

Collateral Damage: An Urgent Need for Legal Apparatus for Protection of the Whistleblowers & RTI Activists

Dr. Devakumar Jacob,
Asst. Prof. LNG College, Ponneri, Tamil Nadu

Abstract: *Culture of secrecy resulted in fertile growth of corruption. In face of 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. It has been realized by most of the countries that greater access of the citizens to information enhances the responsiveness of government to community needs. In turn, this facility provides a platform of public grievances and thus improves feeling of goodwill towards the government. Under such circumstances, public and various NGOs demanded greater access to the information held by public authorities. The government approved to their demand by enacting RTI Act, 2005.*

Union Cabinet, on the 9th Aug 2011, cleared the bill for whistleblower protection. This bill will entail protecting the whistleblowers & punishing those who expose the identity of people disclosing information based upon public requests. This will provide Central Vigilance Commission same powers as that of a civil court to hand down severe punishments to people revealing identity of whistleblowers. The CVC will be empowered to take action against those who reveal the identity of whistleblowers or those who threaten the whistleblowers while those who make frivolous complaints will also be liable to punishment. Aim: The main objective of the bill is to safeguard those exposing corruption or malpractice by public servants. The broader goal is to initiate public participation to help keep corruption in check. Why it's important: The bill, if approved, would serve as the country's first law to protect whistleblower. In recent years, incidents of harassment, intimidation and violence have been reported by whistleblowers across the country. This has discouraged citizens from speaking out against wrongdoing in the public sector. In 2003, a public servant was shot and killed after denouncing allegedly unlawful dealings in a national highways' project. This paper indicates there is need to restructure the existing legal acts for protection of RTI activist.

Key words: *Collateral Damage, Corruption, Right to Information, Whistle blowers and Central Vigilance Commission,*

I. Introduction

"Silence of Good men is more Dangerous than the Brutality of bad men" - Martin Luther King

Access to information to the people was not easy until RTI Act-2005 is implemented. Lack of information denied for people to realize their socio – economic aspirations, because they had no basis to participate in the debate or question the decision making process even if it was harming them. Official Secret Act, 1923 acted as a relic of colonial rule covering everything in secrecy. The common people did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons responsible for policy formation to power and contribution towards the financing of huge costs of public activities were denied access to the relevant information.

This culture of secrecy resulted in fertile growth of corruption. In face of 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.¹ It has been realized by most of the countries that greater access of the citizens to information enhances the responsiveness of government to community needs. In turn, this facility provides a platform of public grievances and thus improves feeling of goodwill towards the government. Under such circumstances, public and various NGOs demanded greater access to the information held by public authorities. The government approved to their demand by enacting RTI Act, 2005.

Information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Fighting corruption which has been a major anxiety for our country for many decades has answer potentially in the hands of RTI.

This can be achieved by growth of a comprehensive information management system and by the promotion of information literacy among the citizens. This will positively lead to ultimate recognition of the objectives of RTI viz. transparency and accountability. It is therefore, rather safe to affirm that RTI is a means as well as end to attain democracy in its real meaning.²

Corruption is the cancer of public life today. There is a universal growing recognition that corruption is anti-economic development, anti-poor and anti-national. At last there are some systematic efforts being made to tackle the issue of corruption. The directive by the Supreme Court that candidates standing for election will have to declare details of their criminal record, their wealth and educational qualification has injected an element of transparency in public life. The passing of the Right to Information Act is hailed as a major step to empowering civil society and making the government more accountable. Sunshine is the antidote for corruption and the more transparent public organizations become, there will be lesser scope for corruption. Equally important is the role played by people within a corrupt organisation in exposing corruption. These people are taking a great risk by exposing corruption in their organisations. Satyendra Dubey's name comes to mind. He was a sincere whistleblower in the National Highways Authority of India (NHAI) and had sacrificed his life. This moved the Supreme Court to issue a direction to the CVC to protect whistleblowers.³ The National Campaign for People's Right to Information, the organisation that played pivotal role in the movement for the RTI Act, demanded speedy passage of the Whistleblowers' Protection Bill 2011. The landmark Right to Information Act, passed by the Parliament in 2005, aimed at making the system of governance more transparent. But RTI applications by zealous activists have time and again unearthed a can of worms and exposed the deep-rooted corruption and rot in our system. The unexplained deaths of RTI activists and whistleblowers prove that the RTI Act has threatened many powerful, unscrupulous powers that be. In the last half a decade, many RTI activists have died; as many as eight to ten have been killed in a year.⁴ RTI activists claim that the government has not done enough to protect them.

