

Why India needs to strengthen WBP Act

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The freedom of information and press has been long believed to be one of the fundamental rights under our Constitution. It ensures transparency, accountability from the government, and allows for the press to ask hard-hitting questions. While in the international context, on numerous occasions in the past year, the journalists, with the help of sources, have not only questioned the authorities on fraud and illegal activities,

but also have been instrumental in exposing corruption, leading to many heads of countries stepping down (as was in the case of Pakistan and Iceland). The sources who divulge such secret and confidential information are, in many countries, legally allowed to remain anonymous. The question, therefore, arises whether similar anonymity can be afforded to a source who discloses illegal acts in India?

To put this in context, in a ranking published by the Transparency International in 2017 called the Corruption Perceptions Index, India ranked 81st most corrupt country of the 180 countries surveyed. Therefore, combating corruption and, at the same time, protecting the sources who disclose such acts of corruption should be a priority in India.

While the Whistle Blowers Protection Act 2014 (WBP Act), passed to protect the whistle-blowers, has not yet been notified, an amendment Bill has been introduced, seeming to dilute the original statute rather than strengthening it. The proposed amendments include, inter alia, removing immunity given to the whistle-blowers from being prosecuted under the Official Secrets Act of 1923. These also prohibit any disclosure prejudicially affecting the sovereignty, integrity, security or economic interest of the state. In the original statute itself, no action can be taken on the disclosure made by a whistle-blower if the disclosure does not indicate the identity of the complainant or the if identity of the complainant is found to be incorrect or false. Since the WBP Act applies only to the disclosures made to a competent authority, the precise question, therefore, is: How does India protect its sources who disclose secret, anti-corruption acts to the media? The short answer to that, of course, is India does not.

At present, India has no law to regulate or protect the anonymity of any person who divulges top secret information to the journalists. The Press Council Act of 1978 does provide that no newspaper, news agency, editor or journalist will be compelled to disclose the source of any news or information published or reported by them to the Press Council of India (PCI), but this provision is only with respect to the PCI, which is a self-regulatory body. In addition, despite the Law Commission of India's recommendation that the source through which the information is received by a journalist should be given protection, India has not enacted any law to implement the same. The journalists and the media have no privilege protecting them from the obligation to disclose their source of information. Therefore, a source's identity is at all times at risk of being revealed. There is no dearth of examples found in India of whistle-blowers being brutally attacked or even murdered for blowing the lid of huge corruption cases. Satyendra Dubey is an example of a whistle-blower who, despite requesting anonymity, was murdered after his identity was revealed.

Our European counterparts perform way better in ensuring whistle-blowers' and sources' protection. In Sweden, for example, a source who divulges information to a journalist on condition of anonymity is protected under the Constitution, and to breach this confidentiality agreement is a criminal offence, punishable up to a term of one year or fine.

India fares even worse when it comes to protection of the information which may be communicated by the whistle-blowers through different means of technology. The lack of protection provided to the confidential sources is further accentuated by the lack of encryption laws in India. While the Information Technology Act of 2000 does lay down that the central government may prescribe the mode or methods for encryption for the secure use of electronic medium (Section 84A), it has failed to prescribe any. Also, the Draft Personal Data Protection Data Bill, 2018, may be step towards compliance with the EU General Data Protection Regulation (GDPR), but it is completely deficient in providing specific provisions for protection of anonymity of sources or the information that may be given by users to the journalists.

With increased surveillance by the government, heightened risk of exposure due to data leak potential, the deficiency in our current information technology laws to give the whistle-blowers or sources adequate protection and the WBP Act still not being enforced, it is imperative that policy-makers draw their attention to strengthening the WBP Act and provide legal protection to the whistle-blowers and sources. This will go a long way in ensuring that the integrity of the fourth pillar of democracy is protected, cherished and upheld.

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