

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No, no; you have made your point. ...(*Interruptions*)... You have put the question. That is enough. ...(*Interruptions*)... Would you like to respond to this?

SHRI SUSHILKUMAR SHINDE: Sir, he has made a suggestion. I will look into it.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Okay. The House is adjourned for lunch for half-an-hour.

The House then adjourned for lunch at four minutes past two of the clock.

The House reassembled after lunch at thirty-six minutes past two of the clock,

THE VICE-CHAIRMAN (Prof. P.J. Kurien) in the Chair.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, we shall take up further discussion on the Whistle Blowers Protection Bill, 2011. Shri V. Narayanasamy, I think on that day you had made the speech.

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## GOVERNMENT BILL

### **The Whistle Blowers Protection Bill, 2011 - *contd.***

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI V. NARAYANASAMY): Sir, my speech was disrupted on that day.

Sir, the Right to Information Act was passed by both the Houses in 2005. It is under implementation. When the Right to Information Act was in force, the persons who were making disclosure, the whistle-blowers, were being harassed. It started from Satyendra Dubey's case. He brought into focus corruption involved in laying of roads. Thereafter, several murders took place in Maharashtra, Madhya Pradesh, and in various other States. I do not want to go into the details. The persons, who were exposing corruption in public offices, had been targeted consistently in this country. Considering the need for giving protection to those people, the Government adopted a Resolution on 21st April 2004 giving powers to the Central Vigilance Commission as the designated agency to receive written complaints from whistle-blowers and take action accordingly. There is a clear

provision in that the identity of the whistle-blower has to be concealed. There was a lot of demand from various quarters that the Government should bring a legislation to this effect. Accordingly, Sir, the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 was introduced in the Lok Sabha on 26th August 2010. I would like to mention the basic features of the Bill. The aim is to bring public servants of the Central Government, the State Governments, Government companies, corporations and local authorities within the ambit of the Bill. Its another feature was to provide adequate protection to persons who have been making disclosure of corruption in public offices as well as of those who are doing wilful wrong leading to loss to the public exchequer. Then, Sir, there is a procedure for the purpose of enquiring into those complaints that are being given by the whistle-blowers and the punishment for those people who disclose the identity of the whistle-blower without his permission. If there is a frivolous complaint given by the whistle-blowers, there is adequate provision for taking action against them also. It is a balanced Bill. Then, Sir, the Bill went to the Standing Committee. The Standing Committee looked into it. In the original Bill, the Members of Parliament, the Council of Ministers, the judiciary, Defence Forces and intelligence forces have been excluded. But, Sir, when the Bill was referred to the Standing Committee, the Committee, in its 46th Report, gave its observations. They said that the term 'public servant' should be the same as defined in the Prevention of Corruption Act, which was accepted by the Government. Then, Sir, as far as the recommendation for bringing others under the Bill is concerned, the Standing Committee said that the Council of Ministers, the Members of Parliament, the Members of Legislative Assembly and also the judiciary should be brought within the ambit of the Bill because the higher judiciary is covered by the Judicial Accountability Bill. Therefore, the Government considered it and brought an amendment to that effect in the Lok Sabha. Thirdly, Sir, we found that in the case of Defence Forces, intelligence agencies and security forces, under the RTI Act, no exemption is given to them in respect of the part relating to corruption and human rights violation. Even the Defence Department has agreed that they should be given protection only on two issues and on other issues including corruption and human rights violation, the Whistle-Blowers Protection Act will apply. Therefore, it has been accepted by the Government. Sir, the Special Protection Force of the Government has been exempted because it is dealing with sensitive national security issue.

Then, Sir, coming to the other issue which has been that if the complaint is considered to be frivolous or *mala fide* or false then, before closing that complaint, the concerned competent authority has to give an opportunity to the complainant to explain. Thereafter, after satisfying itself, it has to close the complaint. Therefore, that opportunity has also been provided to the complainant. Sir, initially in the original Bill, the limitation period for the whistle-blower to give a complaint from the date of occurrence was five years. But, the Standing Committee said that it should be seven years. The Government accepted it and the period of seven years has been incorporated in that. Then, if the competent authority forwards a complaint for the purpose of getting a report from the head of the department and if they fail to comply with that within the stipulated time-frame or they delay or disclose the information to the other people without the permission of the complainant then, there is a penal provision for those officers who are delaying or wilfully not allowing the enquiry to be carried on. That was also agreed by the Government. This was agreed in general and thereafter, the Bill was passed in the Lok Sabha. Now, it is in the domain of this hon. House. For the NGOs and certain other people who have been involved in public service and the persons who are making public disclosures, this Bill has to be passed. Apart from that, the hon. Members and we also feel that the persons who are making disclosures and giving information about corruption in the public service should be protected. Now, the Bill is in the domain of this House. After its passage in the Lok Sabha, we are bringing forward a small amendment which is relating to the security of the country and the unity and integrity of the country.

It also relates to our foreign relation which is there in Section 6. But it has not been worded properly. It has to be brought in Section 4. In Section 8 it is there. Therefore, we are bringing in a small amendment. I commend the Bill for consideration in this House.

*The question was proposed.*

SHRI RAVI SHANKAR PRASAD (Bihar): Mr. Vice-Chairman, Sir, I am really grateful to you that on a crucial Bill like the Whistle Blowers Protection Bill, 2011, you have given me the privilege and honour to speak and initiate the debate. Today is a very unique day in the pursuit of our democratic polity. Democracy means accountability. Democracy means equity. And democracy means good

governance. Good governance can never come about if there is corruption. I shall be dealing with that issue separately a little later. But in exposure of corruption in a conclusive manner an insider plays a very crucial role. An insider takes a great risk in seeking to expose corruption. When I am speaking today let me at the very outset pay my profound homage to Satyendra Dubey, the courageous engineer of the National Highways Authority of India who was exposing corruption in the construction of national highway in my own State of Bihar; and was killed. When I am speaking on this Bill, let me pay my homage to Manjunath, Sales Executive of the Indian Oil Corporation, a graduate of IIM who was exposing adulteration of fuel near Lucknow in Uttar Pradesh and was killed. Let me pay my homage to Kalol Sood, the brave Block Development Officer of Bengal who was exposing the scam in our NRAG and was found to be dead in very mysterious circumstances. About 9 or 10 RTI activists had to pay with their life for exposing scams. Therefore, I begin with my homage to them.

