

Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (India's Whistleblower Bill)

A Comparison with International Best Practice Standards

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India's Public Interest Disclosure and Protection to Persons Making The Disclosures Bill, 2010

A Comparison with International Best Practice Standardsⁱ

Introduction

In August 2010 the Government of India tabled a Bill in Parliament (Lok Sabha = House of the People) seeking approval for a legal framework whose objective is to protect persons making a disclosure of wrong doing in State agencies. Given India's recent history of victimisation including murders of honest and upright public servants who dared to make a confidential disclosure at the highest levels of Government about violations of law or offence committed they know their colleagues had committed, a law seeking to protect such 'whistleblowers' is highly welcome. The Government of India drafted the *Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010* (PIDPPMD Bill) popularly known as 'whistleblower legislation' in secrecy without even a semblance of public consultation. However after the PIDPPMD Bill was tabled in Parliament the Department of Personnel and Training, the nodal department for this Bill placed it on its website and gave people a month's duration to comment on its provisions. Later in September the PIDPPMD Bill was referred to the Standing Committee of Parliament related to Personnel, Law and Justice (the Standing Committee) for detailed deliberations. The Standing Committee gave the 1.2 billion people of India a period of 15 days in October to send their comments on the PIDPPMD Bill and seek permission to make verbal representations at its meetings. The Standing Committee is expected to complete its work by the end of 2010. This comparative study has been put together to serve as a ready-reckoner on international best practice standards of whistleblower legislation, for Government, the Standing Committee and representatives of civil society and the mass media. CHRI hopes that this study will encourage all stakeholders to work for improvements in the Bill.

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In August 2010 Government of India tabled the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 popularly known as 'the Whistleblower Bill' (herein the Bill) in the Lok Sabha. Its objective is to create a framework to protect persons making a disclosure of wrong doing in State agencies. It came after media attention and public outcry about all kinds of victimisation including murder of honest and upright public servants who dared to make disclosure about violations of law, corruption and abuse of office. More disturbing was the fact that in several cases the disclosures were made in confidence and concerned wrongdoing at the highest levels of government.

While the move is very welcome the Whistleblower Bill was drafted in haste and in secrecy without even a semblance of public consultation. Once tabled the Department of Personnel and Training, the nodal department for this Bill placed it on its website and gave people a month's time to comment on its

provisions. Later in September the Bill was referred to the Standing Committee of Parliament on Personnel, Law and Justice (the Standing Committee) for detailed deliberations. It gave the 1.2 billion people of India 15 days to send in their comments and seek permission to make verbal representations at its meetings. The Standing Committee is expected to complete its work by the end of 2010.]

Making public interest disclosures and providing the whistleblower with a safe alternative to silence

In order to better understand what needs improvement in the PIDPPMD Bill and why, it is important to understand the objectives of whistleblower laws enacted the world over. Ordinarily whistleblower laws cover two major areas-

- a) they provide a mechanism for a person to make a disclosure about a wrong doing that has occurred, is occurring or is likely to occur in a public body in the public interest; and
- b) they provide a mechanism for protecting the whistleblower from any retaliatory action or reprisals that may be taken by persons accused of the wrong doing or by the head of the public body who may himself/ herself be involved in the wrong doing. The protection extends not only to undoing the effects of a retaliatory action but also to compensating the whistleblower for any loss including personal harm he/she may have suffered.

Ordinarily the whistleblower is a public servant himself/ herself who has reasonable knowledge of the wrong doing but is unable to take corrective action on his/ her own. This inability may be because of the relatively junior or subordinate position of that person vis-à-vis the position of his/ her colleagues who may be involved in such wrong doing. Internal office procedures often compel a person to make use of a channel of communication about such matters that may involve his superiors who themselves may be involved in the wrong doing and who in all likelihood may hush up the case without the senior management getting wind of it. Alternatively the whistleblower may be accused of violating an official secrecy law that criminalises unauthorised communication of information relating to the work place in a public office. Equally the wrong doing may be completely unrelated to the whistleblower's own position within the organisation. He/ she may have been only an observer of or a person privy to the wrong doing. The disclosure must be done in good faith without the expectation of personal gain except when the law itself allows for rewards to be granted in return. It is in the public interest to create special channels and procedures for such whistleblowing as it will help the public body to take corrective action and prevent such occurrences in future. People must have information about this wrong doing and the corrective action taken subsequently. This is the primary role of a whistleblower law.

An equally important objective of a whistleblower law is to provide the potential whistleblower with a safe alternative to silence. Unless the law has sufficiently strong provisions that compel the appropriate authorities to investigate the allegations of wrong doing and protect the whistleblower from all kinds of reprisals and harm, the disclosure of wrong doing may be brushed under the carpet. The whistleblower may be subjected to retaliatory action in order to 'fix' him/ her for being a snitch. For example, the inconvenient whistleblowing employee may be transferred to a job with lower responsibilities (punishment posting) or subtly side lined and dropped out of the consideration for promotion, or even disciplinary proceedings may be launched against him/ her for being a 'snitch'. The public authorities often mask such retaliation as 'routine administrative actions' taken in the regular course of work.

Unless protected by law, the whistleblower may suffer while those who committed wrongs may remain unmolested. These are not uncommon occurrences in the vast Indian bureaucracy. Where stakes are very high the corrupt may collude with anti-social elements to arrange for the physical elimination of the whistleblower as happened in the case of the Satyendra Dubey and the Shanmugam Manjunath.ⁱⁱ

All provisions in a whistleblower protection law flow from or are closely related to the principle of providing a safe alternative to silence. For example, maintenance of confidentiality in the manner of making and investigating disclosures about wrong doing, identifying the kinds of action that may be construed as being retaliatory towards the whistleblower, the provision of a mechanism to receive and inquire into complaints about retaliatory action, the identification of remedies available in law to a victimised whistleblower, providing protection to the whistleblower and possibly his/ her family to prevent physical harm, creating risks for the victimiser as deterrence- all flow from this cardinal principle. Closely related to this principle are provisions that govern the nature, composition, powers and functions of the agency that is competent to receive and act upon complaints of victimisation. In the absence of strong provisions for protecting the whistleblower he/ she may not be able to gather the courage to cross the boundaries of loyalty to one's colleagues and seniors and take a principled position to expose their wrong doings. This in the long run causes more harm to the public body and the polity at large than the short term impact on the morale of other officials and the working atmosphere within the organisation. Accountability takes a beating when impunity prevails.

International best practice standards on whistleblower legislation

Several civil society organisations including CHRI have critiqued the contents of the Whistleblower Bill soon after it was made public. However there is a need to systematically build a normative argument for improving the contents of the PIDPPMD Bill. Most of the available analyses is either focused on internal inconsistencies and contradictions or on a comparison with the draft *Public Interest Disclosure and Protection of Informers Bill* (LCI Bill) prepared by the Law Commission of India in 2003. However, comparisons with similar laws in other jurisdictions are also very useful. The phenomenally successful *Right to Information Act* (RTI Act) 2005 benefitted from inclusion of domestic and international elements. While ensuring that the Whistleblower's Bill is suited to domestic circumstances there is great value in incorporating the best from well working international standards in what is recognised as being a companion law of information access laws.ⁱⁱⁱ

Few countries in the world have actually adopted comprehensive laws regulating to whistleblowing in the public and private sector. Some countries have whistleblower-related provisions in their laws aimed at controlling corruption^{iv} or improving transparency in public procurement processes but these do not provide a specific and separate comprehensive regime for regulating whistleblowing and protecting whistleblowers from their adversaries. With the exception of some guiding principles contained in the United Nations Convention Against Corruption^v there is no compilation of whistleblower protection-related standards that has gained universal acceptance and forms part of international law. Several well respected civil society initiatives have laid out guiding principles^{vi} that can usefully inform whistleblower protection however, the current comparative study, builds on a set of principles recognised by an

intergovernmental institution, namely the Council of Europe earlier this year. During the period 2007-2010, the Council of Europe undertook a study of whistleblower protection regimes in Europe and other parts of the globe and finally adopted a set of principles to serve as a guide to its members States for instituting similar legislation. As these principles have gained acceptance within a significant segment of the international community, namely the European Union which is also India's biggest trading partner, the current paper uses these standards as a benchmark to make an assessment of the Indian bill. The present study also takes into account federal legislation in six Commonwealth countries, namely, Canada, Ghana, New Zealand, South Africa, Uganda and the United Kingdom and three non-Commonwealth countries, namely, Norway, Romania and the United States of America as they also have a comprehensive legal regime for regulating whistleblowing.

This comparative study is based on 20 best practice standards of which 18 are based on the principles identified in the parliamentary resolution adopted by the Council of Europe. Two more principles have been added based on reasons that are specific to the Indian context. Standard #3 on the coverage of wrong doing by Ministers has been added because India has adopted a parliamentary form of Government where Ministers as the political heads of ministries and departments are involved in making a range of decisions relating to policy formulation, their implementation and revision. As a whistleblower law primarily regulates disclosures of wrong doing committed by public servants, it should logically cover Ministers as well. In India Ministers are included in the category of public servants. Standard #12 requiring reporting on the progress of an investigation to the whistleblower has been included because this is already a requirement under Section 4(1)(d) of India's RTI Act. The RTI Act requires every public authority to give reasons for its administrative and quasi-judicial decisions to persons affected by such decisions. As an act of whistleblowing inevitably compels the authority receiving the information about wrong doing to take action, the whistleblower must be entitled to know the outcomes of these actions and the reasons behind the decisions that may be taken in the process.

While the comparison of the contents of the Bill with the best practice principles adopted by the Council of Europe is one aspect of this study a second and equally important aspect is the matching of these principles with whistleblower statutes in force in other parts of the world. This study provides a comparative picture of the legal framework for regulating whistleblowing in six Commonwealth countries, namely, Canada, Ghana, New Zealand, South Africa, Uganda and the United Kingdom. Three non-Commonwealth countries, namely, Norway, Romania and the United States of America have been added to this list as they also have a comprehensive legal regime for regulating whistleblowing. It is important to point out that this study compares national/ federal level whistleblower laws only for obvious reasons. Provincial legislations may or may not cover issues relating to whistleblowers in national security and intelligence agencies. Therefore despite the existence of whistleblower laws at the provincial level, Australia has not been included in the study primarily because there is no comprehensive law covering the Government at the national level. It must also be emphasised that this study focuses merely on the framework provided in the laws of these countries for regulating whistleblowing. This study does not extend to the efficacy of such laws and the impact that they have had on government and society in general. That is a separate topic worthy of a detailed study which may be difficult to

complete given the shortness of the legislative programme around the PIDPPMD Bill. The Standing Committee is required to submit its report to Parliament by the end of this year.

How does the Whistleblower Bill compare with international best practice standards?

The present formulation of the law to protect Whistleblowers fares poorly against Council of Europe standards and against the standards of individual countries that have whistleblower protection laws. It also fares poorly against the draft Bill recommended by the Law Commission in 2003.

Sl. #	Name of the Bill/ Document	International Standards (Total = 20)		
		Fully covered	Partially covered	Not covered
1.	India: <i>Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010</i> (PIDPPMD Bill)	<u>2</u>	<u>5</u>	<u>13</u>
2.	India: <i>Public Interest Disclosure and Protection of Informers Bill, 2003</i> (LCI Bill)	<u>4</u>	<u>5</u>	<u>11</u>
3.	Canada: <i>Public Servants Disclosure Protection Act, 2005</i>	17	nil	3
4.	Council of Europe: <i>Parliamentary Resolution 1729 (2010)</i>	18	nil	2
5.	Ghana: <i>Whistleblower Act, 2006</i>	13	3	4
6.	New Zealand: <i>Protected Disclosures Act, 2000</i>	15	2	3
7.	Norway: <i>Working Environment Act, 2005</i>	13	3	4
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004)</i>	11	3	6
9.	South Africa: <i>Protected Disclosures Act, 2000</i>	10	3	7
10.	Uganda: <i>The Whistleblowers Protection Act, 2010</i>	11	3	6
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998</i>	9	4	7
12.	United States of America: <i>Whistleblower Protection Act, 1989, The</i>	14	5	1

	<i>Sarbanes-Oxley Act, 2002 and The Military Whistleblower Protection Act, 1988</i>			
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Given below is a sneak preview of the detailed comparison between the contents of the PIDPPMD Bill and the LCI Bill vis-à-vis the international best practice standards:

No.	Brief Description of the International Standard	Comparison with the <i>Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010</i>	Comparison with the <i>Public Interest Disclosure and Protection of Informers Bill, 2003</i>
1.	Provide the whistleblower a safe alternative to silence	Partially covered	Partially covered
2.	'Public interest disclosure' must include all <i>bona fide</i> warnings of various types of unlawful acts, including all serious human rights violations	Partially covered	Partially covered (better than 2010 Bill)
3.	Public interest disclosure must include wrong doings committed or likely to be committed by Ministers	Not covered	Covered
4.	Public interest disclosure must cover wrong doing in the private sector	Not covered	Not covered
5.	Whistleblowers in the public sector including members of the armed forces and intelligence services and employees of the private sector must be covered	Partially covered (armed forces, intelligence services and private sector are excluded)	Partially covered (armed forces, intelligence services and private sector are excluded)
6.	Issues in employment law relating to protection of the whistleblower against retaliatory action must be codified	Not covered	Covered
7.	Issues in criminal law and procedure for protecting the whistleblower and other witnesses against criminal prosecution for defamation or breach of official or business secrecy must be codified	Partially covered	Partially covered

No.	Brief Description of the International Standard	Comparison with the <i>Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010</i>	Comparison with the <i>Public Interest Disclosure and Protection of Informers Bill, 2003</i>
8.	Issues in relation to media law- protection of journalistic sources must be codified	Not covered (whistle-blowing to the media is not allowed)	Not covered (whistle-blowing to the media is not allowed)
9.	Public and private sector bodies must be incentivised to establish internal mechanisms for whistle-blowing	Not covered (internal whistle-blowing is not allowed)	Not covered (internal whistle-blowing is not allowed)
10.	The whistleblower must be provided with guidance and counselling	Not covered	Not covered
11.	Disclosures of wrong doing must be properly investigated and information must reach the senior management promptly	Not covered (wrong doing is inquired into by the Competent Authority with the head of the department providing comments & opinion)	Not covered (wrong doing is inquired into by the Competent Authority)
12.	The whistleblower must be informed about the progress of investigation into the disclosure and provided with a copy of the final report and recommendations for corrective action	Not covered	Not covered
13.	The whistleblower's identity must not be disclosed without his/ her consent or in order to avert serious and imminent threats to public interest	Not covered	Not covered
14.	The whistleblower must have recourse to an enforcement mechanism to make a complaint against victimisation, have it investigated and be able to claim interim relief and appropriate compensation	Partially covered (no mention of interim order or compensation for victimisation)	Partially covered
15.	Whistle-blowing to external authorities including the media, subject to specific conditions, must be protected	Not covered	Not covered

No.	Brief Description of the International Standard	Comparison with the <i>Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010</i>	Comparison with the <i>Public Interest Disclosure and Protection of Informers Bill, 2003</i>
16.	The whistleblower must be treated as having acted in good faith if he/ she had reasonable grounds to be believe that the information disclosed was true even if turns out later that the wrong doing had not occurred	Not covered	Not covered
17.	The law must create a risk for the person who victimises a whistle-blowing employee through possible sanctions including removal from office	Not covered	Not covered
18.	In a case of victimisation of a whistleblower, the law must reverse the burden of proof on the employer	Not covered	Covered
19.	The law must provide for consequences for accusations made in bad faith	Covered	Covered
20.	The law must be monitored and evaluated at regular intervals by independent bodies	Covered	Not covered

Poor adherence to the principle contained in India’s national motto: *Satyamēva jayate*

The PIDPPMD Bill also ignores an important principle that defines India’s vision as a polity aspiring to become a responsible democracy in the world. At the time of framing of the Indian Constitution, its founders adopted as the national motto a hoary principle contained in the two-millenia old *Mundaka Upanisad*.^{vii} “*Satyamēva jayate*” which translates as “truth alone triumphs”. For truth to triumph avenues that permit falsehood and corruption to prevail must be foreclosed. Enabling whistleblowers to make disclosures of wrong doing and protecting them are the stated purposes of the present PIDPPMD Bill. However, in its present form it does not have unequivocal provisions for receiving and investigating disclosures of wrong doing, nor does it chart out a clear path for corrective actions to follow, nor assure with any certainty the protection of the whistleblower from victimisation. The Bill if enacted in its present form will neither serve to make the national motto truer nor serve its own avowed purpose expressed in the Statement of Objects and Reasons.

