

Bill No. 97 of 2010

**THE PUBLIC INTEREST DISCLOSURE AND PROTECTION TO
PERSONS MAKING THE DISCLOSURES BILL, 2010**

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**THE PUBLIC INTEREST DISCLOSURE AND
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A

BILL

to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful mis-use of power or willful mis-use of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth year of the Republic of India as follows:—

CHAPTER-I

PRELIMINARY

1. (1) This Act may be called as the Public Interest Disclosure and Protection to Persons Making the Disclosures Act, 2010.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into the force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

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

(b) “Competent Authority” means in relation to—

(i) any public servant referred to in sub-clause (A) of clause (i), the Central Vigilance Commission or any other authority as the Central Government may, by notification in the Official Gazette, specify in this behalf under this Act;

(ii) any public servant referred to in sub-clause (B) of clause (i), the State Vigilance Commissioner, if any, or any officer of a State Government or any other authority as the State Government 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; 45 of 1988.

(ii) willful mis-use of power or willful misuse of discretion by virtue of which demonstrable loss is caused to the Government or demonstrable gain accrues to the public servant ;

(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 3;

(e) “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on an 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.

(i) “public servant” means any employee of—

(A) the Central Government or any corporation established by or under any Central Act, any Government Companies, societies or local authorities owned or controlled by the Central Government and such other categories of employees as may be notified by the Central Government, from time to time in the Official Gazette;

(B) the State Government or any corporation established by or under any State Act, Government Companies, Societies or local authorities owned or controlled by the State Government and such other categories of employees as may be notified by the State Government, from time to time in the Official Gazette.

(j) “prescribed” means prescribed by the 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. **3.** (1) Notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, any public servant [other than those referred to in clauses (a) to (d) of article 33 of the Constitution] or any other person including any non-Requirements of public interest disclosure.

governmental organization, may make a public interest disclosure before the Competent Authority:

Provided that any public servant, being a person or member referred to in clause (a) or clause (b) or clause (c) or clause (d) of article 33 of the Constitution, may make a public disclosure if such disclosure does not, directly or indirectly, relate to,—

- (a) the members of the Armed Force or any matter relating to Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence or any matter relating to such bureau or other organization;
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c) or any matter relating to such telecommunication system, bureau or organization.

(2) Any disclosure made under this Act shall be treated as public interest disclosure for the purposes of this Act and shall be made before the Competent Authority.

(3) Every disclosure shall be made in good faith and the person making disclosure shall make a personal declaration stating that he reasonably believes that the information disclosed by him and allegation contained therein is substantially true.

(4) Every disclosure shall be made in writing or by electronic mail or electronic mail message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other material, if any.

(5) The Competent Authority may, if it deems fit, call for further information or particulars from the person making the disclosure.

(6) No action shall be taken on public interest disclosure by the Competent Authority if the disclosure does not indicate the identity of the complainant or public servant making public interest disclosure or the identity of the complainant or public servant is found incorrect or false.

CHAPTER III

INQUIRY IN RELATION TO PUBLIC INTEREST DISCLOSURE

Powers and functions of Competent Authority on receipt of public interest disclosure.

4. (1) Subject to the provisions of this Act, the Competent Authority shall, on receipt of a public interest disclosure under section 3,—

(a) ascertain from the complainant or the public servant whether he was the person or the public servant who made the disclosure or not;

(b) conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise.

(2) The Competent Authority shall, upon receipt of the complaint and concealing the identity of the complainant, or the public servant in the first instance, make discreet inquiry, in such manner as may be prescribed, to ascertain whether there is any basis for proceeding further to investigate the disclosure.

(3) If the Competent Authority, either as a result of the discreet inquiry, or on the basis of the disclosure itself without any inquiry, is of the opinion that the disclosure requires to be investigated, it shall seek comments or explanation or report from the Head of the Department of the organization or authority, board or corporation concerned or office concerned within such time as may specified by it.

