



**PARLIAMENT OF INDIA
RAJYA SABHA**

46

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE

ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

FORTY SIXTH REPORT

ON

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

(PRESENTED TO THE HON'BLE CHAIRMAN, RAJYA SABHA ON 9TH JUNE, 2011)

**RAJYA SABHA SECRETARIAT
NEW DELHI
JUNE, 2011 / JYAISTHA, 1993 (SAKA)**

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE

1. Smt. Jayanthi Natarajan — *Chairperson*

RAJYA SABHA

1. Shri Shantaram Laxman Naik
2. Dr. Abhishek Manu Singhvi
3. Shri Balavant *alias* Bal Apte
4. Shri Ram Jethmalani
5. Shri Parimal Nathwani
6. Shri Amar Singh
7. Shri Ram Vilas Paswan
8. Shri O.T. Lepcha
9. Vacant*

LOK SABHA

10. Shri N.S.V. Chitthan
11. Smt. Deepa Dasmunsi
12. Smt. Jyoti Dhurve
13. Shri D.B. Chandre Gowda
14. Dr. Monazir Hassan
15. Shri Shailendra Kumar
16. Smt. Chandresh Kumari
17. Shri Bhajan Lal
18. Dr. Kirodi Lal Meena
19. Ms. Meenakshi Natarajan
20. Shri Devji M. Patel
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Shri S. Semmalai
24. Shri Vijay Bahadur Singh
25. Dr. Prabha Kishor Taviad
26. Shri Manish Tewari
27. Shri R. Thamaraiselvan
28. Adv. P.T. Thomas (Idukki)
29. Vacant**
30. Vacant***

SECRETARIAT

Shri Deepak Goyal, Joint Secretary
Shri K.P. Singh, Director
Shri K.N. Earendra Kumar, Joint Director
Smt. Niangkhannem Guite, Assistant Director
Smt. Catherine John L., Committee Officer

(i)

* Vacancy caused due to death of Shri M. Rajasekara Murthy w.e.f. 7th December, 2010.

** Vacancy caused due to resignation of Shri Arjun Munda from Lok Sabha w.e.f. 26th February, 2011.

*** Vacancy existing since the reconstitution of the Committee.

INTRODUCTION

I, the Chairperson of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Forty Sixth Report on The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010. The Bill seeks to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse 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.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Lok Sabha on the 26th August, 2010 and pending therein, to this Committee on the 15th September, 2010 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee.

4. The Committee heard the presentation of the Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions on the provisions of the Bill in its meeting held on 29th September, 2010. The Committee also heard the views of stakeholders/ NGOs in its meetings held on 14th and 15th February, 2011. The Committee further held in- house discussion on the Bill on the 28th April, 2011.

5. While considering the Bill, the Committee took note of the following documents/information placed before it :-

- (i) Background note on the Bill submitted by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions;

* Rajya Sabha Parliamentary Bulletin Part-II (No.1937) dated the 16th September, 2010.

- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Personnel and Training thereon;
- (iii) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as representatives of the PRS Legislative Research, Commonwealth Human Rights Initiative, Sh. M.N.Vijaya Kumar, I.A.S., Akhil Bharatiya Grahak Panchayat, Sh. M.P.Dubey, Sh. G.Venkatanarayana, Rakshak Foundation, National Campaign for People's Right to Information, Dr.R.Stephen Lousie, Sh. P.M.Bhat, Sh. Krishna H.Rao, Sh. Ajay B.Bose and Sh. Rajinder Kumar Goyal in its meetings held on 14th and 15th February, 2011;
- (iv) Reply furnished by the Department of Personnel and Training to the questionnaire forwarded by the Secretariat;
- (v) Comments furnished by the Central Vigilance Commission on the Bill; and
- (vi) Other research material/ documents related to the Bill.

6. The Committee adopted the Report in its meeting held on the 11th May, 2011.

7. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
11th May, 2011

JAYANTHI NATARAJAN
Chairperson,
Committee on Personnel,
Public Grievances, Law and Justice

(iii)

REPORT

The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 was introduced* in the Lok Sabha on the 26th August, 2010. It was referred* by the Hon'ble Chairman, Rajya Sabha to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 15th September, 2010 for examination and report.

2. The Bill (Annexure-A) seeks to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse 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.

3. The Statement of Objects and Reasons, appended to the Bill reads as under:-

"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

* Published in Gazette of India (Extraordinary) Part-II Section 2 dated the 26th August, 2010.

* Rajya Sabha Parliamentary Bulletin Part-II (No.1937) dated the 16th September, 2010.

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.

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 maladministration 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 a legislation for providing protection to whistleblowers. The Government of India had issued a Resolution No.89, dated the 21st April, 2004 authorising 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 causes

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.

In view of the position stated in the foregoing paragraphs, it has been decided to enact a 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-blower, 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 mala-fidely;
- (g) punishment for false or frivolous complaints."

4. The Committee heard the presentation of the Secretary, Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions on the Bill on the 29th September, 2010.

5. In order to have a broader view on the Bill, the Committee decided to invite views/suggestions from desirous individuals/organisations on the Bill. Accordingly, a press release was issued inviting views/suggestions. In response to the press release published in major English and Hindi dailies and newspapers all over India on the 2nd October, 2010, a number of representations/memoranda were received.

5.1. The Committee forwarded some select memoranda from out of the ones received from the individuals/organisations to the Department of Personnel and Training for their comments thereon. A list of such memoranda along with the gist of views/suggestions contained therein and the comments of the Department of Personnel and Training thereon is placed at Annexure- B.

5.2. The major points raised in the memoranda are summarized as follows:

- (i) Removal of the restrictions contained in Clause 3(1) (a-d), which shield the Armed Forces, the Security Forces and the intelligence operations from accountability;
- (ii) Bill should provide for specific and exhaustive definition of the term “Victimisation”;
- (iii) Protection against victimization should be more specific and exhaustive;
- (iv) Clause 16 detailing punishment for frivolous disclosures ought to be removed. This clause is a clear deterrent to those making Public Interest Disclosures and the human rights defenders, specifically. The Bill does not provide an adequate definition of "frivolous disclosures" which leaves things open to manipulation;

- (v) There should be numerous Competent Authorities, preferably one in each Department;
- (vi) Bill should provide for cash rewards;
- (vii) The term "Complainant" should not be used as it reflects narrow thinking and prejudice against a person making the disclosure. Instead, the term "Whistle Blower" may be used;
- (viii) Names of the whistle blowers should not be revealed even to the head of Government Department;
- (ix) By seeking to make the identity of the whistleblower a secret, the Bill inadvertently creates conditions wherein anybody with that privileged information (especially employees of CVC/SVC) may gain crores of rupees by disclosing his identity to interested parties. Thus, the Bill perversely endangers the whistleblowers and sets the stage for various kinds of attacks and retributions;
- (x) There should be a specific mechanism for moving trials on a fast track;
- (xi) The Police force and armed forces should be included in the ambit of the Bill;

