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Bill No. 39 of 2020

THE WHISTLE BLOWERS IN PRIVATE SECTOR (PROTECTION) BILL, 2020

By

SHRIMATI SUPRIYA SULE, M.P.

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Bill No. 39 of 2020

THE WHISTLE BLOWERS IN PRIVATE SECTOR (PROTECTION) BILL, 2020

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SHRIMATI SUPRIYA SULE, M.P.

A

BILL

to provide for the protection of whistleblowers within the private sector through the setting up of internal and external complaint review and redressal mechanisms and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Whistleblowers in Private Sector (Protection) Act, 2020.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

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

Definitions.

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

(a) "appropriate authority" means a person or organization designated as such by the Central Government;

(b) "appropriate Government" means in the case of a State, the Government of that State and in all other cases, the Central Government;

(c) "Committee" means the Internal Ombudsman Committee constituted under section 6;

(d) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013;

(e) "complaint" means a complaint regarding retaliatory practices having been taken against an eligible whistleblower or their relatives;

(f) "Council" means the Whistleblowers Complaints and Grievance Redressal Council constituted under section 10;

(g) "disclosure" means a disclosure regarding misconduct having taken place, or currently taking place at a regulated organization;

(h) "eligible whistleblower" means an individual who, in relation to a regulated organization, is or has been,—

(i) an employee of the regulated organization; or

(ii) an individual who supplies goods or services to the regulated organization; or

(iii) an individual who is an associate of the regulated organization; or

(iv) an individual who is a relative of the regulated organization;

(i) "employee" means a person employed at a regulated organization for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether, for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(j) "employer" means any person responsible for the management, supervision and control of the regulated organization;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "regulated organization" includes,—

(i) any private sector organization, private venture, body corporate, undertaking, enterprise, institution, establishment, company, society, trust, partnership, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertaining, industrial, health services or financial activities including production, supply, sale, distribution or service;

(ii) hospitals or nursing homes;

(iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used used for training, sports or other activities relating thereto; and

(iv) such other regulated organizations as the appropriate authority may, by an order specify in this regard; and

(m) "retaliatory practices" includes,—

(i) dismissal of an employee; or

5 (ii) injury of an employee in his or her employment; or

(iii) alteration of an employee's position or duties to his or her disadvantage; or

(iv) discrimination between an employee and other employees of the same employer; or

10 (v) harassment or intimidation of an employee or person related to an employee; or

(vi) harm or injury to an employee or person related to an employee, including psychological harm; or

(vii) damage to an employee's property; or

15 (viii) damage to an employee's reputation; or

(ix) damage to an employee's business or financial position.

CHAPTER II

REGULATION OF DISCLOSURES

20 **3.** Any disclosure of information by an individual shall be qualified for protection under this Act, if,—

Disclosures qualifying for protection.

(a) such individual is an eligible whistleblower with respect to the regulated organization;

(b) has reasonable grounds to suspect that the information indicates the improper functioning of the regulated entity; and

25 (c) such disclosure has been made to the Committee of the regulated organization constituted under section 6 or the Council constituted under section 9, as the case may be.

30 **4.** Any eligible whistleblower may disclose information to the Committee or to the Council, as the case may be, if such whistleblower has reasonable grounds to suspect that the information indicates that the regulated organization or an officer, employee or related party to the regulated organization has engaged in conduct that constitutes an offence against or is in contravention of a provision of any of the following Acts,—

Disclosure of any act contrary to any provision of certain Acts.

45 of 1860. (a) the Indian Penal Code, 1860;

43 of 1961. (b) the Income Tax Act, 1961;

49 of 1988. 35 (c) the Prevention of Corruption Act, 1988;

42 of 2010. (d) the Foreign Contribution (Regulation) Act, 2010;

18 of 2013. (e) the Companies Act, 2013;

15 of 2003. (f) the Prevention of Money Laundering Act, 2002;

22 of 2015. 40 (g) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(h) the Fugitive Economic Offenders Act, 2018; 17 of 2018.

(i) any applicable rules, regulations, orders and directives of the Reserve Bank of India;

(j) any applicable rules, regulations, orders and directives of the Securities and Exchange Board of India; and 5

(k) such other laws as the Central Government may, by order in the Official Gazette, specify.

Protection from retaliatory practices.

5. (1) No eligible whistleblower shall be subject to any retaliatory practices as a result of any disclosures made in accordance with the provisions of this Act.