(4) While seeking comments or explanations or report referred to in sub-section (3), the Competent Authority shall not reveal the identity of the complainant or the public servant and

direct the Head of the Department of the organization concerned or office concerned not to reveal the identity of the complainant or public servant:

Provided that if the Competent Authority is of the opinion that it has, for the purpose of seeking comments or explanation or report from them under sub-section (3) on the public disclosure, become necessary to reveal the identity of the public servant to the Head of the Department of the organisation or authority, board or corporation concerned or office concerned, the Competent Authority may reveal the identity of the complainant or public servant to such Head of the Department of the organisation or authority, board or corporation concerned or office concerned for the said purpose.

(5) The Head of the organisation or office concerned shall not directly or indirectly reveal the identity of the complainant or public servant who made the disclosure.

(6) The Competent Authority, if after conducting an inquiry, is of the opinion that—

(a) the facts and allegations contained in the disclosure are frivolous or vexatious; or

(b) there are no sufficient grounds for proceeding with the inquiry,

it shall close the matter.

(7) After receipt of the comments or explanations or report referred to in sub-section (3), if the Competent Authority is of the opinion that such comments or explanations or report reveals either willful mis-use of power or willful mis-use of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take any one or more of the following measures, namely:—

(i) initiating proceedings against the concerned public servant;

(ii) taking appropriate administrative steps for redressing

the loss caused to the Government as a result of the corrupt practice or misuse of office or misuse of discretion, as the case may be;

(iii) recommend to the appropriate authority or agency for initiation of criminal proceedings under the relevant laws for the time being in force, if so warranted by the facts and circumstances of the case;

(iv) recommend for taking of corrective measures.

(v) take any other measures not falling under (i) to (iv) above which may be necessary for the purpose of this Act.

Matters not to be inquired by Competent Authority.

5. (1) If any matter specified or an issue raised in a disclosure has been determined by a Court or Tribunal authorized to determine the issue, after consideration of the matters specified or issue raised in the disclosure, the Competent Authority shall not take notice of the disclosure to the extent that the disclosure seeks to re-open such issue.

(2) The Competent Authority shall not entertain or inquire into any disclosure—

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850; or

37 of 1850.

(b) in respect of a matter which has been referred for inquiry under the Commission of Inquiry Act, 1952.

60 of 1952.

(3) The Competent Authority shall not investigate, any disclosure involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place.

(4) Nothing in this Act shall be construed as empowering the Competent Authority to question, in any inquiry under this Act, any *bonafide* action or bonafide discretion (including administrative or statutory discretion) exercised in discharge of duty by the employee.

CHAPTER IV

POWERS OF COMPETENT AUTHORITY

6. (1) Without prejudice to the powers conferred upon the Competent Authority under any other law for the time being in force, the Competent Authority, may require, for the purpose of any inquiry any public servant or any other person who in its opinion shall be able to furnish information or produce documents relevant to the inquiry or assist in the inquiry, to furnish any such information or produce any such document as may be necessary for the said purpose.

Powers of
Competent
Authority.

(2) For the purpose of any such inquiry (including the preliminary inquiry), the Competent Authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) The Competent Authority shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Competent Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Panel Code.

2 of 1974.

45 of 1860.

(4) Subject to the provisions of section 7, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public servant, whether imposed by the Official Secrets Act, 1923 or any other law for the time being in force, shall be claimed by any public servant in the proceedings before the Competent Authority or any person or agency authorized by it in writing and the Government or any public servant shall not be entitled in relation to any such inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rules made there

19 of 1923.

under.

Provided that the Competent Authority, while exercising such powers of the Civil Court, shall take steps as necessary to ensure that the identity of the person making complaint has not been revealed or compromised.

Certain matters exempt from disclosure.

7. (1) No person shall be required or be authorized by virtue of provisions contained in this Act to furnish any such information or answer any such question or produce 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,—

(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 a Secretary to the Government of India or the Secretary to the State Government, as the case may be, or, any authority so authorized 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.

(2) Subject to the provisions of sub-section (1), no person shall be compelled for the purposes of inquiry under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court.

