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Monday, January 13, 2003

THE PUBLIC INTEREST DISCLOSURE (PROTECTION OF INFORMERS) BILL 2002

A

Bill

to encourage disclosure of information relating to the conduct of any public servant involving the commission of any offence under the Prevention of Corruption Act, 1988 or any other law for the time being in force, abuse of official position or mal-administration, to protect the persons making such disclosures and for matters connected therewith or incidental thereto.

BE it enacted in Parliament in the Fifty-third Year of Republic of India as follows:

Short title and extent.

1. (1) This Act may be called as the Public Interest Disclosure (Protection of Informers) Act, 2002.
- (2) It extends to the whole of India and applies also to public servants outside India.

Definitions

2. In this Act unless the context otherwise requires-

- (a) "action" means action taken by way of decision, recommendation or finding or any other proceeding and includes failure to act and all other expressions connoting action or act shall be construed accordingly;
- (b) "Competent Authority" in relation to , -
 - (i) a Minister, means any Authority notified by the President in this behalf;
 - (ii) any other public servant, means the Central Vigilance Commission constituted under the Central Vigilance Commission Ordinance, 1999 which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No.371/20/99-AVD-III dated the 4th April, 1999;

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© “disclosure” means a disclosure of information that the person making the disclosure reasonably believes, that it tends to show disclosable conduct ;

(d) “disclosable conduct” means such conduct as a public servant may engage in or has engaged or is engaging, or proposes to engage in, which amounts to,-

- (i) abuse or misuse of power or discretion vested in him; or
- (ii) an attempt to commit or the commission of an offence under the Prevention of Corruption Act, 1988, the Indian Penal Code, 1860 or any other law for the time being in force; or
- (iii) mal-administration;

(e)“mal-administration” includes any action taken or purporting to have been taken or being taken or proposed to be taken in the exercise of administrative or statutory power or discretion,-

- (i) where such action is unreasonable, unjust, oppressive or discriminatory;
- (ii) where there has been negligence or undue delay in taking such action;
- (iii) where there has been reckless, excessive or unauthorized use of power in taking such action;
- (iv) where such action amounts to breach of trust;
- (v) where such action involves the conduct of a public servant which would result in wastage of public funds or causes loss or prejudice to the State or is prejudicial to public interest in any manner;or
- (vi) where such action is outside the authority of law or amounts to violation of systems and procedures.

(f) “Minister” means a member of the Council of the Ministers for the Union and includes the Minister of State and Deputy Minister but does not include the Prime Minister;

(g) “prescribed” means prescribed by rules made under this Act;

(h)“public servant” denotes a person falling under any of the descriptions hereinafter following, namely:-

- (i) every Minister;
- (ii) every officer who is appointed to a public service or post in connection with the affairs of the Union;
- (iii) every person in the service or pay of, -

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- (A) any local authority in any Union territory, (which is notified by the Central Government in this behalf in the Official Gazette),
 - (B) any corporation (not being a local authority) established by or under a Central Act and owned or controlled by the Central Government,
 - (C) any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government,
 - (D) any cooperative society receiving any financial aid from the Central Government;or
 - (E) any society registered under the Societies Registration Act, 1860, which is subject to the control of the Central Government and which is notified by that Government in this behalf in the Official Gazette;
- (i) “victimisation” with all its grammatical variations, in relation to a public servant other than a Minister, shall include –
- (A) suspension pending inquiry, transfer, dilution or withdrawal of duties, powers and responsibilities, recording adverse entries in the service records, issue of memos, verbal abuse, all classes of major or minor punishment specified in the disciplinary rules, orders or regulations applicable to such public servant and such other type of harassment;
 - (B) any of the acts referred to in sub-clause (A) whether committed by the person against whom a disclosure is made or by any other person or public authority at his instance.

Requirements of a Public Interest Disclosure.

3. (1) Any disclosure of information revealing a disclosable conduct shall be a public interest disclosure for the purposes of this Act.
- (2) Notwithstanding anything contained in the Official Secrets Act, 1923, any public servant other than those referred to clauses (a) to(d) of article 33 of the Constitution or any other person including any non-governmental organization,may make a public interest disclosure to the Competent Authority.
- (3) Every disclosure shall be made in good faith and the person making it shall solemnly affirm that he reasonably believes that the information disclosed and any allegation contained therein is substantially true.

