



Whistleblowers Protection Act

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Recently, the accusations raised against the Infosys Chief Executive Officer (CEO) and other senior officials have brought back the focus on whistleblowers' safety in India.

In recent years, the number of whistleblowing complaints has risen in the corporate sector, with Wipro and State Bank of India (SBI) facing most of them in 2018.

Background

- Whistleblowing is defined as an **act of disclosing information** by an employee or any concerned stakeholder about an **illegal or unethical conduct within an organization**.

A whistleblower is a person who informs about a person or organization engaged in such illicit activity.

- The **Law Commission of India** in **2001**, had recommended that, in order to eliminate corruption, a **law to protect whistleblowers** was necessary. It had drafted a bill as well to address this issue.
- In **2004**, in response to a petition filed after the infamous murder of NHA Official, the **Supreme Court of India** directed the Central government that, 'administrative machinery be put in place for acting on complaints from whistleblowers till a law is enacted.'
 - The government, in response, notified a resolution in 2004 named, '**Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)**'.
 - This resolution gave the **Central Vigilance Commission (CVC)** the power to act on complaints from whistleblowers.

- In **2007**, the report of the **Second Administrative Reforms Commission** also recommended that a specific law needs to be enacted to protect whistleblowers.
 - The **UN Convention against Corruption** to which **India is a signatory** (although not ratified) since 2005, encourages states to facilitate reporting of corruption by public officials and provide protection for witnesses and experts against retaliation.
 - The Convention also provides safeguards against victimization of the person making the complaint.
- To conform with such regulations, in 2011 **Whistleblowers Protection Bill** was proposed which finally became a law in 2014.
- The **Companies Act, 2013**, as well as the **Securities and Exchange Board of India** regulations have made it mandatory for companies to take notice of all such complaints.

Key Highlights of Whistleblower Protection Act, 2014

- The act establishes a mechanism to receive complaints related to disclosure of allegations of corruption or wilful misuse of power or discretion, **against any public servant**, and to inquire or cause an inquiry into such disclosure.

The act also provides adequate safeguards against victimization of the person making such complaints.
- It allows any person, including a public servant, to make a **public interest disclosure** before a **Competent Authority**. The law has elaborately defined various competent authorities. For instance, Competent authority to complaint against any union minister is the Prime Minister.
- The law does **not allow anonymous complaints** to be made and clearly states that no action will be taken by competent authority if the complainant does not establish his/her identity.

The maximum time period for making a complaint is **seven years**.
- **Exemptions:** The act is **not applicable** to the armed forces of the Union and the **Special Protection Group (SPG)** personnel and officers, constituted under the **Special Protection Group Act, 1988**.
- **Court of Appeal:** Any person aggrieved by any order of the Competent Authority can make an appeal to the concerned **High Court** within a period of sixty days from the date of the order.
- **Penalty:** Any person who negligently or mala-fidely **reveals the identity** of a complainant will be punishable with imprisonment for a term extending up to **3 years** and a fine which may extend up to Rs 50,000.

If the **disclosure** is done mala-fidely and knowingly that it was incorrect or false or misleading, the person will be punishable with imprisonment for a term extending up to 2 years and a fine extending up to Rs. 30,000.

- **Annual Report:** The Competent Authority prepares a consolidated **annual report** of the performance of its activities and **submits it to the Central or State Government** that will be further laid before each House of Parliament or State Legislature, as the case may be.
- The Whistleblowers Act overrides the **Official Secrets Act, 1923** and allows the complainant to make public interest disclosure before competent authority even if they are violative of the later act but not harming the sovereignty of the nation.
In **2015, an amendment bill** was moved that proposes, whistleblowers must not be allowed to reveal any documents classified under the Official Secrets Act of 1923 even if the purpose is to disclose acts of corruption, misuse of power or criminal activities. This dilutes the very existence of the 2014 Act.

Way Forward

- Suitable legislation must be enacted to provide protection to innocent whistleblowers and the dilution of the act that is proposed by the 2015 Amendment Bill must be abandoned.
- Strengthening of the whistleblower protection mechanism will help in ensuring that the integrity of democracy is **protected, cherished and upheld.**

Source: Mint