8. (1) Every public authority shall, for the purposes of dealing or inquiry into the disclosures sent to it under sub-section (3) of section 4, create an appropriate machinery for the said purpose.

Superintendence of Competent Authority over appropriate machinery.

(2) The Competent Authority shall exercise superintendence over the working of machinery created under sub-section (1) for

the purposes of dealing or inquiry into the disclosures and give such directions for its proper functioning, from time to time, as it may consider necessary.

9. For the purpose of making discreet inquiry or obtaining information from the organization concerned, the Competent Authority shall be authorized to take assistance of the Delhi Special Police Establishment or the police authorities, or any other authority as may be considered necessary, to render all assistance to complete the inquiry within the specified time pursuant to the disclosure received by the competent authority.

Competent Authority to take assistance of police authorities, etc, in certain cases.

CHAPTER V

PROTECTION TO THE PERSONS MAKING DISCLOSURE

10. (1) The Central Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimized by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act .

Safeguards against victimization.

(2) If any person is being victimized or likely to be victimized on the ground that he had filed a complaint or made disclosure or rendered assistance in inquiry under this Act, he may file an application before the Competent Authority seeking redress in the matter, and such authority shall take such action, as deemed fit and may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimized or avoid his victimization .

(3) Every direction given under sub-section (1) by the Competent Authority shall be binding upon the public servant or the public authority against whom the allegation of victimization has been proved.

(4) Notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-section (2), in relation to a public servant, shall include the power to direct the restoration of the public servant making the disclosure, to the status quo ante.

Protection of witnesses and other persons.

11. If the Competent Authority either on the application of the complainant, or witnesses, or on the basis of information gathered, is of the opinion that either the complainant or public servant or the witnesses or any person rendering assistance for inquiry under this Act

need protection, the Competent Authority shall issue appropriate directions to the concerned Government authorities (including police) which shall take necessary steps, through its agencies, to protect such complainant or public servant or persons concerned.

Protection of identity of complainant.

12. The Competent Authority shall, notwithstanding any law for the time being in force, conceal, as required under this Act, the identity of the complainant and the documents or information furnished by him, for the purposes of enquiry under this Act, unless so decided otherwise by the Competent Authority itself or it became necessary to reveal or produce the same by virtue of the order of the court.

Power to pass interim orders.

13. 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 .

CHAPTER VI

OFFENCES AND PENALTIES

Penalty for furnishing incomplete or incorrect or misleading comments or explanation or report

14. Where the Competent Authority, at the time of examining the report or explanations or report referred to in sub-section (3) of section 4 on the complaint submitted by organisations or officials concerned, is of the opinion that the organisations or officials concerned, without any reasonable cause, has not furnished the report within the specified time or *malafidely* refused to submit the report or knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner in furnishing the report, it shall impose a penalty which may extend to two hundred fifty rupees for each day till report is furnished, so however, the total amount of such penalty shall not exceed fifty thousand rupees:

Provided that no penalty shall be imposed against any person unless he has been given an opportunity of being heard.

15. Any person, who negligently or malafidely reveals the identity of a complainant shall, without prejudice to the other provisions of this Act, be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to fifty thousand rupees.

Penalty for revealing identity of complainant.

16. Any person who makes any disclosure malafidely and

Punishment for false or

knowingly that it was incorrect or false or misleading shall be punishable with imprisonment for a term which may extend up to two years and also to fine which may extend up to thirty thousand rupees. frivolous disclosure.

17. (1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Head of the department punishment

(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.

18. Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director” , in relation to a firm, means a partner in the

firm.

Appeal to
High Court.

19. Any person aggrieved by any order of the Competent Authority relating to imposition of penalty under section 14 or section 15 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, the “High Court” means the High Court within whose jurisdiction the cause of action arose.

Bar of
jurisdiction.

20. No civil court shall have jurisdiction in respect of any matter which the Competent Authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Court to
take
cognizance.

