

## **Model Rules for the Whistle Blowers Protection Act drafted by the National Campaign for Peoples' Right to Information (NCPRI)**

1. **Short title and commencement. –**
  - (1) These rules may be called the Whistle Blowers Protection Rules, 2014.
  - (2) They shall come into force on the date of their publication in the Official Gazette.
  
2. **Definitions** -In these rules, unless the context otherwise requires,
  - (1) "Act" means the Whistle Blowers Protection Act, 2011 (17 of 2014);
  - (2) "Competent authority" shall have the same meaning as defined in sub-section (b) under section 3 of the Act and shall also include any such authority as may be specified to receive complaints, by regulations made by the Competent Authority under sub-section (2) of section 4 of the Act.
  - (3) All other words and expressions used herein but not defined in these rules shall have the same meanings assigned to them in the Act.
  
3. **Procedure for disclosure-** Every disclosure under this Act, shall be made in writing or by electronic mail or electronic mail message to the Competent Authority and shall contain the following particulars and shall be accompanied by the documents/other materials, mentioned in sub-section (2) of section 3–
  - (1) Particulars to be contained in the disclosure:
    - (i) Date on which complaint is submitted;
    - (ii) Name, designation and address of public servant against whom a complaint is preferred;
    - (iii) Facts leading to the complaint;
    - (iv) Any other information.
  - (2) Documents/other materials to accompany the disclosure-
    - (i) Name and complete address of complainant with contact numbers, along with proof of identity of the complainant, on a separate page on top of the disclosure;
    - (ii) A self-attested declaration, on a separate page on top of the disclosure, stating that the complainant reasonably believes that the information disclosed by her and allegation contained therein is substantially true
    - (iii) Copy of relevant documents/other materials substantiating the allegations made in the complaint, if any.
  - (3) Where a disclosure is made in writing in hard copy, it shall be enclosed in a closed/secured envelope and shall be clearly marked as a Disclosure/Complaint under the Whistle Blowers' Protection Act and shall be addressed to the Competent Authority.
  - (4) Upon receipt of a complaint, the Competent Authority shall remove the pages giving the details of the name, address, proof of identity of the complainant, self-attested declaration and any other page which gives details of the identity of the complainant and assign a unique complaint number to each complaint which shall be used to refer to the complaint thereafter.
  - (5) The text of the complaint must not give any details or clues to the complainant's identity. Provided that wherever a Competent Authority is of the opinion that the text of the complaint gives details or clues to the complainant's identity, it shall be the responsibility of the Competent Authority to ensure that such text is severed from the complaint and no clues to the identity of the complainant are part of the complaint.

(6) The Competent Authority shall acknowledge the receipt of every disclosure under this Act within 5 days of receiving the disclosure.

Provided that where a complaint is made to a Competent Authority the subject matter of which is more closely connected with the jurisdiction of another Competent Authority, the Competent Authority to which such complaint is made, shall forward the complaint to the appropriate Competent Authority, while protecting the identity of the complainant, as soon as practicable but in no case later than five days from the date of receipt of complaint, and inform the complainant immediately about the forwarding of the complaint.

Provided further that the Competent Authority shall record reasons in writing if a complaint is not forwarded to the appropriate Competent Authority within a period of five days from the date of receipt of the complaint.

