

# **Attacks on Users and Activists of the Right to Information in India**

## **Role of the National Human Rights Commission**

### **Submission to the Independent People's Tribunal**

(on 15<sup>th</sup> December, 2013 at the School of Social Sciences Auditorium, New Delhi)

*Submitted by Venkatesh Nayak, Commonwealth Human Rights Initiative*

---

#### **Background**

*The Right to Information Act* has been in force since October 2005 and is by far one of the most well known of laws, perhaps competing in popularity with the Constitution itself. This law crafted with great hope in order to reflect and respond to people's aspirations of transparency and accountability in all matters that affect them, gives form and substance to the citizens' fundamental right to access information from public authorities and about private bodies in a legitimate manner.

According to a rapid survey compiled by this author's team, around 40 lakh requests for information may have been made to various public authorities across the country during the year 2011-12 alone.<sup>1</sup> In other words about **0.3%** of the citizenry used the RTI Act for seeking information from public authorities last year. Although this number may seem miniscule when compared to the size of the country's population, these efforts are nevertheless creating ripples of varying sizes in the political economy. One of the most unfortunate consequences of seeking information as a matter of right is the growing number of attacks on information-seekers by vested interests who would like to keep the information sought under wraps ostensibly to prevent wrongdoing, illegalities or irregularities from being exposed.

This submission examines first, the phenomenon of attacks on RTI users/activists based on publicly available data (uploaded on English language websites).<sup>2</sup> Second, it will briefly narrate

---

<sup>1</sup> See report on CHRI's website at: <http://www.humanrightsinitiative.org/postoftheday/2013/CHRIrapidStudy-RTIUseinIndia-2011-2012-Oct13.pdf>, accessed on 14 December, 2013. This estimate is based on a conservative extrapolation of the trends thrown up by an analysis of the statistics contained in the annual reports published by the Central Information Commission and 10 State Information Commissions. Accurate figures are difficult to put together due to the absence of the latest annual reports of more than 50% of the State Information Commissions from the public domain.

<sup>2</sup> While every legislation has its advocates and detractors, the RTI Act being a law that gives effect to a fundamental right, has more users than activists. As will be explained below, merely seeking information without having any inclination towards activism has on occasion invited harsh treatment from vested interests, sometimes acting in league with public officials. Therefore this submission takes into account all publicly available reports of attacks on persons who have used the RTI Act to seek information and the reports contain facts or a reasonable basis for suspecting that the attacks were precipitated by the demand for transparency from the seekers of information. However the author does not claim that the data presented in this submission

the role of the National Human Rights Commission in responding to some of these incidents of violence. The third and last part will contain some suggestions for ensuring better protection for people who exercise their fundamental right to seek information about matters public or at least that which ought to be public simply because they are equal stakeholders in the 'democracy' that India claims to be.

### ***Attacks on RTI users and activists: Statistical Data***

Despite its enormous popularity, there is no official mechanism set up to compile information about the numbers of people across the country who seek information under the RTI Act. Correspondingly, there is no official source which holds reliable statistics about the number of attacks on persons just because they sought information from public authorities. Members of Parliament (more frequently in the Rajya Sabha than in the Lok Sabha) have raised queries about attacks on RTI users and activists expressing concern about their safety and access to justice. In the early years of its implementation, the Ministry for Personnel, Public Grievances and Pensions, responsible for administering this law under the *Allocation of Business Rules, 1961*, did provide names of RTI activists who were allegedly murdered.<sup>3</sup> However in recent years the Minister concerned has simply washed his hands off this matter by replying that the Central Government does not collect or maintain any data about such incidents; that the attacks pertain to matters of law and order and are therefore in the domain of the States and that a Bill to protect whistleblowers from attacks has been introduced in Parliament.<sup>4</sup> The Minister also been replying that it is up to the States to take action in such matters based on the criminal and penal laws applicable.