(2) If any person inflicts any kind of retaliatory practice against the eligible whistleblower, such whistleblower may make a complaint about the same to the Committee or the Council, as the case may be in such manner as may be prescribed. 10

CHAPTER III

DISCLOSURE AND WHISTLEBLOWERS PROTECTION MECHANISMS

Constitution of the Internal Ombudsman Committee.

6. (1) Every employer of a regulated organization shall, by an order in writing, constitute a Committee to be known as the Internal Ombudsman Committee for carrying out the purposes of this Act: 15

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Committee shall be constituted at all administrative units or offices. 20

(2) The Committee shall consist of —

(a) a Presiding Officer who shall be a person employed at a senior level at the regulated organization:

Provided that in case a senior level employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1); 25

(b) not less than two members from amongst employees preferably serving in the human resources management sector, or having legal knowledge; and

(c) one member from amongst non-Governmental Organisations or associations committed to the cause of transparency and prevention of corrupt activities, to be nominated by employer. 30

(3) The Presiding Officer and every member of the Internal Ombudsman Committee shall hold office for a period not exceeding three years, from the date of appointment as may be specified by the employer.

(4) Where the Presiding Officer or any member of the Committee— 35

(a) contravenes the provisions of section 16 of this Act; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or 40

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section. 45

(5) The Presiding Officer and members of the Committee shall be paid such allowances for attending the sitting for of the Committee by the employer, as may be prescribed.

7. The Committee shall—

Functions of the Internal Ombudsman Committee.

- 5 (a) set up a whistle blower hotline for receiving complaints and tips about inconsistent practices in the regulated organization;
- (b) Institute or conduct an inquiry into the complaints or inconsistent practices in a regulated organization upon receipt of complaints;
- (c) refer matters and report to the employer in relation to the disclosures made by the whistleblower;
- 10 (d) maintain confidentiality of the contents of the disclosures made and identity of the eligible whistleblower;
- (e) reveal the identity of the whistle blower after taking the consent of the eligible whistleblower in writing;
- 15 (f) coordinate with the Council to draw attention to, and take action against any illegal activities taking place within the regulated organizations;
- (g) forward the complaint and disclosure to the Council or the local police within a period of seven days for registering the case under the relevant laws, if, laws on the disclosures and inquiry conducted, there exists a *prima facie* case;
- (h) provide each party involved a reasonable opportunity of being heard;
- 20 (i) act as a mediator between the eligible whistleblower and the employer, in the event there have been retaliatory practices; and
- (j) act in good faith at all times and not jeopardise the identity, employment and life of the eligible whistleblower.

25 8. Every eligible whistleblower shall, in the first instance, approach the Committee for redressal of his grievance:

Whistle Blower to approach Committee for redressal.

Provided that the eligible whistleblower may choose to directly approach the Council if,—

- 30 (a) the Committee has not taken any action despite a disclosure having been, or a complaint having been lodged; or
- (b) the eligible whistleblower reasonably believes that a member of the Committee is acting illegally; or
- (c) the disclosure pertains directly to employer at the regulated organization.

35 9. The appropriate Government may notify a District Magistrate, or the Collector, or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

District Officer.

10. (1) Every District Officer notified under section 8, shall constitute a Council to be known as the Whistleblower Complaints and Grievance Redressal Council in the district to receive disclosures and whistle blower complaints from,—

Constitution of the Whistle blower Complaints and Grievance Redressal Council.

- 40 (a) the Committee; and
- (b) an eligible whistle blower.

(2) The Council shall consist of a Chairperson, Vice Chairperson and five members with at least one expert from the field of law, one person with expertise in human resource management and one person with experience in law enforcement to be nominated by the District Officer in such manner as may be prescribed.

(3) The chairperson and every member of the Council shall hold office for a period not exceeding three years from the date of appointment as may be specified by the District Officer.

(4) Where the Chairperson or any member of the Council—

(a) contravenes the provisions of section 15; or 5

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, 10

such Chairperson or member, as the case may be, shall be removed from the Council and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(5) The Chairperson and members of the Council shall be entitled to such fees or allowances for holding the proceedings of the Council as may be prescribed. 15

Functions of
the Council.