The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010

A Comparison with International Best Practice Standards

The International Standard:

1. *The law must be based on the principle of providing to the potential whistleblower a safe alternative to silence.*

Sl. #	Name of the Country/ Law/ Bill/ Resolution	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i>^{viii}</p> <p><i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(-ve)</i> <u>The PIDPPMD Bill does not recognise this principle in its fullest sense but is an improvement over the LCI Bill.</u></p> <p>Several provisions that are found in whistleblower protection laws of other jurisdictions are missing from the PIDPPMD Bill. For example, the requirement of obtaining the consent of the whistleblower before revealing his/ her identity to any authority, explication of issues relating to immunisation of the whistleblower from criminal or defamation proceedings, identification of the types of personnel action that will be treated as retaliatory action against the whistleblower, the burden of proving that such actions occurred or did not occur and the provision of specific remedies in cases of victimisation are all missing from the PIDPPMD Bill.</p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i>^{ix}</p> <p><i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(-ve)</i> <u>The LCI Bill is not in consonance with this principle.</u></p> <p>Several provisions that are found in whistleblower protection laws of other jurisdictions are missing from the LIC Bill. For example, there is not even a semblance of a requirement of keeping the identity of the whistleblower confidential. Instead the Competent Authority is mandatorily required to disclose the identity of the whistleblower to the public servant against who the complaint is made unless the whistleblower makes convincing arguments against disclosure. So the whistleblower is not entitled o confidentiality in the first instance. This provision and the absence of protection for witnesses who come forward to corroborate the disclosure made by the whistleblower, the absence of multiple authorities to whom disclosures can be made and the absence of risk for persons who victimise the whistleblower ensure that the LCI Bill provides very limited protection to a whistleblower.</p>
3.	<p>Canada:</p>	<p>Even though the PSDP Act does not explicitly mention this principle in the preamble, a combination of provisions</p>

	Public Servants Disclosure Protection Act, 2005 (PSDP Act)^x	requiring protection of disclosures made in good faith, investigation of the wrong doing disclosed, punishing the wrongdoer if found guilty, complete prohibition of reprisals against the whistleblower, provisions of a mechanism for investigating complaints of reprisal, treatment of reprisals as punishable offences and the provision of specific remedies for the victimised whistleblower ensure that at least notionally there is a safe alternative to silence for the whistleblower. [See specific provisions under the relevant standards given below.]
4.	Council of Europe: Parliamentary Resolution of April, 2010 (COE-PR, 2010)^{xi}	This principle is recognised in their COE-PR, 2010 [Clauses 5 and 6.2]
5.	Ghana: Whistleblower Act, 2006 (WB Act)^{xii}	<p>The WB Act does not specifically mention this principle. The long title of the Act describes its objective as follows:</p> <p>“An Act to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters.”</p> <p>This and a combination of several provisions requiring protection of disclosures made in good faith, investigation to be conducted into the impropriety disclosed, supervision of the whole process of making and dealing with disclosures by the Attorney General’s office, prohibition of reprisals against the whistleblower, the provision of an independent mechanism for investigating complaints of reprisal through the Commission on Human Rights and Administrative Justice (CHRAJ) and the provision of specific remedies for the victimised whistleblower including interim relief, ensure that at least notionally there is a somewhat safe alternative to silence for the whistleblower.</p>
6.	New Zealand: Protected Disclosures Act, 2000 (PD Act)^{xiii}	<p>The PD Act is based on this principle. According to the provision describing the purpose of the PD Act:</p> <p>The purpose of this Act is to promote the public interest—</p> <p>(a) by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation; and</p> <p>(b) by protecting employees who, in accordance with this Act, make disclosures of information about serious wrong doing in or by an organisation. [Section 5]</p>
7.	Norway:	The WE Act adheres to this principle by and large. Provisions relating to the protection of the whistleblower from retaliation, the possibility of claiming damages for retaliation suffered, the requirement of keeping the identity of the

	<i>Working Environment Act, 2005 (WE Act)</i> ^{xiv}	whistleblower confidential in ordinary circumstances provide a large measure of protection to the whistleblower. However the absence of a specific and independent agency to investigate complaints of retaliatory action, absence of personal risks in law for a person who takes such retaliatory action against the whistleblower somewhat blunt the edges of this protective framework.
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004)</i> ^{xv} (Romanian Whistleblower law)	The Romanian Whistleblower law by and large covers this principle. However crucial elements of a whistleblower protection law such as creating risks for any person who victimises a whistleblower and ensuring prompt and timely investigation into the wrong doing disclosed are missing from this law.
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act)</i> ^{xvi}	The PD Act is based on this principle. The stated objective of the Act is: (a) to protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure; (b) to provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and (c) to provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her employer. [Section 2(1)] However the PD Act does not provide for any mechanism to investigate the disclosure of wrong doing. Presumably this is done under the laws and mechanisms established to deal with the subject matter of the wrong doing.
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i> ^{xvii}	The WP Act does not specifically mention this principle. The long title of the law states that it has been enacted to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices and to provide for the protection against victimisation of persons who make disclosures. However crucial provisions relating to the consequences that must follow when the investigation into a disclosure bears out the impropriety alleged, a clear mechanism for inquiring into complaints of victimisation and harassment of the whistleblower and specific provisions relating to providing compensation and interim relief for the victimised

		whistleblower are missing from the law. The WP Act is not fully based on the principle of providing the whistleblower a safe alternative to silence. [see specific provisions under the relevant standards given below]
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)^{xviii} and Employment Rights Act, 1996^{xix}</i>	<p>The PID Act does not specifically mention this principle. The long title of the Act states the purpose of the law as follows:</p> <p>“An Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation...”</p> <p>There is no requirement to keep the identity of the whistleblower confidential. In fact making such disclosures openly is encouraged which indicates a high degree of confidence in the system for ensuring the physical protection of the whistleblower. However a credible mechanism has been put in place to deal with claims against retaliatory action taken by the employer against the whistle-blowing worker. The whistleblower can even claim interim relief during the pendency of an investigation of the claim of reprisal. [Section 9 PID Act and Section 128, <i>Employment Rights Act</i>] The PID Act in effect makes several amendments to the <i>Employment Relations Act, 1993</i> to provide adequate employment-related protections to whistleblowers in the public and private sector.</p>
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act)^{xx}</i>	<p>The “Findings and Purpose Section” of the WP Act recognises this principle :</p> <p>“The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government...”[Clause 2(b)] This and a combination of provisions enabling the conduct of investigation into the wrong doing, complete prohibition on reprisals against the whistleblower, institution of mechanisms such as ‘individual right of action’ that a whistleblower can make use of to investigate complaints of reprisal and seek remedies and transparency with regard to investigation reports (except where criminal offences may be involved) ensure at least notionally that there is a safe alternative to silence.</p>

The International Standard:

2. The definition of ‘public interest disclosure’ must include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals governed by the public administration .

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>Only a limited number of categories of wrongful actions are recognised by the PIDPPMD Bill.</u> It covers only corrupt actions as defined in the <i>Prevention of Corruption Act, 1968</i>, any criminal offence committed by a public servant or who makes an attempt to commit such offences, wilful misuse of power or discretion leading to demonstrable loss to government or demonstrable gain to the public employee. [Clause 2(d)]</p> <p>(-ve) <u>Human rights violations, actions causing loss to the taxpayer and unlawful actions not amounting to offences have been left out.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The LCI Bill covers more wrongful actions under the definition of ‘maladministration’ and allows for the reporting of more wrongful and unlawful actions than the PIDPPMD Bill.</u> Maladministration includes any action taken, or purporting to have been taken, or being taken or proposed to be taken, in the exercise of administrative or statutory power or discretion,-</p> <p>(i) where such action is unreasonable, unjust, oppressive or discriminatory;</p> <p>(ii) where there has been negligence or undue delay in taking such action;</p> <p>(iii) where there has been reckless, excessive or unauthorized use of power in taking such action;</p> <p>(iv) where such action amounts to breach of trust;</p> <p>(v) where such action involves the conduct of a public servant which would result in wastage of public funds or causes</p>

		<p>loss or prejudice to the State or is prejudicial to public interest in any manner; or</p> <p>(vi) where such action is outside the authority of law or amounts to violation of systems and procedures. [Clause 2(e)]</p> <p>The LCI Bill does not cover human rights violations and all unlawful acts not amounting to offences.</p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>This principle is covered in the PSDP Act. The definition of wrongdoings occurring in the public sector, that may be disclosed under the Act, comprises of: a contravention of any federal or provincial law or regulations made under such laws; misuse of public funds or a public asset; gross mismanagement in the public sector; acts or omissions that endanger life, health or safety of persons or the environment; serious breach of code of conduct drawn up for public servants and knowingly directing or counselling a person to commit the aforementioned wrong doings. [Section 8]</p>
4.	<p>Council of Europe</p> <p><i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.1.1]</p>
5.	<p>Ghana:</p> <p><i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The list of improprieties that may be disclosed under the Act is fairly extensive although it does not cover all unlawful acts. A whistleblower may make disclosures of the following improprieties under this Act:</p> <p>(a) that an economic crime has been committed, is about to be committed or is likely to be committed;</p> <p>(b) that another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;</p> <p>(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;</p> <p>(d) that in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;</p> <p>(e) that the environment has been degraded, is being degraded or is likely to be degraded; or</p> <p>(f) that the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered. [Section 1(1)]</p> <p>An 'economic crime' includes an act which involves the loss, mismanagement or misappropriation of public funds, or causes the loss, mismanagement or misappropriation of public funds. [Section 32]</p>

6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>This principle is partially covered in the PD Act. Only ‘serious’ wrongdoing in a public sector organisation rather than all kinds of wrong doing and unlawful acts and omissions qualify for disclosure in the public interest. Wrongful acts and omissions in the context of the prevention and investigation of crime and fair trial procedures are specifically mentioned in the definition. The definition of serious wrong doing includes:</p> <ul style="list-style-type: none"> (a) an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or (b) an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or (c) an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial; or (d) an act, omission, or course of conduct that constitutes an offence; or (e) an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement. [Section 3] <p>However disclosure of information protected by professional privilege is not allowed under the PD Act. [Section 22] Similarly this Act does not limit any protection, privilege, immunity, or defence, existing on account of other statutes or convention, that relate to the disclosure of information. [Section 21]</p>
7.	<p>Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)^{xxi}</i></p>	<p>The WE Act gives every employee the right to notify ‘censurable conditions’ occurring in his/ her organisation. The phrase ‘censurable condition’ itself is not defined in the Act. However every employer has a duty to issue internal notifications concerning health, risk to life, environment and work safety measures. [Section 3-6] A breach of such measures or the violation of any law or the rules and regulations of the organisation is treated as a ‘censurable condition’ and may be disclosed by the whistleblower through a notification. [Section 2-4] Such notifications may be about conditions such as faults or defects occurring at the work place that may endanger the life and health of employees. A worker also has a duty to notify instances of discrimination or harassment at the work place. [Section 2-3(2)(b) and (d)] Violation of the guidelines drawn up by an organisation for itself may also be reported by a whistleblower.</p> <p>Ethical guidelines have been drawn up for public servants as well. A breach of these guidelines is also treated as a ‘censurable condition’ and may be disclosed by a whistle-blowing employee. Whistle-blowing public servants derive</p>

		<p>their protection from the WE Act. Every public servant has the right to report to one's employer circumstances that may cause the employer, an employee or the surroundings to suffer damages or loss. This includes reporting of the occurrence of corruption and bribery in the organisation. A disclosure based on a well-founded suspicion of a censurable condition on the part of the whistleblower will also attract the protections available under the WE Act and the Ethical Guidelines. [Para 2.2 and 3.4 + Comments, Ethical Guidelines]</p> <p>Additionally supervisory authorities have the 'duty to report' a censurable condition they may notice in any organisation under their jurisdiction. [Section 2-4(2), WE Act]</p>
8.	<p>Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law 571/2004) (Romanian Whistleblower law)</i></p>	<p>This principle is covered by the Romanian Whistleblower law. This law extends to the entire public sector including companies established at the national and provincial level. The offices of the President, Parliament, the entire government apparatus, local authorities, autonomous institutions in the public sector, consultative committees attached to public sector institutions and commissions set up for special purposes are covered by this law. [Article 2]. This law does not exempt armed forces and intelligence agencies from its coverage.</p> <p>The Romanian Whistleblower law protects factual disclosures of a violation of any law, professional ethics, principle of good administration, efficiency, effectiveness, economic efficiency and <u>transparency</u>. [Article 3] More specifically the Romanian law protects disclosures relating to offences leading to or related to corruption and fraud at the work place, offences committed against the financial interest of the European Community, acts of discrimination or unlawful preferential treatment for any person, breach of the law in relation to conflict of interests, abusive usage of human and material resources, exercise of an official's responsibilities in a politically biased manner, <u>violation of the laws relating to open government and transparency in decision-making processes</u>, breach of public procurement-related laws and regulations, incompetence or negligent discharge of duty, non-objective assessments of staff in the processes of recruitment, promotion, demotion or dismissal, breach of administrative procedure or establishing unlawful internal procedures in a public sector organisation, nepotism in the discharge of one's duties favouring one or more communities and faulty or fraudulent administration of public assets and any breach of the principles of good administration. [Article 5]</p>
9.	<p>South Africa: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>The PD Act recognises only a limited number of 'improprieties' i.e., wrongful actions or omissions in the public sector. The definition of the term 'disclosure' comprises the following:</p> <p>(a) That a criminal offence has been committed, is being committed or is likely to be committed;</p> <p>(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is</p>

		<p>subject;</p> <p>(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;</p> <p>(d) that the health or safety of an individual has been, is being or is likely to be endangered;</p> <p>(e) that the environment has been, is being or is likely to be damaged;</p> <p>(f) unfair discrimination as contemplated in the <i>Promotion of Equality and Prevention of Unfair Discrimination Act, 2000</i> (Act No, 4 of 2000)^{xxii}; or</p> <p>(g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.</p> <p>[Section 1(1)]</p>
10.	<p>Uganda:</p> <p><i>The Whistleblowers Protection Act, 2010 (WP Act)</i></p>	<p>The WP Act covers this principle. The range of wrongful actions and omissions are described in both the Interpretation and procedural sections of the Act. According to the Act, a ‘disclosure’ that will be protected under the Act includes a declaration of the following improprieties occurring in the public sector:</p> <p>(a) that a criminal offence or other unlawful act has been committed, is being committed or is likely to be committed;</p> <p>(b) that a miscarriage of justice has occurred, is occurring or is likely to occur;</p> <p>(c) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject; and</p> <p>(d) that any matter referred to in paragraphs (a) to (c) has been, is being or is likely to be deliberately concealed.</p> <p>This definition will apply to any impropriety irrespective of whether or not</p> <p>(i) it occurs or occurred in or outside Uganda; or</p> <p>(ii) the law applying to the impropriety of Ugandan origin or not. [Sections 1 and 2]</p> <p>(This is a unique instance of a law covering the disclosure of improper actions that may occur outside the territory of Uganda and where Ugandan law does not apply in any way to such actions.)</p>
11.	<p>United Kingdom:</p> <p><i>Public Interest Disclosure Act,</i></p>	<p>The PID Act covers this principle in a limited manner. All violations of the law or wrongful actions are not covered by this law. The disclosure of information about wrong doing in the public sector qualifying for protection under this Act should be about one or more of the following allegations:</p>

	1998 (PID Act)	<p>(a) that a criminal offence has been committed, is being committed or is likely to be committed</p> <p>(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject</p> <p>(c) that a miscarriage of justice has occurred, is occurring or is likely to occur</p> <p>(d) that the health or safety of any individual has been, is being or is likely to be endangered</p> <p>(e) that the environment has been, is being or is likely to be damaged or</p> <p>(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed. [Section 1]</p> <p>However if information protected by legal privilege that is maintainable in a legal proceeding is disclosed by the person who received it in the course of giving legal advice such an act does not qualify for protection under this Act. [Section 1]</p>
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act)</i>	<p>This principle is largely covered in the WP Act. Any violation of any law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority and substantial and specific danger to public health and safety qualifies to be disclosed under this law unless such disclosure is specifically prohibited by any other law or Executive order. [Section 1213] The only omission is instances of mismanagement or waste of funds that cannot be described as being 'gross' in nature. Complaints of these less serious instances are expected to be dealt with under other administrative and judicial procedures.^{xxiii}</p>

The International Standard:

3. The law must protect disclosures about wrongful actions committed or likely to be committed by Ministers.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not cover disclosure of wrongful actions or omissions of Ministers.</u> This Bill empowers a whistleblower to disclose wrong doing committed by a public servant. [Clause 2(d)]</p> <p>According to the definition of the term ‘public servant’, he/ she must be an ‘employee’ of the Central or State Governments or a public sector enterprise set up by such governments. [Clause 2(i)]</p> <p>In India a Minister is not an employee of the Government or of any public sector enterprise. He/she is the direct or indirect representative of the people appointed to that position by the President or the Governor.</p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The LCI Bill includes ‘Ministers’ under the definition of the term ‘public servant’.</u></p> <p>The LCI Bill allowed for disclosure of wrongful actions of Ministers as well. [Clause 2(h)(i)]</p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>There is no bar in the PSDP Act on the disclosure of wrongdoing involving Ministers. The whistleblower is not required to target any public servant specifically. Merely providing information about any wrong doing listed in the Act is adequate for the purpose of launching action. However the standard provision- “The Act binds the Crown” is absent from this Act.</p>
4.	<p>Council of Europe:</p>	<p>There is no specific reference to this principle in the COE-PR. However as there is no bar in the resolution on</p>

	<i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	disclosure of wrong doing committed by Ministers member countries of the Council of Europe may make whistleblower laws covering Ministers as well.
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	The WB Act does not specifically bar the disclosure of impropriety committed by Ministers. A combined reading of the provisions relating to: a) the scope of the term 'impropriety' and b) the definition of a whistleblower indicates that wrong doing committed by ministers may also be disclosed by an employee of the department or any other person who has reasonable cause to show that he/ she has information about such an impropriety. [Sections 1(1), 1(4) and 2] [see entry under Ghana at Standards #2 (above) and #5 (below)]
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	There is no bar in the PD Act on the disclosure of wrong doing involving Ministers. As this Act binds the Crown it may be presumed that Ministers are also bound by this law. [Section 4] The whistleblower is not required to target any public servant specifically. Merely providing information about any serious wrong doing listed in the Act is adequate for the purpose of launching action.
7.	Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i>	The WE Act and the Ethical Guidelines provide safe opportunities for the whistleblower to report any violation of the law or the rules, regulations and guidelines of an organisation committed by any person. Persons in policymaking positions are not exempted from this process.
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The very first Article of the Romanian Whistleblower law states that it is aimed at regulating the process of making protected disclosures within public sector organisations by persons holding managerial or executive positions. This and the fact that it does not exempt Ministers' wrong doing from being disclosed ensures that Ministers fall under the scope of this law.
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act)</i>	There is no bar in the PD Act on the disclosure of impropriety involving Ministers. The whistleblower is not required to target any public servant specifically. Merely providing information about any serious wrong doing listed in the Act is adequate for the purpose of launching action.
10.	Uganda:	The WP Act covers disclosure of wrong doing committed by Ministers. The term 'disclosure' is defined in the Act as

	<i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	any declaration of information with regard to the 'conduct of one or more persons' made by a whistleblower who has reason to believe that the information given shows or tends to show the occurrence of an impropriety. [Section 1.] (For a definition of the term 'impropriety' see entry under Uganda at Standard #2 above) As the term 'person' has not been defined in the WP Act and due to the absence of any bar on the disclosure of improprieties committed by a Minister elsewhere in the Act it may be presumed that a disclosure of a Minister's wrong doings is eligible for protection.
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	There is no specific reference to this principle in the PID Act. However as there is no bar on the disclosure of wrong doing committed by Ministers it may be presumed that Ministers are covered by the Act. The PID Act does not bind the Crown.
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5^{xxiv}</i>	The Federal Government of USA is not based on the Westminster model where the government is run by a council of ministers. This standard does not apply to USA. It is possible to make disclosures of wrong doing committed by persons who are appointed by the President and confirmed by the Senate. [See entry under USA at Standard #17 below]

The International Standard:

4. The definition of ‘public interest disclosure’ must include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as shareholders, employees or customers of private companies.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not cover whistle-blowing about wrong doing in the non-governmental sector.</u></p> <p>(-ve) The private and social sectors have been left out despite the Government of India accepting the recommendations of the Second Administrative Reforms Commission (SARC) to protect corporate whistleblower under the law.^{xxv}</p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not cover whistle-blowing about wrong doing in the private sector.</u></p> <p>(+ve) However societies and cooperative societies receiving financial aid from the Government are covered. [Clause 2(h)]</p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005</i></p>	<p>There is no specific law in Canada that permits employees of private sector enterprises to blow the whistle on wrong doing in such bodies.</p>

	(PSDP Act)	
4.	Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	This principle is recognised in their COE-PR, 2010 [Clause 6.1.1]
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	The long title of the WB Act does not specify as to which sectors the law applies. However a combined reading of the definitions of the term ‘employer’ and ‘whistleblower’ indicates that the WB Act covers the public, private and social sector (NGOs, churches and voluntary associations where the whistleblower is in a relationship of employment with the principals or any member) The term ‘employer’ includes an individual, a body corporate or unincorporated of the Republic of Ghana who or which engages the services of or provides work for any other person and pays for the services and a person acting on behalf of or on the authority of the employer. [Section 32] (for the definition of the term ‘whistleblower’ see entry under Ghana at Standard #5 below)
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	In theory the PD Act covers private sector organisations. It recognises whistle-blowing in a private sector body that comprises members of a particular profession or calling and which has the power to discipline its members. [definition of ‘appropriate authority’ under Section 3] However the PD Act does not provide for the manner in which whistleblowers in the private sector may be protected and the serious wrong doing reported by them may be investigated.
7.	Norway: <i>Working Environment Act, 2005 (WE Act)</i>	The WE Act covers any agency that hires or contracts employees in the private sector and the non-governmental sector as well. [Section 1] Private companies, firms and non-governmental organisations are required to publish their internal rules, regulations and guidelines relating to conditions at the workplace. An employee may report a violation of these laws, rules and regulations as a censurable condition under the WE Act. [Sections 2-4 and 3-6]
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistle-blowing law does not cover organisations in the private and social sectors.

<p>9.</p>	<p>South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>^{xxvi}</p>	<p>The PD Act covers whistle-blowing in private sector organisations also. The Preamble of the Act justifies the coverage of the public and private sector as follows:</p> <p>“Bearing in mind that ...</p> <ul style="list-style-type: none"> • criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage; • every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; • every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from-any reprisals as a result of such disclosure; <p>And in order to ...</p> <ul style="list-style-type: none"> • create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures; and • promote the eradication of criminal and other irregular conduct in organs of state and private bodies” (this law is being enacted) <p>The <i>Companies Act, 2008</i> provides greater clarity with regard to the operation of the PD Act in the context of private sector bodies. Shareholders, company secretaries, employees, registered trade unions, suppliers of goods and services to such bodies and employees of such suppliers can blow the whistle on impropriety in the private sector. Government and public companies are required to establish internal mechanisms for allowing disclosures of impropriety by these persons. Information about these mechanisms must be routinely published. [Section 159(7)]</p>
<p>10.</p>	<p>Uganda: <i>The Whistleblowers</i></p>	<p>The WP Act covers whistleblowing in the private sector. The long title of the Act states that it has been enacted to provide for procedures for blowing the whistle on improprieties occurring in private sector as well and also to provide for the protection of all whistleblowers who are victimised. The definition of the term ‘employer’ includes a</p>

	<i>Protection Act, 2010 (WP Act)</i>	company or corporation, a governing body of an unincorporated association, a partnership or any other institution or organisation for whom an 'employee' works. [Section 1] The definition of the terms 'disclosure' and 'impropriety' apply to actions committed by one or more persons in the private sector as well. [for the definition of these terms see entry under Uganda at Standard #2 above.]
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1996</i>	The PID Act provides protection to workers of private sector organisations including educational institutions who make disclosures of wrong doing. The definition of the term 'worker' given in the <i>Employment Rights Act, 1996</i> includes people employed in private sector organisations as well as homeworkers. [Section 230, <i>Employment Rights Act</i>]
12.	United States of America: <i>Sarbanes-Oxley Act, 2002</i> ^{xxvii}	The <i>Sarbanes-Oxley Act, 2002</i> encourages corporate whistle-blowing. Any officer, employee, contractor, subcontractor, or agent of a publicly traded company is prohibited from victimising a whistle-blowing colleague. Any person who takes retaliatory action against the corporate whistleblower may be punished with fine or prison term up to 10 years or both. The victimised whistleblower is entitled to remedies such as compensation and damages through court action. [Sections 806 and 1107]

The International Standard:

5. The law should cover both public and private sector whistleblowers, including members of the armed forces and special services.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> <i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(+ve)</i> <u>The PIDPPMD Bill recognises whistleblowers from the public and private sectors. It also recognises non-governmental organisations as potential whistleblowers.</u></p> <p><i>(-ve)</i> <u>Members of armed forces, employees of intelligence agencies and those manning the telecommunications systems established for the use of such forces and agencies are prohibited from reporting wrongful action directly or indirectly related to these organisations. [Proviso to Clause 3] By implication they may blow the whistle on wrong doing in other bodies covered by the PIDPPMD Bill.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> <i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(+ve)</i> <u>The LCI Bill recognises whistleblowers from the public sector who report on wrongdoing in the bodies covered. [Clause 2(h)]</u></p> <p><i>(-ve)</i> <u>The LCI Bill does not cover private sector bodies that are not financed or controlled by government.</u></p> <p><i>(-ve)</i> <u>However the following persons are not permitted to blow the whistle on wrongdoing about anything: members of the armed forces in general, members of the armed forces charged with the maintenance of public order, members of the intelligence and counter-intelligence agencies established by the State and persons employed for working tele-communications systems for the use of the armed forces or intelligence and counter-intelligence agencies. [Clause 3(2)]</u></p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>The PSDP Act covers public servants blowing the whistle on wrongdoing in the public sector. Additionally, private parties that enter into contracts with the government departments for providing any supplies or services may also blow the whistle on wrong doing in the public sector. The PSDP Act prohibits termination of such contracts or withholding payments on the grounds that a contracting agency or its employees disclosed in good faith wrong doing in the public sector. [Section 42.2]</p>

		However the Canadian armed forces, the Canadian Security Intelligence Service and the Communications Security Establishment are excluded from the purview of this Act.
4.	Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	This principle is recognised in their COE-PR, 2010 [Clause 6.1.2]
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	<p>Unlike other laws reviewed in this comparative study a unique feature of the WB Act is that it defines a ‘whistleblower’ specifically. A whistleblower may be any of the following who makes a disclosure about an impropriety as defined in the Act:</p> <ul style="list-style-type: none"> i) an employee in respect of an employer; ii) an employee in respect of any other employee; iii) a person in respect of another person or institution. [Sections 1(3) and 2] <p>The WB Act covers whistleblowers in the public private and social sectors. The police, armed forces, intelligence and communications services are not exempted from the scope of the Act.</p> <p>However independent contractors are specifically barred from the coverage of the WB Act. [Section 32]</p>
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	<p>The PD Act covers whistleblowers who are employees or former employees of public sector and private sector organisations. Homeworkers (maids and other domestic help) as well as volunteers in a public or private sector organisation may also seek the protection of this Act by disclosing serious wrong doing as defined in the Act. It also specifically covers members of the armed forces. [Section 3]</p> <p>Similarly intelligence and security organisations have been brought within the purview of this law. Special provisions have been made to facilitate whistle-blowing in intelligence and security organisations, the Department of the Prime Minister and the Cabinet and the ministries of Defence, Foreign Affairs and Trade. For example, a whistle blower disclosing wrong doing must have security clearance to access the related records. There are restrictions on the Ombudsman from publicly disclosing details of cases originating from such organisations. [Section 12, 13 and 14]</p>
7.	Norway:	The WE Act covers whistleblowers in the public private and social sectors. However the Act does not cover the military aviation sector which has a separate law regulating employment conditions. [Section 1-2]

	<i>Working Environment Act, 2005 (WE Act)</i>	
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistleblower law covers whistleblowers from both the public and private sectors. There is no bar on whistle-blowing by members of the armed forces. [Article 3(b)]
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	<p>The PD Act covers whistleblowers from the public, private and social sectors. The police, the armed forces and members of other security, intelligence and communications-related organisations are not exempted from its coverage.</p> <p>However the PD Act does not cover trade unions or service providers and independent contractors who supply commodities or services to public and private sector bodies covered by the PD Act. Protection is provided for such persons and entities under the <i>Companies Act, 2008</i>. A shareholder, director, company secretary, prescribed officer or employee of a company, a registered trade union that represents employees of the company or another representative of the employees of that company, a supplier of goods or services to a company, or an employee of such a supplier is entitled to the protection of the PD Act for blowing the whistle on impropriety not only in one's own organisation but also that which occurs in other organisations also. However the whistleblower must have reason to believe that the impropriety has occurred. [Section 159(4), <i>Companies Act</i>]</p>
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	<p>The WP Act covers this principle. The Act covers a whistleblower who may or may not be an employee of a body in the public and private sector. The Act describes persons who are qualified to make disclosures as follows:</p> <p>(a) an employee in the public or private sector in respect of their employer;</p> <p>(b) an employee in respect of another employee;</p> <p>(c) a person in respect of another person; or</p> <p>(d) a person in respect of a private or public institution. [Section 3]</p>

		<p>An ‘employee’ is defined as a person who has entered into a contract of service or contract for services or an apprenticeship contract, and includes a person who is employed by or for the Government of Uganda, including the Public Service, a local authority or a parastatal organisation and member of the Uganda Peoples’ Defence Forces. [Section 1]</p> <p>There is no bar on whistleblowing by a member of an intelligence or security organisation in the WP Act.</p>
11.	<p>United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1996</i></p>	<p>The PID Act covers both public and private sector whistleblowers including those who are employed for performing any service on contract basis or those apprentices who are merely being trained for employment. The definition of the term ‘worker’ given in the <i>Employment Rights Act, 1996</i> ensures this wide coverage. [Section 230, <i>Employment Rights Act</i>]</p> <p>The PID Act does not cover whistleblowers serving in the police, the three defence forces, national security-related organisations such as the Security Service, Secret Intelligence Service and the Government Communications Headquarters. Similarly whistleblowers working as parliamentary staff cannot avail themselves of the protection of the PID Act. The <i>Employment Rights Act</i> contains these exclusionary provisions. [Sections 191-195 and 200 <i>Employment Rights Act</i>]</p>
12.	<p>United States of America: <i>False Claims Act, 1863, Whistleblower Protection Act, 1989 (WP Act), Military Whistleblower Protection Act, 1988^{xxviii}, Sarbanes-Oxley Act 2002 and the United States Code, Title 5</i></p>	<p>Several laws enacted at the Federal and State level are both omnibus and sector-specific in offering protection to whistleblowers in the public and corporate sector. The earliest law goes back to 1863 when Congress passed the <i>False Claims Act</i> to allow private individuals to sue on behalf of the Federal Government, its suppliers of goods and services who had committed fraud or overcharged the public exchequer. Also known as <i>qui tam</i> legislation it permits taxpayers to move courts for issue of <i>qui tam</i> writ against fraudulent suppliers and claim from the State as reward a percentage of the funds recovered as a result of the litigation. This law is generally understood to be the forerunner of all whistleblower laws where a person could initiate action about some wrong doing even though he/ she was not directly affected by such wrong doing.</p> <p>A year before the WP Act was enacted Congresswoman Barbara Boxer introduced a Bill in the US House of Representatives to protect whistleblowers in the defence services from reprisals. The <i>Military Whistleblower Protection Act</i> enacted as part of the <i>Defense Authorisation Act, 1988</i> allows whistleblowers in the armed forces to make confidential disclosures about wrongdoing to members of the US Congress; or to the Inspector General or audit officers of the Department of Defense. A 1990 amendment prohibited referral of whistleblowers in the military for mental health evaluations as a retaliatory action. A 1998 amendment gave powers to the Inspector General to</p>

		<p>investigate allegations of wrong doing discloses by the whistleblower. [Section 1034, Title 10 of the US Code contains the text of the <i>Military Whistleblower Protection Act</i> as amended from time to time]^{xxix}</p> <p>The WP Act enacted in 1989 covers employees, former employees and candidates for employment who blow the whistle on wrong doing in the Federal Government. According to experts, employees who are not part of the competitive service because of their ‘confidential’ ‘policy determining’, ‘policy-making’ or policy advocating character are not covered by the WE Act.^{xxx} However it is possible to make a disclosure against such employees to the Merit Systems Protection Board under the United States Code. Employees of the Postal Service or the Postal Rate Commission, the Government Accountability Office, the Central Intelligence Agency, Federal Bureau of Investigation, Defense Intelligence Agency, Justice Department, Transportation Security Administration, the National Imagery and Mapping Agency and the National Security Agency cannot avail themselves of the protection of the WP Act. <i>The Whistleblower Protection Enhancement Bill, 2007</i> introduced in the US House of Representatives to specifically address this issue has not been enacted yet. The President may exempt from the coverage of this law employees conducting foreign intelligence and counter-intelligence activities.</p> <p>The <i>Sarbanes-Oxley Act, 2002</i> was enacted to protect whistleblowers in the corporate sector especially in publicly traded companies. [See entry under USA at Standard #4 above]</p>
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The International Standard:

