

WHISTLE BLOWER PROTECTION IN INDIA: A MYTH OR REALITY

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Abstract

Whistle blowing is an act of disclosure of information by people within or outside an organization which is not open to public and generally involves activities of an organization that are in opposition to public interest. It is a channel of unveiling information about illegal or unethical tasks which help the employee to take a positive step towards reduction of corruption. Whistleblower is one who blows the whistle on the acts like corruption, crime and unethical conduct. There have been number of commissions which were appointed in India to suggest about the formulation of the legislation for the protection of the whistle blowers, however, there are number of instances of the victimization of the whistleblowers. This victimization has increased to such an extent that in many of the cases it has resulted in causing death of the whistle blowers under suspicious circumstances. The government of India has made efforts to formulate the legislation in the form of Whistle Blower Act, 2011; however, it is not successful in giving protection to the whistle blowers especially after the amendment Bill 2015 which has resulted in making the issue of protection of the whistle blowers a myth rather than a reality.

Keywords: *Whistle Blower, Whistle Blower Protection, Whistle Blower Act, Corruption, Victimization of Whistleblowers*

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INTRODUCTION

Whistle blowing is an act of disclosure of information by an employee or contractor of an organisation regarding the corrupt means and wilful misconduct of an individual or group of individuals within an organization.¹ It can be defined as an act of disclosure of information by people within or outside an organization which is not open to public and generally involves activities of an organization that are in opposition to public interest. It is a channel of unveiling information about illegal or unethical tasks which help the employee to take a positive step towards reduction of corruption.² It is basically an act of alerting the higher ups and the society about the danger. Whistleblower is one who blows the whistle on the acts like corruption, crime and unethical conduct.³ The alleged misconduct can involve fraud, violation of law, threat to the interest of the organisation, violation of rule or regulation and gross mismanagement or waste of funds etc. The word whistle blowing is thought to have its roots in the practice of policemen and referees who used to blow their whistle while attempting to stop an activity that is illegal or foul.⁴ Whistle blowing can be of two types i.e. internal and external whistle blowing. Individuals who expose information regarding wrongdoing, fraud, corruption or mismanagement and report such acts inside an organisation i.e. to the Chief executive officer or any member of the senior management are called as internal whistleblowers. Whereas individuals who report of such wrongdoings outside of the organisation i.e. to the media, law enforcement agencies, etc. are called as external whistleblowers.⁵

Whistle blowing policy is a policy with which anyone can account for any alleged, dishonest or illegal actions or misconduct in the company or any organisation directly to any person

¹ Ayushi Kalyan and Aseem Diddee, *Whistle Blowing Policy in India: Needs and Challenges*, Law Mantra Online Monthly Journal, Available at: <http://journal.lawmantra.co.in/?p=153>

² Kanubha Jain, *Whistle Blower Policy: A Revised Vigil Mechanism*, Abhinav National Monthly Refereed Journal of Research in Commerce and Management, Vol. 4, Issue 4, 23-28 at 23 (April 2015).

³ *India Needs a Whistleblowers Protection Act*, The Hindu, 25th March 2003 (Tuesday), Available at: www.hindu.com

⁴ Dasguptas and A. Kesharwani, *Whistle Blowing: A Survey of Literature*, The IUP Journal of Corporate Governance, Vol. 9, Issue 4, 1-15 at 2 (2010).

⁵ Peter Bowden, *A Comparative Analysis of Whistle Blower Protection*, Australian Association for Professional and Applied Ethics, 12th Annual Conference, Adelaide (28-30th September 2015), Available at: <https://w3.unis.edu.au/hawkeinstitute/gig/adpae05/documents/bowden-whistleblower.pdf>

having authority or to the director or head of the company or organisation.⁶ The first law on the protection of whistleblower was passed in the United States.⁷ This Act protects the whistleblowers from unlawful release and encourages them to disclose the illegal activity and misconduct by giving the damages which are acquired by the government.⁸ There are multiple Acts in India which provide for the eradication of corruption from public sector. But all these Acts are not sufficient enough to eradicate the corruption until the protection is provided to those who disclose corruption.⁹ Whistle Blowers Protection Act is the first law of the country which protects the whistleblowers.¹⁰ Even before the passing of the Act, the Supreme Court acknowledged the need to afford some sort of protection to persons who would give information about the malpractices of public authorities. In the case of *A.K. Roy v. Union of India*,¹¹ the Supreme Court held that-

“The disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination.”

