



सूचना के जन अधिकार का राष्ट्रीय अभियान

NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

Note on the Whistle Blowers Protection Bill

The National Campaign for Peoples' Right to Information (NCPRI) welcomes the passage of the Whistle Blowers Protection Bill, 2011 in the Rajya Sabha. We believe this legislation is a key measure for fighting corruption, and in conjunction with other anti-corruption and grievance redress legislations like the Right to Information Act, Lokpal Act and the Grievance Redress bill, will ensure better governance.

This note highlights some of the deficiencies of the Whistle Blowers Protection Bill which was passed by the Rajya Sabha in February 2014 and suggests amendments to the legislation to ensure a robust mechanism for protection of whistleblowers and to promote an environment to encourage people to blow the whistle about wrongdoings/corruption.

1. Competent Authority- In addition to the authorities designated as 'Competent Authorities' in the Whistle Blowers Protection Bill, 2011, where independent institutions (like the Lokpal and Lokayuktas) are set up with powers to receive complaints, they should also be deemed Competent Authorities under this law for matters under their jurisdiction.

If a citizen files a complaint to the incorrect Competent Authority, it should be the obligation of that Competent Authority to protect the identity of the complainant and forward the complaint to the appropriate Competent Authority within a specified time frame.

2. Definition of victimisation - The bill must clearly define what constitutes victimisation of the whistleblower. It must ensure that protection is provided against victimization to any person, who makes a complaint or disclosure or renders assistance in inquiry, relating to any of the matters under the jurisdiction of this law.

In case of a complaint of victimization, if the action or inaction that led to the complaint satisfies one or more of the following four conditions, the charge of victimisation should stand *prima facie* established:

- (i) violates any government law, rule, policy, orders or any other instrument prescribing relevant norms or processes
- (ii) violates the policy of the public authority concerned
- (iii) is not in conformity with the general practice in the matter
- (iv) is not based on sound reasons.

3. Penalty for victimization: The law must provide for penalties to be imposed on any person or persons who victimize the whistleblower. Wherever a complainant, or any other person connected with the complainant, is killed or suffers grievous injury as a result of a complaint relating to any matter under the jurisdiction of this law, the law must have a provision for ensuring that action is taken on a priority basis on the original complaint of corruption or criminal offence filed by the whistleblower. These measures will deter victimization of whistleblowers.

4. Compensation for victims: The bill must provide for mandatory compensation for any loss or other detriment suffered by a person as a result of victimization under this bill. The amount should be recovered from the person(s) who victimized the whistleblower.

5. Stipulated timeframes: The bill gives the Competent Authority the power to make a discreet inquiry and seek comments/report/explanation from the HOD, if required. After following due process, if the Competent Authority is of the opinion that there is corruption, wilful misuse of power or discretion or commission of a criminal offence, it has the powers to recommend several measures to be undertaken. In order to prevent inordinate delays, the law must stipulate a clear time frame for the Competent Authority to act on the complaint/disclosure and make recommendations. This time frame should ordinarily be 60 days from the date of receipt of complaint or disclosure, extendible to 90 days on the basis of reasons for delay recorded in writing.

In cases of victimization, the Competent Authority has the power to take action and give directions to protect the whistleblowers. This must be done ordinarily within a period of 15 days. Wherever the life and liberty of the whistleblower is under threat, appropriate action for protection must be taken in time to prevent the victimization.

6. Jurisdiction of the Bill- the Whistle Blower Protection Bill must extend to all public servants and public authorities in the Centre and the States, including the armed forces; corporate bodies, companies, societies or other association of persons registered under any Central or State Act; and their functionaries thereof. No arbitrary exemptions should be extended to any organization or public authority such as the Prime Minister or Chief Ministers.

7. Inclusion of private sector: It is critical that the private sector be in the ambit of the bill. Corruption in private institutions has very significant impact on the public. Given the vast scale of the private sector in India and the corruption therein, it is important that this bill be extended to complaints about the private sector when they either abet corruption (under Section 12 of the Prevention of Corruption Act) or commit a criminal offence. This is in keeping with the stated position of the government (as indicated in the Prime Minister's speech) to bring the private sector within the ambit of anti-corruption laws.

8. Protection for persons other than whistleblowers providing relevant information: Where a person other than the complainant provides or wishes to provide any material, information or document relevant to the investigation of the complaint, this person should also be entitled to all the protection offered under the law to a complainant and should in all manner be treated on par with an original complainant. This is important to ensure that people can provide additional evidence and documents without fear of exposure.

9. Closure of complaint- the Bill should not empower the Competent Authority to dismiss/reject/close a complaint on the grounds that it is 'frivolous' or 'vexatious'. The terms frivolous or vexatious are not possible to define objectively and are likely to be misused. It may lead to a situation where most complaints would be routinely rejected as being frivolous or vexatious. Further, after inquiry if a complaint is closed, detailed reasons for closing the complaint must be recorded in writing and disclosed to the complainant.

10. Time limit for complaints- there should be no time limit (like 7 years) for making complaints regarding offences. Many corruption cases are complex and large and take many years to unravel, or are detected after many years, sometimes after the government changes.

11. Anonymous complaints- The bill should provide for taking cognizance of an anonymous complaint if it is accompanied with adequate supporting evidence to establish a *prima facie* case. The competent authority should not reject the complaint merely on the basis that it is anonymous. Further, a website which encrypts the data and the identity of the person uploading the data could be provided for people to securely make disclosures without fear of the data being intercepted or the identity of the person being revealed (if the person seeks to remain anonymous).

