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# **VOICES OF COURAGE: ANALYSING WHISTLEBLOWERS' LAWS**

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## **ABSTRACT**

Public trust in government is crucial for the effective functioning of society, encouraging voluntary compliance with public policies and regulations. The Whistleblower Protection Act is key to promoting transparency and accountability by safeguarding individuals who reveal corruption and abuse of power, thus strengthening public trust and state capacity. This paper explores the implications and effectiveness of the Whistleblower Protection Act in India, tracing its legislative development and examining notable cases that have influenced its progress. An international perspective is provided by comparing India's whistleblower laws with those in the United States, the European Union, the United Kingdom, and Canada, identifying best practices and areas for improvement.

The research delves into the key provisions of the Whistleblower Protection Act and the main issues in its implementation. It analyzes the amendments proposed in the Whistleblower (Amendment) Bill, 2015, especially the prohibition of disclosures related to ten specific categories of information and the absence of detailed criteria for government-appointed authorities handling such disclosures. Additionally, the paper contrasts the Whistleblower Protection Act with the Right to Information Act, 2005, highlighting differences in their approaches to transparency and confidentiality.

Recent developments, including the Competition Commission of India (Lesser Penalty) Regulations, 2024, and the proposed Protection of Trade Secret Bill, 2024, are discussed, showcasing efforts to enhance whistleblower protection and encourage the reporting of misconduct. This paper emphasizes the need for robust legal safeguards to protect whistleblowers, ensuring their safety and encouraging the exposure of corruption and unethical practices. By fostering a culture of ethical compliance and integrity, whistleblower protection laws can significantly contribute to building public trust and enhancing the effectiveness of governance.

## **INTRODUCTION**

Public trust in government and the state is a critical component for the effective functioning of any society. When citizens have confidence in their government, it significantly enhances voluntary compliance with public policies and regulations. This trust is essential for a variety of reasons, but primarily because it facilitates smoother implementation and greater acceptance of governmental initiatives. State capacity, which can be broadly defined as the government's ability to accomplish its intended policy goals, relies heavily on the willingness of the populace to adhere to these policies. Compliance, therefore, serves an essential purpose in ensuring that the government can effectively execute its strategies and achieve its objectives. In this context, the role of the Whistleblower Act becomes particularly pertinent. By protecting those who expose wrongdoing and corruption within the government and public sectors, the Act aims to bolster transparency and accountability, thereby fostering public trust. As such, understanding the implications and effectiveness of the Whistleblower Act is crucial in assessing its impact on public trust and state capacity. "Whistleblower" is defined by this policy as an employee who reports, to one or more of the parties specified in this policy, an activity that he/she considers to be illegal, dishonest, unethical, or otherwise improper."<sup>1</sup>

The Whistleblower Protection Act was enacted by Parliament to create a robust system for exposing corrupt activities within public institutions and the abuse of power by public officials. Whistleblower protection is crucial because it enables oversight of public institutions and their officials. The act seeks to uncover alleged corruption within these institutions and ensure the proper exercise of authority by government employees. The main goal of the Whistleblower Protection Act is to safeguard the whistleblower, the individual who discloses such information.

## **HISTORY OF WHISTLEBLOWING LAWS IN INDIA**

Whistle-blowers serve as the "canaries in the coal mine," often accused of "committing the truth" by exposing wrongdoing, fraud, corruption, or mismanagement within organizations. These individuals, who may be government employees reporting misconduct within governmental bodies or private company employees exposing corrupt practices, make

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<sup>1</sup> WHISTLEBLOWER PROTECTION THE NATIONAL ENDOWMENT FOR THE HUMANITIES, <https://www.neh.gov/about/oig/whistleblower-protection> (last visited Jun 28, 2024)

allegations either internally or externally.

The journey of whistleblower protection laws in India began in 2001 when the Law Commission of India<sup>2</sup> recommended the establishment of legislation to safeguard whistleblowers as a measure to combat corruption. Following this recommendation, a bill was drafted for this purpose. In 2004, the Hon'ble Supreme Court of India, in response to the Satyendra Dubey case<sup>3</sup>, directed the Central Government to create an administrative framework to handle whistleblower complaints until specific protective legislation was enacted.

