398 of 2018

Rohit Kumar

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

With

Civil Writ Jurisdiction Case No.9639 of 2021

Gaurav Kumar Singh

... .. Petitioner/s

Versus

The Union of India & Ors.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 353 of 2021)

For the Petitioner/s : Ms. Shivani Kaushik (In Person)

Mr. Mrigank Mauli, Amicus Curiae

For the UOI : Dr. K.N.Singh (ASG)

Mr. Anshuman Singh, Advocate

For the Respondents : Ms. Kanak Verma, CGC

Mr. Abhimanyu Singh, Advocate

For the State : Mr. Lalit Kishore, AG

Mr. Anjani Kumar, AAG-4

Mr. S.D. Yadav, AAG-9

Mr. Alok Kumar Rahi, A.C. to AAG-4

For Respondent No. 5 : Mrs. Binita Singh, Advocate

For Respondent No. 6 : Mr. Shivender Kishore, Sr. Advocate

For the Respondents : Mr. S.D. Sanjay, Sr. Advocate

For the PMCH : Mr. P. K. Shahi, Senior Advocate

Mr. Vikas Kumar, Advocate

For PMC : Mr. Prasoon Sinha, Advocate

For DMCH : Mr. Bindhyachal Rai, Advocate

For GMC : Mr. Rabindra Kr. Priyadarshi, Advocate

For the Intervener : Mr. Yogesh Chandra Verma, Senior Advocate

Mr. Rajiv Kumar Singh, Advocate



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(In Civil Writ Jurisdiction Case No. 17398 of 2018)

For the Petitioner/s : Mr. Manish Kumar No 13, Advocate
Ms. Parul Prasad (Amicus Curiae)
Mr. Rohit Kumar (In Person)
For the State : Mr. Anjani Kumar, AAG IV
Mr. Subhash Prasad Singh, GA-3
For Respondent No. 6 : Mr. Kumar Ravish, Advocate
For the Respondents : Mr. Shivendra Kishore, Sr. Advocate
Ms. Binita Singh, Advocate

(In Civil Writ Jurisdiction Case No. 9639 of 2021)

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate
Mr. Nikhil Singh, Advocate
For the UOI : Dr. K.N. Singh (ASG)
Mr. Anshuman Singh, CGC
For AIIMS, Patna : Mr. Binay Kumar Pandey, Advocate
For the State : Mr. Lalit Kishore, Advocate General.

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR**

CAV ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

(The Court proceedings are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their homes/offices.)

36. 18.06.2021

This order is in continuation of our order No.19 dated 12.05.2021.

2. The Constitution Bench (Five Judge) of the Hon'ble Apex Court in **State (NCT of Delhi) Vs. Union of India, (2018) 8 SCC 501**, while elaborately dealing with the concepts of democracy; democratic spirit; representative participation; constitutional morality and values; constitutional



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governance and executives; parliamentary democracy and collective responsibility of cabinet; democracy and federalism; constitutional objectivity; constitutional responsibility; collaborative federalism; pragmatic federalism; constitutional renaissance, inter alia observed that:

“.....The main purpose of a representative Government is to represent the public will, perception and the popular sentiment into policies. The representatives, thus, act on behalf of the people at large and remain accountable to the people for their activities as lawmakers. Therefore, representative form of governance comes out as a device to bring to fore the popular will. The Constitution of India has embraced the representative model of governance at all levels i.e. local, State and the Union. Thus perceived, the people are the sovereign since they exercise the power of adult franchise that ultimately builds the structure of representative democracy.”

.....

“Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals.”

...

“Fundamental human freedoms limit the authority of the State. Yet the role of institutions in achieving democracy is as significant. Nations fail when institutions of governance fail. The responsiveness of institutions is determined in a large measure by their ability to be receptive to differences and perceptive to the need for constant engagement and dialogue. Constitutional skirmishes are not unhealthy. They test the resilience of democracy. How good a system works in practice must depend upon the statesmanship of those who are in decision-making positions within them.”