Sir, our democracy day after tomorrow would become exactly 65 years old. As I see, these 65 years have been years of learning. These 65 years have been years of ups and downs. If I may briefly reflect upon the growth of our democratic process there had been one party rule for a good measure. Then, in States, non-Congress (I) Party started occupying the political space; and thereafter the people realised the worth of their vote. Today, they know that they can defeat any political party howsoever powerful, any political leader howsoever popular through the power of their vote. I always feel as an activist from the very beginning, this has led to a very sobering impact on our democratic polity. It has stabilised our democracy. The people of the country know that there should be no military coup in India. The people of the country know that in view of the very, I would say, extraordinary experience of the seventies, no leader howsoever popular would seek to impose Emergency in the country, impose Press censorship, arrest people without trial in a very brazen way. Now with this establishment of our democratic polity the voters recognise that they support a political party consistent with their ideology of support base; and they in turn try to understand the identity of India. Sir, I am a great believer in the democratic power of our people; and the best thing I recognise, I was present in the Lok Sabha when I was a Minister in Vajpayee's Government, that from Punjab a political activist had been elected who never believed in the identity of India, who never believed in the Indian Constitution, but

the day people gave him the mandate, he took oath in the Lok Sabha under the Indian Constitution.

This is the great sobering experience of the working of our democracy which we have had. Therefore, we are very proud of our democracy. Sir, democratic process cannot survive only in the context of an opposition party and a Government. Democracy means political process; democracy means non-political process. All those processes, in one way or the other, strengthen the cause of democracy. I remember the time when Public Interest Litigation came up. There was a lot of doubt as to what was happening and why it was happening. I remember, Sir, in my days in Patna, when I used to practise law there, I was a whistleblower myself. This whole fodder scam case was argued by me. Then I was a small known lawyer, not a known political leader. The entire bitumen scam was argued by me. ...*(Interruptions)*... All right, I stand corrected. Will you allow me to speak? It is a serious matter. We will talk about the Goa issue separately.

Then there was a lot of apprehension. But both, the political process and the non-political process, were working together. Therefore, I also salute a large number of NGOs, who, over the years, have articulated because of our democracy. People used to say that the court was interfering too much. Maybe, they were right to some extent. I have always felt that the court has got no business to intervene in the executive Government of the day. The right to govern the country has been given to the Government of the day, whether in a State or in a country. Yes, in cases of violation of fundamental rights, violation of human rights and gross corruption, the courts must intervene. That is how the democracy has strengthened over the years.

In this whole quest of governance, accountability is important. For accountability, transparency and integrity are equally important. You cannot have the element of good governance; you cannot have constructive accountability, if you jettison integrity and probity. Yes, today India is growing very well. We see a very aspirational India. Young people are having a dream; young graduates are working very hard and there is a lot of perseverance. But they also get disheartened when they see the present image of the country. Sir, I keep on travelling in the country and interact with young people. I keep on going abroad. Hardly, a month ago, I was in the United States. The kind of writings I heard about, the kind of negative

image I heard about, was certainly disturbing for me as an Indian. We have to rise above all these things. In the exposure of all these massive scams and corruption cases, whistleblowers have played a very crucial role. Gopikrishna was consistently writing articles in The Pioneer newspaper about what was happening in the 2G. As I was a Member of the Standing Committee on Information Technology, I was following it up closely. We tried to do our best but could not succeed. That is a separate chapter altogether. I will discuss it in the Chamber as to what happened and why. But he kept on writing. He was threatened. Ultimately, when the whole 2G issue became very explosive, people started listening to him. He was also given a CNN-IBN award for the best journalist. I asked him one day, "Gopi, what happened?" He said, "There was a whistleblower in the Department of Telecom, who was my source. He was fed up with the happenings so much that he used to give me this information." I told him to give my regards to the whistleblower for exposing such a big corruption in contemporary history of India. The same is the case of Commonwealth Games and other things. I am not being partisan today. But what is important is, if mal-administration or corruption or abuse of power is exposed, one should not take it in a negative way as impinging upon the Government of the day. I would see it as a kind of warning that please usher in course correction. Sir, our democracy is very strong today. Today, you are in power; tomorrow we can come to power. Earlier, we were there. This exchange will keep on going. That is the flow of democracy. But there are certain fundamental obligations which we owe to the country, to the people of the country and to posterity. That is, we must leave an India which is strong, resurgent and accountable. In that process, I see today's Bill as a moment of great historic opportunity, and it is in that larger context that I was seeking to elevate this debate. And there has been a trinity. The first is the Right to Information Act. The second is the Lokpal Bill. We wish, Mr. Minister, that your Government will bring it at the earliest. Today there is a meeting of the Select Committee. I hope that it is expedited, and in this Session itself, the Lokpal Bill will be brought before the House. And the third is the Whistle Blowers Protection Bill. Therefore, this whole process is very important. Sir, when I was a young student, a school-going boy, the first question of whistle blower, which we heard very vaguely, was about Deep Throat in the Watergate Scandal. There were stories and stories, and finally, the very arrogant, imperial, U.S. President, Nixon, had to bow down from office. But it