6. The law must codify the relevant issues in employment law, in particular protection for whistleblowers against unfair dismissals and other forms of employment-related retaliation.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not contain a list of actions that are indicative of the victimisation of the whistleblower employee.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The LCI Bill clearly spells out a range of actions that may constitute acts of victimisation of the whistleblower employee.</u> According to the LCI Bill, “victimisation” with all its grammatical variations, in relation to a public servant other than a Minister, shall include –</p> <p>(a) suspension pending inquiry, transfer, dilution or withdrawal of duties, powers and responsibilities, recording adverse entries in the service records, issue of memos, verbal abuse, all classes of major or minor punishment specified in the disciplinary rules, orders or regulations applicable to such public servant and such other type of harassment;</p> <p>(b) any of the acts referred to above whether committed by the person against whom a disclosure is made or by any other person or public authority at his/ her instance.</p>
3.	<p>Canada: <i>Public Servants Disclosure</i></p>	<p>The PSDP Act places a complete prohibition on reprisals against whistleblowers. The kinds of action that constitute ‘reprisals’ are also defined in the Act:</p>

	<p>Protection Act, 2005 (PSDP Act)</p>	<p>(a) a disciplinary measure;</p> <p>(b) the demotion of the public servant;</p> <p>(c) the termination of employment of the public servant, including, in the case of a member of the Royal Canadian Mounted Police, a discharge or dismissal;</p> <p>(d) any measure that adversely affects the employment or working conditions of the public servant; and</p> <p>(e) a threat to take any of the measures referred to in any of paragraphs (a) to (d). [Sections 2 and 42.1]</p> <p>The PSDP Act creates a mechanism for investigating complaints of reprisals filed by the victimised whistleblower or any other public servant or former public servant designated by him/ her. The complaint must be filed with the PSI Commissioner within 60 days of the whistleblower coming to know of the reprisal taken. The PSI Commissioner is required to decide whether or not to take action on the complaint within 15 days of it being filed. If he/ she decides not to deal with the complaint, the complainant is entitled to receive a notice of the decision along with reasons. [Section 19]</p>
4.	<p>Council of Europe: Parliamentary Resolution of April, 2010 (COE-PR, 2010)</p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.1.3.1]</p>
5.	<p>Ghana: Whistleblower Act, 2006 (WB Act)</p>	<p>The WB Act creates a right for every whistleblower not to be subjected to victimisation by his/ her employer, any employee or any person as a result of making a disclosure of an impropriety. The Act lists the kinds of actions and omissions that constitute victimisation of the whistleblower who is an employee:</p> <p>(i) dismissed</p> <p>(ii) suspended</p> <p>(iii) declared redundant</p> <p>(iv) denied promotion</p> <p>(v) transferred against the whistleblower's will</p> <p>(vi) harassed</p>

		<p>(vii) intimidated</p> <p>(viii) threatened with any of the matters set out in subparagraph (i) to (vii), or</p> <p>(ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee. [Section 12(2)]</p> <p>The WB Act creates a mechanism for dealing with complaints of victimisation. A whistleblower is required to make a complaint of victimisation in the first instance before the Commission on Human Rights and Administrative Justice (CHRAJ). CHRAJ has the power to order remedial action if the allegation of victimisation is borne out to be true at the end of an investigation. [Sections 13 and 14]</p>
6.	<p>New Zealand:</p> <p><i>Protected Disclosures Act, 2000 (PD Act) and Employment Relations Act, 2000 (ER Act)</i>^{xxxii}</p>	<p>The PD Act protects the whistleblower from retaliatory action such as dismissal or any other personnel action taken by any person in the public sector organisation. Both serving and retired employees may treat this retaliatory action(s) as a ‘personal grievance’ and take recourse to procedures described in the <i>Employment Relations Act, 2000</i>. The personal grievance may be about unjustifiable dismissal from service or any other unjustifiable action affecting one or more conditions of the whistleblower’s employment or post-termination/retirement situation. [Section 103, <i>Employee Relations Act</i>] (See the entries under New Zealand at Standards #14, and 17-18, below)</p>
7.	<p>Norway:</p> <p><i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i></p>	<p>The WE Act prohibits retaliatory action against an employee who has notified a censurable condition. [Section 2-5]</p> <p>The Ethical Guidelines place a duty on the managers of public servants to ensure that he/ she is not ‘punished’ or subjected to reprisals by the employer or one’s colleagues for reporting unlawful or unethical situations or acts, or well-founded suspicions regarding same. [Para 2.2 and 3.4 + Comments, Ethical Guidelines]</p>
8.	<p>Romania:</p> <p><i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law) and Romanian Labour Code</i>^{xxxiii}</p>	<p>The Romanian Whistleblower law does not codify the issues in employment law for a whistle-blowing employee. However the law requires that a whistleblower who makes a disclosure about any wrong doing on the basis of factual or other credible information to be protected from employment-related detriments. [Article 4(h), Romanian Whistleblower law] The Romanian Whistleblower law states that the procedures under the Labour Code will operate in conjunction with its own provisions. Under the Labour Code a victimised whistleblower may challenge the following kinds of employment-related action taken by the employer in retaliation against the disclosure:</p> <p>a) written warning;</p>

		<p>b) suspension of the individual employment contract for a period not exceeding 10 working days;</p> <p>c) demotion, while paying the wage corresponding to the position where the demotion was directed, for a length that may not exceed 60 days;</p> <p>d) 5-10% decrease of the basic pay for one to three months;</p> <p>e) 5-10% decrease of the basic pay and/or, as the case may be, of the management benefit, for one to three months; and</p> <p>f) disciplinary cancellation of the individual employment contract. [Article 264, <i>Romanian Labour Code</i>]</p> <p>However before taking any of these personnel actions the employer is required to initiate disciplinary proceedings against the whistleblower by giving due notice. Whenever a public sector organisation initiates a disciplinary proceeding against a whistleblower on account of disclosing the wrong doing, he/ she has the right to request for the presence of a representative of a trade union or a professional association or members of the mass media. The organisation is required to post a notice on its website at least three days in advance of the date of hearing. [Article 7(1)(b), <i>Romanian Whistleblower law</i>]</p> <p>The Romanian law establishes the principle that a whistleblower will not be disproportionately punished for other misbehaviours if he/ she has made a disclosure of wrong doing also. [Article 4(d), <i>Romanian Whistleblower law</i>]</p>
9.	<p>South Africa: <i>Protected Disclosures Act, 2000 (PD Act) the Labour Relations Act, 1995^{xxxiii} and the Companies Act</i></p>	<p>The PD Act prohibits employers from subjecting whistle-blowing employees to any ‘occupational detriment’ in retaliation. [Section 3] The kinds of occupational detriment that are prohibited are also defined in this law:</p> <p>(a) being subjected to any disciplinary action;</p> <p>(b) being dismissed, suspended, demoted, harassed or intimidated;</p> <p>(c) being transferred against his or her will;</p> <p>(d) being refused transfer or promotion;</p> <p>(e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;</p> <p>(f) being refused a reference. or being provided with an adverse reference, from his or her <i>employer</i>;</p>

		<p>(g) being denied appointment to any employment, profession or office;</p> <p>(h) being threatened with any of the actions referred to paragraphs (a) to (g) above; or</p> <p>(i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security. [Section 2(vi)]</p> <p>A whistleblower who has suffered occupational detriment may approach any court with jurisdiction including a labour court for redress. [Section 4(1), PD Act]</p> <p>The <i>Labour Relations Act, 1995</i> has been amended to include the provisions of the PD Act and provides specific protections to the whistleblower. If any person engages in a conduct to cause detriment to the whistleblower and the conduct causes detriment or if any person makes a threat of causing detriment to the whistleblower, the whistleblower may sue him/ her for damages and seek compensation from that person. [Section 159(5), <i>Labour Relations Act</i>] These proceedings will lie in a court of appropriate jurisdiction.</p> <p>The <i>Companies Act, 2008</i> similarly recognises the right of the whistleblower in a private sector organisation to sue any person for causing or threatening to cause detriment for disclosing an act of impropriety. [Section 154(5), <i>Companies Act</i>]</p> <p>As these provisions do not limit themselves to ‘occupational detriment’ but extend to ‘any’ kind of detriment that a whistleblower may suffer, they provide for remedies against physical and mental violence and all other kinds of harassment to which a whistleblower may be subjected.</p>
10.	<p>Uganda:</p> <p><i>The Whistleblowers Protection Act, 2010 (WP Act)</i></p>	<p>The WP Act covers this principle. Three terms- ‘harassment’, ‘victimisation’ and ‘occupational detriment’ describe the retaliatory action against a whistleblowing employee that is prohibited under the Act. The term ‘harassment’ is defined as a “systematic, persistent or continual unwanted and annoying pestering that may include threats or demands”. The term ‘victimisation’ is defined as meaning and including:</p> <p>(a) dismissal;</p> <p>(b) suspension;</p> <p>(c) denial of promotion;</p> <p>(d) demotion;</p>

		<p>(e) redundancy;</p> <p>(f) harassment;</p> <p>(g) negative discrimination measures;</p> <p>(h) intimidation; and</p> <p>(i) threat of any of the above.</p> <p>A substantive provision adds to this list of acts of victimisation, any measure that may be taken by the employer or a fellow employee that is discriminatory or adverse in nature. 'Occupational detriment' is defined as "a reasonable belief or fear on the part of the whistleblower that he or she may be subjected to dismissal, suspension, harassment, discrimination or intimidation". [Sections 1 and 9(2)]</p>
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and the Employment Rights Act, 1996</i>	The PID Act complies with this principle. It recognises the right of the whistleblower not to suffer an unfair dismissal or any other employment-related detriment on account of making the disclosure about wrong doing. [Sections 2 and 3] The <i>Employment Rights Act</i> has been amended to incorporate this right for all workers. [Sections 47B and 103A]
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Section 2302(b)</i>	<p>The WP Act provides the eligible whistleblower protection from all 'personnel action' that he/she may be subjected to in retaliation for disclosing wrong doing. According to the WP Act and the <i>United States Code</i> retaliatory 'personnel action' includes the taking, threatening to take or failure to take the following kinds of action to the disadvantage of the whistleblower:</p> <p>(i) an appointment;</p> <p>(ii) a promotion;</p> <p>(iii) an action under chapter 75 of Title 5 of the US Code or other disciplinary or corrective action;</p> <p>(iv) a detail, transfer, or reassignment;</p> <p>(v) a reinstatement;</p> <p>(vi) a restoration;</p>

		<p>(vii) a reemployment;</p> <p>(viii) a performance evaluation under chapter 43 of Title 5 of the US Code;</p> <p>(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;</p> <p>(x) a decision to order psychiatric testing or examination; and</p> <p>(xi) any other significant change in duties, responsibilities, or working conditions. [Section 2302(a)(2)(a), Title 5, <i>United States Code</i>]</p> <p>Taking retaliatory action against the whistleblower for disclosing wrongdoing in accordance with the WP Act constitutes a 'prohibited personnel action' within the meaning of the phrase defined in Section 2302(b) of Title 5 of the United States Code. The whistleblower has the option of choosing from four fora to seek protection from reprisals:</p> <p>(a) through an appeal to the Merit Systems Protection Board (MSPB) known as "Chapter 77" appeals;</p> <p>(b) in actions instituted by the Office of Special Counsel (OSC);</p> <p>(c) in individual right of action; and</p> <p>(d) in grievances brought by the employee under negotiated grievance procedures. [Section 4, WP Act and Sections 2302(b)(9) and 1211-1215, Title 5, <i>United States Code</i>] (also see entry under USA at Standard # 14 below)</p>
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The International Standard:

7. The law must codify the relevant issues in criminal law and procedure, in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The PIDPPMD Bill enables the whistleblower to make disclosures without the fear of a possible prosecution under the <i>Official Secrets Act, 1923</i>. [Clause 3(1)]</u></p> <p>(+ve) The PIDPPMD Bill empowers the Competent Authority to provide protection to the whistleblower and other witnesses.</p> <p>(+ve) <u>The Competent Authority is required to take action to protect witnesses whom may come forward to support or corroborate the whistleblower’s allegations or provide information about other wrongdoings related to the original disclosure.</u> [Clause 11]</p> <p>(-ve) <u>There is no reference in the PIDPPMD Bill to a bar on filing of defamations suits against whistleblowers.</u></p> <p>(+ve) <u>The Central Government is made duty bound to protect only such whistleblowers who are public servants from initiation of legal proceedings.</u> [Clause 10(1)]</p> <p>Strictly speaking, legal proceedings may be launched against whistleblowers who are retired public servants or those employed in the non-governmental sector.</p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature</p>	<p>(+ve) <u>The LCI Bill enables the whistleblower to make disclosures without the fear of a possible prosecution under the <i>Official Secrets Act, 1923</i>. [Clause 3(2)]</u> The LCI Bill empowers the Competent Authority to provide protection only to the whistleblower.</p> <p>(-ve) There is no protection for witnesses whom may come forward to support or corroborate the whistleblower’s allegations or provide information about other wrongdoings related to the original disclosure.</p> <p>(+ve) The LCI Bill protects all whistleblowers from legal proceedings if they make disclosures in good faith. [Clause 15]</p>

	<i>(-ve)= negative feature</i>	
3.	Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i>	The PSDP Act protects all information supplied or produced in the course of an investigation under the Act as privileged information for the purpose of laws relating to libel and slander. The reports of the Public Sector Integrity Commissioner appointed to conduct investigations under the Act are also treated in a similar manner. [Section 47]
4.	Council of Europe <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	This principle is recognised in their COE-PR, 2010 [Clause 6.1.3.2]
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	<p>The WB protects a whistleblower from civil or criminal proceedings in respect of the disclosure of impropriety except when it is proved that he / she made a false disclosure knowingly or with malicious intent. [Section 18]</p> <p>The WB Act voids the provision in any employment contract or agreement between an employer and employee if it seeks to prevent him/ her from making a disclosure under the Act or has the effect of discouraging the employee from making a disclosure or prevents the whistleblower from initiating proceedings before a court or another institution to claim relief in respect of victimisation. This provision applies to contracts that were in existence at the commencement of the Act in 2006. [Section 19]</p> <p>Unlike other laws reviewed here the WB Act defines victimisation of a whistleblower who is a layperson and not an employee of an organisation. Subjecting a non-employee whistleblower to discrimination, intimidation or harassment by a person or an institution also amounts to victimisation. [Section 12(3)]</p>
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	<p>The PD Act immunises the whistleblower from civil and criminal proceedings. According to this Act:</p> <p>No person who—</p> <p>(a) makes a protected disclosure of information; or</p> <p>(b) refers a protected disclosure of information to an appropriate authority for investigation—</p> <p>is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information.</p>

		<p>(2) This immunity applies despite any prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract, oath, or practice. [Section 18]</p> <p>Amendments made to the PD Act in 2009 provide similar immunity from legal proceedings, protection of one's identity and recourse to the mechanisms under the <i>Employee Relations Act, 2000</i> against retaliatory action to witnesses who volunteer supporting information on the original disclosure of serious wrong doing. However these protections are not available if a witness provides the information only after being required to do so under any enactment or rule or when summoned by the person investigating the original disclosure. [Section 19A]</p> <p>The PD Act prohibits an employer from contracting an employee out of the PD Act. It also voids any provision in any contract that requires a person to withdraw or abandon a disclosure made under this Act. [Section 23]</p>
7.	<p>Norway:</p> <p><i>Working Environment Act, 2005 (WE Act) and the Public Administration Act, 1967</i>^{xxxiv}</p>	<p>The WE Act does not specify what protections are available to a whistleblower against criminal prosecution for breach of official or business secrecy or the launch of defamation proceedings if the investigation into the disclosure revealed that no censurable condition had occurred.</p> <p>The <i>Public Administration Act, 1967</i> which covers the government machinery requires public servants to maintain secrecy about personal information and information that relates to the operational and business matters of any person or entity. As neither this law nor the WE Act immunises a whistleblower from breach of official secrecy while reporting a censurable condition it may be presumed that whistle-blowing in the government machinery is limited by official secrecy.</p>
8.	<p>Romania:</p> <p><i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i></p>	<p>The Romanian Whistleblower law does not make a specific mention of issues relating to criminal prosecution or launch of defamation proceedings against the whistleblower. However the law states that the provisions of the witness protection law (Law 682/2002) will apply to whistleblowers disclosing corrupt action or offences against the European Community. This protection does not seem to extend to other kinds of wrong doing that may be disclosed under the Romanian Whistleblower law.^{xxxv} There is no specific reference to breach of business secrecy requirements in government and publicly funded companies.</p>
9.	<p>South Africa:</p> <p><i>Protected Disclosures Act, 2000 (PD Act) and the</i></p>	<p>The PD Act does not make a specific reference to protection for the whistleblower from criminal prosecution of the whistleblower. However if a whistleblower commits an offence by making a disclosure of an impropriety such disclosure is not entitled for protection under this Act. [Section 2(ix)(i)]</p>