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- (4) Every disclosure shall be in writing and shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.
- (5) The Competent Authority may, if it deems fit call for further information or particulars from the person making the disclosure.
- (6) The Competent Authority shall not entertain a disclosure under subsection (1) unless the identity of the person making it is disclosed in the disclosure.

Procedure on receipt of Public Interest Disclosure.

4. (1) On receipt of a public interest disclosure under section 3, if the Competent Authority considers, after conducting a preliminary inquiry that such disclosure -
 - (a) is frivolous or vexatious;
 - (b) is misconceived or lacking in substance;
 - (c) is trivial;or
 - (d) has already been dealt with adequately;

it shall dismiss the complaint and inform the person making the disclosure accordingly.

- (2) If an issue raised in a disclosure has been determined by a court or tribunal authorised to determine the issue, after consideration of the matters raised in the disclosure, the Competent Authority shall decline to act on the disclosure to the extent that the disclosure seeks to reopen the issue.
- (3) If the Competent Authority is of the opinion that the disclosure should be inquired into then it shall proceed in accordance with the provisions of section 5, to inquire into the facts and allegations contained in the disclosure.

Procedure of Inquiry.

5. (1) Where the Competent Authority proposes to conduct an inquiry under sub-section (3) of section 4, it –

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- (a) shall forward a copy of the disclosure along with relevant documents and material, if any, to the public servant concerned and to his superior in the official hierarchy;
 - (b) shall afford to the public servant concerned an opportunity to offer his comments upon the disclosure and the accompanying documents and material, if any; and
 - (c) may make such orders as to the safe custody of documents and material relevant to the inquiry, as it deems fit.
- (2) The inquiry by the Competent Authority shall not be open to public and the name of the public servant making the disclosure and the public servant named in the disclosure shall not be disclosed to the public.
- (3) The name of the person making the disclosure shall be disclosed to the public servant:

Provided that if the person making the disclosure requests that his identity should not be disclosed to the public servant named in the disclosure, and if the Competent Authority is satisfied that such a request may be acceded to in public interest or the safety of such person, it shall make necessary directions in that behalf after recording its reasons.

(4) The Competent Authority shall be bound by the principles of natural justice and subject to the other provisions of this Act, the Competent Authority shall have the power to regulate its own procedure including the fixing of places and times of its inquiry.

(5) If, after conducting an inquiry, the Competent Authority is of the opinion that -

(a) the facts and allegations contained in the disclosure are frivolous or vexatious or are not made in good faith; or

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

it shall close the inquiry and inform the concerned persons, the reasons for its opinion.

(6) If after conducting such inquiry, the Competent Authority is of the opinion that disclosable conduct is established against a public servant,

(a) it shall, if such public servant is other than a Minister, record the appropriate findings and send its findings

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along with the relevant records, to the Authority competent to take disciplinary action against the public servant;

- (b) it shall, if such public servant is a Minister, record the appropriate findings and send its findings along with the relevant records, to the Prime Minister.

(7) The authorities referred to in clauses (a) or (b) of sub-section (6), as the case may be, shall upon receipt of the findings under that sub-section, take appropriate action immediately against the person named in its findings.

(8) If the inquiry held by the Competent Authority discloses conduct, which constitutes an offence punishable under any law, the Competent Authority shall direct the appropriate authority or agency to initiate criminal proceedings against such public servant including a Minister in accordance with law:

Provided that where such a direction is made, any requirement of sanction or prior approval for such prosecution under any law for the time being in force, shall not be necessary to be complied with.

(9) The conduct of an inquiry under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the inquiry, in accordance with any law for the time being in force.

Matters not subject to inquiry by Competent Authority.

6. (1) 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
- (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952.

(2) The Competent Authority shall not investigate,-

- (a) any disclosure which is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

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- (b) 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:

Provided that the Competent Authority may entertain a disclosure referred to in clause (a), if the person making it satisfies him that he had sufficient cause for not making the disclosure within the period specified in this clause.

- (3) Subject to the provisions of sub-section (2) the provisions of this Act shall apply to all disclosable conduct committed before the commencement of this Act.

(4) Nothing in this Act shall be construed as empowering the Competent Authority to question, in any inquiry under this Act, any administrative or statutory action taken in the exercise of a discretion except where it is satisfied that the discretion is so exercised because of the disclosable conduct.

Powers of the Competent Authority.