Satyendra Dubey, an Indian Engineering Service Officer and Project Director at the National Highway Authority of India (NHAI) observed substandard quality and procedures in road construction. After receiving no response from senior NHAI officials, he escalated his concerns to the Prime Minister's Office (PMO), requesting anonymity. However, PMO officials disclosed his identity, resulting in his murder in Gaya, Bihar. Consequently, the government issued the "Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)," designating the Central Vigilance Commission (CVC) as the agency responsible for receiving and handling complaints of corruption or misuse of office by central government employees. The CVC was mandated to protect the whistleblower's identity unless the complainant publicly disclosed details of the complaint or their identity.

In another notable case, M Shanmugam Manjunath<sup>4</sup>, a manager at the Indian Oil Corporation, sealed two petrol pumps for selling adulterated fuels. When the pumps resumed operations, he conducted a surprise raid and was subsequently murdered.

These alarming incidents underscored the necessity for legal protections for whistleblowers. In 2007, the Second Administrative Reform Commission<sup>5</sup> reaffirmed the need for such legislation. Ultimately, the Whistleblower Protection Bill was enacted in 2011 and became law

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<sup>2</sup> LAW COMMISSION OF INDIA, REPORT NO. 179: THE PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMERS (2001).

<sup>3</sup> Ani, *Three convicted in Satyendra Dubey murder case*, Indian Express (March 22, 2010), <https://indianexpress.com/article/india/crime/three-convicted-in-satyendra-dubey-murder-case/>

<sup>4</sup> Pawan Kumar @Monu Mittal V. State of UP. & Anr, A.I.R. 2015 SC (Cri) 822

<sup>5</sup> SECOND ADMINISTRATIVE REFORMS COMMISSION, REPORT NO. 4: ETHICS IN GOVERNANCE (2007).

in 2014. Additionally, the Companies Act of 2013 and the amendments by the Securities and Exchange Board of India mandated that companies address whistleblower complaints, further institutionalizing protections for whistleblowers in India.

In addition to the prominent cases of Satyendra Dubey and M. Shanmugam Manjunath, several other instances have significantly influenced the evolution of whistleblower protection laws in India. One such case is that of Narendra Kumar<sup>6</sup>, an IPS officer stationed in Morena District, Madhya Pradesh. Kumar was actively engaged in efforts to halt illegal quarrying operations. During one such intervention, he was fatally run over by a vehicle after the driver ignored his directives to stop.

Another notable case is that of SP Mahantesh<sup>7</sup>, who served as the Deputy Director of Cooperative Audit. Mahantesh uncovered extensive irregularities in land acquisitions, layout formations, and site allotments, implicating numerous officials and politicians. His audit report highlighted these malpractices. Suddenly, one evening, Mahantesh was forcibly removed from his vehicle and brutally beaten by attackers. His body was found near the residence of the Chief Justice of Haryana, and he later succumbed to a cardiac arrest.

The case of V. Saseendran<sup>8</sup> also stands out. As a Company Secretary, Saseendran reported a massive corruption incident involving a loss of Rs. 400 crores. Despite facing pressure to retract his allegations, he wrote to the Chief Minister of Kerala detailing the corruption. Shortly thereafter, Saseendran was found hanging in his home under suspicious circumstances.

## **INTERNATIONAL PERSPECTIVE OF WHISTLEBLOWER LAWS**

### **1. United States**

The United States' first whistleblower protection law, the *False Claims Act, 1863*<sup>9</sup>, was enacted by President Abraham Lincoln during the Civil War to combat fraud by suppliers providing

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<sup>6</sup> Agencies, *Team Anna demands law to protect whistleblowers*, Indian Express (March 9, 2012), <https://indianexpress.com/article/india/latest-news/team-anna-demands-law-to-protect-whistleblowers/>

<sup>7</sup> Press Trust of India, *4 held in whistleblower officer's murder case*, Indian Express (May 22, 2012), <https://indianexpress.com/article/news-archive/web/4-held-in-whistleblower-officer-s-murder-cas/>.