- (xii) The action taken by the Competent Authority should be put in public domain;
- (xiii) On receiving complaints, the Competent Authority should give a complaint number;
- (xiv) The complainant should be apprised of the development and action completed at each stage so that he may be able to point out the deficiencies;
- (xv) The time limit as provided in Clause 5(3) of the Bill should be removed;
- (xvi) The scope of disclosure should be widened to include complaints relating to illegal acts performed by contractors/suppliers directly or through their employees and/or hired persons;
- (xvii) In Clause 2(d)(ii) the word "demonstrable" occurring at both places may be deleted and suitably replaced with the word "wrongful";
- (xviii) In Clause 4(6)(b) of the Bill after the words "it shall close the matter" the words "and send a copy of the closure report to the complainant" may be added ;
- (xix) In Clause 10(1) of the Bill after the words "Central Government" and before the word "shall" the words "and the State Governments" may be inserted;
- (xx) The Bill should cover the corporate sector also;

- (xxi) If the allegations are substantiated in the preliminary enquiry, the accused should be suspended forthwith;
- (xxii) Provide retrospective operation to the Bill/Act to enable earlier whistleblowers to get justice;
- (xxiii) The Bill does not provide any protection to a private whistleblower (e.g. RTI activist);
- (xxiv) The CVC is not suitable to be the Competent Body under this Bill for the following reasons:-
 - (a) it has to seek permission to initiate enquiries;
 - (b) it does not have jurisdiction over politicians;
 - (c) it does not have resources and thus will need to outsource investigation;
 - (d) it only has advisory powers and thus cannot mandate enforcement of its recommendation;
 - (e) Appointment procedure for a CVC is non-transparent, and as seen from the current controversy over the present incumbent's appointment, may also lack moral authority;
 - (f) There are no provisions for transparency and accountability of the CVC in the CVC Act, or for the Competent Authority in this Bill.

- (xxv) Lack of timeline for investigation may be used to shield corrupt public servants. Further, long drawn investigation will render whistleblower protection (if needed) irrelevant;
- (xxvi) The burden of proof to prove victimization is on the whistleblower; whereas international best practices lay the onus on the supervisor to show legitimate rationale for negative action taken;
- (xxvii) Bill must provide protection for two types of whistleblowers.- citizen and institutional (Government) whistleblower;
- (xxviii) In case of grievous hurt to the whistleblower, a special task force under the Competent Authority should investigate issues being probed by the whistleblower;
- (xxix) Whistleblower must be provided an opportunity for rebuttal in case a complaint is closed based on preliminary investigation.

5.3. The major highlights of the comments furnished by the Department of Personnel and Training are given below :-

- (a) As per provisions of the Bill, each and every complaint is required to be enquired into. It may not be practically possible to entertain large number of anonymous and pseudonymous

complaints and there is likelihood that the very purpose of the Bill may get diluted.

- (b) The Bill does not provide for any time frame to complete enquiry and decide upon the complaint. However, if deemed necessary the same can be provided in the Rules/Regulations. It may not be appropriate to provide for time-frame in the Bill because it needs to be spelt-out what action has to be taken if the same is not complied within the time-frame.
- (c) DOP&T has already issued a circular requesting all Ministries/Departments to publicize cases which have reached finality both in regard to conviction and major penalties of dismissal, removal from service and compulsory retirement.
- (d) Clause 10 provides for safeguard against victimization. Victimization has been clarified as "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". It is felt that the above provision will take care of all aspects including fabrication of false charges, transfer, posting, promotion, etc.

- (e) It was Ministry of Defence which suggested that Armed Forces may be kept out of the purview of the bill. DOP&T is open to suggestions.
- (f) The motive of the Whistle Blowers Bill and that of the RTI Act are different. Though both are aimed at checking corruption, the exemptions provided in the Whistle Blowers Bill and that in the RTI Act cannot be made the same. In fact, the exemption under the RTI Act are more than that under the Whistle Blowers Bill.
- (g) The term "maladministration" was used and defined in the Bill suggested by the Law Commission of India in its 179th report. The Group of Ministries (GoM) and also the Committee of Secretaries (CoS) felt that such stringent clauses would hamper smooth functioning of Government servants. Hence, the present grounds enunciated in the Bill would suffice.
- (h) At this stage, it may not be possible for the CVC to handle complaints of private sector.
- (i) It is felt that Ministers may be left out for the present.
- (j) All Government officials are covered in the Bill, whether working in India or abroad, in connection with the affairs of the Government.

- (k) Though the Bill does not require the Competent Authority to provide guidance to potential whistle blowers, the Bill does allow the Competent Authority to ascertain the identity of the complainant. (Clause 4(1)(a)). This clause gives power to interact with the whistle blower and the Competent Authority may guide potential whistle blowers, if felt necessary.
- (l) On promulgation of this Act, there may be no need for whistle blowers to make complaints to other forums. Further, it may not be possible for the Government to protect all whistle blowers who themselves reveal their identity to other forums.
- (m) The CBI is being strengthened and additional Special Courts are being set-up.
- (n) It has been suggested that if the complaint is closed, the complainant should be informed, accordingly. This suggestion can be taken care of while framing the rules/regulations.
- (o) There is no provision in the Bill for appellate/oversight authority.
- (p) There is no provision in the Bill for special task force, etc.

5.4. A Questionnaire on the Bill was also prepared by the Secretariat and forwarded to the Ministry for their replies. The reply to the

Questionnaire (Annexure C) was furnished by the Ministry on 18th February, 2011 and the same was considered by the Committee.

5.5. The Committee also heard the views of stakeholders/NGOs viz. PRS Legislative Research, Commonwealth Human Rights Initiative, Shri M.N.Vijaya Kumar, I.A.S., Akhil Bharatiya Grahak Panchayat, Shri M.P.Dubey, Shri G.Venkatanarayana, Rakshak Foundation, National Campaign for People's Right to Information, Dr.R.Stephen Louie, Shri P.M.Bhat, Shri Krishna H. Rao, Shri Ajay B. Bose and Shri Rajinder Kumar Goyal in its meetings held on the 14th and the 15th February, 2011. The Committee further held in-house discussion on the Bill on the 28th April, 2011.

