

AS INTRODUCED IN LOK SABHA

Bill No. 246 of 2016

THE WHISTLE BLOWERS PROTECTION (AMENDMENT)
BILL, 2016

By

SHRI BAIJAYANT PANDA, M.P.

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BILL

further to amend the Whistle Blowers Protection Act, 2011.

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

1. (1) This Act may be called the Whistle Blowers Protection (Amendment) Act, 2016.

Short title and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 3. **2.** In section 3 of the Whistle Blowers Protection Act, 2011 (hereinafter referred to as the principal Act),— 17 of 2014.

(i) after clause (f), the following clause shall be inserted, namely:—

"(fa) "injury" in relation to an employee of a company means any disadvantage including dismissal of an employee, alteration of an employee's position to his detriment or discrimination with an employee;" and 5

(ii) after clause (k), the following clauses shall be inserted, namely:—

"(l) "State Vigilance Commission" means the Commission established by a resolution of the respective State Government; and

(m) "witness" means any person, who possesses information or document about any crime regarded by the competent authority as being material to any criminal proceeding." 10

Amendment of section 8. **3.** In section 8 of the principal Act, in sub-section (I), after clause (b), the following clause shall be added, namely:—

"(c) as might involve the disclosure of the proceedings in a legal professional agreement between an advocate and a client." 15

Amendment of section 12. **4.** In section 12 of the principal Act, the words ", or witnesses," and the words "or the witnesses" shall be omitted.

Insertion of new Chapter VA. **5.** In the principal Act, after Chapter V, the following Chapter and sections thereunder shall be inserted, namely:— 20

"CHAPTER VA

WHISTLE BLOWER WITNESS PROTECTION AND PROTECTION AGAINST INJURY

Classification of witnesses. **14A.** For the purposes of this Act, the witnesses shall be classified into following groups—

(a) Group A—where the threat extends to life of the witness or his family members. 25

(b) Group B—where the threat extends to safety, reputation or property of the witness or his family members.

(c) Group C—where the threat is moderate and extends to harassment and intimidation of the witness or his family member's reputation or property, during the investigation process. 30

Appropriate Government to protect the witness. **14B.** (1) It shall be the duty of the appropriate Government to formulate measures to protect the witness.

(2) Without generality of the foregoing provisions, the witness protection measures shall be proportional to the threat and shall include—

(a) concealment of identity of the witness by referring to him with the changed name or alphabet; 35

(b) close protection and regular patrolling around the witness's place of residence;

(c) holding of *in-camera* trials, if necessary;

(d) avoidance of face-to-face contact between witness and accused during investigation or trial; 40

(e) allowing a support person to remain present during recording of statement of deposition of witness; and

(f) such other measures as may be necessary to ensure safety of the witness.

	14C. The Competent Authority, at any time after the making of disclosure by the complainant, if it is of the opinion that a company or a person has caused any injury to the person making the disclosure or to the complainant, shall —	Protection against injury of complainant.
5	(a) make an order requiring the company to compensate the complainant for loss, damage or injury caused as a result of reprisal or threat; or	
	(b) make an order requiring the company to reinstate the complainant in that position or a position at a comparable level; or	
10	(c) make an order imposing a penalty not exceeding five lakh rupees and punishable with imprisonment for a term which may extend upto fifteen years or as may be applicable under any law for the time being in force.	
	14D. For the purposes of sections 14B and 14C, the Central Government shall, by notification, establish a tribunal, to be known as the Public Interest Disclosure Protection Tribunal to exercise such powers and authority as may be conferred on it by law made by Parliament in this behalf.	Establishment of Public Interest Disclosure Protection Tribunal.
15	14E. For the purposes of sections 14B and 14C, the Central Government shall, by notification, constitute a Fund to be known as the Witness Protection Fund to which shall be credited funds from the Central Government, fines deposited in courts and donations or contributions from institutions and private individuals .".	Constitution of Witness Protection Fund.

STATEMENT OF OBJECTS AND REASONS

The Whistle Blowers Protection Act, 2011 (17 of 2014) was enacted to provide protection from harassment to persons making disclosure of corruption, willful misuse of power or arbitrary use of discretion of any power by any public servant, besides keeping the identity of the whistle-blowers secure. However, the Act lacks specific provisions and administrative set-up to protect whistle-blowers witnesses against physical attacks and any other reprisals. Further, the compulsory identification of the complainant is causing a detriment to many. Thus, it has become necessary to amend the parent Act to address the above shortcomings.

Hence this Bill.

NEW DELHI;
July 5, 2016.

BAIJAYANT PANDA

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that Central Government shall establish Public Interest Disclosure Protection Tribunal to protect the whistle-blowers witnesses and settle the disputes between employee and a company at the earliest. It also provides that Central Government shall constitute the Witness Protection Fund to release funds to protect the whistle-blower witnesses. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees three hundred crore would be involved as recurring expenditure per annum.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

ANNEXURE

EXTRACT FROM THE WHISTLE BLOWERS PROTECTION ACT, 2011.

(17 OF 2014)

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Definitions.

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

(f) "Government company" means a company referred to in section 617 of the Companies Act, 1956;

* * * * *

(k) "regulations" means the regulations made by the Competent Authority under this Act.

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Certain
matters
exempt from
disclosure.

8. (I) * * * * *

(a) * * * * *

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

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Protection of
witnesses and
other
persons.

12. 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.

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