Although the Central Government appears reluctant to collect data about attacks on persons seeking information under the RTI Act, perhaps as a mark of respect to the principles of federalism, civil society and media persons have compiled databases of such incidents on various websites, the most popular one being displayed on Wikipedia.<sup>5</sup> The cases in this compilation are verifiable through links to the websites of the media where the stories were initially published.

Till date, about 250 individuals have been allegedly attacked, harassed (physically or mentally), their property and belongings allegedly damaged and some even allegedly murdered for

---

is all that there is to know about attacks on RTI users in India. Many reports of attacks may have been circulated through the local language media without being echoed in the English language press. As Google search facility is designed to recognise the Roman alphabet better than other Indian language alphabets, this submission is restricted to information accessed on the subject from English language websites.

<sup>3</sup> For example, see Starred Question No. 212 replied in the Rajya Sabha in March 2011, accessible on the Rajya Sabha website at: <http://rajyasabha.nic.in>, accessed on 12 December, 2013.

<sup>4</sup> For example, see Unstarred Question answered in the Lok Sabha on 09 August, 2011 accessible on the Lok Sabha website at: <http://loksabha.nic.in>. Also see Unstarred Question No. 2084 replied on 09 August, 2013, Unstarred Question #1759 replied on 29 March, 2013 both in the Rajya Sabha accessible on the Rajya Sabha website at: <http://rajyasabha.nic.in>, all accessed on 12 December, 2013.

<sup>5</sup> See: [http://en.wikipedia.org/wiki/Attacks\\_on\\_RTU\\_activists\\_in\\_India](http://en.wikipedia.org/wiki/Attacks_on_RTU_activists_in_India), accessed on 12 December, 2013.

seeking information under the RTI Act.<sup>6</sup> More than 31 alleged murders and 2 alleged suicides can be directly linked to the fact that the victims sought some information under the RTI Act which proved detrimental to their life and safety. More than 214 cases of assault of varying degrees and mental and physical harassment have been reported through the media over the last eight years. At least 18 of these victims are women. The youngest victim is an 18-year old boy. At least one physically differently-abled person has been allegedly harassed for seeking information under the RTI Act. In one instance, the daughter-in-law of an RTI activist lost her life trying to prevent him from being butchered.<sup>7</sup>

***Reported cause of attacks on RTI users and activists:***

Some of the major reasons behind the alleged murders of RTI users and activists, as reported by the media, are given below:

- Unearthing illegal mining in forested areas;
- Exposing sand mining mafia;
- Targetting the land mafia or raising one's voice against encroachment of public/private property by the rich and the powerful;
- Exposing illegal electricity connections of powerful private companies;
- Exposing the construction industry mafia and illegal construction activity by the rich and the powerful;
- Protesting against the construction of a nuclear power plant;
- Exposing police inaction in murder cases, especially apprehending the perpetrators;
- Exposing horse-trading subsequent to elections to a municipal corporation;
- Exposing bogus certificates presented by unqualified candidates appointed by the government as school teachers;
- Using the information obtained under the RTI Act for tipping off the Lokayukta about the disproportionate assets owned by a woman municipal corporator and her husband;
- Exposing social security pension scam at the *gram panchayat* level;
- Exposing corruption and irregularities in the implementation of the Mahatma Gandhi National Rural Employment Guarantee Programme in a district;
- Exposing irregularities in the implementation of housing assistance schemes funded by the Central or State Governments;
- Exposing irregularities in the functioning of the public distribution system (ration shops);
- Exposing the allegedly corrupt activities of a *sarpanch* (elected village headman)

---

<sup>6</sup> The author recognises with gratitude the hard work of Mr. Nachiket Udupa for sharing this compilation readily. The author has updated this list based on further searches through the Google facility as well as data sourced from the NHRC's *Updated List of Human Rights Defender Cases* accessible on its website at: [http://nhrc.nic.in/Documents/HRD\\_CASES\\_2013\\_09.pdf](http://nhrc.nic.in/Documents/HRD_CASES_2013_09.pdf), accessed on 12 December, 2013.

