

## **Right to Information and Good Governance**

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### **Lecture 73**

#### **Victimization and Misuse of Right to Information Act**

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## VICTIMIZATION & MISUSE OF RIGHT TO INFORMATION ACT

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Hi, this is Raghav and I work at the Centre for Environmental Law, Education, Research and Advocacy, National Law School of India University in Bangalore. In this video, I will try to explain about the various aspects of Victimization of the RTI users and also the authorities who are involved in providing access to Information to the citizens.

First let us try to understand the aspect of Victimization of the RTI users and in the second part of the video I will try to explain about the misuse of the provisions that are contained in the Right to Information Act before we proceed with the topic let me try to explain about the basics of the Right to Information Act.

As we all know, Right to Information Act is one of the recent enactments and it has become the backbone of our country this enactment is the one which is keeping the democracy alive because, it has provided for transparency and accountability the Right to Information Act has brought in a major change and this is brought in an era of transparency by curbing corrupt practices in various public offices at all levels be it at the state government, be it at the central government or be at the local governments.

We have seen or we would have heard of several news items about several, about several people getting killed or harassed. Well, the incidents of RTI users being harassed or killed has been reported from across the country and it is not just restricted to one particular area the increase in number of incidents of killing and harassment of the RTI users has been threatening the democratic fabric of our country, this democratic fabric has been enshrined as we all know in the Constitution of India.

It is definitely a matter of grave concern for the public-spirited citizens who are instrumental in exposing the corrupt practices and exposing the authorities as we all know the RTI Act came in the year 2005. Since then, harassment of the RTI users has been prevalent the issue of harassment of the RTI users has also been taken note of the central information commission, the high court, supreme court and even the central government.

Before jumping to the aspect of the victimization of RTI users, let me explain in brief about the Right to Information and the intended objective behind the legislation. The Right to Information Act before it came in the present form, we had the Freedom of Information Act which was in the year 2002. This was passed by the parliament but, for some reason it never saw the daylight and it did not it was never notified.

But, even before the Freedom of Information Act came into place, we had several states which had already enacted the laws granting the right to seek information many states including Goa, Tamil Nadu, Rajasthan, Karnataka, Madhya Pradesh, Maharashtra, Assam, Jammu Kashmir had already enacted these legislations way back in the year 1997-98 until 2002 but, the number of RTI users during this period was considerably less due to the lack of awareness and knowledge about the legislation.

Well, the aspect of Right to Information and that being the right has been enshrined in the Constitution of India and Supreme Court has also acknowledged this fact. In one of the cases the Supreme Court has recognized the Right to Information as a basic right for governance of a democratic country it was in the case of Raj Narain way back in the year 1975 and in the case of S.P. Gupta that is also famously known as Judges case in the year 1982 that the right to know was held as a right.

This specific right to know has been also recognized under Article 19(1)(a) which provides for freedom of speech and expression even though, this right comes with an extra exception that is the reasonable restriction most of the information has to be made available for the public to access disclosure of any information should not be an exception rather it should be the non for the government to follow.

The Right to Information Act as we all know is applicable to all three wings of the government that is it is applicable to the executive, it is applicable to the legislation as well as to the judiciary, the procedure to file an application under the Right to Information Act has been provided under Section-6 of the RTI Act where, any citizen can file an application seeking information from any authority.

Well, such authority is also duty bound to give the information. If in case the authority does not have the required information it has to be forwarded to the concerned authority to relay the information and there are certain specified duration within which the information has to be granted it can vary from 30 days to even 8 days before going into the topic let me raise a question here can you take a rough guess as to how many cases have been reported or registered for causing harassment or death of the RTI users?

Take a rough guess. Well even though, the data about the number of deaths are not clear but on a rough estimate based on the reports of the newspaper and various other agencies which means the independent organizations which includes the non-government organizations more than 500 cases come across and approximately 100 deaths throughout the country. RTI users have sacrificed their lives only because they have sought information.

Yes of course, it is absurd when we think of the scenario where people are losing their life for asking questions is that how a democracy should function these cases clearly reflect the reluctance within the government to adhere to the democratic values and principle enshrined in the Constitution increase in the number of cases of harassment and assaults is a clear indication of the rising intolerance and derogation for the rule in the law.

Even though, there has been a substantial changes in the way the governments function subsequent to the enactment of the Right to Information Act the culture of impurity to threaten the RTI users in only increasing the trend is threatening the democracy democratic

fabric of the country if we see most of the cases of harassment or assault is related to information where, wherein the applicant has sought information regarding the project which is of a greater public interest or about the various welfare schemes that has been introduced by the governments and who are these targets.

