

AS INTRODUCED IN THE RAJYA SABHA
ON THE 3RD MARCH, 2006

Bill No. XI of 2006

THE WHISTLE BLOWERS (PROTECTION IN PUBLIC INTEREST
DISCLOSURES) BILL, 2006

A

BILL

to provide for protection from criminal or civil liability, departmental inquiry, demotion, harassment and discrimination of whistle blowers, i.e., the persons who bring to light specific instances of illegality, criminality, corruption, miscarriage of justice, any danger to public health and safety in any Government, public or private enterprise to an authority designated for the purposes and matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Whistle Blowers (Protection in Public Interest Disclosures) Act, 2006.

5 (2) It extends to the whole of India.

(3) It shall come into force at once.

Short title
extent and
com-
mencement.

| | | |
|---|--|------------|
| Definitions | 2. In this Act, unless the context otherwise requires,— | |
| | (a) "designated Authority" means the authority designated by the Central Government to receive complaints of public interest disclosures under section 6 and includes any new authority created in this behalf; | |
| | (b) "prescribed" means prescribed by rules made under this Act; | 5 |
| | (c) "public interest disclosure" means specific disclosure by an individual involving illegality, criminality, breach of law, miscarriage of justice, danger to public health and safety and damage to environment and includes attempt to cover up such malpractices in any governmental establishment, public or private enterprise; | |
| | (d) "whistle blower" means any individual making public interest disclosure. | 10 |
| Appointment of Designated Authority. | 3. (1) The Central Government shall, within three months from the commencement of this Act, by notification in this behalf, appoint a designated authority for the purpose of receiving and processing complaints on public interest disclosure under this Act. | |
| | (2) The designated authority shall have offices in the capital city of each State and Union Territory in the country. | 15 |
| Public interest disclosure to be made in writing. | 4. (1) A whistleblower desirous of making a public interest disclosure shall make it to the designated authority in writing or in electronic form either in English or Hindi. | |
| | (2) The designated authority shall keep the identity of the whistle blower secret: | |
| | Provided that the whistle blower shall comply with all the instructions issued by the designated authority in this regard to keep his identity secret. | 20 |
| Adequate protection to whistle blower. | 5. (1) A whistle blower making public interest disclosure shall be given adequate protection by the designated authority in such ways and manner as may be prescribed. | |
| | (2) Without prejudice to the generality of the provision in clause (1), protection shall include protection from departmental enquiry, criminal and civil liability, delay in promotion, demotion harrassment, discrimination. | 25 |
| Action to be taken on false complaints. | 6. (1) The designated authority shall not entertain any anonymous complaints received by it in any manner. | |
| | (2) The designated authority may on such verifications as may be necessary in this regard cause such action to be taken against the complainant on false complaints as may be prescribed. | 30 |
| Punishment. | 7. Any person retaliating against a whistle blower shall be punishable with an imprisonment which may extend to five years: | |
| | Provided that if the public interest disclosure by whistle blower happens to belong to the Central or State public sector undertakings or corporate sector, the period of imprisonment for the person so retaliating may extend to ten years. | 35 |
| Non-applicability of Official Secrets Act, 1923 to the whistle blowers. | 8. The provisions of the Official Secrets Act, 1923 or any agreement or service conduct rules shall not be applicable to the whistle blowers in relations to public interest disclosures. | 19 of 1923 |
| Overriding effect of the Act. | 9. The provisions of this Act and the rules made there under shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. | 40 |
| Power to remove difficulty. | 10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not | |

inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

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

- 5 **11.** The Central Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act. Power to make rules.

STATEMENT OF OBJECTS AND REASONS

There is no denying the fact that corruption is rampant in our country. Be it Government, public sector or private sector—everywhere, it has crept into the system. It is so deep rooted and channelised that when a whistle blower tries to raise his voice against corrupt practices from within the system, his voice is scuttled and he is made to suffer because of his audacity for his outburst. The instances of a whistle blower being fired, demoted, harassed or punished in other ways while the organization denies, ignores or quietly buries a disclosure are in abundance.

It is true that under normal circumstances, an organization is entitled to total loyalty and confidentiality from its employees. But when there is serious malpractice or when people's lives are at stake—as in cheating and corruption; defence deals; destruction of national wealth; conspiracy against state; encounters of innocent persons; toxic leaks from a chemical factory; non-adherence of safety standards in factories, mines and other establishments; false declarations by a company; the public interest demands that such an event be disclosed and the person showing courage for this should be protected rather than punished. Auditors, vigilance commissions, regulators, the press, society and courts all play an important role in checking the malpractices to some extent. But it is difficult to lay hands on the inside information provided by the whistle blower. Even the recent Right to Information Act, 2005 is not of much use in this regard.

Further, there is the legal bar in the form of Official Secrets' Act and Conduct Rules in the public sector or a Non-disclosure Agreement in the corporate sector by which the employees are gagged from disclosing matters to the public on pain of incurring criminal or civil liability for any breach. It is unreasonable to expect employees to sacrifice their jobs and future in order to protect the public interest. A few daredevils may do it but the majority will not venture out in the area. In trying to protect the whistle blowers, we will not only protect the society and ourselves but also serve as a deterrent to the Government and other organizations. In many countries, the laws relating to protection of whistle blowers have been enacted. The UK's Public Interest Disclosures Act, 1998 is a fine piece of legislation providing protection to employees in public, private and non-public sectors including those working outside the UK. Sarbanes—Oxley Act of 2002 enacted by US Congress granted sweeping legal protection to whistle blowers in publicly traded companies. Under this Act, anyone retaliating against a corporate whistle blower can be imprisoned for 10 years with remedies available to the whistle blower include reinstatement, back pay with interest, compensatory damages, special damages, attorney fee and costs.

The issue of protection to whistle blowers has assumed special significance in the light of the murder of National Highways Authority of India's Deputy General-Manager, Shri Satyandra Dubey, who raised his voice against the prevalent corruption in awarding road building contracts under Golden Quadrilateral Projects. Another brilliant officer of Indian Oil Corporation, Shri A. Manjunath, had to lay down his life for highlighting adulteration and mafia operations in the functioning petrol pumps. There are numerous cases in our country which speak volumes of the need for such legislation. Even the Law Commission has recommended the need for a Whistle Blower Protection Act which will ensure transparency in the administration and will also provide a sense of security to the whistle blower.

Hence this Bill.

VIJAYJ. DARDA

FINANCIAL MEMORANDUM

Clause 3 of the Bill empowers the Central Government to appoint a designated authority to look into the cases of public interest disclosure from whistle blowers. It also provides that the designated authority shall have offices in the capital of each State and Union Territory. The Bill, if enacted will involve expenditure from the Consolidated Fund of India to the tune of rupees fifty crore.

Non-recurring expenditure of rupees thirty crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill and the rules with relate to matters of detail only. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

A

BILL

to provide for protection from criminal or civil liability, departmental inquiry, demotion, harassment and discrimination of whistle blowers, i.e., the persons who bring to light specific instances of illegality, criminality, corruption, miscarriage of justice, any danger to public health and safety in any Government, public or private enterprise to an authority designated for the purposes and matters connected therewith or incidental thereto

(Shri Vijay J. Darda, M.P.)