1-2 Satyendra Dubey brave Whistleblower

The term 'whistle blowing' is a relatively recent entry into the public lexicon. The overriding public interest may lie in protecting the public's right to be told, and the whistleblower's right not to be punished for doing so. The term 'whistle-blowing' is a relatively recent entry into the vocabulary of public and corporate affairs, although the phenomenon itself is not new. It refers to the process by which insiders go public with their claims of malpractices by, or within, organisations - usually after failing to remedy the matters from the inside, and often at great personal risk to them. Sometimes the cost of such valiant efforts is just too high to pay. Satyendra Dubey, was one of those rare young men who was completely and uncomplicatedly honest. He didn't know he was a hero. An engineer from Indian Institute of Technology, Kanpur and working for National Highway Authority of India probably never knew the word but died for simply doing the right thing.⁵ He was gunned down by the mafia at Gaya, early on November 27, 2003 morning nearly a year after he had complained about the corruption on the Golden Quadrilateral project to the Prime Minister's office. Knowing the dangers that surround honest people bucking the whole corrupt system, in his letter, Dubey had requested that his name be kept secret, a request that wasn't honoured-the letter was sent from the PMO to the Ministry of Road, Transport and Highways and then to the National Highway Authority of India, with which Dubey was working as Deputy General Manager. His death speaks volumes about the growing nexus between politicians and mafia and also highlights the illegal procedures ways involved in awarding contracts and also the allegedly fraudulent pre-qualification bids in connection to big development projects.

India has passed a federal Freedom of Information Bill in 2003 however it did not have a Whistleblowers Act recommended by the Constitution Review Commission in 2002. Moreover a draft bill on public disclosures recommended by the Law Commission lies in cold storage. Satyendra Dubey's death merits attention and a subsequent Public Interest Litigation urges the Supreme Court to direct the Centre to evolve a system to ensure protection to anybody who complains to the Government against corruption.

Yet another person has paid with his life for speaking up against corruption. Manjunath Shanmugam, a young manager with Indian Oil Corporation (IOC) and an IIM graduate, was shot dead on November 19, 2005 for drawing attention to irregularities in the quality of fuel being marketed in some petrol pumps. Manjunath had ordered the closure of an IOC petrol pump in Lakhimpur Kheri in UP for selling adulterated fuel. Samples of fuel from the pump indicated adulteration. It appears that the owners of the petrol pump decided to act before more of their illegal activities were exposed. They had him shot dead. Manjunath is said to have ordered the shutdown of two other IOC dealer's petrol pumps in Lakhimpur for adulteration of fuel.⁶ The IOC has demanded security for its employees. It appears that employees of fuel marketing companies in the country have to battle a fuel adulteration mafia that presides over a multi-crore business. Those who simply do their duty and speak up against adulteration are living in terror. Some like Manjunath are silenced forever. The issues that Manjunath's murder raises are not confined to IOC employees alone. There are thousands of honest people in

this country who draw attention to financial and other irregularities in the system and end up paying dearly for this.

Corruption exists all over the region and thrives at all layers of government. Officers who refuse to enter the bandwagon are victimized. In India, the Tehelka expose involving defense deals had not only victimized the reporters involved in the undercover operation but also harassed virtually anybody associated with the portal. In this case, the owner of the Global capital who owned a share in the portal was imprisoned without any concrete charges framed against him. All this was due to the fact that the expose had caught some of the high ups in the ruling coalition taking bribes on camera! More recently, the Labour Government in England had found a scapegoat in Dr David Kelly who was considered a 'mole' in the Ministry of Defense in order to draw public attention away from the Iraq war. He was named as the source of a disputed BBC report claiming the Downing Street had "sexed up" evidence of Iraqi weapons of mass destruction so as to drive the country into the war with Iraq.⁷

The need and urgency of a whistle blowing act cannot be overemphasized even as Satyendra Dubey's and Manjunath death sparked off widespread public protest. Both in unlettered societies with meager resources as also in the developed world, there is an urgent need both for access to information by the public along with an act that would provide protection to all those who blew the whistle. It is time that the authorities took cognizance of the fact that money associated with development works that usually comes from the tax payers pocket lands up in corrupt hands. In the process development takes the back seat. India cannot afford to lose its money nor its resources.⁸ The real heroes of today's world are honest people. They are few and far between. They are the ones society is longing to follow. But everywhere it sees them fail. Yet the world and developing countries especially cannot afford to lose its honest officers who stand up against all odds and risk their lives. It is time the government thinks about cleaning its system by providing protection to all those ordinary people who dares to bare open facts and has a stake at country's future.

