

**Bill No. 154 of 2015**

**THE WHISTLE BLOWERS PROTECTION (AMENDMENT) BILL, 2015**

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BILL

*further to amend the Whistle Blowers Protection Act, 2011.*

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Whistle Blowers Protection (Amendment) Act, 2015.

Short title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

17 of 2014. 5

**2.** In the Whistle Blowers Protection Act, 2011 (hereinafter referred to as the principal Act), in section 2, the words “the armed forces of the Union, being” shall be omitted.

Amendment  
of section 2.

**3.** In the principal Act, in section 3,—

1 of 1956.

(i) for the words and figures “section 617 of the Companies Act, 1956”, wherever they occur, the words, brackets and figures “clause (45) of section 2 of the Companies Act, 2013” shall be substituted;

Amendment  
of section 3.

18 of 2013. 10

(ii) in clause (d), in the opening line, for the word “complaint”, the word “disclosure” shall be substituted.

Amendment of section 4.

4. In the principal Act, in section 4, for sub-section (I), the following sub-sections shall be substituted, namely:—

“(I) Any public servant or any other person including a non-Governmental organisation may make public interest disclosure before the Competent Authority. 5

(IA) Notwithstanding anything contained in sub-section (I), no public interest disclosure shall be made by any public servant or any other person including a non-Governmental organisation under this Act, if such disclosure contains—

(a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security of the State, the strategic, scientific or economic interests of the State, friendly relations with foreign States or lead to incitement to an offence; 10

(b) information, which has been expressly forbidden to be published by any court of law or tribunal, or the disclosure of which may constitute contempt of court; 15

(c) information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature;

(d) information relating to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless such information has been disclosed to the complainant under the provisions of the Right to Information Act, 2005; 20 22 of 2005.

(e) information which is available to a person in his fiduciary capacity or relationship, unless such information has been disclosed to the complainant under the provisions of the Right to Information Act, 2005; 25 22 of 2005.

(f) information received in confidence from a foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information, which would impede the process of investigation or apprehension or prosecution of offenders; 30

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, except as otherwise provided under the Right to Information Act, 2005; 22 of 2005.

(j) personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless such information has been disclosed to the complainant under the provisions of the Right to Information Act, 2005.”. 35 22 of 2005.

Amendment of section 5.

5. In section 5 of the principal Act, after sub-section (I), the following sub-section shall be inserted, namely:— 40

“(IA) The Competent Authority shall not inquire into any public interest disclosure which involves information of the nature specified in sub-section (IA) of section 4:

Provided that the Competent Authority shall, on receipt of any such public interest disclosure, refer such disclosure to an authority authorised under 45

sub-section (1) of section 8 to ascertain whether the disclosure contains any information of the nature specified in sub-section (1A) of section 4, and the certificate given in this regard by such authority shall be binding on the Competent Authority.”.

5 **6.** In section 8 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 8.

“(1) No person shall be required or authorised under this Act, or under any other law for the time being in force, to furnish any information or answer any question or produce any document or render any other assistance in an inquiry under this Act, if furnishing of such information, or answering of question or the production of the document or the rendering of assistance is likely to result in the disclosure of any information of the nature specified in sub-section (1A) of section 4, and for this purpose, a certificate issued by an authority, authorised in this behalf by the Central Government or the State Government, as the case may be, certifying that such information, answer, document or assistance is of the nature specified in sub-section (1A) of section 4, shall be binding.”.

7. For section 14 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 14.

20 **“14.** On any disclosure made by the complainant or public servant, if the Competent Authority is of the opinion that pending inquiry, any corrupt practice is required to be stopped, it may pass such interim order, as it may deem fit, to stop such practice.”. Power to pass interim orders.

**8.** In section 18 of the principal Act, in sub-section (2), for the words “is attributable, such officer”, the words “is attributable to any negligence on the part of any officer other than the Head of the Department, such officer” shall be substituted. Amendment of section 18.

25 **9.** In section 20 of the principal Act, for the words and figures “relating to imposition of penalty under section 14 or section 15 or section 16”, the words and figures “under section 15” shall be substituted. Amendment of section 20.

**10.** In the principal Act, in section 23,—

30 (i) in sub-section (1), for the words “a consolidated” the word “an” shall be substituted; Amendment of section 23.

(ii) in sub-section (2), for the words “cause a copy thereof”, the words “consolidate the reports so received and cause the consolidated report” shall be substituted.

35 **11.** In section 31 of the principal Act, in sub-section (2), for the words “be deemed”, the words “shall be deemed” shall be substituted. Amendment of section 31.