11. (1) The Council shall—

(a) institute or conduct an inquiry into the matter upon receipt of complaints;

(b) maintain confidentiality of the contents of the disclosures made, as well as the identity of the eligible whistle blower; 20

(c) reveal the identity of the whistle blower after taking the consent of the eligible whistle blower in writing;

(d) coordinate with State and Central law enforcement bodies to draw attention to, and take action against any illegal activities taking place within the regulated organizations; 25

(e) forward the complaint and disclosure to the local police within a period of seven days for registering the case under the relevant legislation, if, based on the disclosures and inquiry conducted, there *prima facie* exists a case;

(f) provide each party involved with the opportunity of being heard;

(g) act as a mediator between the eligible whistle blower and the employer, in the event there have been retaliatory practices. 30

5 of 1908

(2) For the purpose of making an inquiry under sub-section (1) the Council, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath; 35

(b) requiring the discovery and production of documents;

(c) any other matter as may be prescribed.

(3) Every inquiry into any complaint received under clause (a) of sub-section (1) shall be completed within a period of ninety days from the date of receipt of complaint by the Council. 40

CHAPTER IV

DISCLOSURES, COMPLAINTS AND INQUIRIES

Whistle
blower
disclosures and
complaints.

12. Any eligible whistle blower may make a disclosure or a complaint in writing or through hotline if so instituted by the Committee or the Council, as the case may be, within 45

a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided further that the Committee or the Council, as the case may be, may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances existed which prevented the eligible whistle blower from filing a complaint within the said period.

13. (1) The Committee or the Council, as the case may be, during the pendency of an inquiry on a written request made by the eligible whistle blower may recommend to the employer to,—

Action during pendency of inquiry.

(a) transfer the eligible whistle blower or the respondent to any other workplace; or

(b) grant leave to the eligible whistle blower up to a period of three months; or

(c) grant such other relief to the eligible whistle blower as may be prescribed.

(2) The leave granted to the eligible whistle blower under clause (b) of sub-section (1) shall be in addition to the leave he is otherwise entitled to.

(3) On the recommendation of the Committee or the Council, as the case may be, the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Committee or the Council, as the case may be.

14. (1) On the completion of an inquiry under this Act, the Committee or the Council, as the case may be, shall provide a report of its findings to the employer or as the case may be, to the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

Inquiry report.

(2) Where the Committee or the Council, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Committee or the Council, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be,—

(a) to take action for such misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made in such manner as may be prescribed;

(b) to deduct, notwithstanding anything in the service rules applicable to the respondent, such sum from the salary or wages of the respondent, as it may consider appropriate to be paid to the eligible whistle blower as compensation for retaliatory practices initiated against such eligible whistle blower;

(c) take necessary legal action against the respondent, including forwarding the disclosure and complaint to law enforcement authorities; or

(d) recommend corrective measures.

(4) The employer or the District Officer shall act upon the recommendation within a period sixty days of its receipt.

15. Where the Committee or the Council, as the case may be arrives at a conclusion that the allegation against the respondent is malicious or that the eligible whistle blower making the complaint or disclosure has made the complaint or disclosure knowing it to be false or the eligible whistle blower has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against

Punishment for false or malicious complaint.

the eligible whistle blower who has made the complaint under section 11, as the case may be, in accordance with the provisions of the service rules or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the eligible whistle blower under this section. 5

Prohibition of publication or making known contents of complaint or disclosure.

16. Notwithstanding anything contained in this Act, the contents of the complaint or disclosure made under section 11, the identity and addresses of the eligible whistle blower, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Committee or the Council, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner: 10

Provided that information may be disseminated, once a complaint or disclosure has been forwarded to the appropriate law enforcement agency or if such information is otherwise made publicly available, regarding the action taken by the employer, the Committee and the Council under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the eligible whistle blower and the witnesses. 15

Penalty for publication or making known contents of complaint and inquiry proceedings.

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act contravenes the provisions of section 15, he shall be liable for penalty in accordance with the provisions or the service rules applicable to the said person or where no such service rules exist in such manner as may be prescribed. 20

CHAPTER V

DUTIES OF THE EMPLOYER

Duties of the employer.

