

Whistleblowers Right And Protection In The Light Of Right To Information Act 2005

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Abstract : Protection of whistleblowing vindicates important interest supporting enforcement of criminal and civil laws. Whistleblowing can be seen as supporting public interest by encouraging disclosures of a certain type of information. This aspect can be called the public information or the public interest concept implied in whistleblowing. Whistleblowing is a statute that protects all government employees and hence the government is prohibited from threatening any employee just because the employee discloses information about any unreasonable thing. The Supreme Court in various cases i.e. Manoj H. Mishra vs. Union of India, Shri Harish Chandra Joma Mhatre vs. Central Vigilance Commission, Whistle-Blowers Associations vs. Union Of India suggested that whistleblowers play a very important role in providing information about corruption and maladministration.

IndexTerms - Whistleblowers, Rights, Protection, Information and Informers.

INTRODUCTION

The RTI has been an instrument in bringing in transparency and curbing corruption, thereby enhancing democracy at various levels. The right to information is derived from the arena of the fundamental rights under Article 19 (1) (a) of the Constitution of India. The Right To Information is indisputably a fundamental right, a facet of “speech and expression” as contained in Article 19 (1) (a).¹ The right to freedom of expression and speech copes with the principle of receiving and sharing information. Article 19 (2) empowers the state to formulate law if such law imposes reasonable restrictions in the matters of exercise of the rights envisaged under Article 19 (1) (a) in the scope of the integrity and sovereignty of India.²

CORRUPTION AS PLAQUE AND ROLE OF RTI AS CLEANING AGENT.

Corruption is a phenomenon, which denotes the deviation from the formal duties of a public role because of private pecuniary or status gains. It is the corruption of mind and corruption at the workplace which leads to illegal activities and the person who is involved tries to hide it and those who uncover their activities are informer or whistleblower. As pointed by the Supreme Court, State of M.P vs. Ram Singh³ that the menace of corruption was found to have enormously increased by the First and Second World War conditions.

“September 28” is celebrated internationally as ‘Right To Know Day’, highlighting the critical importance of people's right to access information held by their governments. In India, following a nationwide campaign led by grassroots and civil society organizations, the government passed a landmark Right to Information Act in 2005. Since then, social activists, civil society organizations, and ordinary citizens have effectively used the Act to tackle corruption and bring greater transparency and accountability in the government.

Right to Information laws grant citizens the legal right to access information held by their governments, bringing much-needed transparency in the otherwise opaque functioning of government. Globally, more than 80 countries have now enacted such laws, with the list growing each year. India's RTI Act is internationally recognized as a strong and effective law. Over the last six years, the RTI has been used extensively by ordinary Indian citizens to demand a vast range of information from their government.⁴ Unlike many countries where RTI laws have been used primarily by journalists and the media, in India, the law has a broad base of users. A 2009 study estimates that in the Act's first three years alone, close to two million RTI requests were filed in different parts of the country. Case studies and media reports show that RTI is being used to redress individual grievances, access entitlements such as ration cards and pensions, investigate government policies and decisions, and expose corruption and misuse of government resources.⁵

¹ People's Union For Civil Liberties vs. Union Of India, A.I.R. 2004 S.C. 1442 (India).

² Narender Kumar, *Constitutional Law Of India* 254 (Allahabad Law Agency, Haryana, 8th ed., 2012).

³ (2000) 5 S.C.C. 88 (India).

⁴ The Times Of India, Misuse of RTI Act riles PM, Oct. 13, 2012. (Sept. 6, 2020, 9:14 PM), <https://timesofindia.indiatimes.com/india/Misuse-of-RTI-Act-riles-PM/articleshow/16789428.cms>.

⁵ Aruna Roy and Nikhil Dey: Fighting for the Right to Know in India, *Development Dialogue*, 2002, p. 77-90 (Sept. 9, 2020, 9:10 AM), <http://www.freedominfo.org/documents/rtiessay.pdf>.

For many, particularly India's poor and disadvantaged the simple act of filing an RTI application is empowering and often leads to tangible results. Controversies including the 2G spectrum scam, financial irregularities in the organization of Commonwealth Games, and the Adarsh Housing Society scandal among others have brought the dark truth of corruption in governance to the fore. The prevalence of corruption in India can be gauged from the Centre for Media Services analysis that during 2005-10, corruption coverage in prime-time bulletins increased almost by four times in comparison to news stories. The Corruption Perceptions Index (CPI) is an index published annually by Transparency International since 1995 which ranks countries "by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys". The CPI generally defines corruption as "the misuse of public power for private benefit". According to the 2018 CPI, India was ranked 78th out of 176 countries and the corruption scale is increasing every year.⁶

A culture of secrecy resulted in fertile growth of corruption. In face of the non-accountability of the public authorities and lack of openness in the functioning of government, abuse of power, and corrupt diversion of the public money was the order of the day. Limitations to the free flow of information led to the germination of feelings such as 'powerlessness' and 'alienation' among the citizens. RTI act as a tool to ensure transparency and accountability in governance.

