

## The Whistleblowers Protection Act, 2014: Comparison of the 2015 Bill with the 2013 amendments

The Whistleblowers Protection Act, 2014 was passed in Parliament on February 21, 2014.<sup>1</sup> After the Bill was passed by Lok Sabha, certain amendments were circulated in Rajya Sabha on August 5, 2013.<sup>2</sup> However, these changes were not incorporated in the Bill when it was passed by Rajya Sabha in 2014.

The Whistleblowers Protection (Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015.<sup>3</sup> The Statement of Objects and Reasons states that this Bill has been introduced to give effect to the earlier amendments which could not be passed. The Table below compares the provisions of the 2015 Bill with that of the 2013 amendments.

**Table 1: Comparison of the provisions of the Whistleblowers Protection (Amendment) Bill, 2015 with that of the 2013 proposed amendments**

Whistleblowers Protection Act, 2014	Official amendments- August 2013	Whistleblowers Protection (Amendment) Bill, 2015
<b>Grounds on which public interest disclosure cannot be made</b>		
<p><b>Section 4(1):</b> The Act states that any person, including a public servant or NGO, may make a public interest disclosure before a Competent Authority.</p> <p>This would apply, irrespective of the provisions of the Official Secrets Act, 1923.</p>	<p>No public interest disclosure may be if it contains:</p> <ul style="list-style-type: none"> <li>i) Information likely to prejudicially affect 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;</li> <li>ii) Information that involves the disclosure of cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers except as provided for under the Right to Information Act, 2005.</li> </ul>	<p>No public interest disclosure may be if it contains :</p> <ul style="list-style-type: none"> <li>i) Information likely to prejudicially affect 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;</li> <li>ii) Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers except as provided for under the Right to Information Act, 2005.</li> <li>iii) The information has been expressly forbidden to be published by a court or tribunal, or if the disclosure of information may result in contempt of court;</li> <li>iv) The information would cause a breach of privilege of Parliament or state legislature;</li> </ul>

- v) The information relates to commercial confidence, trade secrets, intellectual property (and such disclosure would harm a competitor). However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed.
- vi) The information is available to the person making the disclosure in his fiduciary capacity. However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed.
- vii) Information is received in confidence from a foreign government;
- viii) The disclosure of the information would endanger the life or physical safety of a person, or identify the source of information given in confidence for law enforcement or security purposes.
- ix) The information would impede the process of investigation/apprehension/prosecution of offenders;
- x) The disclosure of personal information if it has no relationship to any public interest, or if it causes unwarranted invasion of privacy. However, if such information has been made available under the Right to Information Act, 2005, then it may be disclosed.

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**Inquiry by the Competent Authority in relation to a disclosure**

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**Section 5(1):** Under the Act, upon receiving a disclosure, the Competent Authority is required to:

- i) Ascertain the identity of the complainant, and
- ii) Conceal the identity of the complainant, unless the complainant has himself revealed his identity.

The competent authority is not to inquire into any disclosure specified above.

The Competent Authority must refer the disclosure to the appropriate authority appointed by a central or state government to ascertain whether it is exempt from disclosure. The decision of the authority is binding on the Competent

Same as 2013 amendments.

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Authority.

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**Certain issues that are exempt from being addressed during an inquiry**

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**Section 8:** The Act provides that no person is required to answer any question, produce any document or render any assistance in any inquiry under the Act under certain circumstances.

These circumstances are matters that relate to the sovereignty, security and integrity of India, friendly relations with a foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It also includes information like the disclosure of Cabinet proceedings of the centre or states.

Deletes the conditions of public order, decency or morality or in relation to contempt of court and defamation.

Adds 'scientific or economic interests' as one of the circumstances.

A certificate by an authority of the state or central government with regard to the above will be binding.

Circumstances under which no person is required to answer any question, produce any document or render any assistance in any inquiry under the Act include the above ten conditions under which public disclosures cannot be made.

A certificate by an authority of the state or central government with regard to the above will be binding.

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**Punishment related to the Head of the Department (drafting error)**

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**Section 18(2):** If an offence has been committed with the consent of, or is attributable, such officer shall also be considered to be guilty of that offence.

The Bill clarifies that if the offence has been committed with the consent of, or is attributable to, any neglect on the part of any officer, other than the Head of the Department, and then such officer shall also be considered to be guilty of that offence.

Same as the 2013 amendments.

Certain other amendments to correct english/drafting errors have been made in relation to Sections 14, 18, 20, 23 and 31. They do not modify the provisions of the Act in a substantial manner.

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Sources: The Whistleblowers Protection Act, 2014, The Whistleblowers (Amendment) Bill, 2015; Notice of Amendments in Rajya Sabha, August 5, 2013; PRS.

1. The Whistleblowers Protection Act, 2014, <http://www.prsindia.org/uploads/media/Public%20Disclosure/Whistle%20Blowers%20Protection%20Act,%202011.pdf>.
2. The Whistleblowers Protection Bill, 2011, Notice of Amendments, Rajya Sabha, August 5, 2013, <http://www.prsindia.org/uploads/media/Public%20Disclosure/Notice%20of%20Amendments%20-Whistle%20blower.pdf>
3. The Whistleblowers (Amendment) Bill, 2015, <http://www.prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015-3784/>.

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