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RTI VIS A VIS WHISTLE-BLOWER- Tanisha Maheshwari & Yashvardhan Vats¹**ABSTRACT-**

Right to information was made legally enforceable in 2005, enabling and empowering citizens with the right to seek information strengthening the spirit and intention of a democratic polity. The purpose of this article is to describe the relation between Right to Information and Whistle-Blowers Act. It establishes the implied relation between the two. Covering who exactly comprises a whistle-blower and the evolution and inception of right to information act since the 1990's via organisations and campaigns. It emphasizes on Right to Information vis a vis whistle-blower i; e, how it is being used as a tool by a whistle-blower to garner data from any public authority expose information pertaining corruptive and fraudulent practices in the greater good of public. The article covers critical analysis of the whistle-blower act enacted for protection of their interests along with the loopholes and required amendments in the pending 2015 bill and some of the leading cases of instances of a whistle-blower losing his life merely for revealing wrong-doings within an organisation.

INTRODUCTION-

Information is an indispensable part of an individual. The very essence of any democratic setup lies in providing citizens with the right to garner information which forms the cornerstone of good governance. The fundamental rights enshrined in the Indian Constitution guarantee this right. Freedom of speech and expression impliedly incorporates the right to gather information and disseminate and propagate it. It is indisputably a part of article 19.

The right to information is a fundamental right guaranteed by the constitution to make the authorities responsible and liable. Empowering citizens to seek data from any open power or office advances straightforwardness and accountability. For efficient and transparent governance openness is of paramount importance.

When citizens are provided with well-furnished information, they hold the government

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answerable which in turn reinforces public confidence in the system, strengthens public participation, and results in the formulation of efficient policies.

The right to information is accessed by people called whistle-blowers to garner information to expose any corrupt or fraudulent practice that they encounter. Any information within an organization that is immoral, and corrupt towards the administration is revealed via them. Right to information provides a platform for seeking such information.

Right to information in relation to whistle-blowers becomes a powerful tool for exercising free speech and expression and promoting accountability. Bureaucratic practices can be highly corruptive which weakens the spirit of democracy.

HISTORY AND EVOLUTION-

The origin of the right to information can be traced way back to the 1990s. the movement initially started in the 1990s in the state of Rajasthan spearheaded by Aruna Roy.

MKSS acted as a catalyst spearheaded by three leading activists Nikhil Dey, Shankar Singh along with Aruna Roy. They initiated their journey in a small village Devdungri, inhabiting a hut like other people. The village incorporated all sorts of issues be it low literacy levels, degradation, drought proneness, low debt, or high debts.

MKSS used public hearings known as JAN SUNWAIS as a tool to make people comprehend the significance of information and combating corruption. They demanded transparency, redressal mechanisms, etc.²

NCPRI which stands for National Campaign for People's Right to Information led the struggle for the right to information in the late 1990s. Tamil Nadu in the year 1997 became the first state to have passed the Right to Information law. (Mittal, 2019)Manifold states including Goa, Tamil Nadu, and Rajasthan had passed laws for making the right to information enforceable³. Eventually, the Press Council of India prepared the first official draft legislation for the right to information. A person could seek any information from any public authority or department. There were a lot of deliberations and negotiations to legally enforce the right to furnish

²Harsh Mander, A. J. (n.d.). The Movement For Right To information In India. Retrieved <https://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf>

³ Mittal, V. (2019). RIGHT TO INFORMATION ACT 2005, A REVOLUTION. Retrieved from <https://cic.gov.in/sites/default/files/Vaibhav%20Mittal.pdf>

information to citizens. It ultimately paved the way for the Right to Information act 2002.

Owing to the weak nature of the freedom of information act 2002 there was a constant surge to strengthen as well as come up with more powerful freedom of information act. When the UPA government came into power in 2004 they set up CMP which had a mention RTI. Further National Advisory Council was set up for monitoring the implementation by CMP. A strengthened RTI draft bill was introduced finally leading to the right to information act 2005.