Again, In April 2004, the Supreme Court pressed the government to protect the whistleblowers by issuing an office order, the Public Interest Disclosures and Protection of Informers Resolutions, 2004, designating the Central Vigilance Commission (CVC) as the nodal agency to handle complaints on corruption.¹² Later on the Indian Government

⁶ Catherine C. Koh, *The Impact of Whistle Blowing Legislation on Developed and Emerging Markets*, Honours Thesis Paper 2204 (2012), Available at: http://scholarworks.wrnich.edu/honours_thesis

⁷ For Further Details See False Claims Act which was passed in 1863 and revised in 1986. It tries to encounter fraud by suppliers of the U.S. government during the Civil War.

⁸ V. K. Chaurasiya et. al., *Whistleblower's Protection Act 2011, India: A Critical Analysis*, International Journal of Advanced Research in Computer Science, Vol. 4, No. 8, 136-141 at 136 (May- June 2013).

⁹ C. Raj Kumar, *Corruption in India: A Violation of Human Rights Promoting Transparency and Right to Good Governance*, Journal of University of California, Vol. 49, 743-790 at 747 (2015).

¹⁰ Sonal Nagpal, *Whistle Blowing Mechanism: A Move Towards Better Corporate Governance*, Global Journal of Management and Business Studies, Vol. 3, No. 8 855-860 at 856 (2013).

¹¹ 1982 SCR (2) 272

¹² Office Order No. 33/5/2004, Central Vigilance Commission, Government of India, New Delhi (17th May, 2004), Available at: http://cvc.nic.in/004vgl26_1.PDF

introduced the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010.¹³

VICTIMIZATION OF WHISTLEBLOWERS IN INDIA: SOME INSTANCES

Whistle blowing in India is only a matter of writing anonymous complaints due to fear of facing dire consequences like bad reputation, losing job, boycott from peer group, suicides due to excessive harassment at the workplace or even murder or killing by the wrongdoers.¹⁴ Further the problem is that due to anonymity in complaints, it lacks credibility and no strong action could be taken against the wrongdoers. Rather they become more alert and ultimately the whistleblower becomes the victim. This victimization of the whistleblowers is day by day increasing in aggravated form especially from the period right to information is legalized by the government. This extent can be measured by analyzing different cases of victimization of Whistle blowers.

Satyendra Dubey: He was a project engineer of the National Highways Authority of India (NHAI). He had exposed the financial irregularities in handling of golden quadrilateral project in 2002.¹⁵ On 11th November, 2002 he had sent anonymous letter to the prime minister wherein he disclosed the corrupt practices of the contractors who submit forged documents to justify their technical and financial capabilities to win bids for the contract. He also requested to prime minister that his identity should not be revealed. The prime minister forwarded the letter to the Central Vigilance Commission along with the Ministry of Road, Transport and Highways. On November 27, Dubey was shot dead in Gaya.¹⁶ The matter was raised in Parliament, and the Prime Minister shifted the onus of investigation from the Bihar Police to the CBI. The CBI registered a case against unknown persons under 120-B (criminal

¹³ Also See Office Memorandum, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, New Delhi, (16th June, 2014), Available at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/371_4_2013-AVD-III-16062014.pdf

¹⁴ Nimisha Bhargava, Mani K. Madala, *An Overview of Whistle Blowing: Indian Perspective*, International Journal of Innovative Research in Science, Engineering and Technology, Vol. 4, Issue 2, 334-339 at 337 (February 2015).

