



The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010, introduced on August 26, 2010 in the Lok Sabha was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice. The Committee made a number of recommendations in its report which was submitted on June 9, 2011. On December 20, 2011 the government circulated a list of amendments to the Bill. This Table compares the Bill with the recommendations of the Standing Committee and the official amendments.

**Table 1: Comparison of the Bill with that of the Standing Committee recommendations**

Public Interest Disclosure Bill, 2010	Standing Committee Recommendations	Proposed Official Amendments
<p>Clause 2(d)(i),(ii),(iii): Defines “disclosure” as any complaint made in writing or electronic mail against a public servant on matters related to (a) attempt to or commission of an offence under the Prevention of Corruption Act, 1988; (b) wilful misuse of power which leads to demonstrable loss to the government or gain to the public servant; or (c) attempt or commission of a criminal offence by a public servant.</p>	<p>Wrongful gain accrued to any third party should be included.</p>	<p>Definition of “disclosure” amended to include wilful misuse of power or wilful misuse of discretion which leads to demonstrable loss to the government or demonstrable gain to the public servant or <i>to any third party</i>.</p>
<p>Clause 2(i)(a)(b): Defines “public servant” as any person who is an employee of the central government or the state government or any company or society owned or controlled by the central or state government.</p>	<p>Definition used in the Prevention of Corruption Act, 1988 (PCA) and IPC should be incorporated. The Bill should cover members of the Council of Ministers, the judiciary (including higher judiciary) and regulatory authorities.</p>	<p>Definition of “public servant” to be same as PCA but shall exclude a judge of the Supreme Court or a High Court. The definition of “competent authority” also amended to include various categories of “public servant”.</p>
<p>Proviso to Clause 3(1): No public interest disclosure shall be accepted against defence, police and intelligence personnel.</p>	<p>Should not exclude the defence and intelligence forces. There could be reasonable exceptions based on operational needs of the forces. Alternately, a separate authority could be set up for these exempted agencies.</p>	<p>Disclosures against defence, police and intelligence personnel allowed. Only personnel under the Special Protection Group Act, 1988 excluded. The “competent authority” shall be notified by the state or central government based on jurisdiction over the forces.</p>
<p>Clause 2(b) and 3(2): Any person may make a public interest disclosure to a Competent Authority (defined as the Central or State Vigilance Commission or any other authority notified for the purpose).</p>	<p>Since it may restrict access for people in remote areas, the Rules should provide for a smooth and convenient system. If there are multiple points at which complaints can be made, the identity of the complainant should be protected.</p>	<p>Complaints can be made to any competent authority specified in the Bill. For complaint against a Minister, the competent authority is the PM; for MPs, Speaker or Chairman of the House; for lower court judges, the High Court; for central or state government employees, the CVC or SVCs. The government can also notify any other authority for the purpose.</p>
<p>Clause 3(6): The Vigilance Commission shall not entertain anonymous complaints.</p>	<p>There should be a foolproof mechanism to ensure that the identity of the complainant is not compromised. This is important because without such a mechanism it would deter prospective complainants.</p>	<p>No amendment.</p>