Mere assurance from the Prime Minister that the guilty wouldn't be spared is not enough either to the citizens. If the government really means business it has to go about demonstrating that there are systems in place for good people to rely on. We need a fast and efficient judiciary to handover judgments in fair and impartial manner with or without political and social pressure,

II. Collateral Damage: Snap Shot Of The Martyrs Of The RTI Activists & Whistle Blowers

| S.N | Name Activists | Reason For Murder | Place/State | Govt. response |
|-----|---------------------------------|---|--------------|----------------|
| 1 | Sri Amit Jethava | environmental forest issue exposed | Bengal | No action |
| 2 | Sathish shetty | land scams exposed | Pune | No action |
| 3 | Lakhyajit Deka | PDS Fraud exposed | UP | No action |
| 4 | Maj Gen VK Singh | PWD Fraud exposed | Ap | No action |
| 5 | Sri Manoranjan Kumar, IES | fight against corrupt in Shipping Ministry | Gujarat | No action |
| 6 | Lieutenant colonel Akash Sachan | substandard equipment supplied to the Indian Army | Delhi | No action |
| 7 | Muneesh | Bribe Home guards. | Andhra | No action |
| 8 | Bidhu Bhushan Dvivedi | misappropriation of accounts (AHD) | Bihar | No action |
| 9 | Lalit mehta | NREG fraud exposed | Maharastra | No action |
| 10 | Kameshwar yadav | NREG fraud exposed | Jharkhand | No action |
| 11 | Arun sawant | civic issues exposed | Maharashtra, | No action |
| 12 | Ramdas ghadegavka | sand mafia exposed | Mahatashtra | No action |
| 13 | Amit jethwa | Illegal mining exposed | Gujarat. | No action |
| 14 | Datta patil | Illegal horse trading | Maharashtra | No action |
| 15 | Murugan | Illegal pulse trade exposed | TamilNadu | No action |
| 16 | Ashok kumar shinde | PWD scam exposed | Bombay | No action |
| 17 | Anwar Shaikh | land transfer exposed | Bombay | No action |
| 18 | Jayashree | Corruption exposed | Maharashtra | No action |
| 19 | Udaybhan singh | paid toilets scam | Delhi | No action |
| 20 | Niyamat Ansari | NREG fraud exposed | Odisha | No action |
| 21 | Saseendran and his two sons | Malabar Cements ltd fraud exposed | Kerala | No action |
| 22 | Mahabir singh | Pension money fraud | Rajasthan | No action |
| 23 | Shehla Masood | animal deaths exposed | Bhopal | No action |
| 24 | Nadeem sayed | Naroda Patiya massacre exposed | Gujarat | No action |
| 25 | Mano Sundhar | Sand scam exposed | TamilNadu | No action |

and a clean and unbiased police that will come to the aid of those working on the right side of the law; we also need public knowledge about the constitution and rule of law; and laws that will encourage people in both urban and rural areas to come forward without any fear to usher in an era of transparency, accountability

and participation in the governance of the country. We need a system, a society where a person can do its duty without fear and the head held high. If the government really intends to deliver such a nation, then it is time the government pulled up its sleeves and makes concrete efforts to pass a whistleblowers act.⁹ It follows that no measure to curb government and corporate transgressions in India or elsewhere will bear fruit unless legal immunity and protection against retaliation is given to responsible and conscientious whistle blowing.

2-2 Number of Whistle blower complaints under 2004 resolution

| S.no | Year | No. Cases | CVC response |
|------|------|-----------|--------------|
| 1 | 2005 | 412 | * |
| 2 | 2006 | 338 | * |
| 3 | 2007 | 328 | * |
| 4 | 2008 | 320 | * |
| 5 | 2009 | 340 | * |
| 6 | 2010 | 400 | * |
| 7 | 2011 | 390 | * |
| 8 | 2012 | 401 | * |
| 9 | 2013 | 460 | * |

*-Corrective action recommended

Sources: Annual Reports of Central Vigilance Commission

2-3 Women Whistleblower assaulted; no case registered

The wife of Mr K.D. Bakshi, a retired IAF official, who blew the lid off blocking of a nullah passing through Vikas Nagar located along the Zirakpur-Kalka highway by certain persons, was allegedly assaulted by at least 10 persons. Ms Chandra Kanta Bakshi (60) was pushed around and abused by the assailants around 11.30 am when she was alone at her home. "Hurling abuses, they barged into the house and caught hold of her hair. However, when she raised the alarm, they fled seeing people gathering at her house," Mr Bakshi was away to Yamunanagar on a personal visit. The assailants, it seemed, were angered by Mr Bakshi's complaint to the Zirakpur Nagar Panchayat that certain residents of the area had blocked the natural flow of the nullah.¹⁰ The blockage of the nullah would prove to be detrimental to the houses during the monsoon; it was feared in the representation by Mr Bakshi. Acting on the complaint of Mr Bakshi, the civic body staff today cleared the nullah by removing encroachments on public land. There were 18 women whistle blowers were targeted and threatened. Two of them were shot dead