EVOLUTION OF WHISTLE-BLOWERS

The initiatives to legally protect individuals, who stand up against failures of the system, Originated in the U.S.A. In the U.S.A, whistle-blowing protection was one way of reinforcing the cultural value of protecting the individual and even more important his/her freedom of speech. The U.S.A False Claims Act (FCA), which originated during the civil war in 1863, is commonly viewed as the start of whistleblowing legislation. The act was established as a result of fraudulent actions by companies that took advantage of wartime. Citizens were able to sue the malignant company on behalf of the U.S.A for years. The shape of whistleblower protection varied greatly between the different states of the U.S.A. Thus to try and overcome these stately differences and to give better protection to whistleblowers, the Civil Service Reform Act (CSRA) was passed in 1978. As the CSRA was not a success straight away. This led to several amendments over the past years (1989, 1994). After the U.S.A, it was the UK that also enacted the Public Disclosure Act. The UK Public Interest Disclosure Act (PIDA) of 1998 is the first much referred to whistleblower protection act outside the U.S.A. National scandals in the late 1980s in the UK spurred the whistleblowing debate in the UK. As a result of this public concern, the Public Interest Research Centre (PIRC) started a research project on self-regulation and whistleblowing in UK companies. As a result of the PIRC report and public pressure, the UK non-profit organization public concern at work (PAW) was established in 1993. In 1998, they succeeded the PIDA was finally enacted in 1999 it came into force.⁷ Moreover, whistleblowers can also play a very important role in providing information about corruption and maladministration. Public servants working in the same department know better as to who is corrupt in their departments, but unfortunately, they are not bold enough to convey the said information to high authorities for fear of reprisals by those against whom complaints are made. If adequate statutory protection is granted, there can be no doubt, that the government will be able to get rid of maladministration. Such provisions exist in England, Australia, New Zealand, and the United States of America. Good faith whistleblower represents the highest ideals of public service and challenge abuse of power.⁸ Protection of whistleblowing vindicates important interest supporting the enforcement of criminal and civil laws. This aspect may be called the "rule of law" concept implied in whistleblowing. Again, whistleblowing can be seen as supporting public interest by encouraging disclosures of a certain type of information. This aspect can be called the "public information" or public interest concept implied in whistles blowing. The United Kingdom-based on a report of Nolan Committee on "Standards Of Public Life" the importance and the need for whistleblowing in 1994 and Second Report on "Standard Of Public Life" in 1996, enacted (UK) Public Interest Disclosure Act, 1998 which deals with a detailed approach to whistleblowing. In the United States, the Whistleblower Protection Act, 1989 provides the necessary protection to be given to the employees who disclose to the government illegality and corruption. The purpose of the Act is to strengthen and provide protection of the rights of federal employees. Australia has passed the Public Interest Disclosure Act in 1994. New Zealand has also passed a statute i.e. Protected Disclosure Act, 2000.⁹

EXISTING PROTECTION TO WHISTLE-BLOWERS IN INDIA.

1. The Whistle Blowers Protection Act 2014 and (Amendment) Bill, 2015.
2. Right To Information Act, 2005.
3. Public Interest Disclosure Law, 2009.
4. Central Vigilance Commission, 2006.
5. Official Secret Act, 1923

AN ANALYSIS OF WHISTLE BLOWERS PROTECTION ACT, 2014.

The Act establishes a mechanism to receive complaints related to disclosure of allegations of corruption or willful misuse of power or discretion, against any public servant, and to inquire or cause an inquiry into such disclosure.

⁶ India Transparency, International corruption index blow, BBC News India, Dec. 1, 2011 (Sept. 9, 2020, 11:04 AM), <https://www.bbc.com/news/world-asia-india-15979646>.

⁷ Ruchia, Critical Issue: Protection of Whistleblowers in India (Sept. 12, 2020, 8:10 PM), <http://www.garph.co.uk/IJARMSS/Sep2013/18.pdf>.

⁸ 179th Report of Law Commission of India, 2001 (Sept. 13, 2020, 10:23 PM), <http://lawcommissionofindia.nic.in/reports/179rtp1.pdf>.