(Emphasis supplied)



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3. Our discussion with Sri Lalit Kishore, learned Advocate General, Bihar as instructed by Sri Amir Subhani, Development Commissioner, Bihar and Sri Santosh Kumar Mall, Secretary, Department of Information and Technology, Government of Bihar, Patna has resulted in our conclusion that the Government, be it for whatever reason, is most reluctant to put in the public domain the number of deaths which occurred in Bihar during the last one year, i.e. during the time of Pandemic Covid-19. In our considered view, the resistance is uncalled for, for such action is neither protected by any law nor in consonance with good governance's settled principles. The Government, while correcting its myopic approach, only needs a reminder that “To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired.” is what Hon’ble the Supreme Court had said in **State of U.P. v. Raj Narain, (1975) 4 SCC 428.**

4. Transparency is the hallmark of good governance, more so in today's era, especially when the Government, both Central and the State, are committed to making success the flagship programme of the Government of India termed as “Digital India” and National Data Sharing and Accessibility Policy (NDSAP) - 2012 published in the Gazette of India on



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March 17, 2012.

5. As simple as it can be, the issue is as to whether more than ten crore people of the State of Bihar have a right to know, on a digital platform, the number of deaths that occurred in Bihar during the time of Covid-19. And whether the Government has a corresponding duty to disclose either voluntarily or as mandated by law.

6. Here only, we may again remind the Government that the right to information is a facet of Article 21 of the Constitution of India and we reproduce with profit what the Hon'ble Supreme Court had said in **Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. : (1988) 4 SCC 592** as under:

“34...We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land Under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.....”

7. While passing a detailed order dated May 12, 2021, we took note of the provisions of the Registration of Births and Deaths Act, 1969 (Act No. 18 of 1969) (referred to as the Registration Act), and The Bihar Municipal Act, 2007 (hereinafter referred to as the Municipal Act) providing a



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mechanism for compulsory registration of births and deaths. Also taking note of the provisions of the Bihar Panchayat Raj Act, 2006 (Referred to as the Panchayat Act), we had directed all the public representatives nominated by the Government of Bihar under the said provision; the functionaries of the Registration Act, the Municipal Act and the Panchayat Act to take all steps ensuring implementation of the Government policies, including immediate reporting, within 24 hours, of deaths, more so, in the rural areas of Bihar.

8. On May 13, 021, the learned Advocate General stated that a copy of this order dated May 12, 2021, would be circulated amongst all concerned, especially the elected representatives and the functionaries under the said Statutes (Acts).

9. Pursuant to that, on May 16, 2021, the Chief Secretary, Government of Bihar filed an affidavit reiterating the stand taken by the learned Advocate General, also confirming the factum of issuance of specific directions. Thus communications addressed to the Department of Panchayati Raj directing Mukhiya/ Upmukhiya/Pramukh/Up-Pramukh/Adayaksha/ Upa Dayaksha to report death within 24 hours was made known to this Court. Even the Commissioner, Patna Division, filed his affidavit dated May 30, 2021, to this



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10. On May 31, 2021, the Chief Secretary, Government of Bihar filed his affidavit seeking time to upload the information of deaths resulting from Covid-19. Such prayer was allowed.

11. However, despite repeated assurances, the Court finds that the Digital Portal was not being uploaded periodically by the functionaries under the relevant Statutes.