21. (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Competent Authority or any officer or person authorised by it.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence punishable under this Act.

CHAPTER VI MISCELLANEOUS

22. (1) The Competent Authority shall prepare a consolidated 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.

Report on
disclosures.

(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.

23. No suit, prosecution or other legal proceedings shall lie against the Competent Authority or against any officer, employee, agency or person acting on its behalf, in respect of anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure for disclosure by writing or appropriate electronic means under sub-section (4) of section 3;

(b) the manner in which the discreet inquiry shall be made by the Competent Authority under sub-section (2) of section 4;

(c) the additional matter in respect of which the Competent Authority may exercise the powers of a civil court under clause (f) of sub-section (2) of section 6;

(d) the form of Annual Report under sub section (1) of section 22;

(e) any other matter which is required to be, or may be prescribed.

Power of State Government to make rules.

25. The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

Powers to make regulations.

26. The Competent Authority may, with the previous approval of the Central Government or the State Government, as the case may be, by notification in the Official Gazette, make regulations not inconsistent with the provision of the Act and the rules made there under to provide for all matters for which provision is expedient for the purposes of

giving effect to the provisions of this Act.

Notification,
and rules to
be laid
before
Parliament.

27. (1) Every notification issued and every rule made by the Central Government and every regulation made by the Competent Authority under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or the regulation, or both Houses agree that the notification or the rule or the regulation should not be made, the notification or the rule or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

28. Every notification issued by a State Government and every rule made by a State Government and every regulation made by the Competent Authority under this Act shall be laid, as soon as may be after it is issued, before the State Legislature.

Notification
issued and rules
made by State
Government to
be laid before
State
Legislature.
Power to
remove
difficulties.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

30. (1) The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No.371/12/2002-AVD-III dated the 21st April, 2004 as amended vide Resolution of even number, dated the 29th April, 2004 is hereby repealed.

Repeal and
savings.

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

STATEMENT OF OBJECTS AND REASONS

Corruption is a social evil which prevents proper and balanced social growth and economic development. One of the impediments felt in eliminating corruption in the Government and the public sector undertakings is lack of adequate protection to the complainants reporting the corruption or willful misuse of power or willful misuse of discretion which causes demonstrable loss to the Government or commission of a criminal offence by a public servant.

2. The Law Commission of India had in its 179th Report, *inter-alia*, recommended formulation of a specific legislation titled "The Public Interest Disclosure (Protection of Informers) Bill, 2002 to encourage disclosure of information regarding corruption or mal-administration by public servants and to provide protection to such complainants. The Second Administrative Reforms Commission in its 4th Report on "Ethics in Governance" has also recommended formulation of legislation for providing protection to whistle-blowers. The Government of India had issued a Resolution No.89, dated the 21st April, 2004 authorizing the Central Vigilance Commission as the designated agency to receive written complaints from whistle-blowers. The said Resolution also, *inter-alia* provides for the protection to the whistle-blowers from harassment, and keeping the identity of whistle-blowers concealed. It has been felt that the persons who report the corruption or willful misuse of power or willful misuse of discretion which cause demonstrable loss to the Government or commission of a criminal offence by a public servant need statutory protection as protection given to them by the said Resolution of the Government of India would not suffice.

3. In view of the position stated in the forgoing paragraphs, it has been decided to enact standalone legislation to, *inter-alia*, provide-

- a) for bringing within the scope of the Bill, public servants being the employees of the Central Government or the State Government or any corporation established by or under any Central Act or any State Act, Government Companies, Societies or local authorities owned or controlled by the Central Government or the State Government and such other categories of employees as may be notified by the Central Government or, as the case may be, the State Government, from time to time, in the Official Gazette;
- b) adequate protection to the persons reporting corruption or willful misuse of power or willful misuse of discretion which causes demonstrable loss to the Government or commission of a criminal offence by a public servant;

- c) a regular mechanism to encourage such person to disclose the information on corruption or willful misuse of power or willful misuse of discretion by public servants or commission of a criminal offence;
- d) the procedure to inquire or cause to inquire into such disclosure and to provide adequate safeguards against victimization of the whistle-blowers, that is the person making such disclosure:
- e) safeguards against victimization of the person reporting matters regarding the corruption by a public servant;
- f) punishment for revealing the identity of a complainant, negligently or *malafidely*;
- g) Punishment for false or frivolous complaints.