¹⁵ Arjumand Barro and Sanjay Barjal, *Whistle Blowing in India: Introspection*, International Journal of Engineering, Technology, Management and Applied Sciences, Vol. 3, 243-252 at 248 (March 2015).

¹⁶ *Three Gets Life in Satyendra Dubey Murder Case*, The Hindu, 15th December, 2016 (Thursday), Available at: <http://www.thehindu.com/news/national/Three-get-life-in-Satyendra-Dubey-murder-case/article16625349.ece>

conspiracy) and 302 (murder) of Indian Penal Code and various provision under the Arms Act on 14 December 2003 and they were finally convicted by the court.¹⁷

Shanmugam Manjunath: He was IIM graduate & marketing manager in Indian Oil Corporation. He detected petrol adulteration racket at Indian Oil Corporation (IOC) outlet in Lakhimpur, Kheri. He ordered shutting down of two pumps in the area.¹⁸ However, the pumps got reopened in a month. Shanmugan conducted a surprise raid on 19th November, 2005 and was shot. His bullet-ridden body was found in backseat of his car. Pawan Kumar mittal, the main accused and owner of the pumps, was arrested along with other eight accused.¹⁹ The trial court convicted all the eight accused in 2007. While Mittal, was sentenced to death, the other seven who were charged with criminal conspiracy, were sentenced to life imprisonment. However, the Lucknow Bench of the Allahabad High Court uphold the convictions of six of the eight accused including Mittal in December, 2009. It commuted the death sentence of Mittal into a life imprisonment and also acquitted two accused named as Rajiv Awasthi and Harish Misra on the basis that nothing incriminating was found against them. A bench of Supreme Court judges comprising Hon'ble Justices Ranjan Gogoi and N. V. Ramana also upheld the decision of the Allahabad High Court in an appeal before them.²⁰

Lalit Mehta: He was an RTI activist and civil engineer by qualification. He was secretary of Vikas Sahyog Kendra, an NGO that was actively working on the right to food and NREGA schemes. He blew the whistle on widespread corruption in the scheme in Palamu. He had become a threat to the contractor lobby and corrupt government officials. He under took social audit of NREGA under the supervision of economist Jean Dreze's supervision. However, he was killed just a day before the submission of report of the audit.²¹ After facing

¹⁷ Prachi Sharma and Satyendra Dubey, *The Brave Whistle Blower who was Betrayed by Government*, 30th October, 2015 (Friday), Available at: <https://www.quora.com>

¹⁸ Santanu Kumar Das, *Whistle Blowing: A Step to Strengthen the Corporate Governance*, International Journal of Management and Social Sciences Research Review, Vol. 1, Issue 1, 41-48 at 44 (January 2016).

¹⁹ Percy Fernandez, *EX- IIM man Shot Dead for Doing his Job*, The Times of India, 23rd November, 2005 (Wednesday), Available at: <https://timesofindia.indiatimes.com/india/Ex-IIM-man-shot-dead-for-doing-his-job/articleshow/1305300.cms>

²⁰ Hari Narayan, *The Extraordinary Tale of an Ordinary Man*, The Hindu, 18th October, 2016, Available at: <http://www.thehindu.com/features/magazine/The-extraordinary-tale-of-an-ordinary-man/article12291362.ece>

²¹ Available at: <http://www.hardnewsmedia.com/2008/07/2264>

pressure from various quarters, the state government ordered a CBI investigation after more than a month of the murder. The special CBI Court convicted two persons while two others were acquitted in the case.²²

Shehla Masood: She was the secretary of NGO Udai that was created in 2004. She was an activist working primarily on wildlife conservation, and also supported other causes like good governance, RTI Act, police reforms, environment, women's rights and issues and transparency.²³ She co-founded RTI Anonymous, a service for whistle blowers for filing anonymous complaints. She was found dead inside her car just outside her residence in Bhopal on August 16, 2011 when she was on her way to attend the demonstration which was called to support Anna Hazare's 'India against Corruption' campaign. Initially, the police termed it as suicide, but after furore, the case was handed over to CBI on 19th August.²⁴ According to police, the motive of the killing remains unknown. However, the media was of the opinion that the possible cause could be her RTI activities, protest relating to illegal diamond mining done by Rio Tinto in connivance with government officers and fight to save tigers, leopards and forests, which were killed for their skins in connivance with forest officers. The special CBI court convicted interior designer Zahida Pervez and three other accused for the murder, and sentenced them to life imprisonment.²⁵