A person's right to seek information was limitless however certain constraints were imposed on furnishing specific categories of information by public authorities on the grounds of national security, sovereignty, etc.⁴

WHO IS A WHISTLE-BLOWER?

The term whistle-blowing can be defined as any practice which reveals any data which is not known by the general public, or any data if revealed to the person related to that data may face consequences. Usually, people belonging to an organization disclose the wrong-doings of their organization and choose the way of illegal practices to either earn money or to gain benefits.

A whistle-blower is anyone who reveals or uncovers any data or malpractice that he/she witnesses in an organization that either belongs to it or is connected to it in some other way. The identity of the whistle-blower is kept secret to ensure the protection of life. They tend to collect data from eclectic sources to the cumulate attraction of administration and provide data to the general public. RIGHT TO INFORMATION ACT (2005) serves as a vital tool in the hands of whistle-blowers. The act helps them to acquire important facts and data which can be released before the general public for the greater good. The fundamental aim is to bring change in society and to create social awareness amongst the masses. Albeit a whistle-blower can gather data via RTI but it may entail severe repercussions too such as identity disclosure which can be life-threatening since the authorities are at risk of legal charges being pressed against them. Referring to a recent case of a whistle-blower put allegations on a promoter of AMTEK AUTO of fraud of a whopping 12 thousand crore, he lodged a criminal complaint accusing fraud, cheating, and money laundering including corruption charges with bank officials too.⁵

⁴ Madhavan, E. S. (n.d.). Revisiting the making of India's Right to Information Act. Retrieved from https://cyber.harvard.edu/sites/cyber.harvard.edu/files/Publish_Sen%20Madhavan.pdf

⁵ Bose, S. (2022, May 26). Whistle-blower Accuses Amtek Auto for 12000 crore Fraud. Retrieved from <https://www.financialexpress.com/industry/whistleblower-accuses-amtek-auto-promoters-of-rs-12000-crore-fraud/2537904/>

While focusing on the other side the whistle-blower's safety and security are considered to be at risk after revealing the information and due to this, THE WHISTLE-BLOWER PROTECTION ACT was brought into force for securing the data and mitigating life risk. Whistle-blowers and RTI activists have big stakes when revealing information about officials whose reputations can be jeopardized. They in turn harm them either directly or indirectly by causing bodily harm or injury to their family members.

There's a paucity of privacy, and in no time their identity can be disclosed. They are attacked or killed for tarnishing the image of big businessmen or politicians. For instance, a whistle-blower named RAJINDER PRASAD SINGH hailing from Bihar was shot dead for revealing information regarding senior officials in police recruitment policy by the local government and health care policy which used unethical means to recruit police officials along with several other malpractices.

In view of such incidents, the whistle-blower protection act was enforced in 2014 which places the onus on the government to safeguard whistle-blower and protect them. It provides mandatory guidelines on how a whistle-blower's interests are to be shielded.⁶

ANALYSIS OF WHISTLE BLOWER'S ACT

The Whistle-blowers protection act was introduced in the year 2014. NCPRI- National Campaign for People's Right to Information stimulated the introduction of an act aimed at the protection of people who reveal wrong-doings, and corruption within the system. It demanded a legislative framework for the protection of whistle-blowers. Such people blow whistles on the malpractices at the cost of their and family members' lives. The act protects the interests of such whistle-blowers.

The bill was introduced in 2011 and passed by Rajya Sabha in the last session of the outgoing parliament in 2014 and received the president's assent. However, there is a strong demand for the introduction of certain key amendments in the provisions of the Whistle-Blower Protection Act 2014. These amendments would ensure a well-strengthened and robust mechanism in place for protection. Foremostly there shall be a proper and adequate definition of victimization, provisions ensuring appropriate protection to anyone who makes a complaint, and extent of

