

Note by NCPRI on the Whistle Blowers Protection (Amendment) Bill, 2015

The Whistle Blowers Protection Act (WBP Act), which was passed by Parliament and received the assent of the President on May 9, 2014, **has not been operationalised till date**. Instead of promulgating rules to operationalise the law, the government has moved an amendment bill in Parliament which seeks to severely dilute the Act.

The amendment bill was brought to Lok Sabha without any public debate on the contents of the bill. RTI requests seeking information on the nature of amendments were denied to citizens. The text of the amendment bill was only made public on May 11, 2015, once it was introduced in Lok Sabha. During the debate in the Lok Sabha, MPs from various parties including the Congress, CPI (M), BJD, Shiv Sena, AITC, TRS and NCP objected to the dilution of the law and many of them asked for the bill to be referred to a Standing Committee. However, their request was ignored and the bill was passed by the Lok Sabha on May 13, 2015.

The Whistle Blowers Protection (Amendment) Bill, 2015 dilutes the original Act in the following ways-

- 1. Removing safeguard available to whistleblowers from prosecution under the Official Secrets Act-**
The amendment bill seeks to remove the clause which safeguards whistleblowers from prosecution under the Official Secrets Act (OSA) if they make a disclosure under the WBP Act. The basic purpose of the WBP Act is to encourage people to come forward and report wrong-doing in the form of corruption, misuse of power and commission of a criminal offence. If whistleblowers are prosecuted for disclosing information as part of their complaint and are not granted immunity from the OSA, the very purpose of the law will be defeated. Offences under the OSA are punishable by imprisonment of up to 14 years. Threat of such stringent penalties would deter even bonafide whistleblowers from coming forward.
- 2. Introducing wide ranging exemptions-** The amendment bill also states that no disclosures should contain information which would prejudicially affect the sovereignty, integrity, security, strategic, scientific or economic interests of the State. Further, information which relates to commercial confidence, competitive position of a third party etc. also cannot form part of the disclosure made by a whistleblower, unless the information has been obtained under the RTI Act. If the competent authority receives a disclosure containing information of the nature mentioned above, then the disclosure will not be inquired into. The exemptions have been modelled on the exemptions provided under Section 8 of the RTI Act to ostensibly bring the WBP Act in line with the RTI Act. As the two laws have completely different goals- the RTI Act seeks to bring out information into the public domain while the WBP Act provides for disclosures to competent authorities within the government to enable inquiry into allegations of corruption and wrong-doing and provide protection to the whistleblower- it is misleading to adopt the exemptions from the RTI Act. Further, the amendment bill completely ignores the predicament of government servants who come across evidence of wrong-doing in the normal course of their working and do not need to file applications under the RTI Act to access information.

As the bill severely dilutes the provisions of the original Act and there has been no formal platform for public consultation/discussion on the amendments, **it is critical that the amendment bill be referred to a Select Committee of the Rajya Sabha** to enable detailed clause-by-clause deliberations and also provide a chance for citizens to present their views on it. In addition, **the government must immediately promulgate rules to operationalise the existing Whistle Blowers Protection Act** to provide protection to whistleblowers.