

# Right to Information Act, 2005 and the Protection of the Whistleblowers in India

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**Abstract:** Corruption is the biggest hurdle in the achievement of good- governance in the country. Any Government, democratic or otherwise, may abuse its powers if it is permitted to function in secrecy. Transparency law enacted in India on October 12, 2005, has managed to leave its imprint in this short period, becoming a new weapon in the hands of people. Not only has the RTI Act been used to know more about government, it has also become a tool to make public institutions and officials accountable and fight corruption. Information accessed through the RTI Act has also played a key role in unearthing scams such as those in the organisation of the Commonwealth Games in Delhi, the 2G spectrum allotment and the allotment of houses in the Adarsh Society in Mumbai, among others. One of the most important obstacles to fighting corruption in India has been the lack of adequate whistleblowers protection. In this direction we have been witnessing so many incidents where the whistleblowers lost their lives. They are killed by the corrupt people in order to save themselves from being punished by the law of the land. So the objective of this research paper is to highlight the issue of whistleblowers protection with examples and to suggest some measures to protect the whistleblowers for strengthening Right to know in India.

**Key Words:** Whistleblower, RTI Activists, Good- Governance, Transparency, Corruption, Victimization, Assault, Information Commission.

## 1.1 Introduction

Corruption is the biggest hurdle in the achievement of good- governance in the country. Corruption must not be viewed as mere law and order or criminal justice situation; instead it has larger and adverse impact on development initiatives, transparency in administration, economic growth, access to justice, and human rights<sup>1</sup>. Any Government, democratic or otherwise, may abuse its powers if it is permitted to function in secrecy. So in this direction the government of India enacted Right to Information Act in 2005; which is a landmark enactment to curb the corruption by ensuring transparency and accountability in the Public Institutions.

The RTI Act, 2005 has not only been used to know more about government, it has also become a tool to make public institutions and officials accountable and fight corruption<sup>2</sup>. Information accessed through the RTI Act, 2005 by the Whistleblowers RTI Activists has also played a key role in unearthing scams such as those in the organisation of the Commonwealth Games in Delhi, the 2G Spectrum allotments, the allotment of houses in the Adarsh Society in Mumbai and **Indian Red Cross Society Scam** among others<sup>3</sup>.

Whistleblowers are the people who demonstrate exemplary courage by putting their lives at stake to expose a wrongdoing, fraud, or an illegality in government agency or in private enterprises. They are vulnerable human rights defenders in India who often act alone against corruption and other illegal activities of public authorities and political leaders who do not want information about their activities to be disclosed. One of the most important obstacles to fight corruption in India has been the lack of adequate whistleblowers protection; that is why there have been multiple instances of threatening, harassment and even murder of various whistleblowers.

Since October 2005, when the RTI Act was implemented, the deaths of 81 activists have been documented in India, according to a report of attacks and killings of RTI Activists, by the Commonwealth Human Rights Initiative (CHRI). An additional 166 activists have reported assaults while 178 have been threatened/ harassed, whereas only 6 RTI activists committed suicide<sup>4</sup>. Media and civil society organisations have particularly been raising the issue of protection of the RTI users with the policy makers. The issue has gained great importance and has been frequently discussed in the Parliament, courts and the executive meetings. It has now been widely accepted that RTI users are prone to victimisation by those with vested interests.

Table Number- 1 reflects the information of Whistleblowers RTI Users, related to the number cases of Killing/ Assault/ Harassment/ Threat/ Death by Suicide from Oct. 2005 to February 2019.

Table No. 1

Information Related to the Killing/ Assault/ Harassment/ Threat/ Death by Suicide on Whistleblowers RTI Users (Oct. 2005-Feb. 2019)

Year	No. of Cases of Murders of Whistleblowers RTI users	No. of Cases of Assault on Whistleblowers RTI users	No. of Cases of Harassment/ Threat to Whistleblowers RTI users	No. of Cases of Death by Suicide by Whistleblowers RTI users	Total
2006-07	00	00	01	00	01
2007-08	00	05	01	00	06
2008-09	03	01	05	00	09
2009-10	01	05	05	00	11
2010-11	10	15	25	01	51
2011-12	07	37	40	01	85
2012-13	07	16	27	00	50
2013-14	08	19	08	01	36
2014-15	09	15	15	01	40
2015-16	09	22	23	00	54
2016-17	08	10	08	02	28
2017-18	05	08	17	00	30
2018-19	13	13	03	00	29
2019-20	01	00	00	00	01
Total	81	166	178	06	431

Source: Commonwealth Human Rights CHRI Initiative (CHRI)'s compilation of reports of attacks and killings of RTI activists, in the Hall of Shame map on the CHRI website here: <http://attacksonrtiusers.org/>

Table number 1 clearly shows that since October 2005, when the RTI Act was implemented, the deaths of 81 activists have been documented in India, according to a report of attacks and killings of RTI Activists, by the Commonwealth Human Rights Initiative (CHRI). An additional 166 activists have reported assaults while 178 have been threatened/ harassed, whereas 6 RTI activists committed suicide. There may be some other unreported instances and cases where whistle Blowers RTI Activists killed, harassed or assaulted in the country.