Well, the targeted individuals are the ones who have sought for the information, they are ones who are living in the remote areas of the country and they are within the reach of these authorities how does the how does it affect the applicant then well, here is the reason the authorities can misuse their power and they can coerce the applicant or even threaten and, in some cases, also cause death of the person who is seeking the information.

Now, let me raise an important question here suppose if an applicant files an application before an authority seeking information about a specific project and about the financial disbursements that has taken place under the project the authority exercising its discretion refuses to provide the information to the applicant relying on one of the exemption clauses that is provided under Section 8 of the Right to Information Act of course the RTI Act also provides for the right to go file an appeal under Section 19 of the RTI Act.

But, if the applicant dies or if he expires before the proceedings that is the appeal proceedings, what do you think will happen to the appeal proceedings? Should the appeal proceedings continue with the legal representatives just like any other civil suit or will the appeal proceedings abate or in other terms will it get closed down in order to answer this question I need to make specific references to the Draft Rules of 2017 that was issued by the Department of Personnel and Training SDOPD under the government of India.

The draft rules aim to replace the 2012 rules and introduce the 2017 rules to the RTI Act but even before the rules were notified it was put up for the public to comment on various provisions one of the most contentious provision was Rule 12 Clause 2 of the rules this particular provision dealt with the withdrawal or abatement of a key the clause stated that well let me read out the clause the appeal proceedings before the commission shall abide on the death of the appellant.

This was a controversial provision that was inserted in the draft rules. Why was it controversial? Well, many users criticized the government for introducing this provision as

the provision effectively ended the proceedings without allowing the information to be released the implication of this rule was that the information will not be released if the applicant dies during the proceedings the other reason why it was condemned or it became contentious was.

Because, it could lead to a situation where the vested interest may go to an extent of threatening or even coercing the applicant or in some cases may also kill the applicant to protect the information from getting disclosed the other point about this provision was regarding the withdrawn suppose, the applicant desires to withdraw the application during dependency of the appeal the commission will have the power to allow such withdrawal and applicant can withdraw the application.

Well, what do you think is wrong with this provision? This would have again led to the threatening or resulting the RTI applicant to withdraw or anybody can coerce him to withdraw his application by those parties specifically who have vested interest and who does, who do not want the information to be released then what exactly is the present situation? The current position as of now is that the applicant who has approached the commission seeking information by way of appeal if, he dies during the proceedings the information will be displayed on or it will be published on the website and the appeal would not get updated because of the depth of the activity.

Introduction of such arbitrary provisions will only support the opacity and secrecy in the system leading to a chaotic environment and in several cases it may all do also lead to deaths and assaults some people have even claimed that this would lead to more cases of harassment and threats which will in turn lead to suppression and later on eliminated the RTI users themselves.

Let us now try to see some of the cases wherein RTI users have been assaulted and some died during procurement of information from, with various authorities under suspicious circumstances let me give a caveat before referring to these cases most of the cases which I am referring to are taken from different sources available on the internet and authenticity of these cases have been verified from other different news items and articles that are published and reported during the set period of incident.

The information commission in one of the cases has taken note of the plight of the applicant wherein he was made to wait unnecessarily and unreasonably to follow the cumbersome procedure in order to apply seeking for information well how it relevant the applicant in this case had applied to water-board seeking for information about a crisis sometime in the year 2006 the applicant was made to meet another officer and only later on he was told to meet the public information officer to file the RTI application.

The application required the applicant to pay rupees 10 as the fees as it was prescribed under the procedures that prescription to pay the, pay the sum of rupees 10 was supposed to be done either by way of postal order, money order or by way of cash well this case was in the early days of the enactment of the Right to Information Act where, the commission mandated the authority to make the information easily accessible for the citizen and not to put the citizens through the procedure which is cumbersome and difficult for them to follow.

Because, there may be some applicants who may be illiterate, who may not understand the consequences. But even they are entitled to seek information from the authorities the whole purpose of the Right to Information Act is to provide easy access to information by making such provisions for the applicant wherein it can be easily complied with if any unreasonable demands or unnecessary demands are made the whole objective of the RTI Act will be defeated.

The information commission itself has taken note of the victimization of the applicants in several cases let me try to narrate another case this was in the year 2005 whereas, where Mister Dhananjay Tripathi had applied to the Banaras Hindu University seeking information about an inquiry report about one of his friends who was a student in the University this student had expired in the University Hospital.

Well the inquiry report that was sought from Mister Dhananjay Tripathi was pertaining to the death where there were some doubts that the authorities or the Doctors were negligent about handling his case he filed an application and the application got denied as the university authorities the public information officer in the university denied the application later on he excised the right to file an appeal with the appellate authority who is the vice chancellor and that appeal was also not considered and his appeal was dismissed.