	Companies Act, 2008	<p>The PD Act voids any agreements or contracts between the employee and his/ her employer if such agreement or contract purports to exclude any of the PD Act’s provisions or restrains the employee from instituting or continuing any proceedings under this law. It also voids the exclusion of any employee from the purview of the PD Act or any contractual provision that discourages an employee from making a disclosure about impropriety under this Act. [Section 2(3)]</p> <p>The <i>Companies Act, 2008</i> provides specific protection to whistleblowers in the private sector from administrative, civil and criminal liability for disclosing impropriety in private sector organisations. [Section 159(4)]</p> <p>The <i>Companies Act</i> also voids a memorandum of incorporation or rules of any company or an agreement entered into if it negates any provisions relating to whistle-blowing. [Section 159(2)]</p>
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	<p>The WP Act covers this principle. According to the Act a whistleblower shall not be liable to any civil or criminal proceedings in respect of a disclosure that contravenes any duty of confidentiality or official secrecy law where he/ she acts in good faith. [Section 10]</p> <p>The WP Act also voids contracting out the rights and protections guaranteed in employment contracts and agreements. According to the Act, a provision in a contract of employment or other agreement between an employer and an employee is void if it—</p> <ul style="list-style-type: none"> (a) seeks to prevent the employee from making a disclosure; (b) has the effect of discouraging an employee from making a disclosure; (c) precludes the employee from making a complaint in respect of victimisation; (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation; or (e) if it has the effect of creating fear or discouraging the employee from making a disclosure. [Section 13 (1)] <p>This principle applies to all employment contracts and agreements that were in effect at the time of the commencement of the Act. [Section 13(2)]</p>
11.	United Kingdom:	<p>Only one aspect of this principle is protected in the PID Act. The PID Act voids clauses contained in any agreement that prevents workers from whistle-blowing. [Section 3] The <i>Employment Rights Act</i> has been suitably amended.</p>

	<p>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1996</p>	<p>[Section 43J]</p> <p>The PID Act states that if a whistleblower commits an offence by making the disclosure it does not qualify for protection. This includes offences specified in various laws including the law guarding official secrets in the UK. [Section 1] The <i>Employment Rights Act, 1996</i> has also been amended to this effect. [Section 43B] Presumably it is possible to launch criminal prosecution against a whistleblower in such cases.</p> <p>There are no provisions about the launch of defamation proceedings under the PID Act.</p>
<p>12.</p>	<p>United States of America:</p> <p>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Section 2302(b)(8)</p>	<p>The WP Act protects a whistleblower who makes any disclosure of any violation of law, gross mismanagement or waste of funds or abuse of authority or substantial danger to public health and safety. However the making of such disclosure should not be prohibited by law or by an executive order of the President of the USA in the interest of national defence or the conduct of foreign affairs. These are the twin limitations on a whistleblower who elects to make such a disclosure to any person other than the Special Counsel appointed under the Act or the Inspector General of the concerned agency. If the whistleblower discloses wrong doing to either of these two authorities the twin limitations do not apply. [Section 3, WP Act and Section 2302(b)(8)(a) and (b), Title 5, <i>United States Code</i>]</p> <p>Presumably if the disclosure is made to a person other than the Special Counsel or the Inspector General of the agency in violation of the twin requirements the whistleblower is liable for criminal and possibly civil proceedings.</p>

The International Standard:

8. The law must codify the relevant issues in media law, in particular protection of journalistic sources.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> <i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(+ve)</i> <u>Theoretically under the PIDPPMD Bill a media-person may make a disclosure to the Competent Authority about wrongdoing in public authorities.</u> [Clause 3(1)] <i>(-ve)</i> However there is no clear provision guaranteeing protection for journalistic sources.</p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> <i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(+ve)</i> <u>Theoretically, under the LCI Bill a media-person may make a disclosure to the Competent Authority about wrongdoing in public authorities.</u> [Clause 3(1)] <i>(-ve)</i> However there is no clear provision guaranteeing protection for journalistic sources.</p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>The PSDP Act recognises this principle. Nothing in the Act relating to making of disclosures of wrong doing applies to the dissemination of news and information by employees of the Canadian Broadcasting Corporation. [Section 18]</p>
4.	<p>Council of Europe:</p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.1.3.3]</p>

	<i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	The WB Act is silent on this principle. However the Act includes the National Media Commission in the list of persons to whom a disclosure of impropriety can be made. [Section 3(1)] A disclosure to other sections of the mass media is not permitted under the Act. The National Media Commission is a media oversight body created by an act of Parliament (1993) as per the requirement under Ghana’s Constitution. ^{xxxvi}
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	The PD Act does not permit the making of disclosures of wrong doing to the mass media. Consequently there is no provision in the Act for protecting journalistic sources in such cases.
7.	Norway: <i>Working Environment Act, 2005 (WE Act)</i>	The WE Act does not make it clear whether a ‘censurable condition’ may be reported to the media by the whistleblower. So this standard is irrelevant for comparison with the WE Act.
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistleblower law permits the making of disclosures of wrong doing to the mass media. [Article 6(g)] The Constitution of Romania guarantees the freedom of the press under the fundamental right to freedom of expression. [Article 31] ^{xxxvii} Presumably the legal regime provides for the protection of journalistic sources.
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act)</i>	The PD Act protects disclosures of impropriety made by an employee to any person provided certain conditions are satisfied. [Section 9] The term ‘any person’ presumably includes media persons. ^{xxxviii} Although the PD Act does not contain a specific provision protecting journalistic sources this protection is provided by the constitutional guarantee of the freedom of the press ^{xxxix} and other laws relating to the working of the mass media.
10.	Uganda: <i>The Whistleblowers</i>	The WP Act does not permit the making of disclosures of impropriety to the mass media. Consequently this principle is not applicable in this case.

	Protection Act, 2010 (WP Act)	
11.	United Kingdom: Public Interest Disclosure Act, 1998 (PID Act)	The PID Act does not specifically mention this principle even though a disclosure of wrong doing or an exceptionally serious failure under certain conditions can be made to a media person. Presumably other laws relating to media freedom that protect the confidentiality of journalistic sources are adequate to protect this principle.
12.	United States of America: Whistleblower Protection Act, 1989 (WP Act)	The WB Act permits a whistleblower to make a disclosure of wrong doing to ‘any person’ other than the Special Counsel or the Inspector General of the agency unless the disclosure is prohibited by any law or by an executive order of the President in the interest of national defence or the conduct of foreign affairs. It is obvious that such a disclosure may be made to a representative of the media as well. The first amendment to the US Constitution which guarantees the right to free speech also prohibits infringing the freedom of the press. However the law on the protection of journalistic sources has been variously interpreted. In <i>Branzburg v Hayes</i> , the US Supreme Court held by majority opinion that compelling a journalist to reveal his/ her sources before a grand jury does not violate the freedom of the press clause of the first amendment. However lower courts have drawn a distinction between compulsion under civil and criminal proceedings where a journalist may or may not be compelled to reveal sources before a grand jury. ^{xl}

The International Standard:

9. The law must give appropriate incentives to government and corporate decision makers to put into place internal whistle-blowing procedures.

Sl. #	Name of the Country/ Law / Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not require public authorities to create internal procedures for whistle-blowing. All disclosures of wrongdoing are required to be made to the single Competent Authority established at the Central and State level.</u> [Clause 3(2)]</p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not require public authorities to create internal procedures for whistle-blowing. All disclosures of wrongdoing are required to be made to the Competent Authority only.</u> [Clause 3(2)]</p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>The PSDP Act requires the Treasury Board of the Federal Government to establish a code of conduct for public servants whose breach is treated as wrong doing and disclosure of such breaches qualify for protection under the Act. [Section 5] The PSDP Act requires the chief executive of every portion of the public sector to establish internal mechanisms for</p>

		<p>receiving and investigating disclosures of wrong doing by its employees. The Chief executive must designate a senior officer to receive and deal with disclosures of wrong doing. [Section 10]</p> <p>Additionally a public servant has the option of reporting any wrong doing to his/ her supervisor. [Section 12]</p>
4.	<p>Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.2.1]</p>
5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act permits the making of a disclosure of impropriety by a whistleblower to his/her employer. [Section 3(1)]. There is no specific provision that requires the employer to establish an internal mechanism for receiving and dealing with such disclosures. Presumably every organisation or body covered by the Act will be required to put in place mechanisms for receiving disclosures of impropriety.</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>The PD Act requires every public sector organisation to establish internal procedures for receiving and acting upon disclosures of serious wrong doing. These procedures must comply with principles of natural justice and have designated officers who may receive disclosures of serious wrong doing. The organisation is required to publicise this information and continue to republish it at regular intervals. [Section 11] Whistleblowers are compelled to use this procedure first and foremost. [Section 7]</p> <p>A whistleblower may make a disclosure of serious wrong doing to the head of the organisation directly if, internal procedures have not been established or publicised; or the person designated to receive the disclosure may himself/ herself be involved in that case or he/she may have some relationship or association with the person who committed the wrong doing. [Section 8]</p>
7.	<p>Norway: <i>Working Environment Act, 2005 (WE Act)</i></p>	<p>The WE Act expects the whistleblower to report the ‘censurable condition’ within the organisation first. So the employer is required to put in place an internal mechanism for receiving and dealing with disclosures. [Section 2-4]</p>
8.	<p>Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law</i></p>	<p>The Romanian Whistleblower law permits the making of disclosures of wrong doing to the person who is hierarchically superior to the person who committed the wrong doing. [Article 6(a)] Presumably the public sector organisations covered by this law will be required to put in place mechanisms for receiving and dealing with such disclosures.</p>

	(Law571/2004) (Romanian Whistleblower law)	
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	<p>The PD Act permits the whistleblower to disclose the impropriety using any internal mechanisms established by his/ her employer for this purpose. Where such mechanisms have not been established, the whistleblower can make the disclosure to his/ her employer directly. If disclosure is made to any other person within the same organisation but in accordance with the procedure established for this purpose, such disclosure is also eligible for protection under the PD Act. [Section 6]</p> <p>The <i>Companies Act, 2008</i> encourages private sector organisations to put in place internal mechanisms for their board members, shareholders, officials, contractors and employees of such contractors to blow the whistle on impropriety described in the Act. The employer is required to publish information about these mechanisms regularly. [Section 159(7), <i>Companies Act</i>]</p>
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	The WP Act permits the whistleblower to disclose the impropriety to his/ her employer in the first instance provided the case pertains to his/ her place of employment. However there is no express obligation on an employer to create other internal mechanisms for receiving disclosures of impropriety from employees. [Section 4(1)]
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	The PID Act encourages the whistleblower to disclose the wrong doing using the internal procedures of his/ her organisation, although this is not mandatory. He/ she may report the wrong doing to one's employer or to any other person in the organisation who has legal responsibility for matters relating to the wrong doing. However this procedure may not be used if the wrong doing is committed by the employer. [Section 1] The <i>Employment Rights Act, 1993</i> has been amended to incorporate this provision. [Section 43C] It is obvious that the organisation will be required to create internal procedures to facilitate reporting of wrong doing internally.
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and United States Code, Title 5</i>	The WP Act envisages the possibility of the whistleblower making the disclosure about a wrong doing to the head of the agency where he/ she is employed or to any other person designated by such employer. Presumably such mechanisms are required to set up in every federal agency. [WP Act, and Section 2302(b)(8)(B), Title 5, <i>United States Code</i>]

The International Standard:

10. The law must provide for guidance and counselling services for the whistleblower.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>The <i>Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010</i> (PIDPPMD Bill)</p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not require the Competent Authority to provide guidance to potential whistleblowers.</u></p>
2.	<p>The <i>Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill)</p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not require the Competent Authority to provide guidance to potential whistleblowers.</u></p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005</i> (PSDP Act)</p>	<p>The Public Sector Integrity Commissioner has a duty to provide information and advice to public servants about making disclosures under the PSDP Act. [Section 22(a)]</p>
4.	<p>Council of Europe:</p> <p><i>Parliamentary Resolution of April, 2010</i> (COE-PR, 2010)</p>	<p>This principle is not covered in the COE-PR, 2010.</p>

5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act does not contain any provision that requires any authority to provide guidance and counselling service to a whistleblower. However some guidance about the manner of making a disclosure of impropriety is provided in the WB Act itself. The provisions indicate that the whistleblower must have first-hand knowledge of the occurrence of the impropriety. However there is no compulsory requirement of providing documentary evidence to support the disclosure. As far as practicable the disclosure (whether oral or written) must contain:</p> <p>(a) the full name, address and occupation of the whistleblower;</p> <p>(b) the nature of the impropriety in respect of which the disclosure is made;</p> <p>(c) the person alleged to have committed, who is committing or is about to commit the impropriety;</p> <p>(d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;</p> <p>(e) the full name, address and description of a person who witnessed the commission of the impropriety, if there is such a person;</p> <p>(f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and</p> <p>(g) if the person is an employee making a disclosure about that person's employer or a fellow employee, whether the whistleblower remains in the same employment. [Section 4(2)]</p> <p>If a whistleblower is unable to make a disclosure in writing, he may make it orally to one of the persons listed in the WB Act. It is the duty of that person to reduce the oral submission into writing. [Section 5(1)]</p> <p>If the whistleblower is unlettered, it is the duty of the person to whom the disclosure is made orally to reduce it into writing, read, interpret and explain it to the whistleblower in a language that he/ she understands and obtain his/ her mark of approval. A certificate about the mark is to be attached. A modified certificate may be attached to a disclosure made by a person who is visually challenged. [Section 5(2) and (3)]</p> <p>If the disclosure is made to a traditional chief, head of a recognised religious body or a head or an elder of a family, the chief, head or elder may instead of recording the disclosure as required by the Act such person must assist the whistleblower to make the disclosure to the police or to any other authority specified in the Act. [Section 6(2)] (For a list of persons competent to receive disclosures of impropriety see entry under Ghana at Standard #15 below.)</p>
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6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>The Ombudsmen who are designated under the Act to receive disclosures of serious wrong doing in certain cases and cause investigations into them are also required to provide guidance to a potential whistleblower. The kind of guidance that may be provided to the potential whistleblower is described as follows:</p> <p>“If an employee notifies the Office of the Ombudsmen, orally or in writing, that he or she has disclosed, or is considering the disclosure of, information under this Act, an Ombudsman must provide information and guidance to that employee on the following matters:</p> <p>(a) the kinds of disclosures that are protected under this Act:</p> <p>(b) the manner in which, and the persons to whom, information may be disclosed under this Act:</p> <p>(c) the broad role of each authority referred to in paragraph (a)(i) to (x) of the definition of appropriate authority in section 3(1):</p> <p>(d) the protections and remedies available under this Act and the <i>Human Rights Act 1993</i> if the disclosure of information in accordance with this Act leads to victimisation of the person making the disclosure:</p> <p>(e) how particular information disclosed to an appropriate authority may be referred to another appropriate authority under this Act.” [Sections 6B and 19(3)- these provisions were introduced through an amendment in 2009]</p>
7.	<p>Norway: <i>Working Environment Act, 2005 (WE Act)</i></p>	<p>This principle is not covered by the WE Act.</p>
8.	<p>Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i></p>	<p>This principle is not covered by the Romanian Whistleblower law.</p>
9.	<p>South Africa:</p>	<p>The PD Act is largely silent on this principle but for a small exception. If a disclosure of impropriety is made to a prescribed person and such person is of the opinion that the matter is more appropriately dealt with by another</p>