- 4. The notes on clauses explain in detail the provisions of the Bill.
- 5. The Bill seeks to achieve the aforesaid objectives.

PRITHVIRAJ CHAUHAN

New Delhi,

The 12th August, 2010

Note for clauses

Clause 1- This clause provides for the short title, extent and commencement of the proposed legislation. It is proposed not to extent the provisions of the proposed legislation to the state of Jammu and Kashmir. It further proposed to empower the Central Government to bring it into force on such date as it may appoint by notification in the Official Gazette and the Central Government may appoint different dates for different provisions of the Act.

Clause 2- This clause defines various expressions used in the proposed legislation which, inter alia, include the expressions “Central Vigilance Commission”, “Competent Authority”, “disclosure”, “electronic mail” or “electronic mail message”, “Government company”, “public authority” and “public servant”.

Clause 3- This clause lays down the requirements of public interest disclosure. It provides that notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, any public servant [other than those referred to in clauses (a) to (d) of article 33 of the Constitution] or any other person including any non-governmental organisation, may make a public interest disclosure before the Competent Authority.

It further provides that any public servant, being a person or member referred to in clause(a) or clause(b) or clause(c) or clause(d) of article 33 of the Constitution, may make a public disclosure if such disclosure does not, directly or indirectly, relate to, the members of the Armed Force or any matter relating to Armed Forces; the members of the Forces charged with the maintenance of public order; persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence or any matter relating to such bureau or other organisation, persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation or any matter relating to such telecommunication system, bureau or organisation.

It further provides that any disclosure made under the proposed legislation shall be treated as public interest disclosure to be made before the Competent Authority which is made in good faith and the person making such disclosure shall make a personal declaration stating that he reasonable believes that the information disclosed by him and allegation contained therein is substantially true.

It further provides that every disclosure shall be made in writing or by electronic mail or electronic mail message in accordance with the procedure as may be prescribed which shall contain full particulars and be accompanied by supporting documents, or other material and the Competent Authority may, if it deems fit, call for further information or particulars from the person making such disclosure.

It also provides that no action will be taken on public interest disclosure by the Competent Authority if the disclosure does not indicate the identity of the complainant or

public servant making public interest disclosure or the identity of the complainant or public servant is found incorrect or false.

Clause 4.- This clause provides for the powers and functions of the Competent Authority on receipt of public interest disclosure. It provides that the Competent Authority shall, on receipt of a public interest disclosure, ascertain from the complainant or the public servant whether he was the person or the public servant who made the disclosure or not and conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise.

It further provides that the Competent Authority, upon the receipt of the complaint and concealing the identity of the complainant, or the public servant in the first instance, make discreet inquiry, in such manner as may be prescribed, to ascertain whether there is any basis for proceeding further to investigate the disclosure and in case the Competent Authority, either as a result of the discreet inquiry, or on the basis of the disclosure itself without any inquiry, is of the opinion that the disclosure requires to be investigated, it shall seek the comments or explanation or report from the Head of the Department of the organization or authority, board or corporation concerned or office concerned within such time as may be specified by it and while doing so, the competent authority will not reveal the identity of the complainant or the public servant. However, if the Competent Authority is of the opinion that it has, for the purpose of seeking comments or explanation or report from the Head of the Department of the organisation or authority, board or corporation concerned or office concerned may reveal the identity of the complainant or public servant to such Head of the Department of the organization or authority, board or corporation concerned or office concerned.

It further provides that the Competent Authority, if after conducting an inquiry is of the opinion that, the facts and allegations contained in the disclosure are frivolous or vexatious; or there are no sufficient grounds for proceeding with the inquiry, it shall close the matter.