5.6. The Committee also called for the comments of the CVC on the Bill which were received *vide* their communication dated 22nd March, 2011 (Annexure D).

Major issues examined by the Committee

1. Public Interest Disclosure

(i) Scope of the Public Interest Disclosure

5.7. The Committee took note of the submissions made by some of the witnesses who appeared before the Committee, that the ambit of wrongdoings that may be disclosed under the Bill is very limited and that

‘willful maladministration’, ‘human rights violations’ and wrongdoings that may have adverse effect on ‘public health, safety or environment’ should also be covered in the Bill. It was further submitted that such provisions exist in similar laws operational in countries like Canada, Romania and Uganda.

5.8. The Ministry, in its comments furnished to the Committee, stated that the term "maladministration" was used and defined in the Bill suggested by the Law Commission of India in its 179th report. The Group of Ministries (GoM) and also the Committee of Secretaries (CoS) felt that such stringent clauses would hamper smooth functioning of Government servants. Hence, the present grounds enunciated in the Bill would suffice.

5.9. One of the witnesses who appeared before the Committee suggested that Clause 2(d) of the Bill should be amended to include violation of any law operational in the country, that has been or is intended to be, committed by public servants. A suggestion also came that the scope of disclosure should be widened to include complaints relating to illegal acts performed by contractors/ suppliers directly or through their employees and/ or hired persons. However, the Ministry in its response, has stated that this will increase the ambit of the Bill considerably and CVC may not be able to handle complaints on such a large scale.

5.10. The CVC, in its written comments furnished to the Secretariat, has suggested that clause 2(d)(ii) of the Bill may be amended to include wrongful gain accrued to any third party also. The CVC further commented that the comprehensive definition of "public servant" given in the Prevention of Corruption Act may be adopted for the purposes of this Bill.

5.11. The Committee recommends that the suggestions made/concerns raised by the stakeholders in the above mentioned paras should be seriously considered by the Ministry and appropriately included in the Bill to the extent feasible. Eventually, the Bill should be dealing with all such wrongdoings. The Committee, however, specifically recommends that the suggestion of CVC to cover accrual of wrongful gain to third party should be incorporated in clause 2(d)(ii) of the Bill. The Committee also recommends to Government to examine the suggestion of the CVC regarding defining the term "Public Servant" in the Bill when the term already stands defined under the IPC and the PC Act.

(ii) Ambit of the Public Interest Disclosure

5.12. The proviso to Clause 3(1) of the Bill prohibits public servants, referred to in clauses (a) to (d) of article 33 of the Constitution, from making public disclosures related to members of the Armed Forces,

Forces charged with the maintenance of public order, persons employed in any bureau/organization established for purpose of intelligence or counter intelligence and in telecommunication system set up for the purposes of such Force, Bureau or Organization and matters related thereto.

5.13. The Committee, during its interactions on the Bill, with various stakeholders, came across a persistent view that there was no rationale for such exemption. It was also cited before the Committee that in countries like Ghana, New Zealand, South Africa and Uganda, such Services were not excluded from the coverage of whistleblowers laws and that in the USA, special laws have been enacted to enable armed forces to make disclosure of wrongdoing in confidence to the Inspectors General and the Members of the US Congress. Serious apprehensions were raised in the written/ oral submissions made before the Committee that such an exemption would shield them from public scrutiny and accountability, thereby preventing wrongdoings in such Forces from coming to light.

5.14. The Ministry, in its comments furnished to the Committee, in this regard, stated that it was the Ministry of Defence which suggested that the Armed Forces might be kept out of the purview of the Bill. Further, the Ministry, in its reply to the questionnaire, has stated that Government is of the view that all personnel covered under Article 33(1) should not

whistle blow against each other. They can, however, whistle blow against all other public servants, while other public servants/persons can blow whistle against them.

5.15. The Committee takes note of the grave concerns raised regarding the exception created in relation to the defence/intelligence forces vide proviso to Clause 3(1) of the Bill. In Committee's view, the Ministry has not furnished cogent reasons for excluding such Agencies/Forces from the ambit of the Bill. It is pertinent to note at this point that under the RTI Act, 2005, no such exemption has been given to the Armed Forces. Further, the RTI Act does not completely exempt the intelligence and security organisations and information in relation to such Organizations is disclosable in cases of corruption and human rights violations. Since this Bill is ultimately aimed at tackling corruption, the Committee does not find any logical reason behind such an exemption. The Committee feels that the Bill under examination should not exclude the defence forces/ intelligence and security organisations in this matter.

5.16. Government may, however, while doing away with such exemptions, come out with suitable and reasonable exceptions, in order to keep a balance between the operational needs of these forces and their accountability to the public. Government may, alternatively, even consider setting up a separate authority for these

exempted agencies under the Bill or special laws may be enacted on the lines of the USA. The Committee directs the Government to examine this proposal in more detail so that no organisation of the Government is left out from public scrutiny and accountability in such a manner.

5.17. The Committee took into account a suggestion made before it that the members of the Council of Ministers should also be included within the ambit of the Bill. In this context, the Committee noted that such a provision was suggested by the Law Commission of India, in its 179th Report for inclusion in the Bill.

5.18. The Committee also took note of one of the submissions made before it, viz, that on many occasions, pliable public servants were the instruments, rather than the doers; and that this Bill looks at the public servants only, while ignoring the main culprits who may be the persons wielding actual power. The situation needs to be dealt with more thoughtfully so that the actual offenders may be proceeded against.

5.19. Another view that was placed before the Committee was that the Bill should cover private sector companies/firms also. The Ministry, in its reply to the questionnaire, has stated that the jurisdiction of the Bill is co-terminus with the present jurisdiction of the CVC. Accordingly,

Government banks, insurance companies and public sector undertakings were covered, but not the private sector firms.

5.20. Another suggestion placed before the Committee was that the judiciary should also be brought within the ambit of this Bill. On this issue, the Secretary, DoPT clarified, while deposing before the Committee, that under the Prevention of Corruption Act, under the definition of “public servant”, the judges are included.

5.21. But, while the Committee was deliberating on the Bill, doubts were raised as to whether this provision is applicable to the lower judiciary only, or whether it applied to the higher judiciary also. The term “public servant” has also been defined in the Bill under examination. It is, however, not clear whether the term includes the judiciary also. The Committee strongly feels that there should be greater clarity in this regard in the Bill.

5.22. During the course of discussions on the Bill, one of the Members of the Committee opined that regulatory authorities should also be brought under the purview of this Bill. The Ministry, in its written comments, clarified that all Government officials were covered in the Bill whether working in India or abroad, in connection with the affairs of the Government.