<sup>7</sup> Ms. Sonu daughter-in-law of Jagdish of Haryana was crushed to death when the attackers tried to run an automobile across his legs. See: <http://www.thehindu.com/news/states/other-states/article1447478.ece>, accessed on 12 December, 2013.

- Cautioning borrowers against an unscrupulous moneylender after obtaining information about his activities under the RTI Act; and
- Seeking inspection of the records of handloom weavers' cooperatives.

Similar reasons along with some others are said to be responsible for the numerous instances of assault or harassment (physical or mental) of RTI users and activists in various States. Assault or harassment is said to have been precipitated by the following actions:

- Exposing environmental pollution being caused by private companies;
- Exposing the corrupt activities of a minister of a State Government;
- Exposing issuance of bogus licenses by the Regional Transport Office to bike vendors;
- Exposing the corrupt actions of a Block Development Officer;
- Exposing corruption in the construction of public roads;
- Exposing issuance of false pension and physically handicapped certificates by the authorities;
- Exposing illegal tube well operations;
- Seeking information in the struggle for securing the rights of an ethnic group identified as 'primitive tribals' under the law;
- Exposing irregularities in the issue of Liquefied Petroleum Gas (LPG) cylinders by a major public sector oil and gas marketing company;
- Seeking information about action taken by the police on one's own complaint about assault suffered at the hands of a third person; and
- Seeking information about the school where one's daughters were studying.

***Broad trends indicated by the data:***

Publicly available data indicates that the most number of attacks including murder and also harassment RTI users/activists occurred of in the State of Maharashtra (52 instances including 8 alleged murders), during the last eight years.<sup>8</sup> Gujarat comes a close second with 34 incidents of attack including 3 cases of murders. Andhra Pradesh, Bihar, Delhi, Haryana, Karnataka and Uttar Pradesh have recorded more than 10 instances of attacks on RTI users and activists. The author has not come across reports of such attacks from the States of Kerala and Sikkim.<sup>9</sup> While a majority of the RTI users identified in this submission had the misfortune of being attacked only once, Dr. Amarnath Pandey from Uttar Pradesh and Mr. Ramesh Agarwal from Chhattisgarh had to suffer attacks at least twice during this period.<sup>10</sup>

---

<sup>8</sup> See Sheet 2 of the List attached to this submission.

<sup>9</sup> Perhaps the reports of similar incidents might have been published in the local language press or the victims may not have bothered to go to the press or the police fearing further retribution from their assailants. So the author does not claim that RTI users and activists may be any safer in these States.

<sup>10</sup> See Sheet 1 of the List attached to this submission.

### ***Role of the National Human Rights Commission:***

The National Human Rights Commission (NHRC), mandated to protect the human rights of all persons guaranteed under the Constitution and in the international human rights covenants, has begun to take cognizance of attacks on RTI users. Although the NHRC staff informed the author telephonically that no separate database of complaints about attacks on RTI activists is maintained in their office, the updated list of Human Rights Defender Cases uploaded on their website mentions at least five instances where the NHRC has taken cognizance of the complaints of attacks on RTI users and activists.<sup>11</sup> A summary of the cases as reported in this document is given below:

#### **I. Case No. 463/13/30/2012 LFs 489/13/30/2012 & 495/13/30/2012**

In February 2012, the NHRC received a complaint about the alleged murder of an RTI activist who was responsible for exposing illegal construction activity in Virar, Maharashtra by using RTI. The NHRC sought a report from the Police Commissioner of Thane. Upon receipt of the Superintendent of Police's (SP) report the NHRC directed that the case be transferred to the CB-CID for further investigation. As no response was received within the period stipulated in the direction the NHRC sent another reminder to the Director General of Police to submit a report. The SP is said to have reported that the matter was pending in the High Court through a criminal writ petition. The NHRC has sought a further report from the Director General of Police. No further details are available about this case.