Table No. 2

Information Related to the Killings of Whistleblowers RTI Users in 2018

Name	State	Date	Attack Type	Nature of Activism
Bhola Shah	Bihar	Dec. 2018	Murdered	He has exposed several financial irregularities in government Social Welfare Schemes.
Rohit Ashok Junawane	Maharashtra	Nov. 2018	Murdered	He filed an application under the Right to Information (RTI) Act in order to seek information about a construction project. Nine persons, in total, were booked by the police while four out of them were arrested in connection with the killing <sup>5</sup> .
Kedar Singh Jindan	Himachal Pradesh	Sep. 2018	Murdered	For filing RTIs to expose irregularities in Panchayat for distribution of BPL Certificates <sup>6</sup> .
Mukesh Dubey	Madhya Pradesh	Sep. 2018	Murdered	He had filed some RTI applications seeking information about Sumawali Panchayat and had complained about threat to his life to senior police officials, including the Superintendent of Police (SP) and the state Director General of Police (DGP) <sup>7</sup> .
Parshuram Pradhan	Odisha	Aug. 2018	Murdered	He had used RTI extensively to expose corruption in Keutaberini Primary Agriculture Cooperative society in terms of distribution of loan to the beneficiaries <sup>8</sup> .
Valmiki Yadav	Bihar	July 2018	Murdered	Yadav had exposed several rackets and financial irregularities in the

				public welfare schemes and developmental works in the district <sup>9</sup> .
Ashish Dahiya	Haryana	June 2018	Murdered	Through RTI, he exposed Village Sarpanch who illegally occupied some property in the village <sup>10</sup> .
Suresh Oraon	Jharkhand	June 2018	Murdered	RTI activist murdered by Mining Mafia because he had staged a demonstration for local unemployed youths whose land had been acquired for mining <sup>11</sup> .
Satyanarayana Goud	Telangana	May 2018	Murdered	He had filed several RTI petitions in Mumbai with the Maharashtra excise department, alleging that toddy traders from Telangana had settled in the coastal city and were selling adulterated toddy <sup>12</sup> .
Jayant Kumar	Bihar	April 2018	Murdered	Filed several RTIs on Powerful Liquor Mafia <sup>13</sup> .
Prashant Nimse	Maharashtra	April 2018	Murdered	He had got information under RTI and exposed several land irregularities in the NGO <sup>14</sup> .
Nanjibhai Sondarva	Rajkot, Gujarat	March 2018	Murdered	For filing RTIs to expose financial irregularities in the developmental works undertaken in a village <sup>15</sup> .
Poipynhun Majaw	Meghalaya	March 2018	Murdered	Through RTI, Majaw exposed misuse of public funds by the Jaintia Hills Autonomous District Council (JHADC) and its leniency towards more than a dozen cement companies that are allegedly operating against the interests of the local people and harming the fragile ecology of the area <sup>16</sup> .

Table number 2 highlights the 13 reported cases of the murders of Whistle Blowers who sacrificed their lives for fighting against corruption in our country. All of them used Right to Information (RTI) as a weapon to unearth the corruption scams in different government departments and government schemes in India. These RTI Activists belonged to the different parts of the country.

## 1.2 Analysis of Whistleblower Protection Policy and Legislation in India

Government of India enacted this legislation with the intention to protect the whistle blowers which would further strengthen the Right to Information. Parliament passed the Whistleblowers' Protection Act<sup>17</sup> (WBPA) way back in 2011 and it received President's assent on May 9, 2014. But it has not been implemented till date.