LEGISLATIVE PROVISIONS FOR THE PROTECTION OF WHISTLEBLOWERS IN INDIA

A bench comprising of Hon'ble Chief Justice T. S. Thakur, Hon'ble Justices A. K. Sikri and R. Banumathi of Supreme Court of India directed the centre for setting up an administrative mechanism for the protection of the whistle blowers. According to the Bench they face

²² Jaideep Deogharia, *Two Convicted in Whistle Blower Murder Case*, The Times of India, 19th March, 2013 (Tuesday), Available at: <https://timesofindia.indiatimes.com/city/ranchi/two-convicted-in-whistleblower-murder-case/articleshow/19049435.cms>

²³ Sujay Mehdudia, *"Provide Security to Whistleblowers"*, The Hindu, 19th August 2011 (Friday), Available at: <http://www.thehindu.com/news/national/provide-security-to-whistleblowers/article2369802.ece>

²⁴ Available at: <https://www.ndtv.com/india-news/4-sentenced-for-life-in-rti-activist-shehla-masoods-murder-case-1653641>

²⁵ Punya Priya Mitra, *RTI Activists Shehla Masood Murder: Bhopal Designer, 3 Others get Life Term*, The Hindustan Times, 29th January 2007 (Monday), Available at: <https://www.hindustantimes.com/india-news/rti-activist-shehla-masood-murder-bhopal-designer-3-others-get-life-term/story-I970XgfOJY4EYwl>

threats and harassment for bringing to light irregularities in government departments.²⁶ The Supreme Court further directed that machinery should be put in place for acting on complaints from whistle blowers till a law is enacted by the legislature.²⁷ On the basis of the directions of the Supreme Court, the government established central vigilance commission to formally look into the complaints of people of any wrongdoing.²⁸ However, it lacked the authority to take any punitive action against the wrongdoer.²⁹ The Law Commission of India also drafted a Bill in this regard as Shri N. Vittal, the then Central Vigilance Commissioner requested the Law Commission to draft a Bill for encouraging and protecting honest persons to expose corrupt practices on part of public functionaries.³⁰ The Law Commission of India suggested Public Interest Disclosure (Protection of Informers) Bill, 2002 for the protection of whistle blowers in India.³¹

The Whistleblower Protection Act, 2011- The Public Interest Disclosures and Protection to Persons making the Disclosures Bill, 2011 was introduced in the Lok Sabha on 26th August, 2010 in order to give statutory protection to whistle blowers in the country. The Bill was passed on 11th December, 2011 by Lok Sabha and on 21st February, 2014 by Rajya Sabha. It has received the assent of President of India on 9th May 2014, but it has not come into force till now.³²

The Act establishes a mechanism by which the complaints relating to disclosure on any allegation of corruption, or wilful misuse of power or wilful misuse of discretion can be received or inquired in to. It also aims to provide adequate protection against victimisation of

²⁶ *Notify Law for Those Who Blow Whistle: SC*, The Telegraph, 7th January, 2016 (Thursday), Available at: https://www.telegraphindia.com/1160107/jsp/nation/story_62594.jsp

²⁷ *Amit Anand Chaudhary, Set up System to Protect Whistleblowers: SC to Government*, The Times of India, 6th January, 2016 (Wednesday), Available at: <http://timesofindia.indiatimes.com>

²⁸ Shika Sachdeva, *Whistle Blower Protection Mechanism: A Mandate in the Current Indian Scenario*, International Journal of Commerce, Business and Management, Vol. 3, No. 1, 216-219 at 218 (February 2014).

