

Public Interest Disclosure Bill- what it may contain and what it may imply

23 February 2010

Dear all,

Some readers have asked me why I had stopped sending email alerts for several weeks now. Thanks for your concern friends. It tells me that you have been reading these emails. I was away on a long vacation and then came back to catch up on pending work. Now I am back in business. Thanks for your encouragement. So here's the first email alert this year.

The media has been reporting about Government of India's (GOI) intention to table the Public Interest Disclosure Bill during the current session of Parliament. Readers may recollect that Mr. Vijay Darda (INC-Maharashtra) sitting MP had introduced a Private Member's Bill in the Rajya Sabha in 2006 (to access the Bill click on: http://www.karmayog.org/anticorruption/upload/4729/Whistle%20Blowers%20Bill_XI_2006.pdf .

The Law Commission had drafted a Bill in its 179th report (to access the Bill click on: <http://lawcommissionofindia.nic.in/reports/179rpt1.pdf>).

Meanwhile GOI instituted the Public Interest Disclosure and Protection of Informers Resolution (PIDPIR) in 2004 (to access the resolution click on: http://cvc.nic.in/004vgl26_1.PDF). This PIDPIR applies only to the GOI and its instrumentalities. The CVC is the competent authority to receive complaints of this nature. This policy does not apply to officials of the State Governments.

The Departmental Standing Committee on Personnel, Law and Justice had referred to the number of instances where government officials have blown the whistle on wrongdoing in public authorities. But this data is mixed up with other complaints received by the CVC and no separate breakup of such cases is not available (to access these reports click on: <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/31th%20Committee%20Report-Law&Justice.pdf>). This report states that in 2007-08 the number of complaints received came down because adequate personnel were not available to publicise this policy amongst public servants.

Given the poor state of implementation of the existing PIDPIR, it is anybody's guess what shape the Public Interest Disclosure Bill may take and what its implementation may be like. The draft recommended by the Law Commission is weak to say the least. When compared with similar laws in the UK and the US the draft Bill needs a lot of improvement. During the last decade such whistleblower legislation was passed in countries like Kenya and Ghana at the instance of donors. My inquiry with CSO colleagues in these countries tells me that many people are not aware about the existence of such laws and their use is rare. So merely passing a weak law and then waiting for it to implement itself will not serve much purpose. We must also recognise that any person making use of such laws will be dubbed an 'informer' and not trusted by anyone in government. Take the case of petitioners regards tax evasions. The Income Tax Act clearly wants people to blow the whistle on tax evasion and even provides for a policy of rewarding such whistleblowers. Yet we have seen in cases decided before the CIC how the IT department calumniates such people who lay a claim on the promised reward. They are treated like scum in the arguments placed before the CIC. The Public Interest Disclosure Bill is intended to change these things, make the process of blowing the whistle risk free, establish a credible mechanism for investigation of complaints and ensure anonymity of the whistleblowers scrupulously and provide adequate protection for the whistleblower against any retaliatory action.

Yet to the best of my knowledge the contents of the Bill being considered by GOI are not in the public domain. If anybody has access to the latest version of the Bill kindly share it with the RTI fraternity. I believe this is an important policy matter and people have the right to know what the Ministry for Personnel is doing in this regard as the administrative Ministry responsible for this topic. Does the Bill cover all levels of government and all public authorities? Does it provide adequate protection to the whistleblowers? Does it set up an investigative mechanism that will have a high degree of independence to do its work? What will the relationship of this law be with the RTI Act? These are all important issues which must not be left solely to the official policymakers to decide. CSOs and the media need to take up this debate seriously as it is one useful way of breaking up the seemingly monolithic bureaucratic set up and empowering the sincere and honest officers who often get sidelined by their unscrupulous colleagues.

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Thanks,

Venkatesh Nayak
Programme Coordinator
Access to Information Programme
Commonwealth Human Rights Initiative
B-117, I Floor, Sarvodaya Enclave
New Delhi- 110 017
tel: 91-11- 2686 4678/ 2685 0523
fax: 91-11- 2686 4688
website: <http://www.humanrightsinitiative.org/>
alternate email: nayak.venkatesh@gmail.com