	<p>Protected Disclosures Act, 2000</p>	<p>prescribed person or authority he/ she must provide assistance to the whistleblower to approach such other person or authority. [Section 8(2)]</p> <p>The <i>Companies Act, 2008</i> requires every government company and publicly traded company to publish information about internal whistle-blowing procedures routinely. [Section 159(7)(b), <i>Companies Act</i>]</p> <p>Non-governmental organisations such as the Open Democracy Centre (ODAC) provide advice to both employees and employers about whistle-blowing procedures under both laws. (See http://opendemocracy.org.za)</p>
<p>10.</p>	<p>Uganda:</p> <p><i>The Whistleblowers Protection Act, 2010 (WP Act)</i></p>	<p>This principle is not covered by the WP Act. No authority is mandated to provide guidance or counselling services to a potential whistleblower. However when a disclosure of impropriety is made orally, the person authorised to receive the disclosure is required to reduce it in writing and read, interpret and explain the contents to the whistleblower in a language that he/ she understands. The whistleblower is required to certify that the information contained in the written statement is true and correct and make a mark on it. [Section 7]</p> <p>The WP Act itself provides some guidance on how to make a statement of disclosure of impropriety. The statement must, as far as practicable, include:</p> <ul style="list-style-type: none"> (a) the full name, address and occupation of the whistleblower; (b) the nature of the impropriety in respect of which the disclosure is made; (c) the name and particulars of the person alleged to have committed, who is committing or is about to commit the impropriety; (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place; (e) the full name, address and description of a person who witnessed the commission of the impropriety; (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and (g) if that person is making an employment related disclosure, whether the whistleblower remains in the same employment. [Section 6(3)] <p>All forms of information communication technology may be used to convey a disclosure. [Section 6(2)]</p>

11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	<p>This principle is not covered by the PID Act. In practice, however, organisations do provide information about internal procedures for whistle-blowing. The UK Government has set up an informative whistleblower section on its citizen-government interface website: http://www.direct.gov.uk</p> <p>Non-governmental organisations such as Public Concern at Work (PCAW) also provide guidance, counselling and helpline services to both whistleblowers and employers. (See http://www.pcaw.co.uk)</p>
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act)</i>	<p>The WP Act does not place a statutory obligation on any authority to provide guidance or counselling services to the whistleblower. However the Office of the Special Counsel which is competent to receive disclosures of wrong doing provides clear guidance to a potential whistleblower through its website: http://www.osc.gov Whistleblowers can submit disclosures online on this website. The whistleblower has the options of requesting that his/ her identity be kept confidential. Disclosures may also be made anonymously. However the Office of the Special Counsel merely forwards anonymous disclosures to the Office of the Inspector General of the concerned agency without itself making a determination about the ‘substantial likelihood’ of the wrong doing having occurred.^{xii}</p> <p>The Government Accountability Project (GAP), a non-profit organisation in the USA, provides guidance and counselling services to whistleblowers. Potential whistleblowers may submit basic information about themselves and the disclosure of wrong doing through GAP’s website: http://www.whistleblower.org for the counsels of GAP to determine the nature of advice and guidance they can provide.^{xiii}</p>

The International Standard:

11. The law must provide for disclosures to be properly investigated and relevant information to reach senior management in good time, bypassing the normal hierarchy, where necessary.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>As the PIDPPMD Bill does not require public authorities to create internal procedures for whistle-blowing they are not required to create special mechanisms for investigating such disclosures.</u></p> <p>The Competent Authority <u>may invite comments and opinion</u> from the Head of the Department/ Board/ Corporation to which the disclosure of wrong-doing pertains and take this into consideration while making a determination about further action. [Clause 4]</p> <p>It is not clear whether the inquiry will be conducted openly or behind closed doors.</p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill)</p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>As the LCI Bill does not require public authorities to create internal procedures for whistle-blowing they are not required to create special mechanisms for investigating such disclosures.</u></p> <p>The Competent Authority alone is empowered to conduct closed-door inquiries into the disclosure. [Clause 5]</p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005</i> (PSDP Act)</p>	<p>The PSDP Act requires all disclosures received through the internal mechanisms of a public sector unit to be investigated by a senior officer designated by its chief executive as expeditiously as possible. Disclosures do not need to be made through the official hierarchy unless the whistleblower elects to do so. It is possible to make disclosures to the Public Service Integrity Commissioner who will then cause investigation to be launched by the appropriate authority. [Sections 19.7, 13 and 29]</p>

4.	Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	This principle is recognised in their COE-PR, 2010 [Clause 6.2.1.1]
5.	Ghana: <i>Whistleblower Act, 2006</i>	<p>The WB Act permits the making of disclosure of impropriety to a range of persons and authorities including the Attorney General. [Section 3(1)] If any person specified in the Act receives a disclosure of impropriety such person is required to keep the document in safe custody pending investigation. [Sections 6(1)(c) and 7] A copy of the written disclosure must be sent to the Attorney General within seven days of receiving it. [Sections 6(1)(c) and 7]</p> <p>A person, to whom a disclosure of impropriety is made, must undertake an investigation into the wrong doing if he/ she/ it has the capability to do so. If not the written disclosure must be forwarded to the Attorney General or to any other authority that the Attorney General may specify to investigate the impropriety. The Attorney General may cause an investigation to be conducted merely on receipt of a copy of the disclosure from any person. In all three instances the investigation must be completed within 60 days of receipt of the disclosure or issue of directives to conduct the investigation. If a person undertaking an investigation into the impropriety conceals or suppresses evidence or commits an offence in the course of the investigation he/ she is liable on summary conviction to a prison sentence from a minimum of two years to a maximum of four years. [Section 8]</p> <p>If an investigator suspects the likelihood of the relevant evidence being destroyed, concealed or tampered with he may apply to a court of appropriate jurisdiction for an order to preserve and protect the evidence. If an investigator learns that a person willing to provide information relevant to an investigation is being pressurised, intimidated or offered inducement he/ she may approach a court for orders to restrain any person from committing such acts. [Section 9]</p> <p>A report of the investigation into the impropriety must be submitted to the Attorney General within 60 days or immediately after the completion of investigation. The investigation report must contain the following information:</p> <p>(a) the manner in which the investigation was conducted,</p> <p>(b) the names and particulars of persons who provided information in the course of the investigation,</p> <p>(c) facts obtained which either confirm or dispute the truth or accuracy of the information contained in the disclosure and the person who provided the facts,</p>

		<p>(d) an obstacle encountered in the course of the investigation and the nature of the obstacle, and (e) the recommendations of the investigator. [Section 10(3)]</p> <p>If the investigation cannot be completed in 60 days, the following information must be provided to the Attorney General in writing:</p> <p>(a) the reasons for the delay; (b) measures that are proposed to expedite the investigation, and (c) any further assistance required to complete the investigation. [Section 10(2)]</p> <p>Upon receiving a report of the investigation the Attorney General may take any of the following actions:</p> <p>(a) accept the recommendations contained in the report and act on it, (b) ask for further investigations by the same person or institution that conducted the investigations or by some other person or institution, or (c) reject the report and the recommendations for stated reasons which shall be communicated to the investigator. [Section 11]</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>The PD Act describes specific circumstances under which a disclosure may be properly investigated bypassing the usual hierarchy. The Ombudsmen are empowered to escalate an investigation by referring a disclosure of wrong doing to an 'appropriate authority'(for a list of appropriate authorities see entries for the PD Act under Standard #15 below) for investigation if,</p> <p>a) the head of the public sector organisation is himself/ herself alleged to be involved in the wrong doing; or b) the matter is really urgent or the disclosure relates to exceptional circumstances; or c) no action was taken by the head of the department even after 20 days of making the disclosure internally.</p> <p>The Ombudsmen are also empowered to escalate an investigation by referring the disclosure to an appropriate Minister for investigation if it had originally been made using the internal procedures or to the head of the organisation or to an appropriate authority as defined in the Act and if;</p>

		<p>a) there are reasonable grounds to believe that the receiving authority had decided not to investigate the allegation of serious wrong doing; or</p> <p>b) has not made any progress in the investigation within a reasonable period of time; or</p> <p>c) has investigated the matter but not taken any action or made any recommendation in that case; and</p> <p>d) the whistleblower continues to believe that the information disclosed by him/her is true or likely to be true.</p> <p>The Ombudsmen may investigate the information contained in the disclosure is any of the aforementioned conditions apply and/or if the disclosure has been made directly to the Ombudsmen. [Section 15]</p> <p>Amendments made to the PD Act in 2009 empower the Ombudsmen to take over an ongoing investigation from a public sector organisation or conduct the investigation in conjunction with it if any of the aforementioned circumstances apply. The consent of the whistleblower and the organisation/ appropriate authority/ Minister is a mandatory requirement for these procedures. However the Ombudsmen are not empowered to launch investigations of wrong doing alleged against the Office of the Parliamentary Commissioner for Environment. [Sections 15 and 15A]</p>
7.	<p>Norway: <i>Working Environment Act, 2005 (WE Act)</i></p>	<p>The WE Act does not contain specific provisions on how disclosure of censurable conditions must be dealt with. These matters are dealt with in the guidelines issued by the Ministry of Government Administration and Reform. The guidelines require every organisation to deal with disclosures of censurable conditions with due seriousness; investigations must be conducted into the allegations with due promptness and corrective action must be taken if the investigation reveals that the censurable condition indeed occurred.^{xliii}</p>
8.	<p>Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i></p>	<p>The Romanian Whistleblower law is silent on this principle. However it lays down the general principle of ‘good administration’ that will inform the functioning of all public sector organisations. This principle is based on values such as professionalism, efficiency, effectiveness, and efficient utilisation of public resources which must inform the working of every such organisation. [Article 4(e)] Presumably disclosures of wrong doing are dealt with under other existing laws and procedures established in Romania.</p>
9.	<p>South Africa:</p>	<p>The PD Act is silent on this principle. Presumably disclosures of impropriety are investigated by the appropriate agencies under the laws and procedures relevant to the subject matter of the impropriety.</p>

	Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008	The <i>Companies Act</i> requires the employer to act upon the disclosure of impropriety. [Section 159(7)(1), <i>Companies Act</i>] Presumably the impropriety will be investigated in accordance with the company's own rules or under mechanisms established by the relevant public laws.
10.	Uganda: The Whistleblowers Protection Act, 2010 (WP Act)	<p>The WP Act permits the making of a disclosure of impropriety to a range of authorised officers including one's employer if the case pertains to the whistleblower's workplace. (for a complete list of authorised officers see entry under Uganda at Standard #15 below) Every authorised officer is duty bound to receive a disclosure of impropriety. When a disclosure of impropriety is made to an authorised person he/ she is required to—</p> <ul style="list-style-type: none"> (a) make a record of the time and place where the disclosure is made; (b) give to the whistleblower an acknowledgment in writing of receipt of the disclosure; and (c) keep the writing in which the disclosure is made confidential, and in safe custody pending investigation of the impropriety. [Section 5] <p>The authorised person has the discretion to determine whether the disclosure reveals an actionable impropriety. The authorised person may conduct a preliminary investigation at the end of which he/ she may determine the matter contained in the disclosure is trivial, frivolous, vexatious or not made in good faith or that further investigation may not be necessary or may be 'improper'. If a decision is made not to proceed with further investigation the whistleblower has the right to receive written reasons for such a decision. [Section 5(5)]</p> <p>If a whistleblower is aggrieved by a dismissal of one's disclosure, he/ she may make the same disclosure to the Minister responsible for Ethics and Integrity. The Minister may cause fresh investigation into the disclosure or reject the disclosure upon being satisfied that it has no merit to warrant an investigation to be carried out. In any case the Minister is required to inform the whistleblower of the action taken and the outcome of such action. [Section 5(7)]</p> <p>The WP Act requires an authorised officer to carry out investigations into the impropriety expeditiously. No time limit is prescribed for completing the investigation. If an authorised person receiving a disclosure determines that he/ she is incapable of investigating the impropriety he/ she is required to refer the disclosure to another competent authority or the Minister for Ethics and Integrity within seven days of receiving the disclosure. (for a complete list of competent authorities see entry under Uganda at Standard #15 below.)</p> <p>Failure on the part of an authorised officer to launch an investigation into a disclosure is an offence punishable with a</p>

		<p>prison term up to maximum of five years or a fine up to a maximum of 120 currency points or both (1 currency point=20,000 shillings) [Section 18]</p> <p>If in the course of an investigation into the disclosure, the investigator has reasonable grounds to believe—</p> <p>(a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed, tampered with; or</p> <p>(b) that a person willing to provide information relevant to the investigation is being restrained by pressure of obligation to a confidentiality agreement with the persons or official secrets law to which the disclosure relates,</p> <p>the investigator may apply to the court for an order to preserve the evidence or documents or to release the person willing to provide the information from the perceived restraint. [Section 12]</p> <p>However there is no time limit for the completion of investigation. Nor does the WP Act contain any provisions as to the consequences that would follow if the investigation bore out that the information contained in the disclosure is true.</p>
11.	<p>United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i></p>	<p>The PID Act is silent on the action that must be taken on a disclosure made under the Act. Presumably this is dealt with in other laws specific to the subject-matter of the wrong doing.</p>
12.	<p>United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Section 1213</i></p>	<p>According to the WP Act a whistleblower may make a disclosure of wrong doing to one’s employer using the internal mechanism established for dealing with such disclosures. Additionally he/ she may make the disclosure to the Office of the Special Counsel. The Special Counsel does not have the power to investigate these disclosures. However if first hand information about wrong doing is received and the attorneys of its Disclosure Unit determine that the allegations deserve to be investigated further, the Special Counsel refers the disclosure to the head of the agency where the wrong doing occurred. It is the responsibility of the head of the agency to cause an investigation into the allegations and send a report to the Office of the Special Counsel within 60 days. The time limit may be extended if sufficient cause is shown by the agency. (for details of further action taken by the Office of the Special Counsel, see entry under USA at Standard #12 below)</p> <p>For disclosure of wrong doing in relation to counterintelligence or foreign intelligence services a different procedure is prescribed. Such disclosures are sent to the National Security Advisor (NSA), the Permanent Select Committee on Intelligence in the House of Representatives and the Select Committee on Intelligence in the Senate. The Special</p>

		Counsel has no further responsibility in this matter. The NSA and the Congressional committees will decide on how to proceed with the investigation but the disclosure will not be referred to the head of the agency for investigation unlike in other circumstances. [Section 1213(j), Title 5, United States Code]
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The International Standard:

12. The law must require the agency investigating the disclosure to inform the whistleblower about the progress made. The law must also require the investigating agency to give the whistleblower a full report of the proceedings, the final conclusions arrived at and the recommendations for further action made at the end of the investigation.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not place any obligation on the Competent Authority to inform the whistleblower of the progress made in the investigation of wrong doing or provide him/ her with a final report.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not place any obligation on the Competent Authority to inform the whistleblower of the progress made in the investigation of wrong doing or provide him/ her with a final report.</u></p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005</i></p>	<p>The PSDP Act goes a step beyond this principle and requires the public disclosure of all factual information if the investigation establishes that a wrong doing had indeed occurred. Ordinarily It requires the chief executive to establish procedures for maintaining the confidentiality of information relating to an investigation into a disclosure</p>

	(PSDP Act)	<p>of wrong doing. If the investigation does indeed discover wrong doing the chief executive is duty bound to promptly provide access to information to the public that :</p> <p>a) describes the wrong doing and discloses the identity of the wrong doer if it is necessary to do so in order to adequately describe the wrongdoing; and</p> <p>b) the recommendations make to take corrective action; the corrective action taken by the chief executive and where no corrective action is taken, the reasons for not doing so. [Section 11]</p> <p>By implication the whistleblower also will get to know the information if it is placed in the public domain. However there is no requirement to provide him/ her a report of the investigation where the wrong doing is not established. There is no requirement to provide the whistleblower progress reports when the investigation is on.</p>
4.	Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	The COE-PR does not contain this principle.
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	This principle is not covered by the WB Act.
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	The PD Act does not place any obligation on any authority to keep the whistleblower informed of the progress made in the investigation into the disclosure or provide him/ her with a final report.
7.	Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i>	<p>The WE Act does not contain any specific provision about informing the whistleblower about the progress of the investigation into the disclosure. This subject is dealt with in the guidelines issued by the Ministry of Government Administration and Reform. According to these guidelines the disclosure made by a whistleblower must be acknowledged by the receiving authority within a reasonable period. The whistleblower must be informed of the outcome of the investigation. (As these guidelines are not available in English it is difficult to find out details of the procedure of informing the whistleblower about the progress of the case.)</p> <p>The Ethical Guidelines requires government agencies to give factual information to the general public about matters</p>

		involving ‘censurable conditions’ occurring in a government agency. However this disclosure must be balanced with the principles of official secrecy and loyalty to the organisation. [Para 3.4 + Comments, Ethical Guidelines]
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistleblower law is purely a whistleblower protection law. As it is silent on the procedures for dealing with disclosures of wrong doing, this principle is not covered in this law.
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	As the laws relating to whistle-blowing in the public and private sectors are silent on the procedures to be followed for investigating the disclosure of impropriety, this principle is not covered. Presumably procedures for informing the whistleblower relating to the progress of the investigation are to be found in other laws and mechanisms pertinent to the subject-matter of the impropriety.
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	<p>The WP Act partially covers this principle. The whistleblower has the right to know the reasons in writing only if the authorised officer closes the case on the basis of a preliminary investigation. If the Minister for Ethics and Integrity who is competent to receive the same disclosure in such cases of closure, also decides that the case may be closed without further investigation, the whistleblower has the right to know the reasons for such a decision in writing. [Section 5(6) and (7)]</p> <p>There is no requirement of informing the whistleblower if any corrective action is to be taken. Nor are there provisions which require the investigator to furnish a report of the full investigation that may be conducted further to the preliminary investigation. There is also no requirement in the WP Act to place any of this information in the public domain.</p>
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	As the PID Act is silent on action to be taken after a disclosure has been made under the Act, this principle is not covered. [See the entry for the UK under Standard #11 above]
12.	United States of America: <i>Whistleblower Protection Act,</i>	The WP Act goes beyond this principle. It requires the Office of the Special Counsel to transmit a copy of the complete report of the investigation conducted into the disclosure of wrongdoing made by the whistleblower. [WP