It also provides that after receipt of the comments or explanations or report referred to in sub-clause(3), of the Competent Authority is of the opinion that such comments or explanation or report reveals either willful misuse of power or willful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority, for initiating proceedings against the concerned public servant; or for taking appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt practice or misuse of office or misuse of discretion, as the case may be; or, to recommend the appropriate authority or agency for initiation of criminal proceedings under the relevant laws for the time being in force, if so warranted by the facts and circumstances of the case; or, recommend for taking of corrective measures; or, any other appropriate measure which may be necessary for the purposes of the proposed legislation.

Clause 5.- This clause provides for the matter not to be inquired by the Competent Authority. It provides that if any matter specified or an issue raised in a disclosure has been determined by a Court or Tribunal authorized to determine the issue, after consideration of the matters

specified or issue raised in the disclosure, the Competent Authority shall not take notice of such disclosure to the extent that the said disclosure seeks to reopen such issue.

It further provides that the Competent Authority shall not entertain or inquire into any disclosure, in respect of which a formal and public inquiry has been ordered under the Public Servants(Inquiries) Act, 1850 or in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act 1952 and shall not investigate, any disclosure involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place.

It also provides that nothing in the proposed legislation shall be construed as empowering the Competent Authority to question, in any inquiry under the proposed legislation, any *bonafide* action or discretion (including administrative or statutory discretion) exercised in discharge of duty by the employee.

Clause 6.- This clause lays down the powers of the Competent Authority. It provides that without prejudice to the powers conferred upon the Competent Authority under any other law for the time being in force, the Competent Authority, may require, for the purpose of any inquiry any public servant or any other person who in its opinion shall be able to furnish information or produce documents relevant to the inquiry or assist in the inquiry, to furnish any such information or produce any such document as may be necessary for the said purpose.

It further provides that for the purpose of any such inquiry (including the preliminary inquiry), the Competent Authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 and that all proceedings under the proposed legislation shall be deemed to be judicial proceedings under the proposed legislation shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code and for section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It further provides that subject to the provisions of clause 7, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public servant, whether imposed by the Official Secrets Act, 1923 or any other law for the time being in force, shall be claimed by any public servant in the proceedings before the Competent Authority or any person or agency authorized by it in writing and the Government or any public servant shall not be entitled in relation to any such inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rules made there under.

It also provides that the competent Authority, while exercising the powers of the Civil Court, shall take steps as necessary to ensure that the identity of the person making complaint has not been revealed or compromised.

Clause 7 - This clause deals with certain matters exempted from disclosure. It provides that no person shall be required or be authorized by virtue of provisions contained in the proposed legislation to furnish any such information or answer any such question or produce any

document or information or render any other assistance in the inquiry under the proposed legislation, 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, which might involves the disclosure of proceedings of the Cabinet of the Union Government and Cabinet of the State or any Committee of the Cabinet.

It further provides that a certificate issued by a Secretary to the Government of India or the Secretary to the State government, as the case may be, or , any authority so authorized by the Central or State government certifying that any information, answer or portion of a document is of the nature specified which might involves the disclosure of proceedings of the Cabinet of the Union government and Cabinet of the State or any Committee of the Cabinet shall be binding and conclusive.

It also provides that no person shall be compelled for the purposes of inquiry under the proposed legislation to give any evidence or produce any document, which he could not be compelled to give or produce in proceedings before a court.

Clause 8- This clause provides for the superintendence of Competent Authority over appropriate machinery. It provides that every public authority shall, for the purposes of dealing or inquiry into the disclosure sent to it under sub-section (3) of clause 4, create appropriate machinery for the said purpose and shall exercise superintendence over the working of such machinery for the said purpose and shall exercise superintendence over the working of such machinery and give such directions for its proper functioning, from time to time, as it may consider necessary.