is truly amazing that after 32 years, they found that the great journalist or insider, whose name was William Mark Felt, was the Deep Throat and the whistle blower who led to the exposure of the Watergate Scandal. Now, world over, it is being recognized. It is important. Sir, I was just going through a literature. In America, the frauds of public and private companies are pursued very strongly. And I learnt, to my amazement, that America has so many regulators, and yet, nearly one-fifth of the frauds are explored by whistle blowers from inside, who keep on fighting. This movement has been recognized world over. And, we have got, in the U.S.A., the Whistle Blowers Protection Act, 1989. Now, there is the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010. There is a provision of reward for reporting frauds to the Security Exchange Commission. In Canada, we have the Public Servants Disclosure Act for the public sector. Sir, when I was doing my research for this debate, to my utter amazement, I find that there are smaller countries like Romania, South Africa, Uganda, Canada, New Zealand, Australia, etc., which all have some form of protection for whistle blowers. So, why has the esteemed Minister taken so long to bring this Bill? I think it must have been a matter of some priority. And, I would like to say one thing, with profound respect to the hon. Minister, who is a good friend of mine. On a matter of moment like this, allow the House to have a proper debate. I have no grievance. It is your right to bring in a Bill and get it passed. But the manner in which it was passed in the other House — I am not making any comment — leaves much to be desired because this Bill, which we are passing today, is not for your Government or for my Government. This Bill, which we are passing today, is for strengthening of India. Therefore, all the hon. Members, present here, need to share their views so that all the shortcomings may be taken care of and, if need be, they should be addressed.

Sir, I was going through the 2009 Report of the Transparency International, and India's position was 89. I would like to be enlightened by the hon. Minister as to what the contemporary position is. I am sure that post-2009, in the light of what India has experienced, the number would have gone down.

SHRI TAPAN KUMAR SEN (West Bengal): It is 109.

SHRI RAVI SHANKAR PRASAD: Thank you, Tapanji. Therefore, our position has again gone much down. I think it is very important that we must understand

**3.00 P.M.**

that a corrupt Government, a corrupt governance, saps the morale of the people. I am not making a partisan statement today. I know India is a fine country. I am a chronic optimist. I have not got the slightest doubt that India, in our lifetime, will become the biggest powers of the world, not only economic and military, but also spiritual. That is my confirmed belief. And, when I see this great promise of these young people, who have an idea of a 'Great India', and the kind of pessimism which creeps in because of simmering corruption, then, how do we respond? That is, indeed, very important. Therefore, today, when we are seeking to give some kind of statutory cover to a whistle blower, it is a step in the right direction for the strengthening of the accountability process of India.

Sir, I was just going through Satyam Computer's great scam. I was trying to know how this huge scam of 7000 crore plus -- Then and how it might have gone to 10,000 crore plus who unearthed it and I learnt, to my great dismay, that it was an insider's job. His name I have, Sir, but I will not like to disclose so that it may not have any problem for him because I have some questions to ask about the private sector when I come to specifics of the provision. Sir, we have the 179th Law Commission Report which insisted for a Public Interest Disclosure Bill. We had the Second Administrative Reform Commission Ninth Report; Ethics in Governance, and you talked about the Standing Committee Report. I have to ask certain questions; I will come separately about that. But, let me go to certain very fundamental issues. Hon. Minister, I have tried to find the answer. Correct me if I am wrong. Does this Bill apply to a public disclosure in the private sector or does it not? I want a very categorical answer. I see Section 19. Then, there is a provision for punishment to executives of private companies. But when I see Section 4, as far as the obligation to disclosure is concerned, then I don't see private sector being there because there is a case of registered cooperative society, there is a case of a Government company; there is a case of a Minister, Departments, MPs, MLAs, universities' Vice-Chancellors. But does a non-Government, public or private company, come within the ambit of disclosure? It is a little ambiguous. I would like to have clarity on that. The second is, the CVC is the competent authority. Sir, I have the highest regard for the office of the Chief Vigilance Commissioner. But what is the authority of the CVC? At best, it is



recommendatory. What happened to Mr. Thomas, we all know. What kind of comments Supreme Court had to offer, we need not go into that. Past is history, but when you discuss a Bill of such seminal importance, you cannot completely ignore as to what has happened in the past. Now, the authority of the CVC is indeed, very important. The CVC should not be merely a recommendatory body. What kind of rights have we given additionally to the CVC, apart from giving direction in the case of a particular whistleblower being victimised? Why is it important? Who is the competent authority before whom complaint can be filed in the event of corruption in a private sector? Hon. Minister, this issue, is indeed, very important that today, private sector is playing a very crucial role in the economic development of India. We welcome that. We have the PPP model, the Public-Private Partnership model. We have other models. Now, if in the award of contract, if in the award of any particular tender, if in the award of any particular work, there has been a lot of corruption within the meaning of the Prevention of Corruption Act. There has been a lot of wilful, I would say demeanor or wilful kind of action which led to a loss to the Government as enshrined in the Prevention of Corruption Act, Section 13, then what is the remedy available to a whistleblower under the present Act? This clarity has to be there. Sir, now we are believing in an open Government. Yes, there is a conventional view that RTI is creating problem in administration, whistleblower will create problem in administration, Lokpal will create problems in administration. It may have a logic, but I don't believe it because the growth of the country has seen that with the activism of judiciary through the instrument of public interest litigation, when Governmental decision became subject to frequent challenges before the court, the growth did not stop. The biggest period of judicial intervention in Governmental decision, as a lawyer, Narayanasamyji, you would recall, is post-1989 or post-1988.