The blockade of the natural flow of the nullah was viewed seriously by the civic body following which the civic body initiated the action. This action of the municipality seemed to lead the assault on Ms Bakshi by the assailants. The Bakshi live alone at their house here. Their son, Maj V.K. Bakshi, who was posted at Nasik, told Chandigarh Tribune over the telephone that the attack on his mother was a serious matter and the police should pursue the case to its logical conclusion. "In fact, my father had acted in public interest and if whistleblowers are targeted by anti-social elements in this manner, then no right-thinking person would come forward to expose their wrongdoings," he said, demanding police protection for his family. Meanwhile, the Dera Bassi DSP, Mr Varinder Brar, while promising action against the guilty, said the police was investigating the matter. However, no case has been registered yet.

III. Worst Places In The Country Under Attack For Using Sunshine Law

The recent murder of a young Right to Information activists from Bhiwandi was no aberration for a state that has been highest number of attack on RTI activists. Data gleaned by the Commonwealth Human Rights Initiative CHRI shows Maharashtra has seen 53 attacks on RTI activists, including 9 murders, since the acts debut in 2005. Gujarat comes second with 34 attacks on RTI activists, including three murders, Delhi, Bihar, UP, Haryana Andhra Pradesh, and Karnataka follow with over 10 attacks on RTI activists during the last eight years.

The data points to 251 cases nationwide of people being attacked, murdered, harassed or having their property damaged because of the information they sought under RTI. The data through up 32 alleged murders and two suicides that were directly linked with RTI applications filed. While there is no official countrywide data on the number of people who file RTI application, or the number of activists assaulted in India. CHRI used publically available data to gather the information. The organization has appealed to the public to send additional data on attacks on RTI activists that have not made it to the English media and are unreachable on the web. CHRI built on data initially collected by Nachilet Udupa of the National Campaign for People's Right to Information. Available data shows that Maharashtra receives the highest number of RTI applications every year and so it is statistically possible that the number of attacks are higher in the state, said Venkatesh Nayak of CHRI, adding that there is no data available on the number of RTI applications filed in UP. It is possible that being a largely Hindi speaking state, attacks on RTI activists may be covered in local language papers which are accessible over the internet, he added.¹¹ As for the large number of assaults in Gujarat, Nayaks says this

challenge the establishments' view of good governance in the state. While Maharashtra chief information Commissioner Ratakar Gaikwad points to the large number of appeals under the RTI act that the state receives, virtually equal lent to the number received by central information commissions, he added that the number of attacks on RTI activists is unacceptable for a state like Maharashtra. He sought plaise protection for RTI activists under threat.

3-2 Media Reports on assault, murder on RTI & Whistle blower activists

| S.no | Year | State | Assault | murder | State response |
|------|---------|----------------|---------|--------|----------------|
| 1 | 2005-13 | Maharastra | 53 | 10 | Action pending |
| 2 | 2005-13 | Gujarat | 34 | 3 | Action pending |
| 3 | 2005-13 | Andhra Pradesh | 25 | 2 | Action pending |
| 4 | 2005-13 | Bihar | 30 | NA | Action pending |
| 5 | 2005-13 | Delhi | 28 | NA | Action pending |
| 6 | 2005-13 | UP | 38 | NA | Action pending |
| 7 | 2005-13 | Harayana | 25 | 1 | Action pending |
| 8 | 2005-13 | Karnataka | 22 | 1 | Action pending |
| 9 | 2005-13 | TamilNadu | 20 | 5 | Action pending |
| 10 | 2005-13 | Kerela | 18 | 2 | Action pending |

Sources: Sunday Times of India English Daily Chennai Edition dated on December 22, 2013

3-3 Encourage Whistle blowing and need for Whistle blower protection act

The Veerappa Moily Commission on Administrative Reforms II has recommended the system of whistleblowers. It advocates that an honest and conscientious public servant, privy to information relating to gross corruption, abuse of authority or grave injustice, should be encouraged to disclose it in public interest without fear of retribution¹¹ In conjunction with the Right to Information Act, a Whistleblowers Protection Act can indeed be a potent tool for promoting good and transparent governance in the country.