⁹ P.K. Das, *Universal's Handbook On The Right To Information Act 2005*, 11 (Universal Law Publishing Co. Pvt. Ltd, New Delhi, 1st ed., 2005).

1. The Act also provides adequate safeguards against victimization of the person making such complaints.
2. It allows any person, including a public servant, to make a public interest disclosure before a Competent Authority. The law has elaborately defined various competent authorities. For instance, a competent authority to complain against any union minister is the Prime Minister.
3. The law does not allow anonymous complaints to be made and clearly states that no action will be taken by a competent authority if the complainant does not establish his/her identity. The maximum period for making a complaint is seven years.
4. Exemptions: The act does not apply to the Special Protection Group (SPG) personnel and officers, constituted under the Special Protection Group Act, 1988.
5. Court of Appeal: Any person aggrieved by any order of the Competent Authority can appeal to the concerned High Court within a period of sixty days from the date of the order.
6. Penalty: Any person who negligently or mala-finally reveals the identity of a complainant will be punishable with imprisonment for a term extending up to 3 years and a fine which may extend up to Rs 50,000.
7. If the disclosure is done mala-fidely and knowingly that it was incorrect or false or misleading, the person will be punishable with imprisonment for a term extending up to 2 years and a fine extending up to Rs. 30,000.
8. Annual Report: The Competent Authority prepares a consolidated annual report of the performance of its activities and submits it to the Central or State Government that will be further laid before each House of Parliament or State Legislature, as the case may be.
9. The Whistleblowers Act overrides the Official Secrets Act, 1923 and allows the complainant to make public interest disclosure before competent authority even if they are violative of the later act but not harming the sovereignty of the nation.
10. In 2015, an amendment bill was moved that proposes, whistleblowers must not be allowed to reveal any documents classified under the Official Secrets Act of 1923 even if the purpose is to disclose acts of corruption, misuse of power, or criminal activities. This dilutes the very existence of the 2014 Act.¹⁰

PURPOSE OF THE RTI ACT DIFFERS FROM THE WHISTLE BLOWERS.

The Statement of Objects and Reasons of the 2015 Bill states that the prohibited categories have been modeled on the 10 categories of information that cannot be revealed under the Right to Information (RTI) Act, 2005. However, this comparison may not be appropriate. The purpose of the RTI Act is to make information with public authority's access to all citizens to promote transparency and accountability. There may be circumstances where it may not be desirable for public institutions to reveal all types of information to citizens. In contrast, the Whistleblowers Act provides for corruption-related information to be given by an individual to a Competent Authority. The Competent Authority, in all cases, is a high level Constitutional or statutory authority. This information is not made public and the inquiry into the allegation is required to be discreet, with the identity of the complainant, public servant, and related documents being kept secret.

JUDICIAL TREND TOWARD WHISTLE BLOWERS PROTECTION.

A whistleblower is a person who releases information about the wrongdoing of any government or public official or discloses some corruption on the part of the public office holder to the public. He may be a person who is a part of the government functionary. Whistleblowing constitutes an important element of information law.¹¹ Indian Judiciary defines the meaning and role of whistleblower in many cases like;

Manoj H. Mishra vs. Union Of India & Ors on 9 April 2013

"A whistleblower is a person who raises a concern about the wrongdoing occurring in an organization or body of people. Usually, this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation, and/or a direct threat to the public interest, such as fraud, health/safety violations, and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or groups concerned with the issues".¹²

Shri Harishchandra Joma Mhatre vs. Central Vigilance Commission ... on 25 January 2010 (India).¹³

In this case, the Supreme Court asked a question i.e. whether the name of the appellant was a 'whistleblower'. The Supreme Court considered the safety of whistleblower as its priority and stated that information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes must remain secret during the proceeding of the case.

PRACTICES OF WHISTLE BLOWING IN INDIA AND ITS IMPACT ON SOCIETY.

When the Whistle-Blowers Protection (WBP) Act was passed in 2014, it was hailed as a significant step towards beefing up the country's anti-corruption apparatus. Whistle-blowers were to have their identities protected, encouraging more people to come forward and expose wrongdoing in public life. However, the law is yet to be implemented and whistleblowers continue to be harassed, intimidated, and murdered.

Satyendra Dubey: Shot dead in 2003 after he exposed corruption in NHAI.

Lalit Mehta: Exposed corruption in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) scheme in Palamu, Jharkhand. Killed in 2008.

¹⁰ Whistleblowers Protection Act, 23 Oct 2019, (Sept. 15, 2020, 12:58 PM), <https://www.drishtiiias.com/daily-updates/daily-news-analysis/whistleblowers-protection-act>.