5.23. The Committee finds merit in the foregoing views that have come up before it. The Committee desires that the Ministry should consider bringing the members of Council of Ministers, the judiciary including the higher judiciary, regulatory authorities, etc. within the ambit of this Bill by making necessary amendments in the Bill.

2. Receipt of the Public Interest Disclosure complaints

5.24. The Committee is given to understand that under the present Whistle-blower Resolution, the CVC had received a total of 1996 complaints from the year 2005 up to August, 2010 and it acted on 614 complaints. Other complaints were either anonymous/pseudonymous or non-vigilance complaints.

5.25. As per the mechanism envisaged in the Bill [Clause 3(2)], the sole authority authorized to receive a public interest disclosure is the Competent Authority, i.e., CVC or State Vigilance Commissions.

5.26. The Committee, during its interactions with the stakeholders, could gather a pervasive view point that this may not be the best way to instill confidence in the minds of potential whistleblowers and that multiple points may be provided for receiving complaints, specially to facilitate complainants in the remote areas to make use of the enactment. In this context, it was also suggested to provide for an option to receive complaints electronically. There was another suggestion that CVC/SVC

should be made the Appellate Authority in the process of handling the public interest disclosures.

5.27. The Ministry, in its written comments, has clarified that even in the Bill drafted by the Law Commission of India in 2002, the proposal was that the CVC would be the Competent Authority. This Bill did not carry any proposal for numerous Competent Authorities.

5.28. The Committee feels that the doubts arising from various quarters, regarding the efficacy of providing CVC/SVCs as the sole authority authorized to receive a public interest disclosure complaint are not unfounded particularly from the view point of access from remote areas. Accordingly, the Committee urges upon the Ministry to ensure that necessary provisions are made in Rules/Regulations putting in place a smooth and convenient system for receipt of the disclosure complaints. At this point, the Committee would like to stress upon the crucial point that if multiple points are to be made for receipt of public disclosure complaints, it has to be particularly ensured that the identity of the complainant is protected for sure and no loopholes creep in, weakening the system.

3. Identity of the Complainant

5.29. Clause 3(6) of the Bill makes it mandatory that the disclosure should indicate the identity of the complainant.

5.30. In this context, the Committee received suggestions from various quarters that anonymous complaints, if accompanied by sufficient evidence, should be taken cognizance of and in that case, it would be easier to protect the complainant. In some of the memoranda received by the Committee, it was suggested that a secret code may be given for each complaint received in order to maintain confidentiality of the complainant. However, the Ministry, in its comments, did not accept the idea to permit anonymous complaints as this may inflate unusually the number of false complaints thereby defeating the purpose of the Bill. The Government, however, accepted the idea of use of electronic means for receiving complaints and keeping the identity of the complainant secret and agreed to take care of these aspects in the rules/regulations to be framed under the Bill.

5.31. The Committee notes at this juncture that the DOPT, in its comments furnished to the Committee, has stated that the Department of Personnel & Training had issued an OM dated 29.9.92 which provides that no action should be taken on anonymous and pseudonymous complaints. Such complaints should be ignored and filed. However, there is a provision available in the said order, viz., that in case such complaints contain verifiable details, they may be enquired into in accordance with existing instructions only on specific direction of the Head of the Department/Chief Executive. The CVC, in 1999, observed that there was

widespread use of anonymous and pseudonymous petitions by disgruntled elements to blackmail honest officials and hence no action should be taken on such petitions. It was also stated that as per provisions of the Bill each and every petition was required to be enquired into. It may not be practically possible to entertain large number of anonymous and pseudonymous complaints and there is likelihood that the very purpose of the Bill may get diluted.

5.32. The Committee takes cognizance of the comments of the Ministry on the issue that a mechanism can be provided under the Rules/Guidelines to ensure that the identity of the complainant remains confidential in cases where the complaint is received electronically. The Committee takes serious note of the concerns raised by the witnesses regarding ensuring confidentiality of the identity of the complainant. The Committee strongly recommends that the Ministry should envisage a fool-proof mechanism in every respect which would ensure that the identity of the complainant is not compromised with, at any cost and at any level. The Committee would like to place emphasis on this aspect since it feels that the absence of such a mechanism would deter prospective complainants due to fear of harassment, victimization, etc. or even physical harm which, in turn, would hamper the realization of the objective of this legislation.

5.33. The Committee finds merit in the suggestion made by the stakeholders that if an anonymous complaint is received by the Competent Authority, and the facts mentioned in the complaint and the supporting documents reveal a prima facie case, the Competent Authority should not reject it only for want of identity of the complainant. In Committee's view, anonymous complaints, if substantiated, would make the task of the Competent Authority easier as it would be less worried on the aspect of protecting the identity of the complainant which is an important objective of the Bill. The Committee recommends that the Government may also consider an alternative mechanism within/outside the Bill, for enquiring into anonymous complaints.

4. Revealing the identity of the Complainant

5.34. The Ministry, in its reply to the questionnaire, has clarified that a mechanism shall be provided under the Rules/Guidelines to keep the identity of the complainant, confidential.

5.35. The proviso to Clause 4(4) of the Bill lays down that “if it becomes necessary”, the identity of the complainant may be revealed to the Head of the Department of the organization, during inquiry in relation to public interest disclosure.

5.36. The memoranda received by the Committee and the witnesses who tendered oral evidence before the Committee, have placed before the Committee, serious opposition to this provision of the Bill. Some of the witnesses even went to the extent of remarking that this provision is a virtual death knell for the complainant. The main concern raised was that the Bill does not specify the conditions under which it may become necessary to reveal the name of the complainant and that it leaves the Competent Authority with wide scope of discretion in this regard. Further, it is apprehended that this may make it very difficult to keep the identity of the complainant secret from the person/organisation against whom the complaint is filed.

5.37. One of the suggestions in this regard was that the identity of the complainant should not be disclosed without the written consent of the complainant, prior to such disclosure.

5.38. In its written comments, the Ministry stated that this clause had been inserted after a lot of thought. It was felt that it may sometimes not be possible for the head of the department to conduct discreet inquiries in the absence of further clarification. Hence, this clause was inserted with stiff consequences in case of violation as per clause 15 of the Bill.

5.39. As stated in para 5.32 of this Report, protecting the identity of the complainant is pivotal to the successful implementation of this

statute. In order to make sure that the interest of the complainant are protected, the Committee endorses the majority view placed before it that the identity of the complainant should not be revealed by the Competent Authority to the Head of the Department, without the written consent of the complainant.