Clause 9, This clause making provisions for the Competent Authority to take assistance of police authorities in certain cases. It provides that for the purpose of making discreet inquiry or obtaining information from the organization concerned, the Competent Authority shall be authorized to take assistance of the Delhi Special Police Establishment or the police authorities, or any other authority as may be considered necessary, to render all assistance to complete the inquiry within the specified time pursuant to the disclosure received by the competent authority.

Clause 10- This clause empowers by providing safeguards against victimization, it provides that the Central Government shall ensure that no person or a public servant who has made a disclosure under the proposed legislation is victimized by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry, he may file an application before the Competent Authority seeking redress in the matter, and such authority while taking an action may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimized or avoid his victimization.

It further provides that every direction given under sub-clause(1) by the Competent Authority shall be binding upon the public servant or the public authority against whom the allegation of victimization has been proved and notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-clause (2), in relation to a public servant, shall include the power to direct the restoration of the public servant making the disclosure, to the status quo ante.

Clause 11- This clause provides for Protection of witnesses and other persons. It provides that if the Competent Authority either on the application of the complainant, or witnesses, or on the basis of information gathered, or any person rendering assistance for inquiry under the proposed legislation need protection, the Competent Authority shall issue appropriate directions to the concerned Government authorities, including police, which shall take necessary steps to protect such complainant or public servant or persons concerned.

Clause 12. This Clause provides for protection of identity of complainant. It provides that the Competent Authority shall, notwithstanding anything contained in any other law for the time being in force, conceal, the identity of the complainant and the documents or information furnished by him, for the purposes of enquiry, unless so decided otherwise by the Competent Authority itself or it became necessary to reveal or produce the same by virtue of the order of the court.

Clause 13. This clause empowers the Competent Authority to pass interim orders. It provides that 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.

Clause 14. This clause makes provision for penalty for furnishing incomplete or incorrect or misleading comments or explanation or report. It provides that the Competent Authority, at the time of examining the report or explanations or report on the complaint submitted by organizations or officials concerned, is of the opinion that the organizations or officials concerned, without any reasonable cause, has not furnished the report within the specified time or mala fidely refused to submit the report or knowingly given incomplete, incorrect or misleading or false report or destroyed record or information which was the subject of the disclosure or obstructed in any manner in furnishing the report, shall impose a penalty which may extend to two hundred fifty rupees for each day till report is furnished, however, the total amount of such penalty not to exceed fifty thousand rupees but no penalty shall be imposed against any person without giving him an opportunity of being heard.

Clause.15- This clause contains the provision for penalty for revealing identity of complainant. It provides that any person, who negligently or mala fidely reveals the identity

of a complainant shall be punishable with imprisonment for a term which may extend up to three years and also to fine which may extend up to fifty thousand rupees.

Clause 16. This clause provides for punishment for false or frivolous disclosure. It provides that any person who makes any disclosure mala fide and knowingly that it was incorrect or false or misleading shall be punishable with imprisonment for a term which may extend up to two years and also to fine which may extend up to thirty thousand rupees.

Clause 17. This clause provides for punishment to the Head of the Department in the Government. It provides that where an offence under the proposed legislation has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

It further provides that if an offence has been committed by a Department of Government and it is provided that the offence has been committed with the consent or connivance of, or is attributable to any other officer, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clause 18. This clause contains provisions for offences by companies. It provides that where an offence under the proposed legislation has been committed by a company, every person directly in charge of, and responsible to, the company for the conduct of its business at the time of commission of offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was or that he exercised all due diligence to prevent the commission of such offence. It also provides that where any offence under the proposed legislation has been committed with the consent or connivance of, or attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Explanation to the clause seeks to define the terms “company” and “director”.

Clause 19. This clause makes provision for filing of an appeal to the High Court. It provides that any person aggrieved by an order made by the Competent Authority relating to imposition of penalty, for furnishing incomplete or incorrect or misleading comments or explanation or report under clause 14 or for revealing identity of complainant under clause 15 may prefer an appeal to the High Court within a period of sixty days from the date of the order.

