

1. Necessary to promote an environment to encourage people to blow the whistle about wrongdoings". In this context critically examine the various features of the Whistleblowers Protection Act. (250 Words)

**Answer:**

Whistleblowing can be defined as an act of disclosure of information by people within or outside an organization and that which are not otherwise accessible to public, generally of activities of organization that are against public interest. Whistleblowing act as a channel of unveiling information about illegal or unethical activities thus helping to take a positive step towards reduction of corruption.

**Salient features of the Act:**

*Under the Act Whistleblowers may make complaints about:*

- corruption (as defined in the Prevention of Corruption Act, 1983);
- willful misuse of power or discretion which may lead to demonstrable loss to the Government or wrongful gain to any person including a public servant; and
- commission of or attempts to commit offences recognized under law by any public servant to the competent authority.

*The following authorities are competent to receive whistleblower complaints:*

- The Prime Minister at the Centre and the Chief Minister in the States against Ministers of the Union or the States respectively;
- The respective Chairpersons of the House against members of Parliament or the State Legislatures (other than those who may be Ministers);
- The Central Vigilance Commission or such other authority as the Central Government may notify for all other public authorities and public sector undertakings at the Union level; and
- The State Vigilance Commission or such other authority as the State Government may notify in due course to receive complaints against public authorities and state level public sector undertakings.

Any public servant, person or whistleblower may make a complaint (in hard copy or by electronic mail) in good faith to the competent authority with full details and accompanying documents within seven years of the occurrence of the wrongdoing [except matters referred to a commission of inquiry under the Commissions of Inquiry Act, 1952 or where a formal inquiry under the Public Servants (Inquiries Act) 1850 has been launched]. A complaint will not be inquired into if it does not mention the name of the public servant complained against or if the identity of the public servant or the complainant is found to be incorrect or false.

The identity of the complainant will not be revealed without his/her written consent. Any person negligently or malafidely reveals the identity of the whistleblower may be sentenced up to three years in prison and also pay a fine upto Rs. 50,000.

Knowingly and malafidely making a false complaint will invite a two year prison term and a fine up to Rs. 30,000.

The competent authority may make discreet inquires or open inquiry and also seek the explanation of the public servant complained against and within three months take any of the following steps:

- Recommend that formal proceedings be initiated against the public servant complained against;
- Take appropriate steps to redress the loss caused to the Government;
- Recommend initiation of appropriate criminal proceedings against the person complained against;
- Recommend taking corrective measures;
- Recommend any other necessary measure for the purpose of the law; or
- Close the case (complainant must be given an opportunity to object to the closure order).

The competent authority has the powers of a civil court to inquire into complaints it receives and all proceedings before it will be deemed to be judicial proceedings. The competent authority may impose a penalty of up to Rs. 50,000 (USD 800) on the public authority or official for not cooperating with the inquiry process or refusing to provide reports when required.

The competent authority may set up its own inquiring staff or enlist the services of the Central Bureau of Investigation or the police or other authorities to inquire into complaints it receives. The competent authority must ensure that no whistleblowing public servant is victimised. If other citizens and organisations blowing the whistle are victimized the competent authority may pass appropriate orders for protecting them or avoiding such victimization. The burden of proving that there was no victimisation of the whistleblower is on the public authority complained against.

The provisions are a positive step as they give power to every citizen to reveal facts relating to corruption, while keeping their identity concealed. If these are properly implemented, then cases of corruption may surface from every corner of the country. But if provisions that prevent victimisation are not kept within limits, it may lead to misuse by malafide people.

*Issues related to the Act*

**Identity:** The Act does not allow anonymous complainants. But there are no clear provisions on what grounds the Vigilance Commission may reveal the identity of a complainant to the Head of an organisation. Some experts contend that allowing anonymous reporting provide protection to whistleblowers while others have expressed concern about difficulty of investigation and possibility of frivolous complaints. Countries such as the U.S., U.K., Canada and Australia have some provision to investigate anonymous complaints, while Italy and Slovakia do not allow anonymous complaints. However, even countries which allow anonymous complaints do not provide protection against victimisation if the identity of such a whistleblower becomes known.

**Victimisation:** The Act does not define what constitutes victimisation. There is no penalty against the public servant who may be victimising the complainant. This Act does not provide for witness protection programme to protect witnesses during investigation and trial. The Law Commission has recommended guidelines for witness identity protection. Countries such as the US, Canada, Australia, Germany, Italy and South Africa have witness protection programmes.

**Penalty:** The Vigilance Commission may reveal the identity of the complainant in certain circumstances (which may lead to victimisation) but the Act does not provide for any penalty for victimising a complainant. However, a complainant may be penalised with imprisonment and a fine for making false complaints. This was recommended by the Law Commission report and the Cabinet Note stated that the Act aimed to protect honest officials. Such provisions may deter persons from making a disclosure to the Vigilance Commission.

**Appeal:** The public official may appeal to the High Court against penalty for revealing identity or obstructing investigation. However, the Act also penalises any malafide complaint, but does not specify an appeal process.

Several legal experts have also noted that the proposed law doesn't hold the CVC accountable for delayed response to a complaint or for failing to act altogether.

## PRACTICE QUESTIONS

### **Answer the following Questions**

1. Improving India Nepal relations requires greater focus on implementation and less on optics. Analyze. (250 words)
2. Critically analyze the process of removal of dams, as witnessed in several European countries, with special emphasis on India. (250 words)