	Anonymous complaints have supporting documents that substantiates the claims may be investigated. An alternative mechanism could be set up to inquire into such complaints.	
Proviso to Clause 4(4): During the investigation, the Vigilance Commission shall not reveal the identity of the complainant to the head of the concerned organisation unless it is of the opinion that it is necessary to do so. The head of the organisation cannot reveal the identity of the complainant.	The identity of the complainant should not be revealed to the head of the organisation without the written consent of the complainant.	The identity of the public servant or the complainant cannot be revealed to the head of the concerned organization without prior written consent of the public servant or the complainant. If the complainant does not give consent, he has to give all documentary evidence to the competent authority.
Clause 3(4),(5): Each disclosure shall be accompanied by full particulars and supporting documents.	Undue burden should not be placed on the complainant to provide proof to substantiate his case. As long as he is able to make out a prima facie case, the Vigilance Commissioner should follow up on the case.	No amendment.
Clause 4(6): After conducting the inquiry, if the Vigilance Commission feels that the complaint is frivolous or there is no sufficient ground to proceed, it shall close the matter.	The Vigilance Commissions should inform the complainant about the outcome of the complaint. Also, they should give reasons if it decides to dismiss a complaint and the complainant should be given a reasonable hearing if he is not satisfied with the dismissal.	After conducting the inquiry, the competent authority has to inform the complainant or the public servant about the action taken on the complaint and the final outcome. Also, if the competent authority decides to close a case, it shall give an opportunity to the complainant of being heard.
Clause 4(2), (6), (7): The Vigilance Commission decides whether a complaint needs to be investigated based on the disclosure or after making discreet inquiries. If it decides to investigate, it shall seek an explanation from the head of the concerned organisation. After the investigation, the Vigilance Commission can either close the matter or recommend certain measures to the public authority.	The Rules should provide for a time limit for conducting discreet inquiry, for inquiry by the head of the organisation and for taking action on the recommendations of the Vigilance Commission. The authority would have to give reasons in writing if it wants the time limit to be extended.	The Rules will prescribe the time-limit within which the discreet inquiry has to be conducted.
Clause 4(7): The Vigilance Commission can recommend certain measures to the concerned public authority if a public servant is found to have committed an offence. Measures include initiating proceedings against the concerned public servant, taking steps to redress the loss to the government, and recommending criminal proceedings to the appropriate authority.	There should be some mechanism to ensure that the directions of the VC are not avoided to protect the wrongdoer.	The public authority has to take a decision on recommendations made by the competent authority within 3 months (can be extended up to 3 months). If the public authority does not agree with the recommendation, he has to record the reasons for such disagreement.

Clause 5(3): The Vigilance Commission shall not entertain a matter if the complaint is made 5 years after the action.	The statutory time limit of 5 years should not be prescribed. If at all there is a time limit, exceptions should be made in complaints which prima facie reveal offences of a grave nature.	The statutory time limit increased to 7 years.
Clause 10(1): A person shall not be victimised or proceeded against merely on the grounds that he has made a disclosure or assisted in an inquiry.	The term "victimisation" should be defined in the Bill. Also, witnesses and other persons who support the whistleblower should be accorded the same protection.	No amendment.
Clause 10(1): The onus of ensuring that a whistleblower is not victimised is on the central government.	There is no mention of role of state government. A mechanism should be set up to apply particularly to centrally funded schemes when the state level authorities fail to take suitable action.	No amendment.
Clause 10(2),(3), (4): The Vigilance Commission may give directions to a concerned public servant or authority to protect a complainant or witness either on an application by the complainant or based on its own information. It may direct that the public servant who made the disclosure be restored to his previous position.	There is a high chance of non-compliance of orders of the CVC. Therefore, an effective mechanism needs to be chalked out to ensure that the orders of the CVC are complied with and stringent action may be taken for non-compliance.	Before giving any direction to a public authority, the competent authority shall give an opportunity to be heard to the complainant or public servant or public authority. The burden of proof for an allegation of victimization shall lie on the public authority. The public authority shall be fined up to Rs 30,000 if he willfully fails to comply with the directions of the competent authority.
Clause 16: If a person knowingly makes false or misleading disclosures with mala fide intentions, he shall be penalised with imprisonment up to 2 years and a fine of up to Rs 30,000. No appeal provided for such an offence.	The penalty for frivolous or malafide complaints should be substantially reduced. Also, while deciding whether a disclosure is frivolous, the intention of the complainant should be examined rather than the outcome of the inquiry. The complainant should also have the right to appeal to the High Court.	No amendment on penalty amount. The complainant has the right to appeal to the High Court if he is accused of making false or misleading complaints.
Clause 14: The penalty for not furnishing reports to the Vigilance Commission is a fine of upto Rs 250 for each day till the report is submitted. The total penalty amount cannot exceed Rs 50,000.	No recommendation.	The penalty for knowingly giving incomplete or misleading or false report or destroying record is a fine of up to Rs 50,000.

Sources: The Public Interest Disclosure Bill, 2011; The Standing Committee Report; The Official Amendments to the Bill; PRS.