5. Undue burden on whistleblowers

5.40. One of the points made by the witnesses and which was at the centre stage of the deliberations of the Committee was that the Bill requires the whistleblower to make a disclosure specifically naming the public servant responsible for or involved in the wrongdoing. Further, the whistleblower is required to submit supporting documents and other material in support of his or her disclosure. The witnesses felt that this was probably burdensome on the potential whistleblower who might not have all the data.

5.41. The Committee could gauge the general view shared by the witnesses that the Bill proposes to turn CVC/SVC into a sort of a Court where each whistleblower might struggle to prove his point, by himself. This will probably mean as if the whistleblower is taking on the role resembling that of an investigating agency or a public prosecutor, for which the State will neither pay him, nor recognize him, nor accord him special status, protection or extent assistance of any kind.

5.42. The Committee strongly feels that since the main intention of the complainant while making the disclosure is protection of public interest, undue burden should not be placed on him/her to provide proof to substantiate his/her case. Moreover, it would be unreasonable to expect a private citizen, who is the sufferer or at the receiving end having minimal resources at his/her disposal, to place before the Competent Authority proof sufficient to substantiate the complaint. The Committee is of the considered view that the Competent Authority may have a reasonable expectation from the complainant, i.e., he/she should make out a prima facie case, and subsequently, the Competent Authority should follow up the complaint to its logical conclusion. The Committee recommends that the Ministry may consider dealing with this aspect in the Bill.

6. Dismissal of Public Interest Disclosure

5.43. The Committee took note of the fact that clause 4(6) of the Bill lays down the conditions under which the Competent Authority should close the matter. However, the Bill does not mandate that the Competent Authority shall inform the person making the disclosure of the final outcome arrived at by the Competent Authority.

5.44. Some suggestions have come before the Committee in this regard, viz., that the whistleblower must be kept informed about the progress of

the inquiry made into the allegations of wrongdoing and that the Competent Authority must place in the public domain, the details of the outcome of every inquiry launched and the action taken, if any, subsequent to the receipt of the public interest disclosure.

5.45. In this regard, the Ministry has opined that if the Committee agrees, the whistle blower may be informed of the final outcome of the inquiry. However, the procedure therefor, could be incorporated in the Rules/Regulations to be issued under the Act.

5.46. The Ministry has further stated that action taken by the Public Authority on the basis of the recommendation/ direction made by the Competent Authority is not confidential. It has also been stated that on the basis of the recommendations of the ARC, the DOP&T has already issued a circular requesting all Ministries/Departments to publicize cases which have reached finality ending up with conviction or imposition of major penalty of dismissal, removal from service and compulsory retirement.

5.47. The Members of the Committee also felt that a provision making it obligatory on the part of Competent Authority to inform the complainant when the matter is closed, should be incorporated in the Bill. The Competent Authority should also state the reasons for dismissing the complaint. Further, the whistleblower should be given reasonable

opportunity to adduce his justification/arguments, if he is not satisfied with the conduct/outcome of the enquiry.

5.48. The Committee unanimously feels that the Competent Authority should inform the complainant about the outcome of the complaint, since the complainant has a crucial role under the scheme in the statute. The Competent Authority should also give the reasons if the complaint is dismissed and further, the complainant should be given a reasonable hearing to present his case if he is not satisfied with the dismissal of his complaint/ outcome of the enquiry.

7. Statutory time limit

5.49. The Committee took serious note of the apprehensions made by the witnesses and in the memoranda, that the Bill does not provide a time limit :- (i) for conducting the discreet enquiry; or (ii) for inquiry by the head of the organisation/ office; or (iii) for acting upon the recommendations made by the Competent Authority as envisaged in clauses 4(2), 4(6) and 4(7), respectively, of the Bill. It was felt that absence of time limit of any kind might retard the pace of disposal of cases and thereby defeat the objective of the Bill.

5.50. In this regard, the Ministry, in its written comments, has admitted that the Bill does not provide for any time frame to complete enquiry and decide on the complaint. It has, however, suggested that if deemed

necessary, the same can be provided in the Rules/Regulations. It may not be appropriate to provide time-frame in the Bill because, if that is done, we may also have to spell out what action has to be taken if the prescribed action is not completed within the time-frame.

5.51. The Committee also noted that the Law Commission of India, in its Bill proposed in its 179th Report, provided that:

“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.”

5.52. A view in the Committee also emerged that such a provision is essential to ensure the effective implementation of this statute.

5.53. The Committee believes that the malady which presently affects the country’s system is not the absence of statutes, but rather their non-effective/lax implementation. The Committee is of the

considered opinion that the relatively successful implementation of the Right to Information Act, 2005 is mainly due to the statutory provisions in it for furnishing information within the stipulated time limit and penalty for non-adherence to the same. In view of this, the Committee strongly feels that the Rules/Regulations under the Bill should provide for a reasonable time limit for conducting the discreet inquiry by the Competent Authority; for inquiry by the head of the organisation/office and for acting upon the recommendations made by the Competent Authority. The Rules/Regulations could further provide that if the time period has to be extended, it shall not go beyond a particular period stated therein and the Authority seeking extension of time should be required to record reasons in writing therefor.

8. Non-adherence to the recommendations made by the Competent Authority

5.54. The Committee took cognizance of the fact that the Bill does not envisage the consequences of non-adherence to the recommendations made by the Competent Authority in terms of Clause 4(7) of the Bill.

5.55. On this issue, the Ministry has stated that the recommendations under Clause 4(7) cannot be made binding lest it will give over-riding power to the Competent Authority over the entire Executive.

5.56. The Committee feels that it is inevitable that the consequences of non-adherence to the recommendation made by the Competent Authority should be provided in the Bill. The Committee fails to understand how, in the absence of such a provision, the implementation of the Competent Authority's recommendations can be ensured. If the recommendations are not acted upon and kept in cold storage based on one lame excuse or another, the primary objective of the Bill i.e., tackling corruption will be vanquished. Moreover, the Committee feels that quick action on the recommendations of the Competent Authority will also have a deterrent effect on prospective wrong doers. The Committee, accordingly, recommends that Government should review their stand and put in place some mechanism in the Bill to ensure that the direction of the competent authority are not avoided to protect the wrong doers.

9. Time limit for actionable disclosure

5.57. The pre-dominant view that was placed before the Committee was that the time limit of five years from the date on which the action complained against is alleged to have taken place, as provided in clause 5(3) of the Bill, is not in consonance with the spirit of the Bill.

5.58. On this matter, the Ministry has stated that the provision had been kept as it may not be possible to retrieve files/records older than this period. The Ministry, however, kept itself open to Committee's suggestions in this regard. It, however, also added that this has to be considered keeping in view the instructions contained in Appendix - 13 of the GFR, 2005 relating to destruction of office records connected with accounts.