<sup>8</sup> Express News Service, *CBI to probe whistleblower's death in Kerala*, Indian Express (February 18, 2011), <https://indianexpress.com/article/news-archive/web/cbi-to-probe-whistleblower-s-death-in-kerala/>.

<sup>9</sup> False Claims Act, 1863, 31 U.S.C. §§ 3728-3730 (1863).

substandard goods and services to the military. A key component of this Act is the whistleblower provision also called as "Qui Tam" provision, which allows individuals or NGOs to file lawsuits on behalf of the U.S. government in federal court. Successful whistleblowers can receive 15%-30% of the recovered proceeds, contingent on the information leading to a successful prosecution. Subsequently, the Lloyd-La Follette Act, 1912<sup>10</sup> was passed, specifically safeguarding civil servants from being dismissed solely for whistleblowing activities. While the False Claims Act also offers whistleblower protections similar to those in the Lloyd-La Follette Act, the latter is more focused on private citizens and companies.

Then in 1989, the Whistleblower Protection Act<sup>11</sup> (WPA) was introduced to shield federal employees who report waste, fraud, and abuse. However, this Act had limitations: it excluded employees who were not the first to disclose the misconduct, those who disclosed information to co-workers or supervisors, those who reported the consequences of policy decisions, and those who blew the whistle while carrying their job duties. To address these shortcomings, the Whistleblower Protection Enhancement Act (WPEA)<sup>12</sup> was enacted in 2012. The WPEA ensures that whistleblowers retain protection even if the disclosure is made to a supervisor, involves previously revealed information, or is made by an employee off-duty.

In 2002, the No FEAR Act<sup>13</sup> (Notification and Federal Employee Antidiscrimination and Retaliation Act) was implemented, imposing additional responsibilities on federal employers to maintain a workplace free from discrimination and retaliation.

The same year, the Sarbanes-Oxley Act (SOX)<sup>14</sup> was passed, later expanded by the Dodd-Frank Act (DFA)<sup>15</sup> in 2009. The DFA includes a Whistleblower Protection Program that financially rewards individuals who voluntarily report securities law violations, provided the SEC imposes a monetary sanction of at least \$1 million. Rewards are given to those reporting under both SOX and DFA. While both SOX and DFA offer whistleblower protections, they differ significantly. SOX protects employees, contractors, and subcontractors of publicly traded companies and rating agencies from retaliation for reporting criminal offenses, SEC violations,

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<sup>10</sup> Lloyd-La Follette Act, 1912, 5 U.S.C. § 7211 (1912).

<sup>11</sup> Whistleblower Protection Act, 1989 5 U.S.C. § 2302 (1989).

<sup>12</sup> Whistleblower Protection Enhancement Act, 2012 5 U.S.C. §743 (2012).

<sup>13</sup> No FEAR Act, 2002 2 U.S.C. §203 (2002).

<sup>14</sup> Sarbanes Oxley Act, 2002 18 U.S.C. § 1514A (2002).

<sup>15</sup> Dodd-Frank Act, 2009 U.S.C. (2009).

or other federal laws concerning shareholder fraud. DFA, however, only protects employees reporting potential securities law violations to the SEC. Additionally, SOX covers a broader range of laws, whereas DFA is limited to securities laws violations. SOX does not protect against indirect employer retaliation, but DFA does. Procedurally, SOX allows reporting both internally and externally to federal bodies or Congress, with a reporting period of 180 days. DFA requires reporting to the SEC and extends the reporting period to six years.

Various environmental statutes in the U.S. also include whistleblower protections, such as the Clean Water Act of 1972, Resource Conservation and Recovery Act, Toxic Substances Control Act of 1976, and the Clean Air Act. These protections are crucial for effective law enforcement, as they encourage the reporting of regulatory violations by companies or individuals. By safeguarding whistleblowers, the government enhances its ability to enforce these environmental laws.