⁶ Malhotra, S. (2020, october 6). Right To Information And Protection Of Whistle-blowers. Retrieved from <https://blog.ipleaders.in/right-information-protection-whistleblowers/?amp=1>

imposition of penalty for the victimization of whistle-blower provided were a complainant or any known sustains injuries or loses life for disclosure of information immediate action shall be taken, framing an adequate time frame for the competent authority for acting on complaints, making a recommendation, etc, the act shall cover public servants as well as authorities and shouldn't provide for unnecessary exemptions on any grounds, the private section shall be incorporated within the scope of the bill since corruption within the private section can be a severe threat, protection under the act shall be extended to the person who is aiding the original complainant in providing information or documents, the competent authority shall not be empowered to dispose of a complaint on the grounds of being frivolous or vexatious and shall provide the reasons in writing for disclosure of a complaint, there shall be no limitation period for filing complaints, any anonymous complaint shall also be recognized and cognizance must be taken without disposing it on the mere grounds of being anonymous.

Before the bill was passed in 2014 these amendments were proposed however they couldn't be incorporated into the bill due to it being taken into consideration on the last day of the winter session of parliament.⁷ 2015 bill was introduced keeping in mind these amendments. The bill amends the act of 2014.

Fore-mostly, it prohibits disclosure of information coming within the ambit of ten restricted categories. 2013 bill proposed two of such categories which have now been extended to ten including information within a fiduciary relationship, endangering the safety of informants, and leading to the intrusion of privacy. The bill doesn't specify what the basic qualification requirement for a competent authority is. Such independence creates a risk of the competent authority being junior to a public servant. The 2014 whistle-blower act prohibits disclosure under the official secrets act however, the 2015 bill reverses this and permits disclosure prohibited under the official secrets act.⁸ Looking closely at the 2015 amendment bill firstly there is the dilution of law in the proposed provisional amendments. It was introduced in haste and has not been subjected to adequate deliberations and even shields the whistle-blower from prosecution under the official secrets act owing to which the essence and effectiveness of the

⁷WHISTLE-BLOWER PROTECTION ACT. (n.d.). Retrieved from <http://righttoinformation.info/whistleblowers-protection-act/>

⁸ THE WHISTLE-BLOWER PROTECTION AMENDMENT BILL,2015. (n.d.). Retrieved from <https://prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015>

act are being affected.⁹

RTI VIS A VIS WHISTLE BLOWER RTI

RTI plays a vital role when we discuss whistle-blowers. In our country information cannot be easily accessed, while garnering data regarding any government project one has to either go through the tedious process of inquiry or an alternative option introduced to ameliorate the situation the RTI act 2005. Under this, every individual has been entitled to the right to seek information pertaining to any governmental organization/department about its project or future planning subject to certain exceptions.¹⁰ There's no scope for clarification on the implied relation between RTI and whistle-blower. A whistle-blower uses RTI as an effective tool to gather data from authorities with the ulterior motive of revealing them to the general public. The whistle-blower act was established for the protection of people who use RTI to fetch data since they have life threats dangling upon their heads. By disclosing information that can put an end to the improper and fraudulent means of the authorities and administrative bodies a whistle-blower puts his life in grave danger. With the aim of curbing this issue, a whistle-blower bill was proposed in 2011 after an incident where an NHAI whistle-blower Satyendra Dubey took his life at the cost of being an honest person. In view of this incident, the Apex court ordered a central vigilance commission for safeguarding the interest of the whistle-blower such that no other person loses his life.

The National Campaign for People's Right to Information played a crucial role in the RTI act movement whereby they demanded enforcement of the whistle-blower protection bill 2011 and it to be passed swiftly.

