

CHRI's Preliminary Analysis of Jamaica's Whistleblower Bill and the status of similar legislation in India
August 05, 2010

Dear all,

The Jamaican Parliament is debating a law to protect its whistleblowers from harm. *The Protected Disclosures Bill 2010* aims to protect employees in government who blow the whistle on the improper conduct of their colleagues or seniors. The text of the Bill may be accessed at: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/jamaica/jamaica_debate_d_the_protected_disclosures_bill_2010.pdf

CHRI has attempted a preliminary analysis of this Bill at the request of Jamaicans for Justice. This analysis is accessible at : http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/jamaica/jamaica_whistleblower_bill_critique_jul10.pdf

Whistleblower legislation in India:

The Law Commission of India studied the laws that protect whistleblowers in the UK, USA and other developed countries and submitted a report to the Government in 2001. This report may be accessed at: <http://lawcommissionofindia.nic.in/reports/179rtp1.pdf> Along with the report the Law Commission submitted a weak draft Bill to protect whistleblowers. This draft Bill is accessible at: <http://lawcommissionofindia.nic.in/reports/179rtp2.pdf>

Newspapers in India have reported that a draft Bill called- *Public Interest Disclosure and Protection of Persons Making Disclosure Bill 2010* will be placed before the Union Cabinet at today's meeting (5th August 2010). The Government of India probably aims to table this Bill in Parliament in the current session. The draft Bill aimed at protecting whistleblowers is a welcome move. In recent years several whistleblowers including RTI activists have been murdered or grievously injured or harmed in some other manner because they dared to expose wrongdoing in public authorities. A well-legislated mechanism to ensure adequate protection for whistleblowers is the need of the hour.

Even without a specific law on the subject the Government of India has created a mechanism for its employees and those employed in central public sector enterprises to blow the whistle on wrongdoing. The *Public Interest Disclosure and Protection of Informers Resolution* was notified by the Government of India in 2004 to enable public sector employees to make disclosures of wrong doing to the Central Vigilance Commission (<http://cvc.nic.in>) in confidence. This document is accessible at: http://cvc.nic.in/004vgl26_1.PDF This mechanism covers only employees working in the Government of India or any of its agencies. It does not cover the employees of State Governments.

Secrecy over the draft whistleblower Bill and lack of public consultation:

In recent months the media has published reports about major disagreement within Government over the contents of this Bill. However the Government of India has not made any attempt to place the draft whistleblower Bill in the public domain and consult with the people. Instead people will have to wait for the Bill to reach Parliament before they can comment on it. This secrecy is in clear violation of Section 4(1)(c) of the *Right to Information Act, 2005*. According to Section 4(1)(c) of the RTI Act:

“4. (1) Every public authority shall—

X X X

X X X

c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;”

The draft whistleblower Bill is an important legislative policy whose contents the Government ought to have disclosed while formulating it. However age-old practices of undue secrecy, observed by the bureaucracy, while drafting legislation, continue to hamper the effective implementation of this provision of the RTI Act. Even here there is no consistency of practice. While other Ministries go through elaborate processes of public consultation on draft legislations such as the Draft Direct Taxes Code Bill and amendments to the Companies Act, the whistleblower Bill does not get the same treatment. I am currently litigating before the Central Information Commission on the issue of non-

compliance with Section 4(1)(c) in relation to the whistleblower Bill. I will keep you posted on further developments.

In order to access our previous email alerts please click on:

http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84

You will find the links at the top of this web page. If you do not wish to receive email alerts please send an email to this address indicating your refusal to receive email alerts.

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: www.humanrightsinitiative.org
alternate email: nayak.venkatesh@gmail.com