5.59. One of the witnesses who tendered oral evidence before the Committee, while speaking on this issue, stated thus:

"There is a five-year limitation proposed in the Bill. But what happens is, the Right to Information Act allows people to collect information over a period of twenty years. There should be no limitation because it conflicts the whole thing. The same is true about Secretaries deciding whether something is information or not. That also contradicts the Right to Information Act....."

5.60. In one of the memoranda submitted to the Committee, it has been opined that since this Bill also envisages initiation of criminal proceedings against the wrong doer if so warranted, preventing the Competent Authority from investigating any disclosure involving any 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, is contrary to the existing practices under the criminal law which does not prescribe any limitation period for criminal offences.

5.61. The Committee is of the opinion that since the Bill empowers the Competent Authority to recommend for initiation of criminal proceedings under the relevant laws and there is no limitation period under the existing criminal law for such proceedings, the Committee feels that the statutory time limit of 5 years should not be prescribed. The Committee is of the opinion that if at all a time limit has to be prescribed, it should be in consonance with the RTI Act and also the General Financial Rules - 2005. Further, limiting of complaints on events older than 5 years, merely on the ground that records beyond 5 years may not be available does not sound well. In Government, records are maintained as per retention schedule and important records are definitely kept for a longer period. The Committee is, accordingly, not convinced with this restriction of 5 years. The Committee is alternatively of the view that even if a time limit is to be prescribed in the statute, in case of complaints which prima facie reveal wrong doings of a grave nature , exceptions should be made.

10. Exemption given to bonafide action or bonafide discretion

5.62. Clause 5(4) of the Bill prohibits the Competent Authority from questioning, in any inquiry under this statute, any bonafide action or bonafide discretion (including administrative or statutory discretion) exercised in discharge of duty by the employee.

5.63. One of the apprehensions raised in this regard was that it would be impossible to ascertain, whether the alleged action amounts to bonafide action or bonafide use of discretion, unless it was inquired into in the first instance.

5.64. The CVC, in its written submission, stated that since bonafide act includes any bonafide discretionary act/ powers, the words “ or bonafide discretion (including administrative or statutory discretion)” are superfluous and may be omitted.

5.65. The Ministry, however, in its reply to the questionnaire, clarified that this was an exceptional clause meant to cover situations where the Rules/ Guidelines/ Legislation provide for exercise of discretionary powers.

11. Disclosure of sensitive information

5.66. With regard to Clause 7 of the Bill which exempts certain matters from disclosure, it was suggested to the Committee that the Bill could provide for the disclosure of sensitive information belonging to the specified categories in sealed cover, to the Competent Authority or the Court, for examination. It was also submitted by one witness that giving binding and conclusive powers to the Secretary to the Government of India or the Secretary to the State Government, to certify that a document is of the nature specified in clause 7(a) and (b), is also not advisable since

the RTI Act clearly states what information can be given. The Ministry, however, in their clarification stated that such an exemption is absolutely necessary as the country's interest cannot be put on stake.

12. Victimisation of the Whistleblower

5.67. Clause 10 of the Bill states that the Central Government should ensure that the person making the disclosure is not victimized. The term 'victimization' has not been defined in the Bill. It may be noted here that the 179th Report of the LCI has given the definition of 'victimisation' as :-

" '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."*

5.68. The Committee recommends that the term 'victimization' may be defined in the Bill.

5.69. The Ministry, in its written comments, has stated that Clause 10 provides for safeguard against victimization. Victimization has been clarified as "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". It was felt that the above provision would take care of all aspects of victimisation including fabrication of false charges, transfer, posting, promotion etc.

5.70. The Ministry further stated that clause 10(3) of the Bill stipulates that the direction of the Competent Authority is binding. Hence, it is open for the Competent Authority to award punishment to those who harass or victimize whistleblowers.

5.71. The Committee was told during the course of its deliberations that the term 'merely' in clause 10(1) may be replaced with 'directly or indirectly'. The Committee also took note of the suggestion made that in every case of allegation of victimization, the burden of proof should be on the employer. It was also submitted that the penalty for victimization should be made very high.

5.72. The Committee believes that since the disclosure is made in the interest of the general public, the burden to ensure that the complainant is not subjected to any form/degree of victimization should be on the concerned organisation/Competent Authority. The

Committee recommends that in order to ensure protection to the complainant from direct or indirect victimization, the Ministry should actively consider the suggestions detailed above and make necessary changes in the Bill.

5.73. The Committee also recommends that it should be provided in the Bill that witnesses/persons who support the whistleblower or help in the investigation/inquiry, should also be accorded the same protection against victimization as envisaged for the whistleblower, in the Bill.

5.74. The Committee took note of the concerns raised by witnesses that though Clause 10(3) of the Bill provides that every direction given under clause 10(1) by the Competent Authority shall be binding upon the public servant/public authority, against whom the allegation of victimization has been proved, there was however, no provision in the Bill, for ensuring enforcement of these directions.

5.75. The Ministry, in its reply to the questionnaire, has stated that the direction of the Competent Authority under clause 10(2) is binding on the public authority as per clause 10(3). The Competent Authority does not have original jurisdiction in the sense of High Court or Tribunal which can take up contempt of their orders. Even the Central Information Commission is not vested with power of contempt, etc. So, there is no

need to make additional provision in the Bill for ensuring enforcement of this direction which would only mean repetition of the provision of Clause 10(2).

5.76. The Committee takes note of the reply furnished by the Ministry on this issue. The Committee is deeply concerned to note that there are very high chances of non-compliance of orders given by Competent Authority under clause 10(1), in the absence of any provision to ensure enforcement of these orders. Therefore, the Committee strongly feels that the Ministry should chalk out an effective mechanism, preferably in the Bill itself, to ensure that the orders of the Competent Authority are complied with and in case of non-compliance, stringent action should be provided for against those responsible.

13. Protection to whistleblowers

5.77. The Committee took serious note of the apprehensions raised by the witnesses and by those who submitted their memoranda, the crux of which, is stated as under:

“..... Let us consider that the whistleblower is someone who makes a submission on corruption. Actually the RTI activist has not even made his submission on corruption. The RTI activist is under threat of attack.....”

In this regard, a proposal suggested by one of the witnesses was that:

“.....ensure that anyone who is attacked after filing such a complaint, that complaint becomes an automatic high priority reference under this particular Act because the idea of attacking an RTI activists or anyone else is to prevent the truth from coming out. If it becomes clear to these attackers that whoever is being attacked, if they are attacked, even more investigation will be done, special audits will be done. I will give you an example, in Rajasthan when we do social audits, if there are attacks on social audit activists we insist that special audits be done by a very good agency which is a Government agency and that passes the message out to people that if you attack them what will follow is worse.....”