Endorsing the right to information as a fundamental right flowing from Article 19(1)(a) of the Constitution, Chief Justice Y K Sabharwal has emphasised that 'public accountability' is a facet of administrative efficiency, information serving as an instrument for the oversight of citizens. He has stoutly pleaded for the enactment of the whistleblower law on the basis of the draft bill suggested by the Law Commission. In its Report No 179 in 2001, the Law Commission favoured a whistleblowers law, called Public Interest Disclosure (Protection) Act.¹² All that has so far been done in the country is a pusillanimous notification issued by government at the instance of Supreme Court, following the case of Dubey killed in Bihar for highlighting corruption in NHAI. The vigilance commissioner was designated as the authority to receive complaints about corruption and mismanagement in government.

India needs to enact severe law to join an elite club of just four democracies [USA, UK, Australia and New Zealand] which have whistleblower protection. These democracies have not had these laws in place for too long. The US had its law in place only in 1989 and the other countries have followed after that. K Ashok Vardhan Shetty has written a fine review [in the Hindu] of the role whistleblowers have played in improving transparency in governments. He suggests that "Daniel Ellsberg of the USA would easily be the patron saint of modern day whistleblowers. In 1971, Ellsberg released the so-called Pentagon Papers that blew the cover of successive US governments that went about creating the mess called the Vietnam War". Ellsberg was a war veteran and later as an analyst at Rand Corporation had access to sensitive, classified documents. Stung by his conscience Ellsberg leaked these to the public.

He had to pay a heavy price, recounts Shetty: "The U.S. Government responded by prosecuting Ellsberg on 12 charges, leading to a total sentence of 115 years if convicted. That was not all. The dirty tricks department at the Nixon White House launched a smear campaign against Ellsberg; engaged the Watergate burglars to break into his psychiatrist's office in the hope of finding something defamatory; tapped his telephones; engaged thugs to physically attack him; and tried to influence the trial judge with the offer of the post of FBI Director.¹³ When these plots were exposed, the judge had to abandon the trial and acquit Ellsberg. Nixon's machinations against Ellsberg formed the basis of two of the three articles of impeachment against him."

The purpose of this rather long-winded narration of what happened to Ellsberg is to give heart to Indians. All this happened just some 30 years ago in a USA that today stands on high moral ground and lectures the world. A 63 year-old Indian democracy need not despair too much. There is already a right to information law in place. Between that, and an emerging whistleblower law, citizens may hope for greater accountability and better governance in India. Shetty says "both laws work best in tandem". He says that 'with the right to

information act, 'Users would have to specify what they wanted to know. But where there is no reason to suspect that something is amiss, no one may bother to ask.' But whistleblowers could pre-empt disasters". He says, 'Without whistleblowers, we may not get to learn about problems until it is time to mourn the consequences.' A great responsibility is therefore, about to devolve on individual Indians. We are notorious for pointing fingers, plead helplessness and acquire a collective alibi for 'us ordinary, powerless people'. Indians must now quit this hand-wringing and organise themselves into groups and enter an activist mode.

3-4 Worldwide comparison of whistle blowing laws

| laws | Definition of disclosure | Authority | Protection |
|---------------------|--|--|--|
| US | Violation of laws, gross mismanagement, waste of funds and abuse of authority | Office of Special Counsel or Office of Inspector General | Allow anonymous complaints. Protect employees from victimisation in appointment, Promotion, transfer, or pay. |
| UK | Crimes, civil offences (including negligence), miscarriages of justice, dangers to health and safety of the environment | Employer, any prescribed persons, police, media or MP | Allow anonymous complaints. Employment tribunal decides compensation if victimised by unfair dismissal or denial of promotion. |
| Canada | Serious wrongdoing such as violation of law, misuse of public funds, gross mismanagement. | Supervisor or Public Sector Integrity Commissioner | Allow anonymous complaints. Has protection from reprisals (disciplinary measure, demotion, termination). |
| South Africa | Criminal offence, failure to comply with legal obligations, miscarriage of justice, endangering health and safety of individuals, damaging environment, unfair discrimination. | Various authorities such as legal adviser, employer, Cabinet member, and any prescribed person | Right to approach court, including Labour court if subjected to occupational detriment (disciplinary action, dismissal, suspension, demotion, transfer, no reference |
| Australia | Breach of Code of Conduct (be honest, comply with all laws, no improper use of inside information) | Public Service Commissioner, Merit Protection Commissioner, Agency Head | Protection against victimisation and discrimination |
| Ghana | Impropriety such as economic crime, non-compliance of a law, likely to break the law, miscarriage of justice, mismanagement or waste of public resources. | Various authorities such as employer, police, MP, Commission on Human Rights, President | Allow oral or written complaints. Has right to bring action to High Court for victimisation (dismissal, suspension, transfer, harassment) |