And if you see the growth chart of India, maybe, in coalition Government, the biggest chart began post-1991 as well. Therefore, to say that these kinds of interventions in the form of PIL, in the form of RTI, in the form of Lokpal, in the form of Whistle blower would impede growth, is, I would say, not a correct way of looking at it. Maybe, your discretions would be circumscribed; maybe, your reckless abuse of power would be controlled. If that is controlled, that is good for India. The second thing I feel is that if things get established, some of our political friends say, हम लोगों के सारे अधिकार खत्म हो रहे हैं। I hear that and I can see

that. Why should be grudge that? We know that there is pressure on us. We can say that यह काम नहीं हो सकता, this law is a part of the Act. Once the people will come to know about it, I would certainly expect that it is going to be a further maturing of India's democracy that people will know what work we can get, the people will know what work we cannot get. Therefore, all these processes I see as a part of augmentation of our democratic process. That is indeed very important. Therefore, hon. Minister, the private sector is a very important issue about which I would like to know from you because we have a whole range of corruption in many of the private sector companies, not only in their dealings between the companies *per se* but also in the dealings between them and the Government. You must have seen that in the whole 2G, coal blocks allocation, the private sector was interacting with the Government. They were the people who were the beneficiaries of hurried licences given in a manner buried by the Supreme Court. Ultimately, we saw as to how they made quick money. Tapanbabu, I am opposed to Marxism but, at least, one phrase I have learnt to admire, the crony capitalism. And what India witnesses is crony capitalism. We all are supportive of the enterprise of our people, of companies, of private sector entrepreneurs, but one who wants to toil and rise in the country through fair means should not be put behind by means foul through the instrument of crony capitalism. That is the real irony of India and that is the real agony of India. ...(*Interruptions*)... We can agree on some of your issues, no problem. Therefore, these instruments of RTI or the Whistle Blowers or the Lokpal or the amended Prevention of Corruption Act are instruments which in that way strengthen the whole process. Sir, the specific question more on the law itself is that you have clause 4 and you have clause 8. Now I trust that you are coming with some amendments because in clause 4 anything can be disclosed. We are all for a very strong Whistle Blowers Act, we do not want it to be diluted, but I must caution you, Mr. Minister, it should not become an instrument of plaything against India's strategic interests in the hands of those who want to weaken it. Therefore, in our Constitution under article 19(2) there is a provision of security of India, integrity of India, there is a need to bring it here. ...(*Interruptions*)... I am grateful. Maybe, this incitement to violence, if some one wants to have some information with a view to incite people to violence, commit communal carnage, these are the issues which need to be addressed. I can also understand friendly relations with foreign countries. But there I have one caveat

and that is a very important caveat. I hope Tapanji recognises what I am going to say on that. Bofors came from Sweden. Hon. Minister, you will recognise that any genuine exposure of cases relating to India in a foreign country should not be blocked on the ground of friendly relations with foreign countries. That is the caution I would like to administer at the very outset here. Therefore, now I see clause 7...

SHRI V. NARAYANASAMY: Sir, I have a small submission to make. There is a Bill pending before the Parliament, that is, Prevention of Bribery of Foreign Public Officials and International Organisations. The Bill is in the domain of the Parliament and that will take care of it.

SHRI RAVI SHANKAR PRASAD: Alright; I am grateful. Now, I see section 8. Here, you have completely reproduced Article 19(2) of the Fundamental Rights. Hon. Vice-Chairman, Sir, Article 19(2) deals with Right to Freedom of Speech and Expression, Freedom of Movement, Freedom of Residence, Freedom of Occupation. And this freedom is to the citizens of India. That is certainly subject to particular reasonable restrictions which the State must impose. But the right to disclose corruption and mismanagement through the instrument of Whistleblowers Protection Act should not be so much controlled, as is there in 19(2). Yes, I can understand the issues of security, integrity, safety of the country, incitement to violence or public disorder. I can understand all these things. In clause 8, you have said everything — friendly relations with foreign States, public order, decency, morality, contempt of court, defamation. Why all this? I see a politician very much in the news for some wrong reasons. Now, he can say, "Don't expose me in this case of suicide because it is indecent to me." At least, let us not do like this. I have the highest respect for the institution of Judiciary, of which I have been a part, both as a lawyer and as a Law Minister, for some time. But can we deny the fact today that there is corruption in the Judiciary? I hear very disturbing reports about some High Court Judges and also some Supreme Court Judges. Former Chief Justices of India have an occasion to comment upon? I am saying this with full sense of responsibility. I know my protection under the law. I know the obligation to give respect to the Judges. I am only commenting as to what the former Chief Justice of India have been commenting. I am not saying anything new. Now, in contempt or in defamation, a truth is a defence. If a whistleblower is exposing some fact, is

it a defence? Therefore, let us not deny those rights which you are seeking to impose here. That is one request ...*(Interruptions)*...

SHRI V. NARAYANASAMY: I agree with you on that.

SHRI RAVI SHANKAR PRASAD: I am so happy that finally, you are agreeing. Good.

Now, I come to the victimisation of the whistleblower and his protection. Hon. Minister, why have you not explained the meaning of 'Victimisation'? 'Victimisation' is a defined concept in law. Therefore, it would have been appropriate that the 'victimisation' must have been defined in the Bill itself. So, I would request you to kindly consider the non-definition of this vital clause. That is, indeed, very important. I am happy you have incorporated the recommendations of the Standing Committee that unless the whistleblower himself consents, his name shall not be disclosed. But when we are discussing such an important issue, I would like to put one question here. The ways of governance as they are you have eight years' experience of governance, hon. Minister, I hope I am right ...*(Interruptions)*...

SHRI V. NARAYANASAMY: Four years.

SHRI RAVI SHANKAR PRASAD: Alright. I cannot wish you five years more. That will be wrong on my part. But good luck in future. ...*(Interruptions)*... Come on, let us be honest about ourselves. If an insider complains against his boss, तो क्या उसका नाम छुपा रहेगा? I expect an honest answer from you. The way of governance, as they are, is that you will send the complaint to the concerned person; his boss is a 'boss'; ultimately, his name would be known. I was going through this whole law. You have given certain protections. But this hidden hand of the process of our bureaucracy would compel the process to reveal the name of the complainant. There is no safeguard against that. How can we address that? That is an issue. I was just reading a write-up on one Abhijit Ghosh. He was a General Manager in a nationalised bank. He had complained against his CMD. And, ultimately, the CMD was found to be wrong; involved in corruption; he was taken to task. But, before that, he had to toil for five years, being suspended and suffering a proceeding. He wrote a very interesting thing. Is fighting corruption in India is a corrupt act in itself? "If not, then, why are the ones I raised a voice

against sitting comfortably and it is me who is running from pillar to post?" I am sure there are many ones like him. So, we will have to address this.