Later on, he went on to file an appeal before the commission and the commission took note of, took note of this case and directed the authorities to release the inquiry report as there was no ground for them to keep the report confidential. During the proceedings the Central Commission also raised the issue of victimization of Mister Dhananjay who had applied for a seat seeking for Master's Degree in the same university. His admission was refused apparently for seeking information from the university authorities.

The commission observed and also directed the university to not resort to such tactics and ensure that the treatment or such treatment is not meted out to the applicants. It has also been noted by the Central Information Commission considering the serious issues raised by the RTI users in various applications and cases it has ordered that in order to be in order to achieve the objectives enshrined in the act the public authorities has to respect and they have to be courteous towards the applicant.

Because of some of the public authorities they have they tendency to not behave properly with the RTI applicants and moreover the responsibility of the public authorities is not just restricted to providing information, rather they have to provide necessary help to the applicant as well now, I would like to discuss some of the cases where the RTI users have been harassed and some of them have even been killed sometime in the year 2011, Miss Shehla Masood was attacked and she was killed inside her car.

Well, she was shot dead with multiple bullet injuries on her body. Miss Masood was a wildlife conservation activist and she had her own organization which filed several RTI queries seeking information about the wildlife conservation plans in the states of Madhya Pradesh and even Uttar Pradesh. It is not that she died not receive any kind of death threats but, there were several against her. She had been continuously receiving death threats and intimidations but there was no protection that was granted to her despite being informed to the police authorities. By the time this incident occurred, over a dozen number of activists had already been killed. This is one case.

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## ABOUT THE ACT

- FREEDOM OF INFORMATION ACT 2002
  - STATE LEGISLATIONS ON RIGHT TO INFORMATION
  - SEVERAL STATES INCLUDING GOA, TAMIL NADU, KARNATAKA, MAHARASHTRA, ASSAM, JAMMU & KASHMIR ENACTED LAW ON RTI.
- RIGHT TO INFORMATION ACT, 2005
- NUMBER OF CASES REGARDING HARASSMENT, DEATH AND INTIMIDATIONS
  - APPROXIMATELY 500 THROUGHOUT THE COUNTRY.
  - WITH AROUND 80 DEATHS AND MORE THAN 400 HARASSMENT, INTIMIDATION AND ASSAULT.
- DRAFT RTI RULES 2017
  - WITHDRAWAL / ABATEMENT OF APPEAL PROCEEDINGS



The next case which I want to explain is about a student from Koppal district in Karnataka. This case happened in the year 2015 and the student's name is Yellalinga Kurba. This person sought information about the scheme under the Mahatma Gandhi National Rural Employment Guarantee Scheme which is popularly known as the MGNREGA Scheme.

He filed an application to the Panchayat development officer seeking information about the implementation of the scheme and also the disbursements that has taken place under the scheme after few days of filing the application Yellalinga was found dead and it was almost 5 to 6 days gap from the day on which he filed the application and to the day on which he died he was found dead near a railway track it was after the few days of filing application seeking information.

Initially, it was suspected that Yellalinga had committed suicide but due to pressure from the family and by the localites the investigation was taken over by the criminal investigation department and they found that a former Zilla Panchayat president was involved in the killing of the teenager and he was only 17 years old. It was also reported that crores of rupees were misappropriated by the concerned authorities in the scheme which was meant for the poor and established by the government for the welfare of the rural population.

The information sought by Yellalinga proved to be fatal for him which inevitably exposed the corruption and the draft that was there inside the scheme. Many people have been assaulted and killed while trying to obtain information regarding the national rural employment guarantee schemes. There has been rampant corruption and citizens have been deprived of



benefits under the various welfare schemes people have made attempts to bring to light these issues surrounding and to bring to the books the concerned authorities.

In yet another case from the year 2015 an agriculturist from the state of Gujarat and his name is Ratan Singh Chaudhary. He was 30 years old. He filed an application seeking information about the beneficiaries to the relief package following the floods of 2015. It was revealed that the victims of the flood got only rupees 2500 for the losses that they had suffered whereas, the others who were not even genuinely concerned with the flood relief package had received monies up to rupees ninety thousand .

This embezzlement of flood relief funds got exposed after the death of Ratan Singh who was beaten to death by the vested interest people. Recently, in the month of January 2020, Pankaj Kumar was allegedly shot dead with multiple bullets on his body. This 32 year old man Pankaj Kumar had recently brought to light the irregularities in the sand mining trade in the state of Bihar and Pankaj Kumar had initiated a massive movement to bring the officials and the mafia to the limelight.