The whistle-blower protection act is a Demonstration of the Parliament of India which gives a framework to look at confirmed debasement and maltreatment of force by local area laborers and secure any person who revealed claimed bad behaviour in government bodies, exercises, and working environments. The misbehavior might show up as distortion or contamination. The Demonstration was embraced by the Bureau of India as an element of a drive to kill pollution in the nation's organization and passed by the Lok Sabha on 27 December 2011. The Bill

⁹ Page, M. S. (2015, October 9). India: The Whistle-blower Protection Amendment Bill, 2015. Retrieved from <https://www.mondaq.com/india/whistleblowing/433216/the-whistleblowers-protection-amendment-bill-2015>

¹⁰ Malhotra, S. (2020, october 6). Right To Information And Protection Of Whistle-blowers. Retrieved from <https://blog.ipleaders.in/right-information-protection-whistleblowers/?amp=1>

transformed into a Demonstration when it was passed by the Rajya Sabha on 21 February 2014 and got the President's assent on 9 May 2014.¹

Anyway, in not a solitary organization, or partnership, or taxpayer-supported initiatives there is a secret component or informant strategy or system which can address letters of charges of extortion, debasement, and unfortunate behaviour set up to help informants in smooth disclosure which goes in demonstrating that no enterprises explicitly claimed by government needs to engage informants and on second thought they don't believe these individuals should come around and uncover the misbehaviours.

This shows the exceptionally moral stand taken by these huge substances that could do without the average person's cash (citizen). insights show that 62% of informants lost their positions, 18% moved or felt hassled, 11% grievance of diminished compensation, 22% revealed criminal examinations, and 11 were arraigned.¹¹

LEADING CASES-

CASE LAWS:

SATYENDRA DUBEY

The case acted as a base for the establishment of the whistle-blower act whereby the Apex Court ordered a central vigilance commission to ensure the safety and security of whistle-blowers. Satyendra Dubey, an honest NHAI engineer employed in highway building operations. He was appointed for a golden quadrilateral highway project. While working on the same he became acquainted with the malpractices by the senior officials in the process of granting tender. He pointed out the key issues and extracted further information on the same. He wrote a letter to PMO mentioning the corruption however instead of reaching the PMO it was transferred to the ministry of road transport and highways. The letter got further transferred to NHAI senior official and came into the hands of a senior official who appointed Satyendra as the project engineer. After this, he was not only pressurized but shot dead one day after the letter was disclosed.¹²

¹¹ Shah, H. (n.d.). The Need To empower RTI and Whistle-blower Act. Retrieved from <https://www.legalserviceindia.com/legal/article-550-the-need-to-empower-right-to-information-and-whistleblower-protection-act.html>

¹² PTI. (2010, March 27). Three Get Life Sentence, Satyendra Dubey Murder Case. Retrieved from <https://www.thehindu.com/news/national/Three-get-life-in-Satyendra-Dubey-murder-case/article16625349.ece>

SATISH SHETTY VS THE STATE OF KARNATAKA

The case of Satish Shetty had a very clear element to prove why the whistle-blowers were not safe and substantiate the need for the same. Satish Shetty used RTI to extract information about the land which was illegally grabbed by a Mumbai-based land developer IRB, the firm with the help of forged documents illegally grabbed a huge land that was kept aside by the government for the project of the Mumbai-Pune highway but illegitimate means, the land was taken over by IRB Builders. Satish Shetty became a whistle-blower after lodging a complaint against the IRB land developers however after 2.5 months when the complaint was filed, he was shot dead outside his house, the case went to CBI for investigation but later due to paucity of evidence the case was closed.¹³

CONCLUSION-

The leading cases apparently showcase the miserable condition of a whistle-blower and the mishaps one has to witness and the ordeal that a whistle-blower has to undergo for exposing corruption. It is known that such fraudulent practices are highly pervasive and the government had been perpetually reluctant to accept them.

The right to information has been enforced as a tool however it is unfortunate to witness instances of government turning a blind eye to individuals who access it to disclose wrongdoings in the interest of national security, sovereignty, and the democratic spirit of the nation.

The government has a moral and legal obligation towards the citizens to not only provide them with valuable information but also preserve the interests of those who aid and contribute to strengthening the democratic pillars of the country

¹³ Chaterjee, S. (2018, April 18). Satish Shetty Murder, Cbi files Closure Report after 7 years. Retrieved from <https://www.thehindu.com/news/national/other-states/satish-shetty-murder-cbi-files-closure-report-after-7-years/article23590596.ec>