12. On further directions, on June 6, 2021, the Director, Directorate of Economics and Statistics, Department of Planning & Development, Government of Bihar, Patna, filed his affidavit stating that Government of India is a signatory to the United Nations Convention on the Rights of the Child, 1989 and is under an obligation to ensure registration of every birth under Article 7. Accordingly, the Government maintains a Civil Registration System that enables the continuous and permanent recording of births and deaths under a statutory regime, i.e. Registration of Births and Deaths (RBD) Act, 1969. The Civil Registration system has a threefold objective: Legal, Administrative and Statistical. The relevant paragraph of the affidavit reads as under:

“6.The Civil Registration System has a three - fold objective: Legal, Administrative and Statistical. The legal and protective use bestows Birth registration records which provide legal proof of



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place of birth and date of birth, death registration record is required for settlement of inheritance, insurance claims etc. and both have evidentiary value under Indian Evidence Act, 1872. The second fold, i.e. administrative use imparts a legal register of locality wise births and death which is main source of information on mortality, causes of death, to facilitate health planning. The third fold which states statistical use which is source of demographic data for socio - economic planning, development of health systems and population control. It further provides data on fertility and mortality which is essential in understanding the trends in population growth and is used for population projections.”

“7.The Online CRS Application presently resides on NIC Server under the domain name <http://crsorgi.gov.in>. Link to access this application has also been provided on <http://censusindia.gov.in>.”

.....

“9. That in order to simplify the process of birth and death registration, notifications have been issued by Government of Bihar. Under the above, there are multiple functional units both in rural and urban areas which provide support and are also empowered to execute certificates. At Anganwadi Centre (in rural area), Anganwadi Sevika - cum - deputy registrar; at Gram Panchayat level, Panchayat Sachiv : at Referral Hospital & Primary Health Centre, Medical officer - in - charge; At Medical College & Hospital, District Hospital and at Sub - Divisional Hospital, Deputy superintendent of the hospital and further at Cantonment Area, Executive officers of Cantonment Board and at Nagar Panchayat & Nagar Parishad, Executive officer and lastly at Nagar Nigam, Medical officer have been appointed as Registrar. The total number of Rural and Urban registration Units in Bihar is 9143.”

(Emphasis supplied)

13. Still finding that the information was not being uploaded on either of the portals set up and maintained by the



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Central Government or the State Government, this Court further interacted with Sri Santosh Kumar Mall, the Secretary, Department of Information Technology, Government of Bihar, who also filed his affidavit dated June 10, 2021, not only reiterating what stood affirmed by the Director, Statistics, Department of Planning and Development vide his affidavit dated June 6, 2021, but also stating that the total number of Rural and Urban Registration Units in Bihar is 9143 and for the purposes of registration of births and deaths, the portal is accessible to the general public which can be so done within 21 days.

14. Here only, we may clarify that we are not concerned with the individual's right to upload information on the portal in these proceedings.

15. We are concerned with is whether the functionaries authorized under the Statutes are uploading the information and whether such information, of course maintaining the confidentiality of the identity of the deceased, is made known through the Digital Portal to the general public or not. On this there is no answer.

16. The need undertaking such an exercise arose only when this Court found that the number of deaths reported by the Government of Bihar, in the times of the second wave of



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Covid-19, did not appear to be correct, which facts stands confirmed through the affidavit dated June 10, 2021 filed by the Chief Secretary, Government of Bihar wherein it is stated that the total number of deaths which took place in Bihar is 9375 and not 5424 the figure indicated earlier. We clarify that at this stage, we do not express any opinion on the explanation furnished by the Chief Secretary, Government of Bihar, for revising the figure, which may or may not be factually correct.

17. It is only during the course of the proceedings on 12.06.2021 for reasons unfathomable by the Court, for the first time, that too orally, under instructions, the learned Advocate General raised the issue of the public representatives not being responsible or accountable for providing information to be uploaded on the digital portal. Further, there is no mandate of law to disclose information of the number of deaths on the digital portal.

18. In our considered view, the objection is legally unsustainable, and this we say so for the provisions of the Statutes (Acts) and the Bihar Registration of Births and Deaths Rules, 1999 are clear. We had elaborately discussed the provisions of different Statutes (Acts) in our order dated 12.05.2021 and need not repeat here. The plea being specious is also because the Government had acted thereupon and issued



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directions in the affirmative from time to time. In fact, we find the Government to work by adopting an approach of compartmentalization, lacking in coordination, resulting in filing of affidavits which are both either vague or contradictory.