Sir, the last issue I would like to highlight is this. There are other speakers also. I never transcend my time; Sir, you know me. There are certain procedural issues. I think it is a question of not giving enough attention to the details and I would like you to reflect with me. Under clause 15 which is about offences and penalties, you can impose a fine of Rs.250/- or you can go to the extent of Rs.50,000/-. No problem. In clause 16, you say, if any person who negligently or *mala fide* reveals the identity of a complainant, he can be punished up to three years. Again, there is a fine of Rs.30,000/-. Clause 20 is the appellate forum -- appeal to the High Court. "Any person aggrieved by an order of the Competent Authority relating to imposition of penalty under section 14 or section 15 or section 16 may prefer an appeal to the High Court." Hon. Minister, you have been an experienced lawyer yourself. Under Cr. PC, any trial up to three years takes place before the Judicial Magistrate First Class or Metropolitan Magistrate in Delhi. An appeal lies to the Additional District Judge. Then, further appeal lies to the High Court. If the provision of punishment is more than seven years, then, there is conviction by the Session Judge, Additional Session Judge, then, appeal to the High Court. Here, against a fine of Rs.250/- you are sending it to the High Court. I fail to understand the logic of this whole scenario. Unless it is so special, it should not be sent to the High Court. High Courts are overworked. They are overloaded. Therefore, this is an issue which needs to be considered. Yes, make a fast track court. But make a fast track court at the lower level and subject to appeal before the High Court. That is how I would like to see, Sir. Sir, these are some of my concerns which I thought I must flag to the hon. Minister. Sir, I would like to make two or three more points. Why doesn't the benefit to a third party get covered within the scope of the Bill? If an officer is responsible, an executive is responsible, you will recommend action against him. But what happens to the windfall gains of the 2G recipients overnight? Why are they not covered within the mandate of this Bill?

The second issue is, I can understand, Army has been kept away. We have the highest regards for the Armed Forces, for the exemplary work they do to keep

India secure. They sacrifice their lives to keep India secure. But can we wish away from the fact that, of late, in the Armed Forces also, a lot of irregularities are reported? We see that even Lieutenant Generals are subjected to court martial. Yesterday, on a prime channel, we saw what is happening in the DRDO. Because of the respect we have for these institutions, we don't raise it. But if things go for a long time in this manner, then, surely, it has to be raised. Therefore, are you contemplating to have a separate arrangement for the Armed Forces or the like? I would like to know from you whether some *bona fide* officers who have got the courage within limitations should be given protection. You have counted anonymous complaints completely out; I can see that. Being a Minister of Personnel, you all know that when a promotion is due, a lot of anonymous complaints come. Therefore, you rightly ignored anonymous complaints. But when the issue concerns corruption, when the issue concerns maladministration, when the issue concerns abuse of power, when the issue concerns corrupt elements impeding the growth of India, then, keep a window for anonymous complaints as well. It may not be in the manner as you have done for a known complaint, so that if a complaint is there, at least, there must be an obligation to have a preliminary inquiry about the nature of allegations made if the offences are made out. Because the whistle blower only initiates the process. Rest is for the Government to consider, being accountable to the people and the Parliament. Sir, with these words, I support the Bill. I am sure the hon. Minister would address the concerns which I have expressed. Thank you.

SHRI SHANTARAM NAIK (Goa): Sir, I stand here to support the Whistle Blowers Protection Bill, 2010.

Let me, at the outset, appreciate the spirit with which Ravi Prasadji has...

SHRI RAVI SHANKAR PRASAD: My name is Ravi Shankar Prasad.

SHRI SHANTARAM NAIK: ... Ravi Shankar Prasadji has approached the Bill. I very much appreciate your spirit. The only thing that I would like to tell you and your colleagues is that you can't eradicate corruption by catching the *pallu of babas and sadhus* whose antecedents are not known. You can eradicate it by cooperating with the Government. You cooperate for the purpose of passing good legislations and make concrete suggestions that you have made now. But don't

resort to that process which does not suit you as a political party. This is my humble suggestion. ...(*Interruptions*)...

[The Vice-Chairman (SHRI TARIQ ANWAR) in the Chair]

DR. NAJMA A. HEPTUALLA (Madhya Pradesh): Mr. Vice-Chairman, Sir, the standard of debate is so high that even the Minister responded. Let us keep it because it is a very serious Bill. It is not putting one ...

SHRI SHANTARAM NAIK: Madam, only when I point out something, the standard goes down! ...(*Interruptions*)...

DR. NAJMA A. HEPTUALLA: This is not proper, Sir. ...(*Interruptions*)... You are a very senior Member of the House. ...(*Interruptions*)... It is not expected of you. ...(*Interruptions*)...

SHRI SHANTARAM NAIK: Please do not lay down the standards. ...(*Interruptions*)... You are not authorized to lay down the standards. Please. ...(*Interruptions*)... You are not a person authorized to lay down the standards. ...(*Interruptions*)...

SHRI RAVI SHANKAR PRASAD: She is a very senior Member.

SHRI SHANTARAM NAIK: I know. I am equally senior. ...(*Interruptions*)...

SHRI RAVI SHANKAR PRASAD: Let us keep the debate to some standard. ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI TARIQ ANWAR): Please don't go into controversy. Please address the Chair.