## **2. European Union Directives**

The European Union enacted directives<sup>16</sup> in 2019, providing member states with a deadline until the end of 2021 to integrate these directives into their national legal frameworks. These directives are applicable to public sector organizations and private sector entities employing 50 or more individuals within all member states. The core aim of these directives is to enable whistleblowers to report any instances of misconduct without the risk of retaliation, thus fostering a culture of transparency and accountability across various sectors.

*{Earlier United Kingdom was also a member of the EU but was withdrawn on 31<sup>st</sup> January 2020}.*

## **3. United Kingdom**

In the United Kingdom, the *Public Interest Disclosure Act 1998*<sup>17</sup> ("PIDA") provides legal safeguards for workers who report certain types of wrongdoing, commonly known as whistleblowing. Effective since 1999, this legislation ensures that workers who disclose workplace misconduct are protected from adverse treatment or dismissal as a consequence of their disclosures.

For a worker's complaint to be protected under PIDA, it must meet the criteria for a "qualifying

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<sup>16</sup> Directive 2019/1937/EC of the European Parliament and of the Council of 23 October 2019 Relating to the protection of persons who report breaches of Union law, 2019 O.J. (L 305) 17

<sup>17</sup> Public Interest Disclosure Act, 1998, c.23, Act of the Parliament of the United Kingdom (1998).

disclosure." This involves reporting one of six types of failures, including breaches of legal obligations, environmental damage, and violations of health and safety regulations. The whistleblower must have a reasonable belief that the information disclosed indicates wrongdoing and that making the disclosure is in the public interest. Moreover, the disclosure must be made to a "prescribed person" designated by PIDA.

Despite ongoing advocacy for the modernization of UK whistleblowing laws, substantial legislative changes have been limited in recent years. However, in March 2023, the UK government launched a comprehensive review of the current whistleblowing framework. This review aimed to collect evidence on the effectiveness of the existing system in achieving its initial goals: providing avenues for workers to make disclosures, protecting those who do so, and fostering a cultural shift towards valuing whistleblowing. The evidence collection phase of the review was expected to conclude by the end of 2023, with the findings set to influence future government policy on whistleblowing legislation.

In legislative developments, a new Whistleblowing Bill was introduced in the House of Commons at the end of January 2024. Scheduled for its second reading on April 19, 2024, this Bill proposes several significant reforms. These include the establishment of an Office of the Whistleblower, the creation of new civil offenses subject to financial penalties imposed by the Office, and the introduction of criminal offenses for retaliating against whistleblowers, punishable by fines and/or imprisonment.

#### **4. Canada**

There are very few laws in Canada for the protection of whistleblowers. One such federal law is the Public Servants Disclosure Protection Act, 2007<sup>18</sup>. But this act is being highly criticized. There are other legislations adopted by various provinces.

### **PROTECTION OF WHISTLEBLOWER AND RIGHTS IN INDIA**

“The Cambridge dictionary defines term, ‘*Whistleblower*’ as a person who tells someone in authority about something illegal that is happening, especially in a government department or

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<sup>18</sup> Public Servant Disclosure Protection Act, 2005 S.C. 2005, c. 46

a company.”<sup>19</sup> Whistleblowers play a critical role in uncovering misconduct, corruption, fraud, and other illegal activities. They significantly contribute to enhancing accountability and transparency. The protection afforded to whistleblowers encourages them to disclose information that might otherwise remain concealed. This protection is instrumental in identifying and rectifying misconduct, promoting responsibility, and ensuring transparency in both the public and private sectors.

Whistleblowers often possess vital insider knowledge regarding unethical practices or unlawful actions, which can be pivotal in preventing and deterring such activities. By offering protection, whistleblowers are motivated to report such malfeasance promptly. Early detection and intervention can avert potential harm, financial losses, or damage to individuals, organizations, or the broader public interest. Whistleblower protection acts as a deterrent by signalling to potential wrongdoers that their actions could be exposed.<sup>20</sup> The Whistleblower Protection Act includes provisions to safeguard individuals who face retaliation for filing a complaint, making disclosures, or providing assistance in an inquiry under the Act.<sup>21</sup> If a person believes they are being victimized for their whistleblowing activities, they have the right to seek protection from the competent authority designated under the Act.