19. We may remind the Government that in the year 2011, it had itself amended the Bihar Registration of Births and Deaths Rules, 1999 mandating computerization of birth and death registers. Now, if the object of the CRS portal is to be achieved more so, concerning the “second fold” and the “third fold” as is so stated by the Director, Directorate of Economics and Statistics, Department of Planning & Development, Government of Bihar, Patna in his affidavit dated June 6, 2021, reproduced supra, then we see no reason as to why such information of deaths is not regularly uploaded and made known to the general public.

20. We find that none of the Portals maintained by the State is uploaded and/or updated regularly.

21. We may also remind that India is a signatory to the international treaties and is under an obligation under Part-IV, Article 51(c) of the Constitution of India to 'foster respect for international law and treaty obligations in the dealings of organized people with one another'. The State cannot dispute that the World Health Organisation has repeatedly emphasized



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the need of maintaining accurate data from credible sources to design effective countermeasures for this pandemic. Mr. Tedros Adhanom Ghebreyesus, the World Health Organisation (WHO)'s director-general at the 2020 Munich Security Conference, has emphasized, *"We're not just fighting a pandemic; we're fighting an infodemic."*

22. Now that the World Health Organization and the Government of India can provide the status of Covid-19, why is it that the State should be reluctant to upload the information of all deaths on the official website? We are not unmindful that the information of fatalities arising out of Covid-19 is in the public domain. If that were so, then what is the reluctance to upload general information concerning all deaths that occurred during this period, be it for whatever reason.

23. Should not the Government have a more open and interactive website providing accurate, reliable and up-to-date information to the general public? The mandate to do so also flows under the provisions of the Right to Information Act, 2005(referred to as the RTI Act).

24. Section 4(2) of the RTI Act reads as under:-

"It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communication, including internet, so that the public have minimum



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resort to the use of this Act to obtain information”.
(Emphasis supplied)

25. The Hon’ble Apex Court in *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481 has held as under:

"The Statement of Objects and Reasons envisage a noble goal of creating a democracy which is consisting of informed citizens and a transparent government. It also provides for a balance between effective government, efficient operations, expenditure of such transparent systems and requirements of confidentiality for certain sensitive information. It recognizes that these principles are inevitable to create friction inter se and there needs to be harmonization of such conflicting interests and there is further requirement to preserve the supremacy of democratic ideal."

(Emphasis supplied)

26. In *Chief Information Commr. v. State of Manipur*, (2011) 15 SCC 1 Hon’ble the Supreme Court has held as under:

“6. The Act is meant to harmonize the conflicting interests of the Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal. The Preamble would obviously show that the Act is based on the concept of an open society....”

“16. Actually, the concept of active liberty, which is structured on free speech, means sharing of a nation's sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. And a sharing of sovereign authority suggests an intimate



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correlation between the functioning of the Government and the common man's knowledge of such functioning. (*Active Liberty* by Stephen Breyer, p. 15.)”

27. In *Anjali Bhardwaj v. Union of India*, (2019)

18 SCC 246, the Hon’ble Apex Court held that:

“18. There is a definite link between the right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognizes that it is one of the objective which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

(i) Greater transparency in functioning of public authorities.

(ii) Informed citizenry for promotion of partnership between citizens and the Government in decision-making process.

(iii) Improvement in accountability and performance of the Government.

(iv) Reduction in corruption in the government departments.