¹¹ N.V. Paranjape, *Right To Information Law In India*, 256 (Central Law Agency, 30 D/1 Motilal Nehru Road, Allahabad, 1st ed., 2014).

¹² Official Website Indian Kanoon, (Sept. 20, 2020, 4:09 PM), <https://indiankanoon.org/doc/85312877/>.

¹³ Official Website Indian kanoon, (Sept. 21, 2020, 6:25 PM), <https://indiankanoon.org/doc/1891820/>.

Niyamat Ansari: Exposed fund embezzlement in MGNREGA scheme in his village Jerua, Jharkhand. Assaulted, implicated in false cases, and finally murdered in 2011.

Nandi Singh: Exposed irregularities in the public distribution system. Murdered in 2012.

Shimbu Ram Bishnoi: Sought information on MGNREGA and other welfare schemes in Jodhpur under the RTI Act. Repeatedly threatened and then killed in 2013.

Bhupendra Vira: Used the RTI Act to prove that his land in Mumbai was being unlawfully encroached upon. Shot dead in 2016.

Nanjibhai Sondarva: Filed RTI query on the construction of a road in his village in Rajkot, Gujarat. Clubbed to death in March 2018.

PoipynhunMajaw: Was investigating possible corruption in the Jaintia Hills District Council. Killed in March 2018.¹⁴

BLACKMAILING AND MISUSING OF RTI AS MAJOR REASON OF THREATS TO RTI ACTIVISTS IN INDIA.

The RTI requests, at times, are not simply to satisfy one's doubt but also to derive vicarious pleasures. The public interest which the Act intends to secure is missing in many RTI applications. There have been instances where applicants seek policy-related information and many times the applicants have vested interests. At times the Act is used by people to harass their colleagues or blackmail the authorities. Moreover, there are numerous instances of applicants demanding irrelevant or frivolous information. Such a selfish and unintelligent use of the Act will defeat the high objectives of the Act. It has also been observed that the Act is frequently being used by government servants, mostly disgruntled, under disciplinary proceedings to settle their service matters. It is also being misused by people interested in gathering evidence in their litigation cases.¹⁵ There is likelihood that the request or may not turn up to pay the additional fees once the information is ready. It is also unfortunate that the language being used by requestors is at times, intemperate and impolite. The RTI Act is being used by business competitors of public authorities. In certain cases, some NGOs are indulging in getting projects sanctioned from international agencies which they complete by simply filing an RTI application in the Central Ministry concerned, which in turn has to procure the data from various states and districts. The Commission has now started looking at some alternative remedies while dealing with information requests. It now insists that if a normal internal mechanism for assessing information is good enough, recourse to RTI Act may not be permissible. There is also a need to guard against the growth of professional middlemen who use this Act for personal gain.

LESSONS FOR RTI USERS IN INDIA

1. It's pertinent to engage the community in the work. This will not only ensure protection from vested interests but also lend credibility to the efforts.
2. Be in touch with civil society organizations and media persons. Release the information to the public as soon as possible to avoid victimization.
3. If there is a possibility of victimization, have more than one person, file the same RTI application to divert attention. A friend based in another faraway location can also be asked to file the RTI application on your behalf.
4. In case of threat or assault, immediately contact the local police station and obtain a copy of the FIR or DDR. File a formal complaint with the respective information commission, area DSP and the department to which the information pertains with copies of relevant documents through fax or speed post.
5. Right to information is not a stand-alone law. Depending on the information sought, other laws can also be invoked to ensure protection. For instance, if the information sought relates to issues of a minor, the Juvenile Justice Board can be approached for action. This also conveys the fact that those seeking protection are not seeking any extra-judicial favors but working within the established system.

CONCLUSION

It is possible to prevent the victimization of RTI customers by ensuring that Section 4(1) of the RTI Act on proactive disclosure is implemented, thereby decreasing the need to submit RTI applications. The involvement of lawyers for human rights and the proactive strategy of the data committees involved can contribute to rapid intervention. Another excellent choice is a helpline for RTI users involving information commissions and civil society organizations. RTI users should take precautions by involving the entire community in their work, keeping civil society organizations and media people in the loop, and releasing the information obtained to the public at the earliest opportunity.

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¹⁴ Geetanjali Krishna, Whistle-blowers vulnerable to threats and murder four years after WPB Act, New Delhi, April 24, 2018, (Sept. 25, 2020, 11:12PM), https://www.business-standard.com/article/economy-policy/whistle-blowers-vulnerable-to-threats-and-murder-four-years-after-wpb-act-118042301266_1.html.

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