### 1.2.1 The main features of the bill to protect the whistleblowers are-

- Any Public Servant, Person or Whistleblower may make complaint (in hard copy or by electronic mail) about the corruption with full details and accompanying documents within seven years of the occurrence of wrongdoing as defined in the Prevention of Corruption Act, 1983 to-
  1. The Prime Minister at Centre and the Chief Minister in the States against Ministers of the Union or the States respectively;
  2. The respective Chairpersons of the House against members of the Parliament or the State Legislatures (other than those who may be Ministers);
  3. The High Court in relation to any judge or judicial officer or arbitrator in the States (Judges of High Courts and Supreme Court are not covered by this bill);
  4. The Central Vigilance Commission or such other authority as the Central Government may notify for all other public authorities and public sector undertaking at the Central level; and
  5. The State Vigilance Commission or such other authority as the State Government may notify in due course to receive complaints against public authorities and state level public sector undertakings.

- The identity of the complaint will not be revealed without his/her written consent. If any person negligently or mala fiddly reveals the identity of the whistleblower may be sentenced up to three year in prison and also pay a fine up to Rs. 50,000/-.
- If any person negligently or mala fiddly makes a false complaint may be sentenced up to two year in prison and also pay a fine up to Rs. 30,000/-.
- The Competent authority must ensure that no whistle blowing public servant is victimised (although what amounts to victimisation is not defined in the law).
- If other citizen or organization blowing the whistle are victimised the competent authority may pass appropriate orders for protecting them or avoiding such victimization. The burden of providing that there was no victimisation of the whistleblower is on the public authority complaints against.
- The directions of the competent authority to protect a whistleblower from victimization or avoid victimization are binding on the public authority. The competent authority may also pass interim orders for protecting witnesses who come forward to depose in an inquiry into a whistleblower complaint.
- The competent authority may also make orders to stop the continuation of any corrupt practices in public authorities as a result of its inquiry into a whistleblower complaint.
- If an offence under law is committed by anybody in a department. Its head will be deemed guilty and will be liable for prosecution and punishment unless he/she proves that he/she acted diligently or that the offence was committed without his/her knowledge.
- If an offence under law is committed by a company every person in charge of conducting the business of the company will be liable for prosecution and punishment unless they can prove their innocence.
- Court will take cognizance of these offences only upon a complaint made by the competent authority.
- Penalties imposed by the competent authority may appeal against only in High Court of Jurisdiction.
- The Competent Authorities must prepare and submit annual reports about the implementation of this law to the Central or State Governments and the respective governments have the duties to table these reports in Parliament or the State Legislature.

### 1.2.2 Salient features of the Whistle Blower's Protection (Amendment) Bill, 2015<sup>18</sup>

The government introduced amendments to the Whistle Blower's Protection Act, 2014, and tabled the Whistle Blower's Protection (Amendment) Bill, 2015, in the Lok Sabha on 11-05-2015, which was passed on 13-05-2015. The Bill is presently pending in the Rajya Sabha. The following features of the Whistle Blower's Protection (Amendment) Bill, 2015:

1. Modelled on the provisions of Section 8(1) of the Right to Information Act, 2005, amendments to Section 4 of the earlier Whistle Blower's Protection Act, 2014, prohibit disclosures prejudicially affecting the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, friendly relations with foreign states, or lead to incitement to an offence, etc.
2. Amendment to Section 5 provides that the Competent Authority shall not inquire into any public interest disclosure which involves information of the nature specified in the amended Section 4.
3. As per the amended provisions in Section 8, no person shall be required to furnish any information or answer any question or produce any document or render any other assistance in an inquiry under this Act, if the same is likely to result in the disclosure of any information of the nature specified in the amended Section 4.

After analysing the Whistle Blowers Protection Act, 2011 we found that important feature of the Act is the power vested upon CVC to penalise any officer who has disclosed whistle-blower's name without proper approval and such punishment can be up to Rs.50,000/- fine and imprisonment of up to 3 years. But this mechanism will only be applicable when; the whistleblowers would have collected the evidences against the corrupt officials and complained the same to the concerned authority. But this kind of mechanism is not there in Right to Information Act, 2005; that is why so many RTI Activist Whistleblowers are still losing their lives and are being harassed/ assaulted as per the data shown in table number 1 and 2. While filing the RTI application the applicant has to give his/ her personal detail to the Public Information Officer and there is no such condition in the RTI Act, 2005 by which we can prevent the identity of the applicant to be disclosed. Then, how to protect the life of Whistleblower RTI Activist?

### 1.3 There are some of the suggestions to protect the life of the Whistle Blower RTI Activists

**1.3.1 Inclusion the Provision of Protection of Whistle blowers in RTI Act, 2005:-** Nepal in its Right to Information Act, 2064 (2007) has redress the issue of protection of whistleblowers affirming the responsibility of the employees within public agencies to provide information proactively on any ongoing or probable “corruption or irregularities” or on any deed constituting an offence under prevailing laws. It is forbidden to cause harm to or punish a whistleblower for such disclosure and whistleblowers may complain to the commission and demand compensation for revoking such decision<sup>19</sup>. So in the same manner our legislature should add this mechanism by amending the Right to Information Act, 2005.