	<p>1989 (WP Act) and United States Code, Title 5, Section 1213</p>	<p>Act and Section 1213(e)(1), Title 5, <i>United States Code</i>] The whistleblower is allowed to provide any comments on the findings. Then the Special Counsel transmits the report with the comments of the whistleblower, if any, to the President of the United States and the relevant congressional committees that have oversight responsibility for the agency involved. The Special Counsel is also required to place the report in a public file. [WP Act and Sections 1213(e)(2) and (3), Title 5, <i>United States Code</i>]</p> <p>However the final report is not provided to the whistleblower or placed in the public domain if it contains evidence of the commission of a criminal offence. In such cases the report is sent directly to the Attorney General. [Section 1213(f) Title 5, <i>United States Code</i>]</p>
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The International Standard:

13. The law must ensure that the identity of the whistleblower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill authorises the Competent Authority to reveal the identity of the whistleblower to the Head of the Department/ Board/ Corporation to which the disclosure of wrong-doing pertains, while seeking his/her opinion/ comments on the disclosure of wrong doing. [proviso to Clause 4(4)] Obtaining the consent of the whistleblower is not an element for consideration by the Competent Authority.</u></p> <p>(+ve) <u>The Head of the Department/ Board/ Corporation is barred from revealing the identity of the whistleblower to any other person on pain of penalty. [Clause 4(5)]</u></p> <p>(-ve) <u>The identity of the whistleblower may also be revealed by the Competent Authority pursuant to a court order. [Clause 13] However no provision has been made to afford the whistleblower an opportunity to justify non-disclosure of identity. Nor does the PIDPPMD Bill specify the courts that are empowered to order disclosure of the identity of the whistleblower.</u></p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill makes it a general rule for the Competent Authority to disclose the identity of the whistleblower to the public servant against whom the allegation has been made. Obtaining the consent of the whistleblower is not an element for consideration.</u></p> <p>However two conditions must be satisfied for granting anonymity to the whistleblower:</p> <p>a) the whistleblower should have specifically requested anonymity; <u>and</u></p> <p>b) the Competent Authority makes a determination that anonymity is necessary in the public interest or for ensuring the safety of the whistleblower. [Clause 5(3)]</p>
3.	<p>Canada:</p>	<p>According to the PSDP Act when a disclosure of wrong doing is made through the internal mechanism of a public sector unit the chief executive has the duty to take action to protect the identity of the whistleblower and other</p>

	Public Servants Disclosure Protection Act, 2005 (PSDP Act)	<p>persons involved in the disclosure process. [Section 11.1]</p> <p>Similarly the Public Sector Integrity Commissioner appointed to investigate wrong doing is also required to take action to protect the identity of the whistleblower and other persons involved in the disclosure process. [Section 22(e)] There are no exceptions to this requirement of confidentiality.</p>
4.	Council of Europe: Parliamentary Resolution of April, 2010 (COE-PR, 2010)	This principle is recognised in their COE-PR, 2010 [Clause 6.2.1.2]
5.	Ghana: Whistleblower Act, 2006 (WB Act)	<p>The WB Act requires the person receiving a disclosure of impropriety to keep it confidential. [Section 6(1)]</p> <p>A person to whom the disclosure has been made fails to keep the disclosure confidential except as otherwise required by the Act commits an offence. Upon summary conviction he/ she may be fined from a minimum of 500 penalty units to a maximum of 1000 penalty units or he/ she may be sentenced to a prison term from a minimum of two years to a maximum of four years or he/ she may be punished with both. [Section 6(2)]</p> <p>However a copy of the written disclosure must be transmitted to the Attorney General who in turn may transmit it to any authority for investigation. The law does not specify whether the identity of the whistleblower must be kept confidential in all these circumstances.</p>
6.	New Zealand: Protected Disclosures Act, 2000 (PD Act)	<p>The PD Act places a confidentiality obligation on all persons designated to receive disclosure of serious wrong doing. However this confidentiality is not absolute. Information that may lead to revealing the identity of the whistleblower may not be disclosed unless-</p> <p>a) written consent is obtained from the whistleblower; or</p> <p>b) the receiving and dealing authority believes that disclosure of information identifying the whistleblower is necessary for:</p> <p style="padding-left: 40px;">i) the effective investigation of the wrong doing alleged in the disclosure; or</p> <p style="padding-left: 40px;">ii) preventing serious risk to public health, public safety of the environment; or</p> <p style="padding-left: 40px;">iii) adhering to the principles of natural justice. [Section 19]</p>

		An information request made under New Zealand's <i>Official Information Act, 1982</i> may be denied on the grounds that the whistleblower's identity may be revealed wrongfully. [Section 19(2)]
7.	Norway: <i>Working Environment Act, 2005 (WE Act) and the Public Administration Act, 1967</i>	The WE Act does not contain provisions that require the whistleblower's identity to be kept secret. However the guidelines issued by the Ministry of Government Administration and Reform, require the disclosure to be processed confidentially. Ordinarily, information about a disclosure of a censurable condition must be shared with the person accused of committing or contributing to such a condition unless confidentiality is required for proper investigation. As a matter of principle the identity of the whistleblower must be kept confidential. However the identity may be disclosed to a public servant if he/ she makes a request under the <i>Public Administration Act</i> . The <i>Public Administration Act</i> entitles a public servant to get access to the documents of a case where he/ she is the subject of an ongoing investigation. [Section 18, <i>Public Administration Act</i>] Disclosure of the identity of the whistleblower is also subject to the provisions of Norway's law on privacy and personal data protection. ^{xliv}
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistleblower law requires the identity of the whistleblower to be kept secret if he/ she discloses wrong doing committed by an official who is hierarchically superior to him/ her or has supervisory control over the whistleblower. [Article 7(2)] It is not clear whether the whistleblower's identity must be kept secret if the wrong doing is disclosed to other persons specified in the law. (see entry under Romania at Standard #15 below)
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	There is no requirement in the PD Act to maintain confidentiality about the identity of the whistleblower. In fact openness is encouraged as knowing the identity of the whistleblower is deemed essential for the purpose of conducting the investigation and also for remedying the detriment suffered due to retaliatory action from the employer or any other person. ^{xlv} However the <i>Companies Act, 2008</i> requires government and publicly traded companies to establish internal procedures for the purpose of receiving disclosures confidentially. [Section 159(7)(1), <i>Companies Act</i>] It is not clear whether this confidentiality must remain absolute or the identity of the whistleblower may be divulged with his/ her consent or disclosed in order to better support the investigation of the impropriety.
10.	Uganda: <i>The Whistleblowers</i>	The WP Act requires an authorised officer who receives a disclosure of impropriety to keep the disclosure confidential and in safe custody pending investigation. [Section 5(2)(c)]. However there is no procedural provision to

	Protection Act, 2010 (WP Act)	<p>keep the identity of the whistleblower confidential. Instead the WP prescribes sanctions against persons who directly or indirectly disclose the identity of the whistleblower or the contents of the disclosure made.</p> <p>Disclosure of the identity of the identity of a whistleblower, or the actual disclosure made, directly or indirectly, is an offence punishable with a prison term of a maximum of five years or a fine up to 120 currency points or both (1 currency point= 20,000 shillings). [Sections 14 and 15]</p>
11.	United Kingdom: Public Interest Disclosure Act, 1998 (PID Act)	<p>The PID Act does not cover this principle. There is no compulsion on the employer or any other person competent to receive information about wrong doing under the Act to maintain confidentiality about the identity of the whistleblower. Experts have argued that the Act encourages openness in whistle-blowing as it may be necessary to reveal the identity of the whistleblower in the interest of carrying on a fair investigation.^{xlvi} However employers may add confidentiality clauses to the employment contract for protecting whistle-blowing.</p>
12.	United States of America: Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Section 1213	<p>The WP Act does not contain provisions that specifically refer to the requirement of keeping the whistleblower's identity confidential. However the written consent of the whistleblower must be taken before disclosing his/ her name in the course of investigation into the wrong doing. The Office of the Special Counsel has set up an online system for disclosure of wrong doing in an agency. A whistleblower who fills out the relevant form for making a disclosure of wrong doing must specifically mention whether or not he/ she consents to disclosure of one's name.^{xlvii} A decision of disclosure of the identity of the whistleblower is also subject to the requirements of the <i>Freedom of Information Act, 1966</i>, data protection laws and reporting obligations of the Office of the Special Counsel under various enactments and regulations.</p> <p>Disclosure of the identity of the whistleblower may be necessary during investigation into a complaint of reprisal. If the Special Counsel makes a determination to investigate the case he/she may reveal the identity of the whistleblower only with his/ her consent. However this requirement may be waived if the Special Counsel determines that disclosure without consent is necessary to avoid imminent danger to health or safety or an imminent criminal violation. If the Special Counsel determines that the case be closed information about the allegation may be sent to the agency only with the whistleblower's consent. [WP Act and Section 1213, Title 5, <i>United States Code</i>]</p>

The International Standard:

14. The law must protect anyone who, in good faith, makes use of existing internal whistle-blowing channels from any form of retaliation/ reprisal (unfair dismissal, harassment or any other punitive or discriminatory treatment). The law must provide for an enforcement mechanism to investigate the whistleblower's complaint and seek corrective action from the employer including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The PIDPPMD Bill mandates the Central Government to protect the whistleblower from retaliatory action.</u> [Clause 10] It is not clear whether a corresponding or concurrent obligation rests with the State governments as well in relation to whistleblowers who disclose wrong doing in State government offices and agencies.</p> <p>(-ve) <u>The PIDPPMD Bill does not contain a list of actions that will be treated as acts of victimisation.</u></p> <p>(+ve) <u>The PIDPPMD Bill gives concurrent jurisdiction to the Competent Authority at the Centre and in the States to protect the whistleblower.</u> However it may make necessary binding orders to the public authority to stop or prevent victimisation including restoring <i>status quo ante</i>. [Clause 10(2)]</p> <p>(+ve) <u>The Competent Authority may also direct government authorities including the police to provide protection to the whistleblower or other witnesses including a public servant whose actions are the subject of the disclosure.</u> [Clause 11]</p> <p>(-ve) <u>There is no specific enabling provision for the Competent Authority to make inquiries into the allegation of victimisation made by the whistleblower.</u></p> <p>(-ve) <u>The PIDPPMD Bill does not empower the Competent Authority to pass interim orders in relation to victimisation of the whistleblower.</u> However the Competent Authority may during the course of an inquiry pass interim orders to prevent corrupt practices from occurring in the public authority. [Clause 13]</p> <p>(-ve) <u>The PIDPPMD Bills does not contain any provision under which the whistleblower may seek damages or</u></p>

		compensation for being victimised.
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill)</p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) The LCI Bill mandates the Central Government to protect the whistleblower from retaliatory action. [Clause 10]</p> <p>(+ve) The LCI Bill clearly identifies the kinds of action that will be treated as acts of victimisation. [Clause 2(i)]</p> <p>(+ve) The LCI Bill gives concurrent jurisdiction to the Competent Authority to protect the whistleblower by inquiring into a complaint of victimisation and make necessary binding orders to the public authority including restoring <i>status quo ante</i>. It may recommend transfer of the whistleblower employee to avoid victimisation. <u>It may also pass interim orders to prevent the victimisation of the whistleblower during the course of an inquiry into the disclosure made.</u> [Clauses 11 and 13]</p> <p>(-ve) The LCI Bill does not contain any provision for compensating the whistleblower or for awarding damages on account of victimisation suffered as a result of disclosing wrong doing.</p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005</i> (PSDP Act)</p>	<p>The PSD Act provides for well -defined procedures to prevent victimisation of the whistleblower and also provides for specific remedies including compensation if he/ she has already suffered reprisal. A victim of reprisal may approach the Public Sector Integrity Commissioner (PSI Commissioner) with a complaint. Under the PSD Act if the PSI Commissioner decides to deal with the complaint of reprisal, he/ she may give notice to the public sector unit to desist from taking disciplinary action against the complainant or suspend the disciplinary action if already taken. The PSI Commissioner may designate an officer to investigate the complaint of reprisal.</p> <p>The investigations into complaints of reprisal must be conducted as informally and expeditiously as possible. The chief executive of the public sector unit is required to give all access and assistance to an investigator or else the investigator may make a report about non-cooperation to the PSI Commissioner. The PSI Commissioner may appoint a suitably qualified person as the conciliator during the course of the investigation. [Section 19]</p> <p>A settlement that relates to the remedy to be provided to the complainant must be agreed to by the complainant and the person with the authority to implement the remedy. [Section 20]</p> <p>If no settlement on the remedy is reached the PSI Commissioner may make an application to the Public Servants Disclosure Protection Tribunal (PSDP Tribunal) to provide an appropriate remedy to the complainant. The PSDP Tribunal consists of between 2-6 members who are serving judges of a Federal Court or a superior court of a province appointed by the Governor in Council.</p>

		<p>In order to provide an appropriate remedy to the complainant, the Tribunal may, by order, require the employer or the appropriate chief executive, or any person acting on their behalf, to take all necessary measures to:</p> <p>(a) permit the complainant to return to his or her duties;</p> <p>(b) reinstate the complainant or pay compensation to the complainant in lieu of reinstatement if, in the Tribunal's opinion, the relationship of trust between the parties cannot be restored;</p> <p>(c) pay to the complainant compensation in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to the remuneration that would, but for the reprisal, have been paid to the complainant;</p> <p>(d) rescind any measure or action, including any disciplinary action, and pay compensation to the complainant in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to any financial or other penalty imposed on the complainant;</p> <p>(e) pay to the complainant an amount equal to any expenses and any other financial losses incurred by the complainant as a direct result of the reprisal; or</p> <p>(f) compensate the complainant, by an amount of not more than \$10,000, for any pain and suffering that the complainant experienced as a result of the reprisal. [Section 21.7]</p>
4.	<p>Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clauses 6.2.2 and 6.2.5]</p>
5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act specifies the kinds of acts and omissions that will constitute victimisation of the whistle-blowing employee. These are in the nature of occupational detriment or acts of reprisal that may be taken by an employer or any other employee in the organisation. [for a complete list see entry under Ghana at Standard #6]</p> <p>A whistleblower who honestly and reasonably believes that he/ she has been subjected to victimisation or is likely to be victimised because of making the disclosure of impropriety must complain first to the Commission on Human Rights and Administrative Justice (CHRAJ). The complaint must contain the following details:</p> <p>(a) the name, description and address of the whistleblower,</p>

