**PART A: HIGHLIGHTS OF THE BILL**

**Context**

The Whistleblowers Protection Act, 2014 enables any person (i.e. a whistleblower) to report an act of corruption, willful misuse of power or discretion, or criminal offence by a public servant.  This includes all public servants, including Ministers, Members of Parliament, the lower judiciary, regulatory authorities, central and state government employees, etc.[[1]](https://prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015#_edn1)  Such disclosures are made to a specified Competent Authority who must conduct a discreet inquiry and conceal the identity of the complainant and public servant.

After the 2014 Act was passed as a Bill by Lok Sabha, the government circulated amendments in Rajya Sabha to prohibit two categories of information from being disclosed.  This included information related to: (i) sovereignty, strategic, scientific or economic interests of India, foreign relations, or the incitement of an offence; and (ii) proceedings of the Council of Ministers.  However, when the Bill was passed by Rajya Sabha, these amendments were not moved as the discussion took place on the last day of the 15thLok Sabha.

The Whistleblowers Protection (Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015 and passed in that House on May 13, 2015.  The Bill amends the Whistleblowers Protection Act, 2014.

**Key Features**

Under the Whistleblowers Protection Act, 2014, any person may make a public interest disclosure against a public servant.  Such disclosures are made before a Competent Authority.  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.

The Bill amends the Act to prohibit the disclosure of 10 categories of information to a Competent Authority.  The table below compares the provisions of the Bill with the Act.

Table : Comparison Whistleblowers Protection Act, 2014 with the Amendment Bill, 2015

|  | **Whistleblowers Protection Act, 2014** | **Whistleblowers Protection (Amendment) Bill, 2015** |
| --- | --- | --- |
| Disclosure of information | * Disclosures may be made on any act of corruption, abuse of power or discretion, or criminal offence by a public servant. | * A disclosure is prohibited if it contains information related to:   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.   * However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Bill. |
| Applicability of the Official Secrets Act (OSA), 1923 | * Disclosures can be made under the Act even if they are prohibited under the OSA.   [The OSA prevents documenting or communicating any information, etc., if it violates national security.] | * Disclosures cannot be made under the Bill, if it is prohibited under the OSA. |
| Procedure to determine prohibited disclosures | * Not applicable, as the Act does not prohibit any type of information from being disclosed. | * Once a disclosure is made, the competent authority will refer it to a government authorised authority. * This government authority will take the final decision on whether the disclosure is prohibited. |
| Issues that may not be revealed during an inquiry into a whistle blowing complaint | * Once a whistleblowing complaint is admitted, and is being inquired into, no person is required to provide any information if it falls under five categories. * These categories include: i) security of India, ii) foreign relations; iii) public order and morality; iv) contempt of court; defamation, incitement to an offence; and v) Cabinet proceedings. | * The five categories are replaced with the above 10 categories of information. |

**PART B: KEY ISSUES AND ANALYSIS**

**Prohibition of 10 categories from public interest disclosure**

The Whistleblower Protection Act, 2014 was enacted to enable any person to disclose to a Competent Authority, acts of corruption or wilful misuse of power or discretion, or criminal offences by a public servant.  The Competent Authority is the Prime Minister or Chief Minister in the case of Ministers, the Speaker or Chairman for Members of Parliament or state legislatures, the Chief Justice of the High Court for district court judges, and the Central or State Vigilance Commission for government servants.

The Bill amends this provision to prohibit a person from disclosing information related to corruption by public servants if it falls under 10 categories.  These categories include information related to sovereignty, scientific, economic interests and security of India, proceedings of the Council of Ministers, breach of privilege of legislatures, intellectual property, an investigation process, etc.