**1.3.2 Securing the Identity of the RTI Activists:** - The first solution could be the securing the identity of the RTI Activists so that his/her life can be protected. Although the RTI Act, 2005 does not mention that an applicant is required to send a proof of their identity while requesting information, it does state that one must be a citizen of India in order to enjoy use of the Act. This can be used as grounds by the PIO in order to determine the complete identity of the applicant<sup>20</sup>. But this solution to secure the identity of RTI applicant can give rise to a new debate as some of the scholars can claim that by hiding the identity of RTI applicant we would violate ‘the right to know’ of others. But if we have to give priority either to ‘Right to Information’ or ‘Right to Life’ then obviously we will go for protecting the ‘Right to Life’ of an individual. There are some judgements which ensures the securing the identity of the RTI Activists.

➤ **Get Information under Right to Information without revealing your identity: Calcutta High Court (2013)<sup>21</sup>**

Hearing a Public Interest Litigation (PIL) filed by Avishek Goenka, challenging the rejection of his RTI application made to a central government department by using his post box number to protect his identity, a division bench of the Calcutta High Court comprising Acting Chief Justice Ashim Kumar Banerjee and Justice Debangsu Basak held that a person making a petition under the Right to Information (RTI) Act, 2005 need not give his name and address and can make the petition by using only a post box number.

The order of the Calcutta High Court would be applicable only in West Bengal and the Andaman and Nicobar islands. Other states may follow the order, but it is not a binding upon them. This decision, which would serve as a major protection for whistleblowers in the country, was delivered by the division bench to protect applicants or RTI activists from attack and harassment by persons who do not want information about their activities to be disclosed.

➤ **SC: Can’t tell accused who whistleblower is<sup>22</sup>**

Anti – Corruption Bureau (ACB) of Maharashtra had investigated a case of disproportionate assets against a public servant Manjeet Singh Kherra on the basis of a complaint written by “unknown person” and charge sheeted the accused. The accused demanded the copy of original complaint on the ground that it was essential for a fair trial.

Rejecting his plea, an apex court bench of Justice K.S. Radhakrishnan and A.K. Sikri said “Situations are many where certain persons do not want to disclose the identity as well as the information/ complaint passed by them. If the name of the person, as well as copy of the complaint sent by them are disclosed that may cause embarrassment to them and sometime threat to their lives.”

Further the bench, while dismissing Kheda’s petition said “We are of the opinion that non –supply of the complaint or contents thereof, do not, at all, violate the principle of fair trial. The said complaint has no relevancy in the context of this prosecution and in no manner, it would prejudice the petitioner.

**1.3.3 Engagement of Community:** - A large majority of RTI Activists act alone that is why they are more vulnerable that is why RTI Activists should take precautions by engaging the whole community in their work. The Whistle Blowers should avoid filing individual RTI applications rather they should file an RTI on the name of registered Association, NGO, or registered Society. If more than one person files the same RTI application also work well. They can also engage media and other voluntary organization in their task.

➤ **An Association of Individuals can seek information under RTI, Act: Tamil Nadu Information Commissioner (TNIC)<sup>23</sup>**



Tamil Nadu Information Commissioner was inquiring into a complaint by B. Thirugnanam, president, TNHB colony Residents Consumer Protection Awareness Welfare Association, Mathur. The Public Information Officer (PIO) of the Rural Development and Panchayati Raj Department rejected the RTI application on the ground that an “association” was not acceptable as a “proper petitioner” under the RTI Act. Then he approached Tamil Nadu Information Commission (TNIC) TNIC. During the inquiry PIO very comfortably confessed that he was new to the job and that his predecessor had committed the master blunder and he had sent the file for the advice to the law department. The Commission asked how the law experts of the Law Department could have totally forgotten all the basic law of the General Clauses Act, which governs all the Acts. Section 3 of the RTI Act was intended only to restrict the right to citizens of the country to ask the information and had nothing to do with the procedure as to who could apply for the information, the Commission said, and ordered the secretary, Rural Development and Panchayati Raj, to ensure the information was supplied to petitioner within a week, free of cost.