Sources: **US:** Whistleblower Protection Act, 1989; **UK:** Public Interest Disclosure Act, 1998; **Canada:** Public Servants Disclosure Protection Act, 2004; **South Africa:** Protected Disclosure Act, 2000; **Australia:** Public Service Act, 1999; **Ghana:** Whistleblower Act, 2006 and PRS Legislative research

Different countries protect whistleblowers in different ways. Some allow multiple agencies to receive complaints, some allow anonymous complaints, and some define victimisation and provide protection against it.

IV. Whistleblower Protection Bill

Union Cabinet, on the 9th Aug 2011, cleared the bill for whistleblower protection. This bill will entail protecting the whistleblowers & punishing those who expose the identity of people disclosing information based upon public requests. This will provide Central Vigilance Commission same powers as that of a civil court to hand down severe punishments to people revealing identity of whistleblowers.¹⁴ The CVC will be empowered to take action against those who reveal the identity of whistleblowers or those who threaten the whistleblowers while those who make frivolous complaints will also be liable to punishment. Aim: The main objective of the bill is to safeguard those exposing corruption or malpractice by public servants. The broader goal is to initiate public participation to help keep corruption in check. Why it's important: The bill, if approved, would serve as the country's first law to protect whistleblower. In recent years, incidents of harassment, intimidation and violence have been reported by whistleblowers across the country. This has discouraged citizens from speaking out against wrongdoing in the public sector. In 2003, a public servant was shot and killed after denouncing allegedly unlawful dealings in a national highways' project. Earlier this year, a state official in Karnataka was murdered after he exposed irregularities in land allotment.

If implemented, the bill would create a legal framework to investigate and prosecute cases of corruption involving government officials. On top of that, the bill would empower the Central Vigilance Commission, an autonomous body appointed to check corruption, to guarantee police protection to whistleblowers if deemed necessary who it affects: Anyone who fears retaliation can seek protection under the bill. All government employees except those serving in the northern state of Jammu and Kashmir, in the armed

forces and in the Prime Minister's Office, can be investigated on allegations of corruption under the bill. What does it change? If approved, the bill would replace a 2004 resolution which empowers the CVC to receive, investigate and act on complaints filed by whistleblowers. The absence of a protection clause, however, discouraged several from acting against the government.¹⁵ From 2005 to 2008, the CVC received only a few hundred complaints each year, government data indicates. Lawmakers believe that a protection clause, as introduced under the Whistleblowers Bill, would encourage citizens to speak out against the bureaucracy.

While the bill vows to act against those "victimizing" complainants, it doesn't outline penalties or punishments for federal officials found guilty of doing so. Moreover, unlike in the U.S. or the U.K., India's whistleblower bill fails to define key terms like victimization, allowing plenty of room for interpretation and subsequent misuse of the proposed law. Another major loophole, say experts, is the inability to file complaints anonymously. Though the bill strongly recommends that the identity of the complainant be concealed, it permits the CVC, under certain circumstances, to disclose the complainants' identity to the head of the government department under scrutiny. This, argue activists, would discourage citizens from filing complaints. Some critics have also raised concerns over fines and punishments imposed on whistleblowers if their allegations are proven false. They argue such complaints could have been made in good faith but with poor information. Several legal experts have also noted that the proposed law doesn't hold the CVC accountable for delayed response to a complaint or for failing to act altogether. What next? The bill, formerly called "The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill," was approved by the Lok Sabha or lower house of Parliament in December last year, and is expected to be discussed in Rajya Sabha, the upper house, in the session that started Thursday. Though it was cleared from Loksabha during the 2011 monsoon session & is still pending with the Upper House Rajyasabha since Mar 2012 for approval & be enacted into Law.¹⁶

It is to observe that there some deficiency on Victimisation: (a) The Bill does not define what constitutes victimisation. (b) There is no penalty against the public servant who may be victimising the complainant. (c) This Bill does not provide for witness protection programme to protect witnesses during investigation and trial. The Law Commission has recommended guidelines for witness identity protection. Countries such as the US, Canada, Australia, Germany, Italy and South Africa have witness protection programmes. The Vigilance Commission may reveal the identity of the complainant in certain circumstances (which may lead to victimisation) but the Bill does not provide for any penalty for victimising a complainant. However, a complainant may be penalized with imprisonment and a fine for making false complaints. This was recommended by the Law Commission report² and the Cabinet Note stated that the Bill aimed to protect honest officials. Such provisions may deter persons from making a disclosure to the Vigilance Commission.