#### **II. Case No.20596/24/72/2012 LF 29463/24/72/2012**

In June 2012, the NHRC received a complaint about a case of harassment of an RTI activist by the police in Uttar Pradesh for exposing irregularities in the issuance of LPG cylinders by a major public sector oil and gas marketing company. A local NGO also sent a complaint about this case of harassment. The NHRC is said to have sent a notice to the Senior Superintendent of Police (SSP) of Varanasi seeking a report on the incident. As the SSP did not reply within the time limit specified in the notice the NHRC has sent a reminder informing the SSP of issuing process under Section 13 of the *Protection of Human Rights Act, 1993* (PoHRA), for failure to respond.

#### **III. Case No.792/10/1/2012**

In September 2012, the NHRC received a complaint about the murder of an RTI activists Lingaraju who was instrumental in moving the Karnataka Lokayukta to raid the house of a woman corporator and her husband on suspicion of possession of disproportionate assets vis-à-vis their known source of income. Lingaraju is said to have used the RTI Act to provide material facts to the Lokayukta about this case. The NHRC received a report from the Director General of Police after sending a notice and reminders. The NHRC is said to be studying the report or taking further course of action.

---

<sup>11</sup> See f.n. #6 above.

#### **IV. Case No. 9/23/5/2012 (Main File 8/23/5/2012)**

In September 2012, the Asian Centre for Human Rights sent a complaint about the attempt to murder an RTI activist who was working for the rights of the Reangs, in Tripura, identified as 'primitive tribals' under the law. The activists is said to have used RTI to unearth illegal felling of trees, misappropriation of funds meant for the development of Reang families and denial of land rights to them. The NHRC sought reports from the Government of Tripura and issued certain directives to protect the rights of the Reang and also investigate the murder of the RTI Activist. Although the police initially stated that no evidence could be found about the perpetrators of the murder, the investigation was transferred to the CB-CID upon the NHRC's direction. Disciplinary proceedings were launched against the officials found responsible for misappropriation of public funds and recovery proceedings were initiated. However the murder case seems to remain unsolved.

#### **V. Case No. 2391/13/16/2013**

In 2013, the NHRC issued a notice to the Commissioner of Police, Mumbai seeking a report on the complaint of a woman RTI activist who is said to have been thrown out of an appeal proceeding before the Dept. of Urban Development. She is also said to have complained about false criminal cases being lodged against her. No further details of this case are available in the NHRC's report.

#### **VI. Murder of the RTI activist Ram Vilash Singh in Lakhisarai, Bihar in 2011**

Surprisingly, the earliest case of an RTI activist's murder that the NHRC took cognizance of is not mentioned in the list of cases about Human Rights Defenders uploaded on its website.<sup>12</sup> When the author of this submission circulated an email alert of the alleged murder of an RTI activist working in Lakhisarai, the NHRC received it through some untraceable source and took *suo motu* cognizance of the case within 10 days. The NHRC sought a report of the investigation into the incident from the Inspector General (Human Rights) of Bihar. Thanks to the persistence of the NHRC, the police not only apprehended three of the accused but also succeeded in identifying three conspirators whose names were not mentioned in the first information report for obvious reasons. While the NHRC continued to monitor this case the police arrested the conspirators also and the trial court denied them bail. However the conspirators secured bail from the High Court. Ironically, the local Bar Association is said to have passed a resolution condemning the police for framing the conspirators, one of whom is a lawyer and complained to the Director General of Police about harassment. The NHRC closed the complaint case in June 2013 observing that trial was underway in this criminal matter.

***Material added after submission to IPT:*** The NHRC's list of cases regarding complaints of attacks on HRDs also contains another instance where members of a 'gang' who are also said to be RTI activists were assaulted by another 'gang.' As nothing in the case summary indicates that

---

<sup>12</sup> See f.n. #6 above.

the attack was related to their use of the RTI Act, this case has not been included in this compilation.