19. The right to information, therefore, is not only a constitutional right of the citizens, but there is now legislation in the form of the RTI Act, which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very Preamble of the Act captures the importance of this democratic right which reads as under:

“... democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;”

(Emphasis supplied)

28. Faced with a similar situation while dealing with the circular issued by the Reserve Bank of India of not



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sharing information with the public through uploaded on the website, the Court in **Girish Mittal v. Parvati V. Sundaram, (2019) 20 SCC 747**, while reiterating, which stood laid down by the Hon'ble Apex Court in **Reserve Bank of India versus Jayantilal N. Mistry, (2016) 3 SCC 525**, directed the Bank to withdraw its circular preventing disclosure of the names of the parties defaulting in payment of the loan.

29. The Hon'ble Supreme Court in **Rajeev Suri vs. Delhi Development Authority and Ors. (05.01.2021 - SC): Writ Petition (Civil) Nos. 1041/2020** has elaborately clarified that collection and dissemination of information only promotes transparency and accountability in the working of every public authority.

30. The provision of the RTI Act casts a duty upon all public authorities to suo motu provide and disseminate information unless it is protected by law.

31. Learned Additional Solicitor General, on our request, sought information on the issue from the Registrar General, India appointed under the provisions of the Registration Act. Vide a written note he explains that Civil Registration System (CRS) in India is the unified process of continuous, permanent, compulsory and universal recording of vital events (births, deaths, stillbirths) and characteristics



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thereof. The Registration of Births and Deaths Act, 1969 (Act No. 18 of 1969) provides for the compulsory registration of births and deaths. At present, the Department of Planning, Economics & Statistics supervises the civil registration work in the State of Bihar and that as of now the general public cannot access the real-time information regarding registered birth and death of a particular city/village or State. However, the general public can access the annual national report 'Vital Statistics of India based on CRS' published by ORGI on CRS portal under 'Annual reports'. The latest report published is of the year 2018.

32. Section 10 of the Registration Act casts a duty upon various persons to notify births and deaths and a duty to certify the cause of death. The relevant portion of the said Section reads as under:

“10. Duty of certain persons to notify births and deaths and to certify cause of death.—(1) It shall be the duty of—.....

(iii) any other person whom the State Government may specify in this behalf by his designation, to notify every birth or death or both at which he or she attended or was present, or which occurred in such areas as may be prescribed, to the Registrar within such time and in such manner as may be prescribed.”

(emphasis supplied)

33. Even sub-section (4) of Section 4 of the Registration Act mandates the Chief Registrar to take steps by issuing suitable instructions, or otherwise to co-ordinate, and



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supervising registration in the State. All this for securing an efficient system of registration help prepare and submit report to the State Government, in the prescribed manner and intervals. A report on the working of this Act is in terms of sub-section (2) of section 19 of the Registration Act which reads as under:

“The Chief Registrar shall cause the information in the returns furnished by the Registrars to be compiled and shall publish for the information of the public a statistical report on the registered births and deaths during the year at such intervals and in such form as may be prescribed.”

(Emphasis supplied)

34. Here we may again take note of Rule 4, 14 and 15 of the Bihar Registration of Births and Deaths Rules, 1999, which further mandate the Chief Registrar to send statistical data in a reported form to the Government for publication of the reports. Now, if the reports are required to be published as per these Rules, then why is it that the Government is reluctant and cannot do so in a digital form for it is the mandate of Rule 4 that report shall be prepared in the prescribed format and submitted to the State Government by the July 31 of the year following the year to which the report relates. Yet, We find that even these reports are not uploaded on the website, and the portal is as opaque as it can be.

35. Rules 4, 14 and 15 of the Rules read as under:-

“4. Submission of report under Section 4(4): The report under sub-section (4) shall be prepared in the



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prescribed format appended to these Rules and shall be submitted along with the statistical report referred to in sub-section (2) of section 19, to the State Government by the Chief Registrar for every year by the 31st July of the year following the year to which the report relates.”

“14. Interval and forms of periodical returns under Section 19(1) : (1) Every Registrar shall after completing the process of registration send all the Statistical Parts of the reporting forms relating to each month along with a Summary Monthly Report in Form No. 11 for births, Form No. 12 for deaths and Form No. 13 for still births to the Chief Registrar or the officer specified by him on or before the 5th of the following month.