Upon receiving such an application, the competent authority is empowered to take appropriate measures and issue directives to the concerned public servant or public authority. These measures may include instructing the jurisdictional police to protect the whistleblower from victimization or to prevent further victimization. However, it is important to note that the Act does not explicitly define what constitutes "victimization." This determination is left to the discretion of the competent authority, which assesses each case individually.

In this Act section 11<sup>22</sup> clearly laid down the provision against the victimisation, it clearly states that it is the duty of the Central government to confirm that any person who is disclosing any information about the corrupt practises within the public institution or any Individual does not have to face any problems or any biasness against them. This section specifically protects any

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<sup>19</sup> WHISTLE-BLOWER, <https://dictionary.cambridge.org/dictionary/english/whistle-blower> (last visited Jun 28, 2024)

<sup>20</sup> Section 3, The Whistleblower Protection Act, 2014.

<sup>21</sup> WHISTLEBLOWER PROTECTION ACT LII / LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/whistleblower\\_protection\\_act](https://www.law.cornell.edu/wex/whistleblower_protection_act) (last visited Jun 28, 2024)

<sup>22</sup> The Whistleblower Protection Act, 2014, Section 11

Individual or any Public servant disclosing the information against the corruption. Section 11 of the Whistleblower Protection Act (WPA) is a vital safeguard that prohibits retaliation against employees who report misconduct. This provision ensures that whistleblowers are protected from adverse employment actions such as termination, demotion, suspension, or harassment when they disclose unethical or illegal activities.

The scope of protection is broad, covering all employees who report in good faith, whether the report is made internally within the organization or externally to regulatory bodies. Importantly, it also includes protection for anonymous whistleblowers and those facing indirect retaliation through third parties. Section 11 mandates that regulatory bodies investigate claims of retaliation and take enforcement actions against employers found guilty of such conduct. Remedies for affected whistleblowers include reinstatement to their former positions, compensation for lost wages and benefits, and potentially punitive damages to deter future violations. This provision aims to create a safe environment for reporting misconduct, thereby promoting transparency and accountability in both public and private sectors. By offering robust protections against retaliation, Section 11 encourages employees to come forward with crucial information that can prevent or address unethical practices, fostering a culture of ethical compliance and integrity within organizations.<sup>23</sup>

### **MAJOR ISSUES IN THE ACT AND ANALYSIS**

The Amendment Bill proposes amendments to the Whistleblowers Protection Act of 2014, aimed at refining the mechanism for receiving and investigating disclosures of public interest related to corruption, misuse of power, or criminal activities by public servants.

Under the Act, disclosures related to corruption may be restricted if they pertain to 10 specific categories of information, including economic and scientific interests, national security, Cabinet proceedings, intellectual property, and information held in a fiduciary capacity. Previously, disclosures protected under the Official Secrets Act (OSA)<sup>24</sup> of 1923 were permitted under the Act. The Bill now seeks to reverse this provision, disallowing disclosures that are governed by the OSA.

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<sup>23</sup> INTERNATIONAL BEST PRACTICES FOR WHISTLE-BLOWERS: WHAT INDIA CAN ADOPT?, <https://www.livelaw.in/columns/whistle-blowers-protection-act-rti-official-secrets-act-wbpa-corruption-169677> (last visited Jun 28, 2024)

<sup>24</sup> The Official Secrets Act, 1923

Any public interest disclosure received by the Competent Authority will be forwarded to a government-designated body if it falls within one of the prohibited categories mentioned above. This designated body will make a binding decision on the disclosure's handling. The Statement of Objects and Reasons of the Bill indicates that the ten prohibited categories are modelled after those in the Right to Information (RTI) Act, 2005<sup>25</sup>. However, this comparison may be misplaced. Unlike the RTI Act, where disclosures are made public, the Bill mandates that disclosures be made in confidence to a high-level constitutional or statutory authority. Regarding the ten prohibited categories, the RTI Act allows (i) the public authority to disclose information if it is deemed to be in the public interest, and (ii) a two-stage appeal process if the information is not made available.<sup>26</sup> The Bill lacks similar provisions. The Bill requires the Competent Authority to refer a prohibited disclosure to a government authority for a final decision. However, it does not specify the minimum qualifications required or the process for appointing this authority. Whistleblower laws in other countries also restrict the disclosure of certain types of information, including information related to national security and intelligence, information received in a fiduciary capacity, and any disclosure explicitly prohibited by law.