SHRI SHANTARAM NAIK: Sir, the whistleblower concept has got international traditions. In fact, one of the examples has been pointed out by the hon. Deputy Leader of the Opposition. I was going through some papers and I found that that Mr. Daniel Ellsberg of US Department along with Anthony Russo leaked Pentagon papers and secret accounts of Vietnam War. This is one of the major cases where the whistle-blower concept came out.

The second was the Watergate scandal. It has already been pointed out, and then there was the famous Indian case of Satyendra Dubey. In fact, when Satyendra

Dubey case came out, it shocked the entire nation and that was the time when more and more cases of whistle-blowers came out, which also inspired us to have this legislation. In fact, we are very late in enacting this legislation; there is no doubt about it. But it is Satyendra Dubey's case which further inspired us.

Raviji, I would like to draw your attention to certain observations that you had made. One of your observations was that judicial intervention has not stopped the growth of this country. I would beg to differ with you on that because on various occasions we have seen that Bills have been struck down, legislations have been called off and courts have told, 'Please enact another legislation; please show us the legislation.' Courts decide where a factory is to be established; courts decide where dams are to be constructed, etc., etc. These things have hampered the growth process. One has to admit that many of these things have hampered the growth process of this country. But since we have given enormous powers to the court and we respect the judgment of the court, we follow them. But it is not that they have not hampered the process.

Secondly, Sir, this legislation, when enacted, will activate the corruption laws. It will activate the Prevention of Corruption Act, 1988 because unless some agencies are there, unless activists are there to activate this legislation, you can't do anything because there are two fundamental provisions in the Prevention of Corruption Act. One is, the way you trap an officer or somebody who demands bribes, etc., and another is, having disproportionate accounts. In both these cases, unless somebody comes forward to file a complaint to point out the facts, this Act cannot be implemented.

Secondly, I would like to point out incidentally that we are always being blamed that 'we are not doing anything with respect to reducing corruption in the country'. I would like to inform this House that it was late Shri Rajiv Gandhi who took the initiative and the Prevention of Corruption Act, 1988 was enacted during his regime.

Today, every State, the Central Government, police machineries, CBI, everyone, is using the Prevention of Corruption Act, 1988. When the Lokpal will be constituted, it will use the Prevention of Corruption Act, 1988. Lokayuktas in the



States are also using the Prevention of Corruption Act, 1988, enacted during Rajiv Gandhi's regime. Lokpal legislation itself does not contain any provision regarding corruption; it is an authority. But the law dealing with corruption is the one which was enacted by Rajiv Gandhi. I would like to point out that RTI Act was also enacted during our regime. This Whistle Blowers Protection Bill is undergoing discussion. Citizens' Charter Bill will be coming before this House shortly. Money Laundering Act has to be revived because it lacks some rule-framing concepts. And then the Judicial Accountability Bill will come. A number of legislations have come before this House and before this country enacted by this UPA Government. Let everybody remember that. Steps taken by us against corruption are enormous. No party and no Government have ever taken these steps. This Act will help in unearthing, to some extent, the illegal wealth created by some officials. When somebody points out that, money will come out. To that extent, this Act will help us. Instances of harassment of officers and employees in various Government Departments will come to light with the help of this legislation. Today, lower-class employees are scared to point out certain follies of higher officers. If they are given proper protection, they will also come out. Higher ranking officers will also feel responsible when they will come to know that such a legislation is there. Therefore, this legislation is going to help the country in several aspects. I am also agreed, to some extent, with Ravi Shankar Prasadji that it is very difficult to keep the name secret. Law should be there. Law should mandate that one should keep the name of the complainant secret. But, as is pointed out, it is very difficult. I also feel that, in most of the cases, it will not remain a secret. The complainant himself has to realize and, perhaps, he will realize that although the law provides that his name should be kept secret, it may not be possible and that he may have to face some consequences. But daring people are there; they may come out. While doing the discreet inquiry under clause 5(2), the officer concerned has to take utmost caution because it is at this stage where the name is likely to be disclosed. So, it depends upon the officer concerned as to how things are to be done. There must be a special scheme, with substantial funds, prepared by the Government for the purpose of protecting the complainant and the witnesses. There should be a properly enacted scheme under which money should be allotted for this purpose. Unless this money is ensured, people may not come forward for making disclosures. Our Evidence Act also needs to be amended so that statements of complainants and witnesses can be recorded at the earliest. Voice recording, brain mapping, lie detection test, *etc.*, should be given some sort of value for the

purpose of evidence so that things can move faster. As far as frivolous complaints are concerned, a complainant perhaps may not be able to succeed in bringing all the material before an authority. And, his complaint may be dismissed or may not be considered. But, just because a complainant is not able to produce certain evidence, his complaint should not be branded as frivolous. A distinction has to be made between a purely frivolous complaint with no evidentiary value and a complaint having substantial value but for some reason, a complainant may or may not be able to prove and produce further evidence.

Secondly, the burden of producing evidence on the complainant should be limited. If he establishes a *prima facie* case, then the Government, or the authorities, should help him in digging out the evidence. Otherwise, it may not be possible for him to proceed further. His duty should be limited to the extent of producing *prima facie* evidence; the rest should be done by the Government authorities. If this is done, the complaints will reach their logical conclusion. There should be a mechanism for the purpose of digging out evidence with respect to complaints made by the complainants.

Then, Sir, the misuse of Central Government or State Government schemes happens on a large scale. If the complaints are made with respect to misuse of funds or frauds in these schemes, then that should be taken more seriously and the complainant should be given more protection because the total amount, which is likely to be unearthed or saved by such complaint, will be enormous. It will be an advantage to the nation. The nation will gain crores of rupees if proper protection is given to those complainants who try to unearth the money which is wasted by way of frauds in the Government schemes.