- 7. (1) Without prejudice to the powers conferred on the Competent Authority under any other law for the time being in force, the Competent Authority or any person or agency authorized by it in writing, for the purpose of any inquiry (including preliminary inquiry, if any, before such inquiry) under this Act, may require any public servant or any other person who in its opinion will be able to furnish information or produce documents relevant to the inquiry, to furnish any such information or produce any such document.
- (2) For the purpose of any such inquiry (including the preliminary inquiry), the Competent Authority or any person or agency authorized by it in writing 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:-
 - (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) All proceedings before the Competent Authority or any person or agency authorized by it in writing shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

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- (4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by the Official Secrets Act 1923 or any other enactment or by any rule of law, 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 rule of law in legal proceedings.
- (5) No person shall be required or be authorized by virtue of this Act to furnish any such information or answer any such question or produce so much of any document –
- (a) as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organization), or the ongoing investigation of crime; or
 - (b) as might involve the disclosure of proceedings of the Cabinet of the Union 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 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.

- (6) Subject to the provisions of sub-section (4), 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.

Report on disclosures.

8. (1) Every Competent Authority shall prepare annually a consolidated annual report of the performance of its activities in such form as may be prescribed and forward it to the President.

(2) On receipt of the annual report under sub-section (1), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

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Time limit for completion of inquiry

9. (1) The Competent Authority shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of the receipt of the complaint:

Provided that if the Competent authority is of opinion that the inquiry cannot be completed before the said period, it may, for reasons to be recorded in writing, extend the said period and in no case the said period shall be extended beyond a period of two years from the date of receipt of the complaint.

(2) Nothing contained in sub-section (1) shall operate as a bar against initiation or continuance of any action or proceedings under any other law for the time being in force against the public servant named in the complaint.

Safeguards against victimisation

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

(2) If any person other than the Minister, is aggrieved by any action on the ground that he is being victimised due to the fact that he had filed a complaint under section 3, he may file an application before the Competent Authority seeking redress in the matter.

(3) On receipt of an application of under sub-section (2), the Competent Authority may, after making such inquiry as it deems fit, is of opinion that allegation of victimization-

(a) is true and is relatable to the complaint or its subject matter, it may give appropriate directions as it may consider necessary, to the concerned public servant or public authority as the case may be;

(b) is not true or is not maintainable for the reason that the alleged victimisation is not relatable to the complaint or its subject matter, it may dismiss the application.

(4) Notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-section (3), 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.

(5) The Competent Authority issuing directions under sub-section (3), shall take such action as is necessary and reasonable to prevent the victimization continuing or occurring in the future.

(6) Every direction given by the Competent Authority shall be binding upon the public servant or the public authority against whom the allegation of victimization has been proved.

9

Transfer of Public Servant for avoiding victimisation

11. (1) The public servant making a disclosure may, during or at the conclusion of the inquiry, apply to the Competent Authority for transfer from the Office or Department in which he is currently posted to another Office or Department.

(2) The Competent Authority on receipt of an application under sub-section (1) shall, if it is satisfied that the applicant has been victimized or is likely to be victimized because of the disclosure, direct the appropriate authority, even if the inquiry has not resulted in any finding against the public servant, to transfer the applicant to another Office or Department, if such transfer is feasible having regard to the qualification and experience of the applicant and the availability of an equivalent post.

Protection of witnesses and other persons

12. The Competent Authority may pass such orders granting adequate protection to the witnesses and other persons assisting the inquiry as may be necessary in the circumstances of the case

Power to pass interim orders

13. During the pendency of the inquiry and at any time after the first disclosure of the disclosable conduct, the Competent Authority may pass such interim orders as it may deem fit, to prevent victimization of the public servant making the disclosure or to prevent the disclosable conduct continuing or occurring in the future.

Burden of proof in certain cases

14. Where the Competent Authority conducts inquiry into an application under sub-section (3) of section 10, the burden of proving that such action or proceeding which is the subject of victimization would have been taken even if no disclosure had been made by the applicant, shall be upon such public servant or public authority against whom allegation of victimisation has been made.

Protection of action taken in good faith.

15. 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.

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Punishment for False or Frivolous Disclosures

16. Any person who makes any disclosure which was false to his knowledge or reckless or malicious, 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.

Power to make rules.

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

(2) Every rule made under this Act shall be laid, as soon as may be after it is 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 rule, or both Houses agree that the rule should not be made, the rule 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 rule.