### **Recommendations**

In August 2011, the author petitioned the Department of Personnel and Training (DoPT) to write to the NHRC requesting them to issue guidelines for handling complaints of attacks on RTI users and activists by treating them as Human Rights Defenders (HRDs).<sup>13</sup> Although the letter does not appear to have been written, the NHRC has started taking cognizance of such cases albeit only recently. Amongst other things, the author made the following submission to the DoPT:

*“It is necessary to impress upon the NHRC to recognise RTI users, who are attacked for seeking information relating to corruption, mal-governance and abuse of power, as HRDs. This recognition would go a long way in compelling the police to take complaints of victimisation and attacks from RTI users and activists seriously. The NHRC must be tasked with taking action on complaints of attacks on RTI users and seeking reports from the concerned police about the progress of investigation in criminal cases that may be filed in relation to such attacks. It may also give suitable directions for ensuring the safety of the victim’s life, family and property. Meanwhile the concerned Information Commission must also take cognizance of such attacks and ensure that the information sought by the RTI user be publicised in accordance with the provisions of the RTI Act. This two-pronged approach of bringing the guilty to book swiftly and making the information originally sought, public, can go a long way in ensuring that the attackers and their masterminds are punished and their evil schemes defeated. As the purpose of the attacks is often to deter the RTI user from making the information public, proactive disclosure of the records and documents in every case of attack will discourage potential masterminds from harming other RTI users in future. It is the certainty of punishment*

---

<sup>13</sup> *Additional note after making the submission to IPT:* At the time of writing, the only internationally accepted human rights declaration that the author could depend upon to make the central argument contained in the letter addressed to the DoPT, was the UN General Assembly’s Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1999, also known as the UN Declaration on Human Rights Defenders. The text of this Declaration is accessible on the website of the UN Office of the High Commissioner for Human Rights at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>, accessed on 17<sup>th</sup> December 2013. According to this Declaration, RTI users and activists who are attacked for seeking information of public interest to, amongst other things, ensure social justice or expose corruption, fall within the category of “Human Rights Defenders”. At the time of examining the raw data for drawing up this submission the scale and complexity of the problem became more apparent. Several women have also been attacked for seeking information under RTI. Thankfully, recently the UN General Assembly has adopted a resolution on Women Human Rights Defenders as well. The text of this resolution adopted in November 2013 calls for protecting women who promote and defend human rights or combat corruption or focus on securing the rights of women are also to be recognized as Human Rights Defenders deserving the fullest cooperation and protection of the State as well as national human rights institutions. The text of this resolution is available on the UN website at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/68/L.64/Rev.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.64/Rev.1), accessed on 17 December, 2013.

*and the taking away of the shield of secrecy that will deter others from launching attacks on RTI users. The concerned Information Commission may make the information public on its own website and also through the offices of the concerned panchayat/municipality or block/district administration.”*

Much water has flown down the rivers across the country since the sending of this petition and experience indicates that the victims or their families often do not get justice, certainly not in a quick and efficient manner that offers some consolation to the loss suffered. With public memory being proverbially short, it is difficult to ascertain the outcome of the criminal cases launched in such matters, especially when the media does not follow up on its initial report on the incident. In the case of the homicide of the daughter-in-law of the RTI activist in Haryana<sup>14</sup> the trial court is said to have awarded life imprisonment to the accused. Not much information is available about the progress in other cases. Experiences of observing the trial proceedings in the Lakhisarai RTI activist’s murder case<sup>15</sup> indicates that accessing justice and ensuring that the accused stay behind bars is an uphill task. It is necessary for the NHRC and where available the State Human Rights Commissions to use their powers under the PoHRA to intervene in criminal cases and prevent miscarriage of justice or delay in securing justice for the victims.

The author closes this submission by deferring to the wisdom of the jury of the Indian People’s Tribunal to accept the aforementioned recommendations or come up with more appropriate and stringent recommendations in order to ensure that the national motto – ‘*satyameva jayate*’ is fulfilled with due regard for the rights of the victimized RTI users and activists and remedies as well as ensure that adequate compensation is awarded to them in accordance with the law.

\*\*\*\*\*

---

<sup>14</sup> See f.n. #7 above.

<sup>15</sup> See Case # VI on page #6 above.