²⁹ *4th Report of Second Administrative Commission on Ethics in Governance*, Government of India, para 3.6 at 78 and 79 (January 2017)

³⁰ *One Hundred Seventy Nine Report on Public Interest Disclosure and Protection of Informers*, Law Commission of India, at 4, (December 2001).

³¹ *Ibid.* at 80

³² *Ajay Sharma and Shashi Bhushan, Scope of Protection Available to Whistle Blowers: A Critical Analysis of Whistle Blowers Protection Act, 2011*, International Journal of Research and Analysis, Vol. 5, Issue 1, 1-11 at 1 (2007).

the person who has made the complaint.³³ The Act aims to protect whistle blowers, i.e. persons making a disclosure in the public interest, related to an act of injustice, corruption, criminal offence by a public servant, or misuse of power.³⁴ The Act lays down the procedure for making disclosure.³⁵ It also set up the mechanism for making disclosures and inquiries.³⁶ It further provides for the powers of the competent authority,³⁷ protection of the persons making disclosure.³⁸ It also provides for offences and penalties against the wrong disclosures against public servants.³⁹ The Act provides that any public servant or any other person including a non-government organization can make a disclosure to the Central or State Vigilance Commission. The Act makes it is mandatory for the complainant to include his/her identity with the complaint. The Central Vigilance Commission has been directed not to disclose the identity of the complainant except to a higher official if he deems it necessary. The Act penalizes any public official who reveals the identity of the complainant, without any proper approval with up to 3 years imprisonment and a fine up to 50,000 Rupees.⁴⁰ The Act has also prescribed penalties for deliberately filing any false or frivolous complaints with up to 2 years imprisonment and a fine of up to Rs. 30,000.⁴¹

The Whistleblower Protection (Amendment) Bill, 2015- The Whistleblower Protection (Amendment) Bill, 2015 was introduced in Lok Sabha on 11th May, 2015 by the Minister of Personnel, Public Grievances and Pensions, Mr. Jitendra Singh. The Bill was passed in Lok Sabha on 13th May, 2015. The Bill amends the Whistleblowers Protection Act, 2011. It seeks to incorporate different amendments:

³³For Further details See Objective of the *Whistle Blowers Protection Act*, 2011.

³⁴ *Whistle Blower Protection Act*, 2011, section 4 (1)

³⁵ *Ibid.*, section 4.

³⁶ *Ibid.*, chapter III, section 5 and 6.

³⁷ *Ibid.*, chapter IV, section 7-10.

³⁸ *Ibid.*, chapter IV, section 11-14.

³⁹ Anshul Agnihotri, Sankul Kabra, *Whistle Blower Legislation in India: Comparison with International Standards*, Indian Journal of Law and Policy Review, Vol. 1, 31-45 at 32 (August 2016).

⁴⁰ Supra note 34, chapter IV, sections 15-22.

⁴¹ Venkatesh Nayak, *Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2012: A Comparison with International Best Practice Standards*, Common wealth Human Rights Initiative, New Delhi, 1-115 at 15 (2010), Available at: <http://www.humanrightsinitiative.org>

Exemptions from Public Interest Disclosures: The Act provides a mechanism for receiving and inquiring into public interest disclosures against acts of corruption or wilful misuse of power and discretion by public servants. The Bill amends the Act to prohibit any person from making a disclosure if it relates to information under any of the following 10 categories: (i) the sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence; (ii) records of deliberations of the Council of Ministers; (iii) that which is forbidden to be published by a court or if it may result in contempt of court; (iv) a breach of privilege of legislatures; (v) commercial confidence, trade secrets, intellectual property (if it harms a third party); (vi) that relayed in a fiduciary capacity; (vii) that received from a foreign government; (viii) that which could endanger a person's safety etc.; (ix) that which would impede an investigation etc.; (x) personal matters or invasion of privacy.⁴²

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then such disclosure would be permitted under this Act. A certificate by an authority of the state or central government with regard to the above will be binding.⁴³

