

# Standing Committee Report Summary

## The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010

- The Standing Committee on Personnel, Public Grievances, Law and Justice submitted its 46<sup>th</sup> Report on ‘The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010’ on June 9, 2011. The Chairperson was Smt Jayanthi Natarajan.
- The Bill seeks to establish a mechanism to register complaints on any allegation of corruption or wilful misuse of power by a public servant. The Committee broadly agreed with the provisions of the Bill but hoped that the government would consider the recommendations and adopt them wherever found appropriate.
- The Bill covers any complaint under the Prevention of Corruption Act, 1988; wilful misuse of power, and a criminal offence by a public servant. The Committee suggested that the scope of the Bill may be widened to include offences such as maladministration and human rights violations. Specifically, the Bill should cover accrual of wrongful gain to a third party. Also, the definition of “public servant” in the Indian Penal Code and the Prevention of Corruption Act, 1988 could be adopted for this Bill.
- The Committee proposed that the defence forces and intelligence organisations should be included within the ambit of the Bill. There could be reasonable exceptions based on operational needs of the forces. Alternately, a separate authority could be set up for these exempted agencies. It added that the Bill should cover members of the Council of Ministers, the judiciary (including higher judiciary) and regulatory authorities.
- The Bill states that a public interest disclosure can be made only to the Central or State Vigilance Commissions (VCs). The Committee is of the opinion that this may restrict access especially to population in remote areas. It recommended that the Rules should provide for a smooth and convenient system. The Committee added that if there are multiple points at which complaints can be made, the identity of the complainant should be strictly protected.
- The Bill does not allow anonymous complaints. The Committee however suggested that if the anonymous complaints have supporting documents that substantiates the claims, the VCs can investigate it. It also advised that an alternative mechanism could be set up within or outside the Bill for inquiring into anonymous complaints.
- The Committee recommended that there should be a foolproof mechanism to ensure that the identity of the complainant is not compromised at any cost. This is especially important because without such a mechanism it would deter prospective complainants due to fear of harassment and victimisation.
- The Bill allows the VCs to reveal the identity of the complainant to the head of the organisation if it is necessary to do so. The Committee recommended that the identity of the complainant should not be revealed to the head of the organisation without the written consent of the complainant.
- The Committee felt that undue burden should not be placed on the complainant to provide proof to substantiate his case. As long as he is able to make out a prima facie case, the VCs should follow up on the case.
- The Committee is of the view that the VCs should inform the complainant about the outcome of the complaint. Also, the VCs should give reasons if it decides to dismiss a complaint and the complainant should be given a reasonable hearing if he is not satisfied with the dismissal.
- The Committee proposed that there should be a time limit for conducting discreet inquiry by the VCs, for inquiry by the head of the organisation and for taking action on the recommendations of the VCs. The authority would have to give reasons in writing if it wants the time limit to be extended. There should also be some mechanism to ensure that the directions of the VC are not avoided to protect the wrongdoer.
- The Bill states that the VCs shall not entertain any complaints made five years after the action. However, the Committee is not convinced that this restriction should be prescribed. If at all there has to be a time limit, exceptions should be made in case of complaints which prima facie reveal offences of a grave nature.

- The Committee recommended that the term “victimisation” should be defined and the whistleblower should be provided with sufficient protection to protect him from violence. Also, witnesses and other persons who support the whistleblower should be accorded the same protection.
- The Committee strongly recommended that there should be a mechanism to ensure that the orders of the VCs are complied with. Stringent action should be taken against any person who does not comply with the order.
- The Committee felt that the penalty for frivolous or malafide complaints was too high and should be substantially reduced. Also, while deciding whether a disclosure is frivolous, the intention of the complainant should be examined rather than the outcome of the inquiry. The complainant should also have the right to appeal to the High Court.

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