(2) The officer so specified shall forward all such statistical parts of the reporting forms received by him to the Chief Registrar not later than the 10th of the month.”

“15 Statistical report under Section 19(2): The statistical report under sub-section (2) of section 19 shall contain the tables in the prescribed formats appended to these rules and shall be compiled for each year before the 31st July of the year immediately following and shall be published as soon as may be thereafter but in any case not later than five months from that date.”

36. Form No.12 of Rule 14 of the Rules reads as under:

“Form No. 12
(See Rule 14)
Summary Monthly Report of Deaths

- 1. Report for the Month of..... Year.....
- 2. District.....
- 3. Town/Village.....
- 4. Registration Unit.....
- 5. Number of Deaths Registered during the Month :

Deaths			Infants Deaths	Maternal deaths
Registered within one year of occurrence	Registered after one year of occurrence	Total*		
(1)	(2)	(3)	(4)	(5)

Note :- Infant and Maternal Deaths should also be included in the Deaths.



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The number of statistical Reporting Forms (Form No. 2) attached should be equal to the number of deaths registered.

Dated :

Signature and Name of the Registrar
Submitted to the Chief Registrar/District Registrar."

37. It is precisely this information prescribed in Form No.12 which is required to be put in the public domain for which, for undisclosed reasons, the Government is shying away from doing and resisting the passing of any order in that direction.

38. It is not that the data maintained by the Government under the Registration Act is otherwise inaccessible to the general public. In fact, Section 17(1) of the said Act mandates that "any person" may- (a) cause a search to be made by the Registrar for any entry in a register of births and deaths; (b) obtain an extract from such register relating to any birth or death. Implicitly, such register/ data is a public document of records falling within the domain of the information mandatorily to be supplied under the Right to Information Act.

39. As already noticed, per Section 19, the reports at intervals must be published by the public authority, which even as per the Registrar General (Central) are not being done by the State.

40. At this stage, it is vital to refer to the flagship



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programme of the Government of India called '*Digital India*', which was initiated with a vision to transform India into a digitally empowered society and knowledge economy. According to the programme, all the existing/ ongoing e-governance initiatives would be suitably revamped to align them with the principles of Digital India. The Government of India has approved the "e-Kranti" programme that gave a new meaning to the concept of digital India and established some key principles of e-Kranti namely 'Transformation and not Translation', 'Integrated Services and not Individual Services', 'Government Process Reengineering (GPR) to be mandatory in every MMP', 'ICT Infrastructure on Demand', 'Cloud by Default', 'Mobile First', 'Fast Tracking Approvals', 'Mandating Standards and Protocols', 'Language Localization', 'National GIS (Geo-Spatial Information System)', 'Security and Electronic Data Preservation.

41. Further, the Government of India through the Ministry of Science & Technology has published **National Data Sharing and Accessibility Policy (NDSAP) - 2012** in The Gazette of India on March 17, 2012. The objective of this policy is to facilitate the access to Government of India owned shareable data and information in both human readable and machine readable forms through a network all over the country



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in a proactive and periodically updatable manner, within the framework of various related policies, Acts and rules of Government of India, thereby permitting a wider accessibility and use of public data and information.

42. The Preamble of this policy reads as follows:

“A large quantum of data generated using public funds by various organizations and institutions in the country remains inaccessible to civil society, although most of such data may be non-sensitive in nature and could be used by public for scientific, economic and developmental purposes. The National Data Sharing and Accessibility Policy (NDSAP) is designed so as to apply to all sharable non-sensitive data available either in digital or analog forms but generated using public funds by various Ministries / Departments / Subordinate offices / organizations / agencies of Government of India. The NDSAP policy is designed to promote data sharing and enable access to Government of India owned data for national planning and development.”