Then, one more question arises eventually, with which one may or may not agree. Should the information, which an employee comes to know during the course of his functions, be mandatorily passed on to the higher authorities or the competent authorities? For example, under section 176 of IPC, you are supposed to inform the commission of a crime. It is the duty of a citizen to inform regarding the commission of a crime. Should it not be the duty of any officer or any employee, who comes to know that a crime has been committed or any irregularity has been committed by some higher officer in his office, to inform the same to the competent authority? Will it be proper if a provision to this effect is provided in this Bill? It is for the Government to think over it.

Then, a question arises as to what should be the action to be taken against an authority if the complaint made by the complainant is not acted upon. There are various methods by which the complaint can be acted upon, for example, disciplinary action, criminal proceeding, etc. But, if a complaint is not acted upon by the concerned officer, what is to be done has to be thought of and the Government has to find out some provision for this purpose.

Lastly, Sir, I would like to mention that this is one of the legislations which can be called as anti-corruption legislations starting from Prevention of Corruption Act, the Lokpal and Lokayuktas Bill, this Bill relating to the whistle-blowers and the Bill on judicial accountability. So, these are the five or six legislations which are in the pipeline. I hope, the Opposition will co-operate with the Government in the course of time to pass these legislations and strengthen the country's resolve. Thank you.

**श्री वीर सिंह** (उत्तर प्रदेश): मान्यवर, आपने मुझे लोक हित प्रकटन और प्रकटन करने वाले व्यक्तियों को संरक्षण देने वाले इस विधेयक पर बोलने के लिए अवसर प्रदान किया, इसके लिए मैं आपका धन्यवाद करता हूँ।

मान्यवर, भ्रष्टाचार आज हमारे देश की बहुत बड़ी समस्या है। आज यह जो बिल आया है, यह बहुत अच्छी पहल है। भ्रष्टाचार उजागर करने वालों की सुरक्षा पर विधेयक में नए प्रावधानों का उल्लेख किया गया है तथा भ्रष्टाचार से निपटने के लिए केंद्र सरकार निकट भविष्य में और भी विधेयक लाने वाली है, जैसे लोकपाल विधेयक, न्यायिक जवाबदेही विधेयक, सी.वी.सी. विधेयक, पब्लिक सर्विस डिलिवरी विधेयक, भ्रष्टाचार निवारण कानून में संशोधन के लिए अलग से विधेयक।

मान्यवर, केंद्र सरकार ऐसे तमाम विधेयक ला रही है जिनसे देश में भ्रष्टाचार को रोका जा सके। आज देश की जनता भ्रष्टाचार तथा अन्य मामलों के बारे में इतनी जागरूक हो चुकी है कि वह समय-समय पर विभिन्न माध्यमों से सरकार को इनके बारे में अवगत कराती रहती है। आज हमारे देश में विभिन्न सामाजिक संगठन भ्रष्टाचार को रोकने के मामले में प्रदर्शन करते हैं, धरने देते हैं। वे हमारी सरकार और विभिन्न पार्टियों के जन-प्रतिनिधियों के लिए ऐसे शब्दों का प्रयोग करते हैं, जो उनको नहीं करने चाहिए। ऐसा लगता है कि किसी सामाजिक संगठन के एक या दो आदमी एक अरब बीस करोड़ की आबादी वाले देश में यदि दस हजार लोगों को इकट्ठा कर लें और कहें कि यह बात ऐसी है, तो क्या वह बात मानी जाएगी? लगता है कि प्रजातंत्र खत्म हो रहा है और भेड़तंत्र चल रहा है। पिछले दिनों ऐसी बहुत सी बातें देखने को मिलीं, इसलिए मेरा केंद्र सरकार से आग्रह है कि ऐसी नौबत न आए कि सामाजिक संगठन इस ओर कदम उठाएं। सरकार को इस भ्रष्टाचार को रोकने के लिए पहल करनी चाहिए और ठोस कदम उठाने चाहिए।

मान्यवर, भ्रष्टाचार को रोकने के लिए जो शिकायतकर्ता या भंडाफोड़ करने वाले होते हैं, वे शिकायत तो कर देते हैं, किंतु उनके संरक्षण के लिए इस बिल में जो प्रावधान किया गया है, उस पर हमें विशेष ध्यान देना चाहिए। कभी-कभी होता क्या है कि किसी ने लोक हित में, जन हित में एक शिकायत की, जिससे देश को नुकसान हो रहा है और वह शिकायत सही पाई गई, किंतु जो गलत काम करने वाले होते हैं, अधिकारी हों या कोई भी हों, उनके खिलाफ कोई कार्रवाई नहीं होती और न कानून के द्वारा उनको कोई सज़ा दी जाती है। बेचारा शिकायकर्ता अकेला पड़ जाता है और कहीं-कहीं उसको जान से हाथ भी धोना पड़ जाता है। तो ऐसे में जो भंडाफोड़ करने वाले या शिकायतकर्ता होते हैं, उनकी सुरक्षा के लिए हमें विशेष ध्यान देना चाहिए। ऐसा नहीं होता है, इसलिए बड़े-बड़े घोटाले हो जाते हैं। वे डर की वजह से शिकायत नहीं कर पाते, जिससे देश को हानि होती है और जनता का भी नुकसान होता है, इसलिए हमें उस ओर भी कदम उठाने चाहिए।

मान्यवर, भ्रष्टाचार उजागर करने वालों की सुरक्षा के लिए विधेयक में नए प्रावधान भी किए गए हैं, जैसे भंडाफोड़ करने वालों को सुरक्षा प्रदान करने से संबंधित विधेयक के दायरे में अब मंत्री, खुफिया एजेंसियां और सशस्त्र बल भी आएंगे। सरकार ने भ्रष्टाचार को उजागर करने वालों के सुरक्षा संबंधी विधेयक, 2010 की जांच करने वाली संसद की स्थायी समिति की कुछ महत्वपूर्ण सिफारिशों को भी स्वीकार करते हुए इस विधेयक को नया स्वरूप प्रदान किया है। इसे हाल ही में मंत्रिमंडल ने हरी झंडी दिखाई है। मंत्रिमंडल ने जो एक प्रमुख बदलाव शामिल किया है, वह यह है कि इसके दायरे में मंत्रियों, सांसदों, रक्षा सेवाओं, खुफिया एजेंसियों, बैंक अधिकारियों और सार्वजनिक उपक्रमों को लिया गया है, हालांकि मंत्रिमंडल ने न्यायपालिका को इसके दायरे में लाने की सिफारिश नामंजूर कर दी है।