## STATEMENT OF OBJECTS AND REASONS

The Whistle Blowers Protection Act, 2011 (17 of 2014) [hereinafter referred to as the said Act] has been enacted for providing protection to the persons making disclosure of corruption, wilful misuse of power or discretion by any public servant from harassment, besides keeping the identity of the whistle-blowers secure. While the Whistle Blowers Protection Bill, 2011 was taken up for consideration and passing in Parliament, the amendments agreed with a view to strengthening the safeguards against disclosures which may prejudicially affect the sovereignty and integrity of the country, security of the State, etc., and to remove certain drafting errors and errors in cross referencing of clauses were formulated. However, since the Bill was taken up for consideration in the Rajya Sabha on the last day of the extended Winter Session of Parliament, which was the last Session of the 15th Lok Sabha, the official amendments to the Bill for which notice had been given by the Government, were not moved. It has thus become necessary to carry out necessary amendments in the Act so as to incorporate necessary safeguards against disclosures which may prejudicially affect the sovereignty and integrity of the country, security of the State, etc. Thus it has become pertinent to amend the said Act to address the above shortcomings.

2. The salient features of the Bill, *inter alia*, are as follows:

(a) to ensure that the said Act incorporates necessary provisions aimed at strengthening the safeguards against disclosures which may prejudicially affect the sovereignty and integrity of the country, security of the State, etc., it is proposed to amend sections 4, 5 and 8 of the Whistle Blowers Protection Act, 2011;

(b) amendments in section 4 prohibit disclosures prejudicially affecting the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relations with foreign State, or lead to incitement of an offence, etc. These amendments have been modelled on the provisions of sub-section (1) of section 8 of the Right to Information Act, 2005;

(c) amendment in section 5 provides that the Competent Authority shall not inquire into any public interest disclosure which involves information of the nature specified in the amended section 4;

(d) amendment in section 8 provides that no person shall be required to furnish any information or answer any question or produce any document or render any other assistance in an inquiry under the said Act, if the same is likely to result in the disclosure of any information of the nature specified in the amended section 4;

(e) some amendments to correct drafting errors in the said Act have also been proposed.

3. The Bill seeks to achieve the above objects.

NEW DELHI;  
The 6th May, 2015.

Dr. JITENDRA SINGH.

ANNEXURE

EXTRACTS FROM THE WHISTLE BLOWERS PROTECTION ACT, 2011

(17 OF 2014)

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34 of 1988. **2.** The provisions of this Act shall not apply to the armed forces of the Union, being the Special Protection Group constituted under the Special Protection Group Act, 1988. Provisions of this Act not to apply to Special Protection Group.

**3.** In this Act, unless the context otherwise requires,— Definitions.

45 of 2003. (a) "Central Vigilance commission" means the Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003;

(b) "Competent Authority" means—

(i) in relation to a Member of the Union Council of Ministers, the Prime Minister;

(ii) in relation to a Member of Parliament, other than a Minister, the Chairman of the Council of States if such Member is a Member of the Council of States or the Speaker of the House of the People if such Member is a Member of the House of the People, as the case may be;

(iii) in relation to a Member of the Council of Ministers in a States or Union territory, the Chief Minister of the State or Union territory, as the case may be;

(iv) in relation to a Member of Legislative Council or Legislative Assembly of a State or Union territory, other than a Minister, the Chairman of the Legislative Council if such Member is a Member of the Council or the Speaker of the Legislative Assembly if such Member is a Member of the Assembly, as the case may be;

(v) in relation to—

(A) any Judge (except a Judge of the Supreme Court or of a High Court) including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; or

(B) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court; or

(C) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority,

the Higher Court;

(vi) in relation to—

(A) any person in the service or pay of the Central Government or remunerated by the Central Government by way of fees or commission for the performance of any public duty except Ministers, Members of Parliament and members or persons referred to in clause (a) or clause (b) or clause (c) or clause (d) of article 33 of the Constitution, or in the service or pay of a society or local authority or any corporation established by or

under any Central Act, or an authority or a body owned or controlled or aided by the Central Government or a Government company as defined in section 617 of the Companies Act, 1956, owned or controlled by the Central Government; or 1 of 1956.