It further provides that the High Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

Clause 20. This clause provides for exclusion of jurisdiction of civil courts. It provides that no civil court shall have jurisdiction in respect of any matter which the Competent Authority is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Clause 21. This clause provides for courts to take cognizance of an offence. It provides that no court shall take cognizance of any offence punishable under proposed legislation, save on a complaint made by the Competent Authority or any officer or person authorized by it and no court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence punishable under the proposed legislation.

Clause 22. This clause seeks to empower the Competent Authority to prepare a report on disclosures. It provides that the Competent Authority shall prepare a consolidated annual report of the performance of its activities in such form as may be prescribed by the Central Government and forward it to the Central Government or State Government, as the case may be, which would be laid, before Parliament by the Central Government and, before State Legislature by the State Government.

It further provides that if any other law for the time being in force provides preparing of the annual report by the Competent Authority, then the said annual report shall contain a separate part on the performance of activities under the proposed legislation by the competent Authority.

Clause 23.-This clause provides for protection of action taken in good faith. It provides that no suit, prosecution or other legal proceedings shall lie against the Competent Authority or against any officer, employee, agency or person acting on its behalf, for anything which is in good faith done or intended to be done under the proposed legislation.

Clause 24.-This clause confers power on the Central Government to make rules. It provides that the Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of the proposed legislation. Sub-clause (2) enumerates matters for which such rules may be made by the Central Government.

Clause 25.-This clause empowers the power on the State Government to make rules. It provides that the State Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of the proposed legislation.

Clause 26.-This clause empowers the Competent Authority to make regulations. It provides that the Competent Authority may, with the previous approval of the Central Government or the State Government, as the case may be, by notification in the Official Gazette, make regulations not inconsistent with the provisions of the proposed legislation and for giving effect to the provisions of the proposed legislation.

Clause 27.-This clause provides for laying of rules, regulations and notifications before Parliament. It provides that every rule made and every notification issued by the Central Government and every regulation made by the Competent Authority under the proposed legislation shall be laid before the State Legislature.

Clause 28.-This clause provides for laying of rules, regulations and notifications before the State Legislature. It provides that every rule made and every notifications before the State Legislature. It provides that every rule made and every notification issued by the State Government and every regulation made by the Competent Authority under the proposed legislation shall be laid before the State Legislature.

Clause 29.-This clause makes provision for power to remove difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislations, the Central Government may, by order, not inconsistent with provisions of the proposed legislation, remove the difficulty.

It provides that no such order shall be made after the expiry of a period of three years from the date of commencement of the proposed legislation. It also provides that every order under this clause shall, as soon as may be after it is made, be laid before each House of Parliament.

Clause 30.- This clause relates to the repeal and savings. It provides for the repeal of the Resolution of the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) issued vide No.371/12/2002-AVD-III, dated the 21st April, 2004, as amended vide Resolution of even number, dated the 29th April, 2004.

It further provides that notwithstanding the said repeal , anything done or any action taken under the said Resolution be deemed to have been done or taken under the proposed legislation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 24 empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These matters, inter alia, specifies the procedure for disclosure in writing or appropriate electronic means under sub-clause (4) of clause 3; the manner in which the discreet inquiry is to be made by the Competent Authority under sub-clause (2) of clause 4; the additional matter in respect of which the Competent Authority may exercise the powers of a civil court under sub-clause (2) of clause 6; the form of annual report under sub-clause (1) of clause 22.

2. Clause 25 empowers the State Government to make; by notification in the Official Gazette, rules, for carrying out the provisions of the proposed legislation.

3. Clause 26 empowers the Competent Authority, with the previous approval of the Central Government or the State Government, to make, by notification in the Official Gazette, regulations, consistent with the provisions of the proposed legislation and the rules made there under to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of the proposed legislation.

4. Clause 27 provides that rules and regulations made by the Central Government are required to be laid before each House of Parliament and rules and regulation made by the State Government are required to be laid before each House of the State Legislature.

5. The matters in respect of which rules and regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is therefore of a normal character.