सूत्रों ने कहा है कि इसे अन्य कानूनों से हासिल किया जा सकता है। इस कानून में एक बड़ी ऐसी प्रणाली बनाने का प्रस्ताव है जिसके तहत सरकार को घाटा पहुंचाने से संबंधित जनसेवकों के भ्रष्टाचार और पदों के दुरुपयोग के बारे में खुलासा करने वालों का उत्साह बढ़ाने का प्रावधान है।

उपसभाध्यक्ष महोदय, हमें इस ओर भी देखना चाहिए, जैसे कि राज्य सरकारें होती हैं और उधर कोई भ्रष्टाचार होता है, तो केन्द्र सरकार को उधर भी भ्रष्टाचार रोकने में मदद करनी चाहिए। कुछ एजेंसियां ऐसी हैं, जो केन्द्र सरकार के हाथ में होती हैं, जिनसे राज्य सरकारों को मदद नहीं मिल पाती है, इस कारण से भी बढ़ावा मिलता है। मेरा यही कहना है कि यह जो बिल आया है, यह बहुत अच्छा है, इसको सरकार गंभीरता से लागू करेगी, तो बहुत सी समस्याओं का समाधान हो सकेगा। धन्यवाद।

SHRI TAPAN KUMAR SEN: Thank you Mr. Vice-Chairman, Sir. At the outset, I seek your indulgence while speaking on the Whistle Blowers Protection Bill, 2011. I support the Bill along with some amendments on the area where I feel the Bill is inadequate to serve the purpose as defined in its Statement of Objects and Rea-

sons. That is precisely the purpose of my amendments. Now, the Statement of Objects and Reasons says, 'adequate protection to the complainants reporting corruption or wilful misuse of discretion which causes 'demonstrable loss to the Government'. 'Demonstrable loss to the Government' means illegitimate gains to somebody else who is seeking illegitimate gains from the public servant in lieu of illegitimate gratification being paid to the public servant. This is how demonstrable loss takes place in the Government. While dealing with this, most unfortunately, may be deliberately, the supply side of the whole process is totally being ignored. The demonstrable loss caused to the Government by causing loss to the public exchequer through illegal gratification by some private agency, if that is the thing, then the supply side of the whole process, who gives bribe, who supplies illegitimate gratification for making illegitimate gain and loss to the public exchequer, has to be taken care of. Unless that is taken care of, corruption cannot be contained, and this Bill is one of the instruments, along with the Lokpal and others, for containing corruption. If that is the purpose and if there is sincerity of purpose, this must address the supply side of corruption because they are the source of major big-ticket corruption of the day. The 2G, CWG, KG basin and so many other such big-ticket corruption cases are the examples of the supply side which corrupts the Government system, which corrupts the public system, causing demonstrable loss to the public exchequer, to the country's exchequer, making illegitimate grip over the natural and national resources of the country. This is how everything is going about. So, the supply side has to be addressed. But, this Whistle Blowers Bill has not taken care of that supply side at all. So, this thing has to be taken care of to remove the inadequacy there. This aspect has become all the more important, particularly at the present juncture when public-private partnership has become a very popular style in managing different public services and the economic governance of the country. This is being considered as a very ideal and model rule where big corporate, big business houses and private agencies are getting involved within the public domain, playing a role of providing public services and handling the public infrastructure.

The people involved in the PPP should also be brought within the domain of this Bill. They include, the person against whom a complaint can be made and also the person, the whistle-blower, whom you have to protect there. He may not be a public servant, but he may be a player or one of the players in the whole PPP structure. If the people who cause demonstrable loss to the public exchequer and are involved in the PPP process are not covered under it, I think the whole

purpose behind it stands defeated. This has become all the more necessary when you have declared it in the Statement of Objects and Reasons of the Bill. This is very important. This is very crucial.

The third point is regarding tax administration. That is also a very crucial area. Tax evasion has become inbuilt in the process of pursuing business and profit. It is reflected in huge tax default which as on date is around two lakh crore rupees in direct taxes and around one lakh crore rupees in indirect taxes. It is the current figure which is reflected in budgetary papers. Defaulters are mostly the big business traders and corporate class. And precisely for this class, the Government chooses to forgo revenue to the tune of five lakh crore rupees a year. This is happening even in the current year. How do you propose such public loss and private gain machination on the public exchequer causing demonstrable and irreparable loss and expanding our fiscal deficit? You may say that provisions to tackle tax default and tax evasion are there in our tax laws. But the thing is that the manner in which the tax default is expanding ...

THE VICE-CHAIRMAN (SHRI TARIQ ANWAR): Just a minute.

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#### INFORMATION TO THE HOUSE

##### **Re. Passing away of Hon. Minister, Shri Vilasrao Dagadojirao Deshmukh**

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI PAWAN KUMAR BANSAL): Sir, it is a very sad news. Our colleague, Shri Vilasrao Deshmukhji is no more. He has just passed away. Sir, we may adjourn the House.

उपसभाध्यक्ष (श्री तारिक अनवर): श्री विलासराव देशमुख जी के निधन के समाचार के बाद सदन की कार्यवाही दिनांक 16 अगस्त, 2012 तक स्थगित की जाती है।

The House then adjourned at forty-eight minutes past three of the clock till eleven of the clock on Thursday, the 16th August 2012.

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