43. For this purpose, National e-Governance Division (NeGD) was set up by the Department of Electronics and Information Technology (DeitY), Government of India as an Independent Business Division (IBD) within Media Lab Asia, a section 25 company of Department of Electronics and Information Technology, Government of India. NeGD has been set up to support DeitY in program management of the national e-governance plan and implement a capacity building scheme across the country. NeGD plays a pivotal role in supporting various e-Governance Projects and initiatives undertaken by



Ministries/ Departments, both at the Central and State levels.

44. Bihar State Centre of National Informatics Centre (NIC-Bihar) has been instrumental in bringing ICT culture to Bihar Government. *NIC Bihar State Centre*, along with its various Cells in Patna and 38 districts in Bihar, are continually engaged to automate and accelerate e-Governance processes in close interaction with users of the departments. NIC Bihar is thus providing its expertise in the design, development and implementation of various ICT services to the state Government.

45. It is the endeavour of the Government of India through its programme “Digital India” that “All citizen entitlements to be portable and available on the cloud...”..... “Digital Empowerment of Citizens

- Universal digital literacy
- Universally accessible digital resources
- Availability of digital resources / services in Indian languages
- Collaborative digital platforms for participative governance
- Citizens not required to physically submit Govt. documents / certificates” and “e-Governance would be promoted through a centralized initiative to the extent necessary, to ensure citizen-centric service orientation, interoperability of various e-Governance applications and optimal utilization of ICT infrastructure/ resources, while adopting a decentralized implementation model.”

46. The interplay between this policy, the Statutes (Acts) provisions, and the international convention and treaties



are with a public purpose only achieving public good.

47. The data collection process for the births and deaths is an important exercise, more so during the Pandemic COVID-19, from the point of relief measures to be made available to the families of the deceased. Also, in maintaining the correct statistics so that we as a Nation can be prepared for the Third Wave of COVID Pandemic. As rightly stated by Ms. Parul, learned *Amicus Curiae* neither the Government, be it the State Government or the Union, nor us, including the common man can shirk their responsibilities in the dire situation that the entire Nation is facing during this pandemic.

48. She expressed doubt of the number of COVID deaths reported by the Government for according to her figure disclosed is far less than the actual number of deaths for want of non-reporting. For lack of knowledge, resources, and information, some families have not reported, including where all the major members of the family died due to COVID complications. We do not express any opinion on this issue at this stage, left to be discussed on another occasion.

49. We find that the systematic neglect of civil registration and vital statistics has been identified as “the single most critical failure of development over the past 30 years”. It has become increasingly clear that we cannot monitor progress



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towards our sustainable development goals or national development policies without reliable vital statistics.¹ UNESCO released a document titled '*The Right to information in times of crisis*' in September 2020 where it lays emphasis on the UN Secretary-General's statement about the need for 'free-flow of timely, accurate factual information and disaggregated data' including to enable the scrutiny and critique of the effectiveness of government measures responding to the pandemic². The document further states that during a health emergency, 'pro-actively disclosed information' "means *going beyond* merely posting information on a website, since it is vital that key information reaches everyone."³ In ASIAN AND PACIFIC CIVIL REGISTRATION AND VITAL STATISTICS DECADE 2015 - 2024 published by the UN Economic and Social Commission for the Asia and the Pacific the document prescribes 3 goals for vital statistics which are :

- (a) Goal 1: Universal civil registration of births, deaths and other vital events;
- (b) Goal 2: All individuals are provided with legal

¹ World Bank Group (2014) Global Civil Registration and Vital Statistics. Scaling up Investment Plan 2015-2024. Available at http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/05/28/000456286_20140528170841/Rendered/PDF/883510WP0CRVS000Box385194B00PUBLIC0.pdf

See also, *Lene Mikkelsen, Alan Lopez and David Phillips, Why birth and death registration really are "vital" statistics for development April 14 2015.*

² United Nations, COVID-19 and Human Rights: We are All in This Together, April 2020. Available at: https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf

³ UNESCO, The Right to Information in times of crises, Issue brief in the UNESCO series: World Trends in Freedom of Expression and Media Development, CI-2020/WTR/4: Available at https://en.unesco.org/sites/default/files/unesco_ati_iduai2020_english_sep_24.pdf.