Procedure to determine complaints that are prohibited from disclosure: The Bill states that if a disclosure related to any of the above 10 categories is made, the competent authority will refer it to a government authorised authority. This authority will decide if the disclosure is prohibited. This decision will be binding on the competent authority. However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed. The Bill also provides about the circumstances under which no person is required to answer any question, produce any document or render any assistance in any inquiry under the Act. It includes the above ten conditions under which public disclosures cannot be made.⁴⁴

Issues exempt from being addressed during an inquiry into a whistle blowing complaint: Under the Act, no person is required to provide any information or render assistance, during

⁴² Venkatesh Nayak, *Whittling the Whistle*, Available at: <https://www.nationalheraldindia.com/news/whittling-the-whistle-2>

⁴³ Priyanka Rao, *The Whistle blowers Protection Act, 2014: Comparison of 2015 Bill with 2013 Amendments*, May 11, 2015, Available at: www.prsindia.org.

⁴⁴ Carmen Apaza and Yongjin Chang, *The Impact of External Whistle Blowers on Uncovering Corruption: A Comparative Study*, 1-33 at 2, Available at: <http://www.law.kulriven.be/mtisc/integriteit/egpa/previous-egpa.../apazachang.pdf>

an inquiry into a whistle blowing complaint if it relates to one of five categories of information. These include: (i) security of India, (ii) foreign relations; (iii) public order and morality; (iv) contempt of court; defamation or incitement to an offence; and (v) Cabinet proceedings. The Bill amends this provision to replace these five categories with the above 10 categories of information. The proposed amendments allow whistleblowers to disclose some kinds of information only if it has been obtained through a Right to Information query. This includes intellectual property, trade secrets and even information that can be considered as the unwanted invasion of privacy of an individual.⁴⁵

Limitations on Disclosure under the Act: Under the Whistleblowers Protection Act, 2011, any person may make a public interest disclosure against a public servant. Such disclosures are made before a Competent Authority.⁴⁶ The Act specifies the Competent Authority for each category of public servant. For example, it would be the Prime Minister for a Union Minister; Speaker/ Chairman for Members of Parliament; the Chief Justice of the High Court for district court judges, the Central or State Vigilance Commission for government servants.⁴⁷ The Bill amends the Act to prohibit the disclosure of 10 categories of information to a Competent Authority. Further, while the Act excludes 22 security and intelligence organisations from its purview, any information related to allegations of corruption must be provided.

DRAWBACK OF THE LEGISLATION FOR PROTECTION OF WHISTLE BLOWER IN INDIA:

1. The Act empowers the public servant, private person or any NGO to disclose any wrong doings by a public servant only.⁴⁸
2. The Act does not cover any wrong doings in non- governmental sector. The private and social sectors have been left out.⁴⁹

⁴⁵ Nitika Pasan and Surbhi Jain, *Critical Analysis of the Whistle Blowers Protection Mechanism in Indian Law*, Kaav International Journal of Economics, Commerce and Business Management, Vol. 4, 66-69 at 67 (July-September 2017).

⁴⁶ S. Srividhya and C. Stalin Shelly, *Whistle Blowing Protection: A Watchdog for the Organisation*, International Journal of Social Sciences and Interdisciplinary Research, Vol. 1, Issue 10, 204-11 at 207 (October 2012).

⁴⁷ Supra note 34, section 3 (b).

⁴⁸ *Ibid.*, section 4.

3. Members of armed forces, employees of intelligence agencies are prohibited from reporting any wrongful action directly or indirectly to the organisation.⁵⁰ Further with the Amendment Act, 2015, the members of armed forces are excluded from the purview of the Act.
4. The Competent Authority can ask the Head of Department for making comments and opinions. It is not clear that inquiry will be conducted openly or secretly.⁵¹
5. The Act does not place any obligation on the Competent Authority to inform any whistleblower about the progress of investigation.
6. The Act does not provide any witness protection program which is present in other countries like U.S.A., Canada and South Africa.⁵²
7. Though the Amendment Act, 2015 provides for the definition of the term disclosure however, definition of victimisation is still not clear.
8. The time period after which action will be reviewed is not provided. There is no time limit for inquiry.
9. The anonymous complaints are not entertained by central vigilance commission.⁵³
10. The Bill states that if the Competent Authority receives a public interest disclosure that falls under any of the 10 prohibited categories of information, he will refer it to a government authorised authority.⁵⁴ This authority will decide whether the disclosure contains any information that is prohibited under the Bill. This decision will be binding on the Competent Authority. However, the Bill is silent on the minimum qualifications or designation of the government authority. The independence of this