4. **Secure system for receiving complaints-** The Competent Authority shall develop a secure system for receiving complaints in writing or via electronic mail or electronic mail message and shall ensure that the identity of the complainant is not disclosed or revealed.
5. **Competent Authority to provide necessary assistance-** The Competent Authority, shall provide all necessary assistance to the complainant, in writing and filing disclosures, or writing and filing an application seeking redress in case of victimisation or seeking protection, where necessary, and where a complainant is unable to make a complaint or application in writing, the Competent Authority shall render all reasonable assistance to the person making the request orally to reduce the same in writing.
6. **Details of Competent Authority to be prominently displayed-** The name, designation and contact details, including phone number and address of the Competent Authority, and any such authority as may be specified by it to receive complaints, must be displayed clearly and prominently on a board in the premises of the Competent Authority and public authority and on the website of the Competent Authority and public authority, in compliance with the provisions of the Right to Information Act, 2005.
7. **Action in case of criminal offence-** If a disclosure or discreet inquiry or comments/report from the head of the department, prima facie reveals information indicating the commission of a criminal offence, the Competent Authority shall direct the Police to register a FIR and in such cases, the Competent Authority shall deemed to be the complainant in the matter.
8. **Time frame for discreet inquiry-** The discreet inquiry under sub-section (2) of section 5 shall be completed within a period of 60 days from the date of receipt of complaint.
9. **Time frame for seeking comments/report from Head of Department-** The Competent Authority shall seek comments or explanation or report from the Head of the Department of the organisation or authority, board or corporation concerned or office concerned under sub-section (3) of section 5 within such time as may be specified by it, not exceeding a period of 30 days.
10. **Time frame for recommendations of Competent Authority-** Every Competent Authority shall make its recommendations to the public authority under sub-section (7) of section 5 within 120 days from the date of receipt of complaint.  
Provided that this period may be extended to 150 days in exceptional cases with the reasons for delay being recorded in writing.
11. **Time frame for giving directions under section 11-**
  - (1) The Competent Authority shall take action and give directions to the concerned public servant or the public authority under sub-section (2) of section 11, ordinarily within 15 days, and for matters threatening the life or liberty of a person within such time as to effectively protect such person from being victimised or avoid his/her victimisation.  
Provided that without prejudice to the generality of the term "victimization", the said term shall include, but not be limited to, any of the following actions taken or threatened to be

taken, whether directly or indirectly, to the disadvantage of any person, including his/her family members, who has filed a complaint or made disclosure or rendered assistance in inquiry under this Act:

- i. Discharging, demoting, suspending, threatening, intimidating or harassing;
- ii. Singling out by selective application of rules;
- iii. Taking any detrimental or disciplinary action under the service rules and procedure without reasonable cause;
- iv. Taking any measures that adversely affect the employment or working conditions of the public servant including pay, benefits, awards and training;
- v. Transferring to remote places;
- vi. Withholding of promotion;
- vii. Denying the grant of leave, without reasonable cause;
- viii. Recording adverse entries in the ACR/APAR/service record or recording adverse references/comments in memos;
- ix. Withdrawal of powers, duties and responsibilities;
- x. Taking any step whereby restrictions are put on the liberties of the person;
- xi. Taking any steps that are discriminatory in nature;
- xii. Causing any injury in any manner, without reasonable cause.

Provided further that victimization shall stand established if the action or inaction that led to the complaint about victimization was solely a result of the person making a complaint or disclosure or rendering assistance in inquiry under the Act.

- (2) Subject to the provisions of point (1) of rule 11 above, in giving an opportunity of hearing under sub-section (2) of section 11 of the Act to the public authority or the public servant, as the case may be, the Competent Authority shall specify a time-frame within which the public authority or the public servant has to respond, failing which, the allegation of victimisation shall stand established, unless a reasonable cause can be provided for not responding within the specified timeframe.

Provided that, in accordance with sub-section (2) of section 11 of the Act, in any such hearing, the burden of proof that the alleged action on the part of the public authority is not victimisation, shall lie on the public authority.

- (3) If the allegation of victimisation stands established, the Competent Authority shall require the said public authority or public servant to compensate an amount not less than one lakh rupees to the person who was victimised.

12. **The manner for discreet inquiry-** The discreet inquiry under sub-section (2) of section 5 of the Act shall be conducted in the following manner:

- (1) A discreet inquiry shall be made only on an order made in writing by the Competent Authority.
- (2) The Competent Authority shall inform the complainant of the initiation of the discreet inquiry and the names and designations of the persons charged with making it.
- (3) The persons charged with making the discreet inquiry shall be impartial and shall not be interested in the result of the inquiry.
- (4) The persons charged with making the discreet inquiry, or the officer of the Competent Authority who ordered the inquiry, shall not be subordinate to the complainant.
- (5) The report of the discreet inquiry shall be submitted in writing to the Competent Authority and shall include –
  - i. a copy of the order specified in point (1) of rule 12;
  - ii. the evidence produced, if any, during the inquiry;