4-2 Comparison of the Law Commission Report and the Bill

| | Law Commission of India | Bill |
|--------------------------------------|--|---|
| Scope | Disclosure can be against Minister and public servant. | Disclosure can be only against public servant. |
| Definitions | Defines disclosure as a complaint against abuse or misuse of power; commission of an offence under any law; or mal-administration | Defines disclosure as a complaint against a public servant on commission of an offence under the Prevention of Corruption Act, 1988 or misuse of power leading to demonstrable loss to the government or gain to the public servant; or a criminal offence. |
| Disclosure of Identity | Defines victimisation. The name of person making the disclosure shall be revealed to the public servant unless the complainant requests that his identity be kept hidden or it is necessary in public interest. | No definition. The Vigilance Commission shall not reveal the identity of the complainant to the head of the organisation except if it is of the opinion that it is necessary to do so. |
| Powers of Competent Authority | The Competent Authority has the power to direct the appropriate authority to initiate criminal proceedings against the guilty official. | The Vigilance Commission has the power to recommend measures such as initiating proceedings and taking steps to redress the loss to the government. |
| Time limit | The Competent Authority has to complete the inquiry within 6 months to 2 years after receiving the complaint. | No time limit prescribed for discreet inquiry. Time limit for explanation to be given by the concerned head of department shall be prescribed. |
| Burden of proof | In case a complainant is victimised the burden of proof is on the employer or public servant who is accused of victimisation. | No provision. |
| Penalty | Penalty for false complaints is imprisonment upto 3 years and fine of upto Rs 50,000. | Penalty for false complaints is imprisonment upto 2 years and fine of upto Rs 30,000. |

Sources: 179th Law Commission Report, Bill 2010, PRS. Legislative Research

In December 2001, the 179th report of the Law Commission of India examined the issue of whistleblowing and made certain recommendations. The scope of these recommendations were wider than in the current

Bill, as they included ministers within the purview, provided powers to the Authority to initiate criminal proceedings, and fixed a time limit.

4-3 Comparison of the ARC Report and 2010 Bill

| | R report of Second ARC | Bill |
|----------------------------------|--|--|
| Identity Protection | Whistleblowers should be protected by ensuring confidentiality and anonymity. | Makes provision to ensure confidentiality but does not allow anonymous complaints. |
| Private sector | Should cover corporate whistleblowers unearthing fraud or serious damage to public interest. | Not covered in this Bill. The Companies Bill, 2009 addresses this issue. |
| Penalty for Victimization | Acts of harassment or victimization of or retaliation against a whistleblower should be criminal offences with substantial penalty and sentence. | No penalty for victimisation. |

Sources: "Ethics in Governance," Fourth Report of the Second Administrative Reforms Commission, Bill 2010, PRS. Legislative Research

In 2007, the 2nd Administrative Reforms Commission (ARC) made certain recommendations related to whistle-blowing, which have not been incorporated in the Bill. It included acts of whistle-blowing in the private sector and prescribed penalties for victimising complainants.¹⁷ The issue of the private sector is now addressed by the Companies Bill, 2009.

4-4 National RTI Awards 2010

National RTI awards are given to those among many RTI activists whose acts have brought powerful impact within the system & at times, even shook the respective governments to order further inquiries, to uncover the corruption. The awards were decided by a jury of Narayana Murthy, Justice JS Verma, Madhu Trehan, JM Lyngdoh & Sanjay Gupta. Outlook Assistant Editor Saikat Dutta has won the best RTI Journalist award for un-earthing the Rice Export scam worth almost Rs 2500 Crores.¹⁸ Investigation is now with CBI. Best Citizen RTI awards winners are Vinita Kamte, Manoj Kumar Karwasra, Ramesh Kumar, Athar Shamsi & Rajan Savlo. Manoj Kumar won the award basis the RTI regarding illegal activities being done by the panchayat in his village. Government land encroached by the panchayat members themselves. This led to the removal of all village panchayat & even filing of cases against them by the Haryana government.