As a Bill by the Lok Sabha in 2014, the government introduced amendments in the Rajya Sabha to restrict the disclosure of two specific categories of information. These categories encompassed matters concerning India's sovereignty, strategic, scientific, or economic interests, as well as foreign relations or the instigation of an offence. Additionally, they included proceedings of the Council of Ministers.<sup>27</sup> However, due to the discussion occurring on the final day of the 15th Lok Sabha, these amendments were not pursued when the Bill was passed by the Rajya Sabha. Subsequently, the Whistleblowers Protection (Amendment) Bill, 2015 was presented in the Lok Sabha on May 11, 2015, and successfully passed in that House on May 13, 2015. This Bill introduces modifications to the Whistleblowers Protection Act of 2014.

## **PROHIBITION OF 10 CATEGORIES**

The Whistleblower Protection Act of 2014 was established to empower individuals to report

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<sup>25</sup> The Right to Information Act, 2005

<sup>26</sup> The Whistleblowers Protection Bill, 2011, Notice of Amendments, Rajya Sabha, August 5, 2013,

<sup>27</sup> Rajya Sabha Official Debates, February 21, 2014. Any amendments made by Rajya Sabha would have necessitated sending the Bill back to Lok Sabha. Given that Lok Sabha was holding its last sitting that day, the Bill would have lapsed.

acts of corruption, misuse of power, or criminal offenses committed by public servants to designated Competent Authorities. These authorities include the Prime Minister or Chief Minister for Ministers, the Speaker or Chairman for Members of Parliament or state legislators, the Chief Justice of the High Court for district court judges, and the Central or State Vigilance Commission for government officials.<sup>28</sup>

The proposed Bill seeks to amend this provision by prohibiting individuals from disclosing information related to corruption by public servants if it pertains to certain specified categories. These categories encompass matters such as sovereignty, scientific and economic interests, national security, proceedings of the Council of Ministers, breaches of legislative privileges, intellectual property, ongoing investigations, among others.

### **DEVIATION FROM THE PURPOSE OF THE ACT**

The Statement of Objects and Reasons accompanying the 2015 Bill explains that the categories of prohibited information are closely aligned with those specified in the Right to Information (RTI) Act of 2005<sup>29</sup>, where certain types of information cannot be disclosed to the public. However, it is noted that while the RTI Act aims to enhance transparency and accountability by granting citizens access to information held by public authorities, there are instances where withholding certain information is deemed necessary for various reasons. In contrast, the Whistleblowers Protection Act enables individuals to confidentially disclose corruption-related information to designated Competent Authorities, who are typically high-level constitutional or statutory figures. The primary objective here is to facilitate the reporting of wrongdoing within government while ensuring the protection of the whistleblower's identity and maintaining the confidentiality of the inquiry process. This confidentiality extends to safeguarding the identities of both the complainant and the implicated public servant, as well as any pertinent documents.<sup>30</sup> Thus, while the RTI Act promotes transparency through public access to information, the Whistleblowers Act focuses on combating corruption by providing a confidential mechanism for reporting and investigating misconduct within public institutions.