- iii. the details of how the discreet inquiry was carried out, including details of names of persons spoken to;
  - iv. the findings of the discreet inquiry; and
  - v. any other relevant document or material.
- (6) The Competent Authority shall maintain a register of all discreet inquiries initiated under the Act and such register shall include –
  - (a) the complaint number, the date of the complaint, the date of initiation of the inquiry;
  - (b) the names and designations of the persons charged with making the inquiry;
  - (c) the names and designations of the police, the Delhi Special Police Establishment, or other authority, as the case may be, whose assistance was taken; and
  - (d) the results of the discreet inquiry.
- (7) The proceedings of the discreet inquiry shall be conducted in secrecy and under no circumstances shall the person who is the subject of the complaint be made aware of either the complaint or the inquiry.
- (8) The scope of the discreet inquiry should be limited to the scrutiny of records and interrogation of bare minimum persons which may be necessary to judge whether there is any substance in the allegations which are being enquired into.
- (9) The Competent Authority shall ensure that the identity of the complainant is not disclosed or revealed during the process of the discreet inquiry.
- 13. **Copy of recommendations of Competent Authority and report of discreet inquiry to be provided to complainant-** The Competent Authority shall provide a copy of the recommendations made by it under sub-section (7) of section 5 and a copy of the report of the discreet inquiry to the complainant.
- 14. **Protection of identity-** The Competent Authority shall not reveal the identity of the complainant without the prior written consent of the complainant.
- 15. **Format of Consolidated Annual Report-** Every Competent Authority shall prepare a consolidated annual report under sub-section (1) of Section 23, and each report shall state in respect of the year to which the report relates:
  - (a) the number of complaints received by the Competent Authority;
  - (b) the number of complaints in which discreet inquiry under sub-section (2) of section 5 was made;
  - (c) the number of cases in which comments or explanation or report from the Head of the Department of the organisation or authority, board or corporation concerned or office concerned was sought under sub-section (3) of section 5;
  - (d) the number of cases in which recommendations were made by the Competent Authority to the public authority under sub-section (7) of section 5 and the time frame within which the recommendations were made;
  - (e) The particulars of recommendations made by the Competent Authority to the public authority under sub-section (7) of section 5;
  - (f) The number of cases in which the public authority acted upon the recommendations made by the Competent Authority within the stipulated time-frame;
  - (g) The particulars and time-frame of the action taken by the public authority under sub-section (8) of section 5 on the recommendations made by the Competent Authority;
  - (h) The number of complaints closed by the Competent Authority along with the particulars of the reasons for closure;
  - (i) Number of applications received seeking redress from victimisation under sub-section (2) of section 11;

- (j) The particulars of the action taken and directions given by the Competent Authority on receipt of applications seeking redress from victimisation under sub-section (2) of section 11;
- (k) The quantum of penalty or fine imposed on any public servant in respect of administration of this Act and the quantum of penalty or fine recovered from such public servant;
- (l) The particulars of action taken against any person for any offences under the Act, including details of implementation of the action taken;
- (m) Number of cases in which the Competent Authority granted protection under section 12;
- (n) The particulars of the action taken and directions given by the Competent Authority for granting protection under section 12;
- (o) the number of appeals referred to the High Court;
- (p) any facts which indicate an effort by the Competent Authority to administer and implement the spirit and intention of this Act;
- (q) Details of efforts made by the Competent Authority to create awareness about the Act among the general public and among public servants;

Provided that, subject to the provisions of the Act and the rules therein, such report shall not reveal the identity of the complainant or public servant, or contain any clues to the identity of the complainant or public servant.

16. **Representative of Competent Authority at district level-** every Competent Authority shall designate an officer at the district level on its behalf to receive a disclosure/complaint under the Act.

**Suggested notification for specifying Competent Authorities under sub-section (b) of Section 3 of the Whistle Blowers Protection Act, 2011**

**Notification of Competent Authority under sub- section (b) of Section 3-** Where independent institutions (like the Lokpal, Lokayukta, Human Rights Commission, Information Commissions, Womens' Commission etc.) are set up with powers to receive complaints, they will also be deemed Competent Authorities under this Act for matters, persons and institutions under their jurisdiction.