⁴⁹ Supra note 34, section 3 (b).

⁵⁰ Apurba Kundu, *Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010*, Journal of Indian Law and Society, Vol. 2, 113-124 at 119, Available at: www.manupatra.com

⁵¹ Gaurav Vivek Bhatnagar, *Activists Urge Rajya Sabha MPs not to Pass Amended Whistle Blower Bill as is*, Available at: <http://thewire.in/158568/rajya-sabha-whistle-blowers-act-amendments/17/07/2017>

⁵² For Further Details See, *The UK Public Interest Disclosure Act, 1998*, and *The Whistle blowers Protection Act, 1984, USA*.

⁵³ Supra note 39, section 4 (6).

⁵⁴ Rupesh Aggarwal, *Critically Analysing The Whistle Blowers Protection (Amendment) Bill, 2015: Is the Change a Step Towards Regression*, NLUA Law Review, Vol. 1, No. 1, 86-100 at 88 (2015).

authority may be at risk if the authority is junior in rank to the public servant against whom the disclosure is made.⁵⁵

11. The Amendment Act, 2015 prohibits the disclosure of information if information is related to the categories mentioned in 10 sub clauses. It unduly restricts the disclosure of information. Further the disclosure is now prohibited if it falls under any provisions of Official Secrets Act which again restricts the disclosure of information by whistle blower.

SUGGESTIONS FOR IMPROVEMENTS IN WHISTLE BLOWERS PROTECTION LEGISLATION

Whistleblowers would be entitled to official protection only if all of the conditions mentioned under the Act are complied with. They could face action if these conditions are not complied with. Further the central and state governments are the final authorities who are given the power to judge each case. The activists are of the view that the concern of Amendment Bill for protecting national security and exempting information under the Official Secrets Act is only meant to dilute the Whistleblowers Protection Act and it will eventually turn the law into a dead-letter.⁵⁶ The following suggestions can be incorporated to overcome the drawbacks in the present legislation along with the amendment Bill.

1. The Act should also cover the wrong doings done by non-government sector.
2. The members of armed forces, employees of intelligence agencies should not be prohibited from reporting any wrongful action directly or indirectly to the organisation as it will help in recognizing and tackling corrupt practices in these institutions also.
3. The legislation provides for creation of internal whistle blowing mechanism. However, it should be created without any bias.
4. The Competent Authority should be required to inform whistleblower about the progress of investigation not only the result of the investigation.
5. The provision for strict penalties should be incorporated in case of victimising of the whistleblower by the accused persons.
6. There should be proper safeguards for the protection of the whistleblowers.

⁵⁵ Aareja Johari, *If Amendments to Whistle Blowers Act are Passed, There may be no One Left to Protect*, 14th May 2015, Available at: <http://scroll.in/article/727173>

⁵⁶ *Ibid.*

7. There should be provisions for rewarding the whistleblower rather than penalizing the action if he blew the whistle against the organisation.
8. The Act should also provide for witness protection program.
9. Definition of the term victimisation should be made clear.
10. The time period after which action will be reviewed should be provided and there should also be a time limit for inquiry.
11. The anonymous complaints should be entertained by central vigilance commission in order to ascertain the protection of the whistle blower.
12. The legislation should fix the minimum qualifications or designation of the government authority inquiring about the complaint of the whistle blower.
13. There should not be too much categories which is to be excluded from the purview of the Act as it would undermine the importance of the concept of whistle blowing.