**1.3.4 Anonymous RTI:** - RTI Anonymous is one solution that would hopefully reduce this issue to a significant extent. An anonymous RTI is one where your name, address & other parts of your identity remain unknown to the PIO. RTI Anonymous is an online service, through which, any Indian citizen can File Right to Information (RTI) Applications Anonymously. They do not have to reveal their identity. The RTI Anonymous Community will file those RTI Applications in their name and upload the documents obtained as a reply on this website. The original requester will get an email when this happens. The original requester just has to draft the RTI Application as much as he/she can and the RTI Anonymous community will take care of the rest. Former Central Information Commissioner (CIC) Mr. Shailesh Gandhi appreciated this movement by saying “Such initiatives will ultimately strengthen the RTI movement. The only challenge is that the information officers are unlikely to reveal sensitive information in at the first go and your group would need to pursue matters diligently”<sup>24</sup>.

**1.3.5 Proactive Disclosure:** - Proactive disclosure by the public institutions can be a solution to this problem. Government should make it mandatory for all public institutions to bring maximum information to the public domain so that the need to file an RTI application can be reduce. Regular proactive disclosure of information by public authorities under Section 4 (1) of the RTI Act, 2005 can help curb the menace.

**1.3.6 A Helpline should be started by State Government and Information Commission:** - The State Government and Information Commissions should start a helpline for the protection of whistleblowers RTI Activists. Through these helpline Whistle blowers RTI Activists can register their grievances and security of these can be ensured.

**1.3.7 Quick Action on the Complaints of the RTI Activists:-** If in case any RTI Activist receive any threat then quick police action should be taken and the investigation should be done by a senior police officer under the monitoring of information commission and the senior officer of the department to which the information relate.

**Summary:** - The above discussion indicates that RTI Activists are natural whistle blowers who put their lives at stake to make our system corruption free by unearthing corrupt practices. In our country there is no such a strong mechanism to protect the RTI activist from being assaulted that is why the number of instances of threatening, harassment and even murder of various RTI Activists has been increasing. Victimization of RTI users can be prevented by ensuring by securing the identity of the RTI activists like using Post Box Number as an identity proof, by filing RTI on the name of registered Association, NGO, or registered Society, by involving media and other voluntary organization in their task, by filing anonymous RTI applications, by ensuring implementation of Section 4(1) of the RTI Act on proactive disclosure thus reducing the need to file RTI applications. Another solution can be starting a helpline by State Government and Information Commissions for the protection of RTI Activists and quick action and investigation should be done by a senior police officer under the monitoring of Information Commission and the senior officer of the department to which the information relate.

**References:-**

- <sup>1</sup> C. Raj Kumar (2011), Corruption and Human Rights in India, Oxford University Press, New Delhi.
- <sup>2</sup> Shyamlal Yadav, The Indian Express, New Delhi, Sat Oct 12 2013.
- <sup>3</sup> <http://www.indianexpress.com/news/8-years-on-rti-act-counts-itsmilestones/1181554/0>.
- <sup>4</sup> <http://attacksonrtiusers.org/>
- <sup>5</sup> timesnownews.com
- <sup>6</sup> <https://www.newslaundry.com/2018/09/17/the-life-and-death-of-kedar-singh-jindan-dalit-rti-activist-himachal-pradesh>
- <sup>7</sup> indianexpress.com
- <sup>8</sup> odishasoochana.blogspot.com
- <sup>9</sup> newindianexpress.com
- <sup>10</sup> hindustantimes.com
- <sup>11</sup> telegraphindia.com
- <sup>12</sup> thenewsminute.com
- <sup>13</sup> “RTI Activists living Dangerously in Bihar” The Hindu. Retrieved Dec. 2018.
- <sup>14</sup> freepressjournal.in
- <sup>15</sup> “RTI Activist Murdered in Gujrat”. Rising Kashmir. Retrieved March 11, 2018.
- <sup>16</sup> <https://www.moneylife.in/article/two-more-rti-activists-murdered-no-end-seen-to-this-sordid-saga/53562.html>
- <sup>17</sup> The Gazette of India. The Whistle Blowers Protection Act, 2011.
- <sup>18</sup> <https://www.livelaw.in/key-features-whistle-blowers-amendment-bill-stated-parliament/>
- <sup>19</sup> Nepal Right to Information Act, 2064 (2007)
- <sup>20</sup> <https://medium.com/rtilikho/how-to-file-anonymous-rti-in-india-9b6fd49bdb57>
- <sup>21</sup> Hindustan Times November 20, 2013.
- <sup>22</sup> The Times of India, 23 Aug. 2013.
- <sup>23</sup> The Hindu, August 18, 2010.
- <sup>24</sup> <http://getup4change.org/rti/>