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<sup>28</sup> THE WHISTLE BLOWERS PROTECTION (AMENDMENT) BILL, 2015 PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015> (last visited Jun 28, 2024)

<sup>29</sup> Right to Information Act, 2005

<sup>30</sup> LAWS ENACTED AND AMENDED IN 2014: A SNAPSHOT, <https://www.livelaw.in/laws-enacted-amended-2014-snapshot/> (last visited Jun 28, 2024)

## **KEY LAPSES: RTI ACT VS. WHISTLEBLOWER BILL 2015**

The Right to Information (RTI) Act enables public authorities to disclose information falling under the Act's ten prohibited categories and those protected under the Official Secrets Act of 1923, provided that the public interest in disclosure outweighs potential harm to protected interests. Moreover, while the RTI Act excludes 22 security and intelligence organizations from its scope, it mandates the provision of information related to allegations of corruption.<sup>31</sup> Additionally, the Act incorporates a two-stage appeals process against decisions to withhold requested information. In contrast, the Whistleblower (Amendment) Bill 2015 lacks analogous provisions, focusing instead on restricting disclosures related to corruption by public servants under specified categories without offering avenues for appeal against such restrictions.

### **EXPANSION OF PROHIBITED CATEGORIES FROM 2013**

#### **AMENDMENTS**

The Statement of Objects and Reasons for the Bill notes that during the passage of the Whistleblowers Protection Act of 2014, certain amendments were proposed by the government.<sup>32</sup> However, due to the timing of the discussion on the last day of the 15th Lok Sabha, these amendments were not formally introduced. The 2015 Bill aims to reintroduce and implement these amendments.

In contrast to the 2013 proposed amendments, which restricted disclosure on only two grounds—information related to sovereignty, strategic, scientific, or economic interests of India, foreign relations, or the incitement of an offense, and proceedings of the Council of Ministers—the 2015 Bill extends the prohibition to cover 10 categories of information.

### **UNDISCLOSED CRITERIA OF GOVERNMENT AUTHORIZED**

#### **AUTHORITY**

According to the Bill, if the Competent Authority receives a public interest disclosure falling under any of the 10 prohibited categories, it will be referred to a government authorized

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<sup>31</sup> The Right to Information Act, Section 8

<sup>32</sup> “ENACTMENT OF LAW IS SOVEREIGN FUNCTION”: DELHI HIGH COURT DISMISSES PLEA FOR IMPLEMENTATION OF WHISTLE BLOWERS PROTECTION ACT, 2014, <https://www.livelaw.in/news-updates/delhi-high-court-whistle-blowers-protection-act-sovereign-function-192652> (last visited Jun 28, 2024)

authority.<sup>33</sup> This authority is tasked with determining whether the disclosed information breaches the Bill's prohibitions, with its decision binding upon the Competent Authority.

However, the Bill does not specify the minimum qualifications or designation requirements for this government authority. This omission raises concerns about the authority's independence, particularly if it holds a junior rank compared to the public servant implicated in the disclosure.

## **LATEST AMENDMENTS RELATED TO WHISTLEBLOWER LAWS**

### **IN INDIA**

#### **1. Competition Commission of India (Lesser Penalty) Regulation, 2024**<sup>34</sup>

In 2024, the Competition Commission of India (CCI) issued a notification introducing the Competition Commission of India (Lesser Penalty) Regulations, 2024. This regulation aims to incentivize whistle-blowers to come forward and provide accurate and comprehensive information to the CCI. The existing "lesser penalty" provision, outlined in Section 46 of the Competition Act, 2002<sup>35</sup>, encourages organizations to voluntarily disclose full and true details regarding cartels suspected of violating Section 3 of the Act. Under this provision, the first applicant for a lesser penalty receives a 100% reduction in their penalty, while the second and third applicants receive reductions of 50% and 30%, respectively. However, this approach has not achieved significant success.

To address this, the CCI has introduced a new regulation [Competition Commission of India (Lesser Penalty) Regulations, 2024] that includes a "Lesser Penalty Plus" provision. This provision offers an additional 30% reduction in penalties for the first cartel member who comes forward with information.

For instance, consider a cartel 'A' involving two organizations: Company X and Company Y. Company X, as the first applicant under the "lesser penalty" provision, will receive up to a 100% reduction in its penalty. Company Y, as the second applicant, will receive up to a 50% reduction in its penalty. This is in line with the lesser penalty provision under Section 46 of the Competition Act, 2002.