(B) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election in relation to elections to Parliament or a State Legislature; or

(C) any person who holds an office by virtue of which he is authorised or required to perform any public duty (except Ministers and Members of Parliament); or

(D) any person who is a chairman, member or employee of any State Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board; or

(E) any person who is a Vice-Chancellor or member of any governing body, professor, associate professor, assistance professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University established by a Provincial or State Act or established or controlled or funded by the State Government and any person whose services have been availed of by such University or any such other public authority in connection with holding or conducting examinations; or

(F) any person who is an office-bearer or an employee of an educational, scientific, social, culture or other institution, in whatever manner established, receiving or having received any financial assistance from the State Government or any local or other public authority,

the State Vigilance Commission, if any, or any officer of the State Government or any other authority, as the State Government may, by notification in the Official Gazette, specify in this behalf under this Act;

(vii) in relation to members or persons referred to in clause (a) or clause (b) or clause (c) or clause (d) of article 33 of the Constitution, any authority or authorities as the Central Government or the State Government, as the case may be, having jurisdiction in respect thereof, may, by notification in the Official Gazette, specify in this behalf under this Act;

(c) "complainant" means any person who makes a complaint relating to disclosure under this Act;

(d) "disclosure" means a complaint relating to,—

(i) an attempt to commit or commission of an offence under the Prevention of Corruption Act, 1988; 49 of 1988.

(ii) wilful misuse of power or wilful misuse of discretion by virtue of which demonstrable loss is caused to the Government or demonstrable wrongful gain accrues to the public servant or to any third party;

(iii) attempt to commit or commission of a criminal offence by a public servant,

made in writing or by electronic mail or electronic mail message, against the public servant and includes public interest disclosure referred to in sub-section (2) of section 4;

(e) "electronic mail" or "electronic mail message" means a message or information created or transmitted or received on any computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

1 of 1956.

(f) "Government company" means a company referred to in section 617 of the Companies Act, 1956;

(g) "notification" means a notification published in the Gazette of India, or as the case may be, the Official Gazette of a State;

(h) "public authority" means any authority, body or institution falling within the jurisdiction of the Competent Authority;

49 of 1988.

(i) "public servant" shall have the same meaning as assigned to it in clause (c) of section 2 of the Prevention of Corruption Act, 1988 but shall not include a Judge of the Supreme Court or a Judge of a High Court;

(j) "prescribed" means prescribed by rules made by the Central Government and the State Government, as the case may be, under this Act;

(k) "regulations" means the regulations made by the Competent Authority under this Act.

CHAPTER II

PUBLIC INTEREST DISCLOSURE

19 of 1923.

4. (1) Notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, any public servant or any other person including any non-governmental organisation, may make a public interest disclosure before the Competent Authority.

Requirement of public interest disclosure.

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8. (1) No person shall be required or be authorised by virtue of provisions contained in this Act to furnish any such information or answer any such question or produced any document or information or render any other assistance in the inquiry under this Act if such question or document or information is likely to prejudicially affect the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign State, Public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence,—

Certain matters exempt from disclosure.

(a) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of the Cabinet;

(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet,

and for the purpose of this sub-section, a certificate issued by the Secretary to the Government of India or the Secretary to the State Government, as the case may be, or, any authority so authorised by the Central or State Government certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

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14. The Competent Authority, at any time after the making of disclosure by the complainant or public servant, if it is of the opinion that any corrupt practice required to be stopped during the continuation of any inquiry for the said purpose may pass such interim orders as it may deem fit, to prevent the immediate stoppage of such practice.

Power to pass interim orders.

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18. (1) \* \* \* \* \*

Punishment to Head of Department in certain cases.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the

offence has been committed with the consent or connivance of, or is attributable, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Appeal to High Court.

**20.** Any person aggrieved by any order of the Competent Authority relating to imposition of penalty under section 14 or section 15 or section 16 may prefer an appeal to the High Court within a period of sixty days from the date of the order appealed against:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

*Explanation.*—For the purposes of this section, 'High Court' means the High Court within whose jurisdiction the cause of action arose.

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CHAPTER VII

MISCELLANEOUS

Report on disclosures.

**23. (1)** The Competent Authority shall prepare a consolidate annual report of the performance of its activities in such form as may be prescribed and forward it to the Central Government or State Government, as the case may be.

(2) On receipt of the annual report under sub-section (1), the Central Government or State Government, as the case may be, shall cause a copy thereof to be laid before each House of Parliament, or the State Legislature, as the case may be:

Provided that where any other law for the time being in force provides preparing of such annual report by the Competent Authority, then the said annual report shall contain a separate part on the performance of activities under this Act by the Competent Authority.

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Repeal and savings.

**31. (1)** \* \* \* \* \*

(2) Notwithstanding such repeal, anything done or any action taken under the said Resolution be deemed to have been or taken under this Act.

LOK SABHA

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**BILL**

further to amend the Whistle Blowers Protection Act, 2011.

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*(Dr. Jitendra Singh, Minister of Personnel, Public Grievances and Pensions)*

GMGIPMRND—932LS(S3)—07.05.2015.