Similarly, there have been many other cases which are reported across the country about suspicious death of the Right to Information users. Well, they have not been genuinely or directly related to the case but they were merely the information seekers, who were killed for doing their, for exercising their rights. This raises serious concerns about the safety and security of the RTI users in our country.

While, the number of cases of harassment and deaths in the states of Maharashtra and Gujarat are highest in the country, the other states including Uttar Pradesh, Madhya Pradesh, Karnataka and Bihar have also reported many cases about the death and harassment of the RTI users since the year 2005 till 2019. India's transparency watchdog that is the central information commission has made some recommendations to protect and safeguard the interests of the RTI users.

Even though, there are no government policies for the protection of the information seekers, the Central Commission had to exercise its duty and in the year 2011 had taken some steps to ensure that in those cases where after filing the application if the applicant faces threat or harassment the commission will direct the authorities to release the information on their

website apart from this the commission has also decided to take necessary action to put the pressure on the police investigation in any case of attacks on the RTI users.

Even though, this has been a setup of the institutional framework the efficacy of this mechanism has not proved to be successful as the number of attacks on the RTI users has been on the rise since that time of passing the resolution let me now, narrate about the other case that is the famous Adarsh housing scam which happened in the state of Maharashtra which eventually led to the resignation of Chief Minister Ashok Chavan was the then Chief Minister of Maharashtra.

On a bear reading of the Right to Information Act you will notice that there is no provision to ensure protection of the applicant that has been incorporated to protect the offenders who are threatening the applicants for exercising their right. The central information commission has the power to order for grant of compensation for any kind of threat, harassment or intimidation that is caused to the applicants the provision had not been used to the full extent.

Rise in the number of incidents of harassment meted out to the RTI users is a clear indication that there is no proper mechanism to protect the RTI users and the clear absence of fear among the vested interests exercising the right to seek information as we all know is a fundamental right and any citizen of India can seek for any information from any authority, from any corner of the country, from the cases that I have mentioned the citizens who are RTI users have faced harassments and threats.

The procedure prescribed for filing an application mandates the name and postal address of the applicant to be mentioned in the application well then what is the issue with this it makes it easier for the western interests to identify the individual applicant who has sought information just by looking at the copy of the application well there are details like the name, age, name of the father, address and several other personal sensitive information which would have been mentioned in the applicant in the application.

Therefore, the sensitive private information like the name, address and other details of the applicant has to be blanked out as it has been adopted in the United Kingdom's Freedom of Information Act. In our country as well the high court of Calcutta has also suggested that the details of the applicant should not be revealed in order to protect the identity and also the life

of the individual moreover it is the duty of the authorities to hide such information as is being provided under the Whistle-blower Protection Act the threat of intimidation and harassment is not just restricted to the RTI users.

But, it also extends to those officials who are revealing information about the wrongdoings in their own departments yes by raising this point I am pointing out that the protection of officials and any other persons who are Whistle-blowing the wrongdoings in their own department or under their own roof by the functionaries involved and such people who are Whistle-blowing to be protected this will eventually lead to the disclosure of corruption in the government though there is no express provision for the protection of the citizens seeking information under the Right to Information Act.

The government in the year 2014 enacted the Whistle-blowers Protection Act this move came this move came to protect the public servants or any other person making such disclosures however this act is only restricted to those things or those Whistle-blowing acts which are happening within the government well I will not be dealing much into this aspect of Whistle-blower protection because, my colleagues have already dealt with before I move to the second part of the video let me ask this did you know that September 28th every year is celebrated as the International Right to no day.

The first time it was celebrated was in the year 2002 to recognize the global movement effort to bring in transparency in the governance and to promote the Right to Information which was to be adopted by all the countries well this was just an additional information that I thought is relevant for sharing.

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## VICTIMIZATION UNDER RTI

- UNREASONABLE AND UNNECESSARY DEMAND FROM THE AUTHORITY TO COMPLY WITH THE PROCEDURAL MANDATE
- DHANANJAY TRIPATHI 2006 - UTTAR PRADESH
- SHEHLA MASOOD CASE 2011 - MADHYA PRADESH
- YALLALINGA KURUBA CASE 2015 - KARNATAKA
- RATANSINH CAHUDHARY 205 - GUJARAT
- PANKAJ KUMAR 2020 - BIHAR
- RIGHT TO INFORMATION DAY 28 SEPTEMBER EVERY YEAR.



Let us, move to the next part on the misuse of the Right to Information Act let us move to the next part on the misuse of the Right to Information. Till now we saw how the citizens or the applicants have been intimidated, harassed or even killed in some cases for trying to prepare information from the concerned authorities.