5.78. The Committee also felt that the complainant should be provided swift and effective protection that will have a deterrent effect on any vested interest that may think of using violence as a means of suppressing the truth.

5.79. The Committee also took note of the suggestion made that the Bill should include specific definition of the State protection available to those who are victimized and an expanded provision detailing to whom the State protection can apply.

5.80. The Committee is of the unanimous view that the capacity of the State to provide for an effective mechanism for ensuring protection to the life, liberty and property of the complainant would be directly proportional to the degree of faith that the public would be willing to repose in the noble system envisaged in the Bill to promote accountability to the public. Therefore, the Committee feels that it is inevitable that the Government puts in place a flawless mechanism for the protection of the whistleblower in order to ensure effective implementation of this statute. Hence, the Committee desires the Ministry to consider the witnesses' views given above and act upon them, to ensure that the mechanism for the protection of whistleblowers contemplated in the Bill is made foolproof.

14. Onus to protect the whistleblowers

5.81. The Committee took note of a view expressed by the witnesses that the Bill states that the onus of protecting a whistleblower would be on the Central Government. There is no mention of the State Governments in this context. It is obvious that in a federal setup, the Central Government cannot provide for protection for employees of the State Government. It was suggested that the Bill should authorize the State Governments to make rules for carrying out the provisions of this Act and also protect whistle-blowing employees in the States.

5.82. It was also suggested that a new Clause may be inserted in Chapter V of the Bill, to provide that the burden of proving that a public interest disclosure, was not revealed to anybody, without proper authorization, shall be on the Public Authority dealing with the disclosure. It was felt that such a provision will ensure that the confidentiality of the complainant is not compromised by the Public Authority.

5.83. In this regard, one of the issues that come up for discussion is that of ensuring protection to whistleblower in case of Centrally sponsored Schemes, with special emphasis upon SC/ST, tribals and minorities, which are implemented in the States. A Member expressed his concern in following words:

".....There could be certain issues of Centre-versus-State, but what you can do is that wherever there is an act of whistle-blowing which pertains to a Central Government scheme, the Central Government would provide protection to that whistleblower in case the State Government fails to do so....."

5.84. The Committee was emphatic that the Ministry should seriously consider this matter. The Committee desires a mechanism be set up for this Bill to apply particularly in respect of Centrally funded schemes when the State level authorities fail to take suitable

action. The Committee, however, hopes that all the States would adopt this Bill.

5.85. The Committee endorses the suggestions given above and recommends that the Ministry should give them due thought and deliberation, while finalizing the Bill.

15. Frivolous/malafide disclosure

5.86. One of the Members of the Committee, expressed his view regarding this provision in the Bill as under:-

".....In terms of imprisonment, the bar is too high. In fact, it acts as a big deterrent for anybody to even use the Act. There are lot of applications which are filed in the Supreme Court and the High Courts which are frivolous, which are misconceived, but the court does not send those people to jail. We could just fine them. I mean, in a sense, you are defeating the entire purpose of the Act by incorporating such provisions....."

5.87. The Secretary, DoPT, while referring to this issue, sated that:

".....basically, the experience which we have gained from the RTI, we, I think, wanted to bring this into play here in the sense that it is, basically, some complaint which is proved to be mala fide or false; that is the exact word which is used. "Any person who makes any disclosure mala fidely 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." So, it is clearly identified that it should be false or it should be misleading, and mala fide and knowingly done. So, it is not really anything vague. It is something quite focused and which we could try and make even more focused.....The only desire on the part of the DOPT is that we should not permit this to become something where the normal sort of grievances, normal sort of complaints and all that are raised, because then, this whole machinery would be so overburdened that it will not be able to do justice to the actual whistleblower cases. That is the only aim and objective.....”

5.88. At this juncture, a suggestion came that this provision might be kept in abeyance say for a period of five years so that, during this period, the trend regarding filing frivolous/ malafide complaints may be examined, and if found necessary, this provision can then be invoked. It was also proposed that the complainant should be accorded protection against a suit for defamation.

5.89. Another perspective was placed before the Committee, during its discussions, by one of the witnesses in the following terms:

“.....The issue, now, is that there are whistleblowers. Maybe, there are not enough whistleblowers, but we do have a lot of corruption. So, the question before the Members of Parliament is how to make sure that people who find fault with the functioning, in terms of real corruption happening, can actually show evidence and come forward without fear of victimization. And, at the same time, we need to make sure that honest officers are not unnecessarily dragged. That is why you do have a clause to penalize the people for mala fide and knowingly false and misleading complaints.....”

5.90. At the same time, there was a feeling in the Committee that malafide disclosures should be penalised and that causing a malafide complaint to be filed should also be made punishable, since there is a possibility that vested interests can make/ cause to make complaints designed to harm the career of a public servant or to clog the system with false complaints.

5.91. While the Committee does not have much opposition against penalizing frivolous/ malafide complainants, it is certainly opposed to the quantum of punishment prescribed in the Bill. It will not only be a major deterrent for the prospective whistleblowers, but also increase the possibility of misuse of this provision, especially in cases where the accused is high and mighty and is able to influence the

decision as to whether a complaint is frivolous/ malafide. The Committee, therefore, recommends that the penalty provided in clause 16 should be substantially reduced.

5.92. The Committee also feels that, merely because a complaint is not proved beyond reasonable doubt or a complaint is not found to be sustainable or a complaint is dismissed for other reasons, it should not be, termed as frivolous/ malafide. The Committee is of the considered opinion that while deciding whether a disclosure is frivolous/ malafide or not, the Competent Authority should exercise great amount of caution and give primary importance to the fact whether the complainant, while making the disclosure, had based his/ her action on the documents/ information in his possession/ knowledge. The focus should be on the intention and not the outcome of the enquiry. The Committee is of the view that such a dispensation will ensure that only those disclosures which have been made frivolously or with a malafide intention meet with penalty under the Bill.

5.93. There is another aspect of this matter. Clause 19 of the Bill provides for appeal in the High Court for penalties imposed under Clauses 14 and 15. However, it does not provide for appeal in cases of punishment imposed under Clause 16.