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<sup>33</sup> THE WHISTLE BLOWERS PROTECTION (AMENDMENT) BILL, 2015 PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015> (last visited Jun 28, 2024)

<sup>34</sup> Competition Commission of India, Competition Commission of India (Lesser Penalty) Regulations, 2024, L-3(4)/Reg-L.P./2023-24 (February 20, 2024).

<sup>35</sup> Competition Act, 2002, §46, No. 12, Acts of Parliament, 2002 (India).

Now, suppose there is another cartel 'B', and Company Y possesses information about this cartel also and discloses it to the CCI. As per the "Lesser Penalty Plus" provision, Company Y would receive an additional 30% reduction in the penalty related to cartel 'A' and a 100% reduction in the penalty for cartel 'B'.

## **2. The Protection of Trade Secret Bill, 2024<sup>36</sup>- [289<sup>th</sup> Report of Law Commission of India]**

In its 289th report, the Law Commission of India <sup>37</sup>highlights the importance of protecting whistleblowers and advocates for a safe harbor clause in proposed trade secret laws that would grant them immunity, not just a defense. It asserts that illegal activities should not be shielded by trade secret protections, and non-disclosure agreements should not be used to hinder the reporting of such activities.

The Commission, after reviewing similar legal structures in the US and Europe, points out that India lacks a comprehensive whistleblower protection law for industry misconduct and illegal activities. The existing Whistle Blowers Protection Act, 2014, only addresses disclosures related to corruption or the misuse of power by public officials.

Thus, the Commission suggests that the new provision should provide whistleblowers with immunity to prevent discouragement due to lengthy legal battles. To ensure this protection is not misused for personal advantage, the provision should include criteria for good faith and public interest.<sup>38</sup>

Section 5 of the proposed Trade Secret Bill, 2024 clarifies that any disclosure of illegal actions or wrongdoing or action taken in good faith to protect the public interest will not be regarded as misappropriation.

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<sup>36</sup> Protection of Trade Secrets Bill, 2024, Cl. 5, No. \_\_ of 2024 (India).

<sup>37</sup> LAW COMMISSION OF INDIA, REPORT NO. 289: TRADE SECRETS AND ECONOMIC ESPIONAGE (2024).

<sup>38</sup> Debby Jain, *Law Commission Recommends Whistleblower Protection, Says Amendments May Be Brought To Mandate Test Data Disclosure*, LIVE LAW (March 9, 2024), <https://www.livelaw.in/top-stories/law-commission-of-india-289th-report-trade-secrets-economic-espionage>  
251731#:~:text=In%20a%20recent%20development%2C%20the,government%20use%2C%20and%20public%20interest.

## CONCLUSION

The Whistleblower Protection Act in India represents a significant step towards enhancing transparency and accountability within public institutions. By safeguarding individuals who expose corruption and abuse of power, the Act aims to strengthen public trust and state capacity. However, the Act faces challenges in its implementation, particularly concerning the restrictions on disclosures related to ten specific categories of information and the absence of detailed criteria for government-appointed authorities handling such disclosures.

Comparing India's whistleblower laws with those in the United States, the European Union, the United Kingdom, and Canada reveals both strengths and areas for improvement. The international perspective highlights best practices such as the inclusion of financial incentives for whistleblowers, the establishment of independent oversight bodies, and robust protections against retaliation. Adopting similar measures could enhance the effectiveness of India's whistleblower protection framework.

Recent developments, including the Competition Commission of India (Lesser Penalty) Regulations, 2024, and the proposed Protection of Trade Secret Bill, 2024, reflect ongoing efforts to improve whistleblower protection and encourage the reporting of misconduct. These initiatives underscore the importance of providing legal safeguards to protect whistleblowers, ensuring their safety, and fostering a culture of ethical compliance and integrity.

In conclusion, while the Whistleblower Protection Act in India marks a significant legislative milestone, continued efforts are needed to address its shortcomings and ensure robust protection for whistleblowers. By fostering a culture of transparency and accountability, whistleblower protection laws can play a crucial role in building public trust and enhancing the effectiveness of governance.