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documentation of civil registration of births, death and other vital events, as necessary, in order to claim identity, civil status and ensuing rights;

- (c) Goal 3: Accurate, complete and timely vital statistics (including on cause of death), based on registration records, are produced and disseminated.

50. Assuming hypothetically, Rules not providing for making the information available to the general public, we see no difficulty in the State coming out with such legislation, subordinate, delegated or otherwise for as we have already noticed, it has legislative power and competence under Entry 30, List III, Seventh Schedule of the Constitution of India. And also, the rule making power under the relevant Statutes.

51. That apart, as has been noticed by the Apex Court in **Vishaka v. State of Rajasthan, (1997) 6 SCC 241** that even by way of interim measure to uphold international conventional and binding treaties, the State can issue directions for the interregnum till such mechanism is put in place.

52. On similar lines, the Hon'ble the Apex Court in **Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703**, had exhorted the Government to put in place a mechanism by way of subordinate legislation ensuring healthy functioning of our democracy in a transparent manner. Paragraph 92 reads as under:



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“92. We find that, subject to certain well-defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be “transparent” in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the US Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation-making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation-making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the stakeholders concerned *prior* to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.”

53. In light of the discussion above, we find it fit to issue the following directions:

i) The Registration of Births and Deaths Act, 1969 (Act No. 18 of 1969) and also the Right to Information Act, 2005, gives a right to a person in almost unequivocal terms of their access to information and therefore, the Digital Portals should be made accessible to the general public with regular and timely updates. It is needless to say that private information of deceased individuals will still be protected under the Right to Privacy read into Article 21 of the Constitution but has to be



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balanced with 'General public awareness' and information dissemination.

ii) The Right to Information is a Fundamental Right as recognized by the Hon'ble Apex Court, and the information in question is covered under such right. Therefore, the Government of Bihar is under an obligation to the citizens of India, more so the residents of the State, to provide information on the Digital Portal the number of deaths, be it for whatever reason, that have occurred during the COVID 19 Pandemic.

iii) The State is under a duty under the Registration Act to facilitate the right of any person to cause a search, and for that to happen, the Digital Portal maintained by different entities must be updated immediately.

iv) This Court has found the Digital Portals maintained by the Government to be opaque, and therefore we direct the concerned authority to take steps to integrate ease of access, in consonance with the larger aims of the Digital India program and others highlighted in our order.

v) The information to be updated regularly on the digital portal shall be done in line with the right to privacy, recognized under the Constitution.

vi) The annual reports that are to be uploaded on the digital portal have not been since 2018. Therefore, it is directed that the same be carried out within the next two months.

vii) Elected representatives upon whom an obligation has been placed, by relevant statutes/orders, as discussed, are duty-bound to disclose the number of deaths that occurred in their constituencies within twenty-four (24) hours.

viii) Apart from the Constitution of India, which is supreme, and the right to information recognized under it, we also recognize the obligation placed by the Directive Principles



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of State Policy under Article 51. As highlighted above, the State is obligated to provide accurate information, fight the infodemic on the one hand, and heal the systemic neglect on the other.

ix) The Government of Bihar shall take all necessary action for sensitizing the general public, especially in the rural areas, of their Constitutional and Statutory right of uploading and obtaining information on the digital portal.

x) Either the Chief Secretary, Government of Bihar or the Additional Chief Secretary, Government of Bihar or Sri Amir Subhani, the Development Commissioner, Government of Bihar shall forthwith convene a meeting of all concerned and ensure compliance of our order.

xi) Copy of the order be circulated to all concerned.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini/

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