Ramesh Kumar exposed the sub standard medicines that were being provided by the government hospitals to the poor people. In some cases the medicines were not even tested before being fed. As a result the Haryana government has now issued notice not to buy medicines from companies with less than a formidable sum & also testing has been made mandatory. Athar Shamsi fought for the cause of beedi workers in Uttar Pradesh. As against the minimum wage of Rs 60 per 1000 beedi production, the poor workers were being given only in the range of Rs 20-30 by the manufacturer in connivance with the government officials. His effort helped to increase the wages to Rs 52 / 1000 beedi production. Rajan Salvo started his crusade against the illegal registration of Indian land in the name of foreigners in Goa.¹⁹ This is illegal as per the FEMA. As a result of this the government has now given stern warning to the registrars not to do any land registry in foreigners' name. Though some RTI activists were given honour by giving award still there life is under threat. Many were afraid of their life because they were not guaranteed by the court of law or by the police. Their children and relatives were counting their days with fear. There were 251 people have allegedly been attacked, physically or mentally harassed, murdered or made to suffer damage to property for using RTI Act. There were 32 alleged murders can be directly linked to victims use of RTI. And also two alleged suicides directly linked to victims' use of RTI. Cases of assault of varying degrees and mental and physical harassment come around 214. It is to be ashamed that 18 young whistleblowers were assaulted. Most of the whistleblowers and RTI activists who faced violence were attacked once, but Amarnath Pandey from UP and Ramesh Agarwal from Chhattisgarh were attacked twice.

V. Conclusion

The world over, country after democratic country, has recognized the need to keep their citizens informed about the way Government takes decisions. In our country we have the Right to Information Act for nearly eight years. The spirit of the Act can be best summarized by stating that without informed citizens there is no clean governance. It recognizes that citizens are the masters and servants cannot deny information to their masters. In fact, servants acts as trustees and hold the information belonging to their masters. But for almost six decades, the servants behaved like masters and the masters simply accepted this treatment. Rampant corruption prevailing in the country forced the lawmakers to understand that there is no way the country can become better without the servants favouring good governance. Under these circumstances, the preamble of the Right to Information Act highlights way to contain corruption, improve transparency and make servants accountable by empowering citizens to get information.

It lays down the foundation for a better tomorrow. In fact, every citizen who is the master has now the same power to obtain information which only the legislators had so far. This single aspect alone should create a new group of people who will demand good governance. This tool should help the poorest. To help the poorest requires attacking corruption at its root. The RTI Act is sufficiently strong in its present form to even attack the roots of corruption. There will forever be corruption at the lower levels as long as its seeds are sown at the highest level. The RTI Act can be used to expose these seeds of corruption which in turn can curb corruption at the lower levels. Similarly RTI activists are helping in the form of whistle blowing to the government to have clean and good governance.

Today, in addition to this RTI Act, we have the benefit of internet. Also most of the youth today do not bribe to get jobs. Even if a small number of such people who can handle technology effectively are motivated to fight corruption it can do wonders. The RTI Activists and internet can really bring in the real freedom to everybody. RTI Act recognizes that information held in any form should be made available to citizens. In fact, samples of materials used also come under the definition of information. Overriding all other facts, the RTI Act allows information pertaining to third parties to be given to the citizen even if prohibited by the earlier Acts. The only requirement is that the information sought should be in public interest. As far as information held by the Government including personal information, the Act allows one to get such information without even giving any reason as to why you need that information. The RTI Act not only helps the citizens but also the whistle-blower and to recognize whether a particular person is a genuine whistle-blower or not, all one has to do is see files handled by him earlier. In this way supporting a whistle-blower is a much easier task today. But as whistle-blowers do not announce their own activities, opinion of individuals should be collected and likely whistle-blower should be safeguarded. The very fact of preparation of a whistle-blower's list itself allows more information to come regarding whistle-blowers.

For many who indulge in corruption, giving up corrupt practices may be as difficult as giving up smoking for some. While a chronic smoker rejects counseling to give up smoking, a very corrupt person does not make efforts to give up his corrupt practices. Luckily, RTI is a tool which can expose and embarrass a corrupt person. The embarrassment should be so acute that he should feel shy to be seen in public. Unfortunately, today it is not happening. To start with we should recognize the honest and embarrass the corrupt. It is in this way that RTI has become a stick to beat the corrupt with. After the death of Dubey, whistleblowers still have no protection in this country. Manjunath's death could have been prevented had the government acted swiftly and enacted legislation. It did not. This is not an issue on which the government should be procrastinating. People with dreams of cleaning up a corrupt system are getting killed. Therefore special legal mechanism must be implemented to safeguard those whistleblowers and the RTI activists. The state may form special team to identify the RTI activists in the entire region accordingly it can evolve a special force to safeguard them so that those activists may continue their service to expose political nexus and corruption.

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