Let me now try to explain about the other side of the issue where officers are harassed, blackmailed and even threatened by using this tool called the right information or rather I would want to call it a weapon why so in a democratic social setup like ours we know that the Right of Information is a fundamental right this can strengthen the functioning of the democracy bringing in transparency and accountability.

But there is a flip side to this. The law is formed to be misused by some individuals without any genuine cause of reason the major issue with the law is that it does not prescribe the applicants to mention the purpose of seeking information which means any person can seek any information without having any purpose whatsoever numerous such have been noted by the information commissions of RTI law being misused several applications are being filed by applicants seeking personal details which infringes the privacy of the individuals occupying high offices or any other offices.

The intended objective of the Right to Information Law is to secure greater public interest and not to settle private scores of rival individuals there are numerous instances where a single person files application seeking the very same information that was shot in the previous applications.

Right to Information Act does not prescribe the applicant to have a locus standi for seeking any information from any authority. We all know that very well because, that is the whole objective of the Act that everyone should have access to information at their fingertips apart from that the applicant need not justify the reason for filing the application. This provides ample scope for the applicant to misuse the application.

Former supreme court chief justice, Justice H S Kapadia has himself admitted to this fact that the kind of questions that were raised when he was the public information officer or the concerned authority, it took away the precious judicial time of the judges in answering those irrelevant questions which they could have rather invested in answering or writing orders or reading case files privileged questions have been asked by the applicants which are irrelevant and not so important for the functioning of the judges. Apart from this, the public authority is also supposed to give the information to the applicant in the language in which he has filed the application.

I remember one instance where I saw the RTI application which was filed before the High Court of Karnataka. That application was in Hindi and that application had around 10 questions which was not relating to any kind of functioning of the High Court. It was asking more about the mythology and religion eventually it was informed that the response to the application has to be given in Hindi and not in any other language this meant that the concerned authority consumed easily few days of the time to answer all the questions and also to type it in Hindi.

Even though, the answer were all in the negative, the answers had to be typed in Hindi. There are several such applications which are received by the authorities which are completely irrelevant to the functioning of the authority. Some applicants even have the habit or tendency to file several applications and upon refusing the applications by the concerned authority the applicant deliberately takes the matter to the first and second appeal and this will inevitably lead the officers also or the concerned public authority to attend the matter before the appropriate authorities.

The commission has even taken note of this scenario where the applicant has deliberately filed many such opinions seeking information about one of the employees who could be one

of his own relatives. The commission called such applications to be repetitive vexatious and trivial which is causing the corporation to choke. I will just shift this line which.

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## MISUSE OF THE RTI ACT

- INAPPROPRIATE AND IRRELEVANT QUESTIONS
- SEEKING FOR VOLUMINOUS RECORDS
- WASTAGE OF PUBLIC AUTHORITIES TIME AND RESOURCE.
- NARAYAN SINGH V. DELHI TRANSPORT CORPORATION
- SHAIL SAHNI V. SANJEEV KUMAR



So, this slide you will see that I have mentioned few of the cases, couple of cases, rather which have specifically dealt with this aspect of harassment or causing or irrelevant or inappropriate use of the Right to Information. Narayan Singh versus Delhi Transport Corporation was one case which I just mentioned where the commission had made that the applications to be repetitive fixations and tribune this is one instance of the blatant misuse of the Right to Information the corporation has endlessly has to go on answering all the queries raised by the applicant even though it could be in the negative.

But it has to answer them. The supreme court has also taken note of the situation and said that the disclosure of sundry information which are totally unrelated to the transparency and accountability in the functioning of the public authorities or to eradicate corruption would be counterproductive to the efficiency of the administration it is to be understood by everyone that any application that is filed before the public authority should be evaluated by the applicant himself as to whether the application deserves the time of the public authority.

Secondly in the application, the applicant also has to examine if the query that he is raising is in the interest of public ornament. If he satisfies himself about the two criteria objectively then he must proceed to file the application there have been many such cases where the applicant has tried to procure information to harass the officials by using such information against them well.

There are a lot of other cases which has to be looked at and the commission has to take appropriate measures to curb such practices. I will conclude this video by saying that the Right to Information Act has been a landmark legislation for a country with a very high objectives set in at present the provisions of the act are in such a way that it has led the applicants to be harassed, victimized and in some cases, they have been killed.

On the other hand, there is blatant misuse of the legislation, which as I already mentioned. If we realize both are harmful to the effective implementation of the act and there has to be sufficient and concrete steps which has to be taken by the government as well as the concerned commissions or the authorities to deal with these issues and to curb such practices. Thank you.