18. Every employer shall—

(a) provide a safe and inclusive working environment at the workplace which shall include safety from the persons coming into contact at the workplace; 25

(b) display at any conspicuous place in the regulated organization, the available options for highlighting misconduct and illegal activities taking place at the regulated organization, and the order constituting the Committee under sub-section (1) of section 6;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Committee in the manner as may be prescribed; 30

(d) provide necessary facilities to the Committee or the Council, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Committee or the Council, as the case may be; 35

(f) make available such information to the Committee or the Council, as the case may be, as it may require having regard to the complaint or disclosure made under section 11;

(g) cause to initiate action, under any law for the time being in force, against the party responsible for the misconduct as detailed in the disclosure or complaint made by the eligible whistle blower. 40

CHAPTER VI

MISCELLANEOUS

Annual Report.

19. (1) The Committee or the Council, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer. 45

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government in such manner as may be prescribed.

20. The employer shall include in its report the number of complaints and disclosure filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer. Employer to include information in annual report.
- 5 21. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of, in respect of all whistle blower disclosure and complaints in such manner as may be prescribed. Appropriate Government to monitor the implementation of the Act.
22. Where the employer fails to—
- (a) constitute a Committee under sub-section (1) of section 6; and
- 10 (b) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, Penalty for non-compliance with provisions of the Act.
- he shall be punishable with fine which may extend to fifty thousand rupees.
23. The provisions of this Act shall be in addition to and not in derogation of the provisions or any other law for the time being in force. Act not in derogation of any other law.
- 15 24. **The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide requisite funds for carrying out the purposes of this Act from time to time.** Central Government to provide fund.
- 25 25. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such direction, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the removal of any difficulty: Power to remove difficulties.
- 20 Provided that no such order shall be made after expiry of three years from the date of commencement of this Act.
26. (1) The appropriate Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules.
- 25 (2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament agrees in making any modification in the rule or
- 30 Parliament agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (3) Every rule made by the State Government under this Act shall be laid, as soon as
- 35 may be after it is made, before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

With India's growing corporate and private sectors, and its improved performance on the Ease of Doing Business index, it is necessary to also magnify the legislative focus with respect to the internal workings within the private sector.

Massive data leaks that have taken place at the global level, such as WikiLeaks and the Panama Papers, have exposed many cases of corruption, tax evasion, and corporate fraud. These global events indicate how essential it is to encourage the act of whistleblowing within all kinds of work environments, be it public or private. It has also widely been acknowledged that regulatory and legislative interventions, of and by themselves, can have the effect of curbing incidents of fraud, misconduct and non-compliance. While several companies that operate across multiple countries have a whistle blower mechanism in place, the same is not true for most Indian companies.

The Whistle Blowers' Protection Act, 2014, which provides for India's first whistle blower protection framework, is yet to be operationalized, and the rules in relation to the legislation are yet to be framed. Moreover, the Whistle blowers' Protection Act, 2014 is limited in scope to public authorities, public servants and Government companies, and the private sector is entirely excluded from the ambit of the 2014 legislation.

Given that the nature of the private sector and the public sector, and the implications of whistle blowing in each of the sectors would be strikingly different, this Bill endeavors to create a separate and distinct framework to provide for the protection and regulation of whistle blowing activities within the private sector.

The Bill, therefore, seeks to provide for:—

(a) setting up of an internal complaints mechanism at the workplace for registering and reviewing complaints by whistle blowers;

(b) creating an external quasi-judicial body for reviewing cases of harassment of complainants by their employer or employee organizations.

(c) spreading awareness regarding protections and resources available to whistle blowers within each organization, as well as on applicable laws relating to corruption and fraudulent activities.

(d) detailing the inquiry procedure and follow-up proceedings to be undertaken after receipt of a complaint.

The need of the hour is increased transparency and accountability starting within each workplace, in order to ensure the stability and resiliency of India's corporate and private sector, while simultaneously protecting the interests of employees in the private sector.

Hence, this Bill.

NEW DELHI;
January 20, 2020.

SUPRIYA SULE

FINANCIAL MEMORANDUM

Clause 10 of the Bill provides for the establishment of the Whistle blower Complaints and Grievance Redressal Council by the District Officer for redressal of complaints and grievances. Clause 23 provides for payment of adequate funds for carrying out the purposes of the Act. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees one hundred crore per annum would involve from the Consolidated Fund of India.

A non-recurring expenditure of about rupees Fifty Crore is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 26 of the Bill empowers the appropriate Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power, therefore, is of a normal character.

LOK SABHA

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to provide for the protection of whistle blowers within the private sector through the setting up of internal and external complaint review and redressal mechanisms and for matters connected therewith or incidental thereto.

(Shrimati Supriya Sule, M.P.)