5.94. In this regard, the Ministry, in its written reply, has stated that under Clause 14 it is the Competent Authority which will impose penalty on public authority for filing partial, vague or misleading report, whereas clause 16 is an offence and the complainant will be tried by the competent court for the said offence where he will get opportunity to defend under the CrPC. **However, it appears to the Committee that the Bill is not clear as to who is competent and required to take action under Clause 16 of the Bill to impose penalty on the complaint. In the Committee's view, a greater clarity is needed in this regard.**

5.95. The Committee also recommends that in cases of punishment imposed under clause 16, the accused should be given right of appeal to the High Court so that he can place the facts before the Court to argue that he did not have any malafide 'intention' or that, at the time of making the disclosure, the complaint was based on the information he had at his disposal, at that point of time and that it was not frivolous.

Other issues examined by the Committee

16. Powers of Competent Authority

5.96. The witnesses who deposed before the Committee expressed serious doubts as to whether the Competent Authority provided for in the Bill i.e., CVC or State Vigilance Commissions were suitably empowered

under the existing system to ensure that the guilty would be punished in a speedy and efficacious manner, under the due process of law. The Committee could gather that the rationale behind such an apprehension was that the power of the Competent Authority was limited to the extent of **recommending** to the public authority, certain measures, against the public servant.

5.97. Similarly, it was suspected that the involvement of police or CBI as per clause 9 of the Bill would involve susceptibility to political interference or undue pressure from such authorities and would also lead to pendency of cases since such agencies are already overburdened. Therefore, one of the suggestions that came was that the Competent Authority should have its own investigation and prosecution mechanism.

5.98. Doubts were also raised as to how the interim orders of the Competent Authority, as provided in Clause 13 of the Bill, will be executed.

5.99. The Committee takes cognizance of the relevant facts that the LCI, in its 179th Report, had provided :

*“Clause 5(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.”

6.0. On this issue, the Ministry, in its written reply, has stated that the recommendation under clause 4(7) cannot be made binding lest it will give over-riding power to the Competent Authority over the entire Executive.

6.1. Taking into cognizance the practical apprehensions raised by the stakeholders in this regard and the LCI recommendation, the Committee desires that the Ministry should reconsider the provisions of Clause 4(7) the Bill. Keeping in view the fact that the successful implementation of this statute mainly depends on the enforceability of the 'directions' made by the Competent Authority, diluting the

'directions' by making them merely 'recommendations' casts serious doubts on the feasibility of enforcing the 'recommendations' to the desired extent.

17. Special whistleblowers' Courts

6.2. During the deliberations of the Committee on the Bill, one of the Members of the Committee, suggested that:

“.....So, rather than taking it through the CVC route, you can actually set up special whistleblower courts across the country like special CBI Judges. You empower Magistrates who only deal with whistleblower applications. So, in that manner, you don't overburden the CVC, you don't overburden the other authorities and your points about investigation, protection as well as judicial scrutiny gets taken care of.....”

6.3. It may be noted that the Ministry, in its written comments, has stated that CBI is being strengthened and additional Special Courts are being set-up.

18. Incentives to the whistleblower

6.4. Majority of the witnesses who deposed before the Committee opined that the whistle blowers should be rewarded if the disclosure made

by them is proved. One of the witnesses suggested that the principle of ‘qui tam’ may be adopted for this purpose.

6.5. In this regard, the Ministry has stated that the Public Authority who benefits from the whistle blower would be encouraged to provide non-monetary incentives to the whistle blower under the policy guidelines to be issued subsequently.

19. Whistle blowing to be made mandatory

6.6. Some of the witnesses opined that the Bill should make it compulsory for a public servant to blow the whistle on any wrongdoing of which he/she has knowledge and that failure to make such disclosure may be made an offence. The argument that was made in support of this is that according to Section 176 of the Indian Penal Code, 1860 a person who does not provide information about the commission of or the intention of persons to commit the aforementioned offences, is liable for punishment with a prison term of up to six months and or fine up to Rs. 1000. When the law is so strict for ordinary citizens to blow the whistle on wrongdoing in society, there is no reason why such stringent measures cannot be stipulated for public servants working in public authorities.

6.7. However, the Ministry, in its written comments, has stated that whistle-blowing cannot be made mandatory for all public servants, as this will create an unhealthy work environment.

20. Prior publication of Rules

6.8. This issue was brought to the attention of the Committee by one of the witnesses, thus:

"..... the rule-making provision that is mentioned in this Bill is similar to what exists in most other laws. There is no requirement for prior publication which actually allows public consultation on rule-making. Section 23 of the General Clauses Act says that if a law provides for making rules by prior publication, then, there is a requirement on the concerned department to put those draft rules in the public domain, invite peoples views and then notify it. This is a good consultative process which was laid down in 1897. with the exception of the National Rural Employment Guarantee Act, no other law passed in recent times contains such a requirement of prior publication.....Rules must be made after prior publication so that any attempt to dilute provisions of the Act can be taken care of because this has been the experience in several cases where what is given in the principal Act sometimes is diluted in the rules....."

6.9. It was proposed that clauses 24(1), 25 and 26 of the Bill may be amended to require the Central Government as well as the State Government to make rules for carrying out the provisions of the Bill as per the procedure of prior publication contained in Section 23 of the General Clauses Act, 1897. The Committee recommends the Ministry to consider this suggestion.

21. Replacing the word ‘Complainant’

6.10. Some of the witnesses who deposed before the Committee were of the opinion that the term ‘Complainant’ may be replaced in the Bill with ‘Informant’ or ‘Whistleblower’, since the public spirited person who is making the disclosure, is providing some information regarding certain wrongdoing in the interest of the public only; he has nothing to gain from making the disclosure. Indeed, he may be doing so at a great personal risk, purely because of the public interest involved.

22. Chief Vigilance Officer

6.11. One of the suggestions made by witnesses, based on their personal experiences of harassment, for exposing corrupt practices in their respective Departments, was that the CVO should invariably be an outsider so that he/she is completely uninfluenced by the local/organizational administration.

23. Short Title of the Bill

6.12. The Committee takes note and favors the view placed before it, that the Short Title of the Bill may be worded better reflecting the real spirit of whistleblowing.

6.13. The Committee welcomes the Bill and broadly endorses its provisions. The Committee hopes that the Ministry will consider the concerns/suggestions mentioned above and make necessary changes in the Bill wherever found appropriate and possible.

6.14. The Committee in the end takes into account the fact that many more legislations like Lokpal Bill, The Judicial Standards and Accountability Bill etc. are in the offing, the main objectives of which are tackling of corruption and ensuring accountability. The Committee desires that the Government should exercise great care to ensure a holistic approach so that there is no conflict between these legislations and their implementation takes place in a harmonious manner. In any case, the other Bills should not militate against this Bill.