	<p>(b) the name, description and address of the whistleblower's employer or of any other person who the whistleblower claims has subjected the whistleblower to victimisation or might subject the whistleblower to victimisation, and</p> <p>(c) the specific acts complained of as constituting victimisation. [Section 13]</p> <p>CHRAJ has a duty to conduct an inquiry into the complaint of victimisation. Both the complainant and the person causing or likely to cause the victimisation must be heard during the course of the inquiry. At the end of the inquiry CHRAJ may make an order of:</p> <p>(a) reinstatement,</p> <p>(b) reversal of a transfer, or</p> <p>(c) transfer of the whistleblower to another establishment where applicable. [Section 14(3)]</p> <p>CHRAJ may also order payment of a reward from the Whistleblower Reward Fund (Fund) if it considers it to be just in the circumstances of the case. [Section 14(4)]</p> <p>A whistleblower may be rewarded from the Fund if the disclosure leads to the arrest and conviction of an accused person. No sum, proportion or rate is specified in the Act. If the disclosure results in the recovery of money, the whistleblower may be given 10% of the amount as a reward or such other amount as the Attorney General may determine in consultation with the Inspector-General of Police. [Sections 23 and 24]</p> <p>Additionally, the whistleblower has the right to bring action in the High Court to claim damages for breach of contract or for any other relief or remedy to which he/ she may be entitled. However the High Court will not entertain a claim unless it has been submitted to CHRAJ first. [Section 15]</p> <p>The WB Act provides for the protection of the life and property of a whistleblower and that of his/ her family. A whistleblower who reasonably believes that his/ her life or property or that of his/ her family member is endangered or likely to be endangered by the disclosure of impropriety, he/ she may request police protection. The police have a duty to provide such protection. Additionally the CHRAJ or the Attorney General may also direct the police to provide such protection to a whistleblower or to a member of his/ her family. The CHRAJ or the Attorney General may also order police protection to a potential <u>whistleblower who is about to make a disclosure of impropriety</u>. The term 'family' includes spouse, father, mother, child, grandchild, brother and sister. [Section 17]</p>
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<p>6.</p>	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act) and Employment Relations Act, 2000 (ER Act)</i></p>	<p>The PD Act protects the whistleblower from retaliatory action. Complaints are treated as ‘personal grievances’ of employees within the meaning of the term defined in the <i>Employment Relations Act, 2000</i> [Section 17]. The whistleblower may approach the Employment Relations Authority (Authority) with a complaint of victimisation. The Authority is required to investigate into such complaints and pass appropriate orders. This Act requires the Authority to try out mediation first as a means of bringing about a settlement between the whistleblower and his employer. The whistleblower has the option of appealing the actions of the Authority before the Employment Court (Court). Both the whistleblower and the employer may apply for removal of the case to the Court before the Authority starts an investigation into the complaint. The Authority or the Court may order any of the following remedies if it determines that victimisation had indeed occurred:</p> <ul style="list-style-type: none"> (a) reinstatement of the employee in the employee's former position or the placement of the employee in a position no less advantageous to the employee; (b) the reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance; (c) the payment to the employee of compensation by the employee's employer, including compensation for— <ul style="list-style-type: none"> (i) humiliation, loss of dignity, and injury to the feelings of the employee; and (ii) loss of any benefit, whether or not of a monetary kind, which the employee might reasonably have been expected to obtain if the personal grievance had not arisen. [Section 123, 159, 160 and 178 <i>Employment Relations Act</i>] <p>The Authority or the Court may also order reimbursement of remuneration to the whistleblower up to three months’ remuneration as an interim measure if he/ she has lost remuneration as a result of the personal grievance. [Section 128, <i>Employment Relations Act</i>]</p> <p>The ER Act states that reinstatement is the primary remedy in such cases. [Section 125] The Authority may also order interim reinstatement of the whistleblower during the pendency of the inquiry into the complaint of victimisation if it thinks it fit. [Section 127]</p> <p>The whistleblower is entitled to opt for remedies for victimisation under the <i>Human Rights Act, 1993</i>. The Human Rights Review Tribunal may:</p>
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		<p>(a) make a declaration that the defendant has committed a breach of Part 2 of the Act (under which a complaint of victimisation can be made); and/ or</p> <p>(b) make an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order; and/ or</p> <p>c) make an order for payment of damages for:</p> <ul style="list-style-type: none"> (i) pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose; (ii) loss of any benefit, whether or not of a monetary kind, that the complainant or, as the case may be, the aggrieved person might reasonably have been expected to obtain but for the breach; and/ or (iii) humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person; <p>(d) make an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach; and/ or</p> <p>(e) make a declaration that any contract entered into or performed in contravention of any provision of Part 2 of the Act is an illegal contract;</p> <p>(f) make an order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of the Act. [Sections 92J and 92M and <i>Employment Relations Act</i>]</p> <p>However the whistleblower is not permitted to pursue these courses of remedial action concurrently.</p>
7.	<p>Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i></p>	<p>The WE Act lays down the principle that no retaliatory action must be taken against a whistle-blowing employee for disclosing a censurable condition at the work place. [Section 2-5]</p> <p>Similarly the Ethical Guidelines also prohibit seniors or other employees from imposing any retribution or punishment on a whistleblower for disclosing a censurable condition. [Para 3.4 + Comments, Ethical Guidelines]</p>

8.	<p>Romania:</p> <p><i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i></p>	<p>The Romanian Whistleblower law protects the whistleblower from any disciplinary action that may be taken by the disciplinary committee of the organisation in retaliation for blowing the whistle. The whistleblower has the right to seek the presence of a media person and a representative of a trade union or a like professional organisation during the proceedings of the committee. This law states that the provisions of the Romanian Labour Code as well as those of the statutes governing public servants (Law 188/1999) will apply in such disciplinary proceedings. The whistleblower has the right to approach a court of appropriate jurisdiction against any sanction applied by the disciplinary committee in retaliation for whistle-blowing if the matter cannot be settled through negotiation. Presumably the remedies against adverse personnel action are laid down in the aforesaid laws. [Articles 7 and 9]</p>
9.	<p>South Africa:</p> <p><i>Protected Disclosures Act, 2000 (PD Act) the Labour Relations Act, 1995 and the Companies Act, 2008</i></p>	<p>The PD Act prohibits the victimisation of any whistleblower who makes a protected disclosure as per lawful procedure. Every whistleblower who has been subjected to occupational detriment for disclosing impropriety is entitled to seek redress from a court of appropriate jurisdiction including a labour court. [Sections 3 and 4]</p> <p>The definition of occupational detriment includes, dismissal, disciplinary action, suspension, demotion, harassment intimidation, transfer against one's will, refusal of promotion, alteration of a condition or employment or retirement to the whistleblower's disadvantage, refusal of a reference by the employer, denial of appointment to any employment, profession or office or a threat to take any of the foregoing actions or any other adverse effect on the person's employment or work security. [Section 2(vi)]</p> <p>A whistleblower who suffers dismissal may approach a court of appropriate jurisdiction including a labour court for redress. If the whistleblower has suffered dismissal on account of disclosing impropriety under this Act it will be treated as 'automatically unfair dismissal'. Any other occupational detriment suffered will be treated as 'unfair labour practice'. The relevant procedures of the <i>Labour Relations Act, 1995</i> will apply in both instances. [Section 4(2)]</p> <p>A whistle-blowing employee of a government agency may be transferred from his/ her division to another division or from one organ of the State to another, at his/ her request, if he/ she believes that he/she will be adversely affected by retaliatory action. The terms and conditions of employment in the next job must not be less favourable than those of the previous job unless he/ she has consented to such conditions. [Section 4(3 and (4)]</p> <p>The <i>Labour Relations Act, 1995</i> provides for mechanisms such as conciliation, arbitration and adjudication through labour courts for resolving disputes relating to occupational detriment suffered by the whistleblower. If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may-</p>

		<p>(a) order the employer to reinstate the employee from any date not earlier than the date of dismissal (unless the employee does not wish to be reinstated or the circumstances of dismissal were such that a continued employment relationship would be intolerable);</p> <p>(b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or</p> <p>(c) order the employer to pay compensation to the employee. [Section 193, <i>Labour Relations Act</i>]</p> <p>This Act also lays down the principles for limiting the quantum of compensation payable to the victimised whistleblower. [Section 194, <i>Labour Relations Act</i>]</p> <p>In the case of occupational detriment other than dismissal, the dispute may be referred to a bargaining council (council) and where no such council has been established, to the Commission for Conciliation, Mediation and Arbitration (CCMA). Both bodies are duty bound to attempt to resolve the dispute through conciliation. [Part B, Schedule 7, <i>Labour Relations Act</i>] If the matter is not resolved through conciliation it may be referred to a labour court for adjudication. [Section 4(2)(b), PD Act]</p> <p>The <i>Companies Act, 2008</i> recognises the right of the whistleblower in the private sector to claim compensation for damages suffered as a result of any detriment suffered as a consequence of disclosing impropriety under the PD Act. If any person engages in a conduct to cause detriment to the whistleblower and the conduct causes detriment or if any person makes a threat of causing detriment to the whistleblower, the whistleblower may sue him/ her for damages and seek compensation from that person through a court of appropriate jurisdiction. [Section 159(5)]</p>
10.	<p>Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i></p>	<p>The WP Act covers this principle to a large extent. It explicitly prohibits a whistleblowing employee from being victimised by his/ her employer or another employee wholly or partly on account of making a disclosure of impropriety. If the whistleblowing employee suffers any victimisation he/ she may make a complaint to the Inspectorate of Government or the Uganda Human Rights Commission for redress. (for a description of retaliatory actions see entry under Uganda at Standard #6 above.)</p> <p>The complaint must contain the following information:</p> <p>(a) the name, description and address of the whistleblower;</p>

		<p>(b) the name, description and address of the whistleblower’s employer or any other person who the whistleblower claims has victimised him or her; and</p> <p>(c) the specific acts complained of as constituting victimisation. [Section 9]</p> <p>The victimised whistleblower may also seek redress in a court of law through civil action. [Section 9]</p> <p>The whistleblower is also entitled to receive 5% of the sum of money recovered as a result of the corrective action taken after investigating the impropriety. The reward is required to be paid within six months of the recovery being made. [Section 19]</p> <p>The WP Act is silent on the logical consequences that must follow an investigation into a complaint of victimisation. It does not contain any provision relating to compensation or taking corrective action in terms of the victimised whistleblower’s employment situation. There is no provision for granting interim relief to the whistleblower either.</p> <p>The WP Act places a duty on the State to provide protection to a whistleblower and his/ her family from harassment and victimisation. According to the Act:</p> <p>“A whistleblower who makes a disclosure and who has reasonable cause to believe that—</p> <p>(a) his or her life or property; or</p> <p>(b) the life or property of a member of the whistleblower’s family is endangered or likely to be endangered as a result of the disclosure, may request state protection and the state shall provide the protection considered adequate.” [Section 11(1)]</p> <p>For the purpose of this Section ‘family’ includes, spouse, father, mother, child, grandchild, brother and sister. [Section 11(2)]</p>
11.	<p>United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1996</i></p>	<p>The PID Act complies with this principle. It recognises the right of the whistleblower not to suffer an unfair dismissal or any other employment-related detriment on account of making the disclosure about wrong doing. [Sections 2 and 3] The <i>Employment Rights Act, 1993</i> has been amended to protect whistle-blowing workers from retaliatory action. [Sections 47B and 103A] If efforts to seek corrective action from the employer himself/ herself fail a whistleblower may approach the Employment Tribunal (the Tribunal) with a claim about the retaliatory action taken or being planned within a three-month period seeking redress. The Tribunal may condone a delay on reasonable grounds.</p>

		<p>[Section 3, PID Act and Sections 48 and 48(1A), <i>Employment Rights Act</i>] The onus is on the whistleblower to initiate proceedings about victimisation.</p> <p>The Tribunal is headed by an Employment Judge and includes two lay persons who have experience of dealing with employment-related problems. The whistleblower need not pay any cost for making a claim to the Tribunal. He/ she may incur expenses if a lawyer's services are hired although legal representation is not mandatory.</p> <p>If the Tribunal determines that the whistleblower's claim is well-founded it may make a declaration to that effect against the employer. It may also make an award of 'just and equitable' compensation to be paid by the employer to the whistleblower for taking retaliatory action. Expenses incurred by the whistleblower making the claim, damages recoverable under English common law in such cases and the nature of infringement of rights that the claim relates to must be taken into consideration while awarding compensation. [Section 49, <i>Employment Rights Act</i>]</p> <p>The Tribunal may award interim relief during the pendency of investigation of a claim. A claim of relief against dismissal must be made within seven days. Hearings in such matters cannot be adjourned unless there are exceptional circumstances for doing so. Interim relief includes reinstatement and reengagement in another job with the consent of the whistleblower. If the employer fails to act according to the terms of the interim order, the Tribunal may award compensation to the whistleblower payable by the organisation. [Section 128, <i>Employment Rights Act</i>]</p> <p>Good practice requires that the method of conciliation be tried out at all possible stages to arrive at a settlement.</p>
12.	<p>United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Titles 5 and 11, Sections 2302(b), 7121, 7701, 1211-1215, 1221</i></p>	<p>This WP Act adheres to this principle. The WP Act and the <i>United States Code</i> provide the whistleblower four options for seeking redress of complaints of reprisal:</p> <p>a) <u>Chapter 77 appeals</u>: Under this procedure the victimised whistleblower may show that the retaliatory personnel action taken by the agency was based on one or more 'prohibited personnel practices' described in Section 2302(b) of Title 5 of the United States Code and that such action was taken on account of disclosing wrong doing. Briefly the kinds of 'prohibited personnel practices' include taking discriminatory action on grounds of race, colour, sex, age, handicapping condition, religion, marital status or political affiliation, national origin; deceiving or wilfully obstructing the whistleblower from competing for employment; granting any unlawful preference or advantage for the purpose of improving or disadvantaging employment prospects and engaging in nepotism in relation to making appointments in the same agency. The appeal will lie with the Merit Systems Protection Board (MPSB). The MPSB may strike down the action of the agency if it finds it to be based on a prohibited personnel practice. If the appellant has prevailed in</p>

	<p>the case the MPSB may order suitable interim relief pending a review of the decision. The Office of the Special Counsel may intervene in the appeals proceedings with the consent of the whistleblower. [Section 4, WP Act and Sections 2302(b)(8) and (9), 7701, Title 5, <i>United States Code</i>]</p> <p>b) <u>Actions by the Office of the Special Counsel</u>: The Office of the Special Counsel has been established, as an agency independent of the MPSB, primarily to deal with complaints of reprisal from a victimised whistleblower. The Special Counsel has a duty to receive and investigate allegations of all prohibited personnel practices which includes reprisals against the whistleblower. The Special Counsel may also launch investigations <i>suo motu</i> into possible prohibited personnel practices in a federal agency. If the Special Counsel makes a positive determination that the allegation needs to be investigated it may require the agency to send its reports of investigation into the allegation and/ or provide reports concerning the corrective actions the agency is planning to take. The Special Counsel has 240 days within which to make a determination to investigate an allegation or close the case.</p> <p>As a result of its investigation if the Special Counsel determines that a prohibited personnel practice has occurred, a report containing its findings and recommendations is sent to the concerned agency, the MPSB, the Office of Personnel Management and optionally to the President of USA. If the agency does not take any corrective action, the Special Counsel may file a petition with the MPSB for issue of necessary orders. The MPSB may order a range of disciplinary action against the person who committed the reprisal.</p> <p>Upon an application from the Special Counsel a member of the MPSB may stay or postpone a personnel action against the whistleblower for 45 days during the pendency of the investigation if he/ she deems it necessary. If no member of the MPSB acts within three days of the Special Counsel making an application the stay becomes automatically effective. Before terminating the stay the MPSB must hear the Special Counsel and the whistleblower. The WP Act does not specify the payment of compensation for damages suffered by the whistleblower due to the reprisal. [Section 4, WP Act and Sections 1211-1215, Title 5, <i>United States Code</i>]</p> <p>c) <u>Individual Right Of Action</u>: The whistle-blowing employee has a statutory right to launch individual action before the MPSB within 60 days of the Office of a Special Counsel closing a case relating to a complaint of reprisal and seek a review of the matter. A direct complaint may be filed with the MPSB 120 days after filing the complaint with the Office of the Special Counsel and if no final report has been made. Retired employees and applicants for jobs in an agency may also use this route to seek redress against reprisal for disclosing wrong doing. The MPSB may order appropriate remedies such as putting the employee in the same position as he/ she would have been if the prohibited personnel practice had not occurred; awarding back pay and related benefits, medical expenses if any,</p>
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		<p>travel expenses and any other costs incidental to the case. Attorney's fees of a reasonable amount are also awarded to the whistleblower in all cases where he/ she prevails. [Section 4, WP Act and Section 1221, Title 5, United States Code]</p> <p>In addition to the provisions of the WP Act a whistleblower may also launch a grievance proceeding against the action of reprisal suffered by him/ her using the collective bargaining route to arrive at a settlement with the concerned agency. [Section 7121, Title 5, <i>United States Code</i>]</p>
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The International Standard:

15. The law must protect external whistle-blowing, including through the media, where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistleblower.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not provide for disclosures of wrong doing to be made to anybody other than the Competent Authority.</u> <u>Disclosures made to any other person or entity will not qualify for protection and inquiry under the PIDPPMD Bill.</u> <u>The PIDPPMD Bill is silent on the procedure for disclosing wrong doing that may occur in the office of the Competent Authority.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not allow for disclosures of wrong doing to be made to anybody other than the Competent Authority.</u> <u>Disclosures made to any other person or entity will not qualify for protection and inquiry under the LCI Bill.</u> <u>The LCI Bill is silent on the procedure for disclosing wrong doing that may occur in the office of the Competent Authority.</u></p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>Apart from allowing for disclosures of wrong doing to be made within the organisation where the whistleblower is employed, the PSDP Act permits him/ her to make such disclosures to the Public Sector Integrity Commissioner (PSI Commissioner) appointed under the Act. [Sections 13 and 39] Disclosure of wrong doing in the office of the PSI Commissioner may be made to the Auditor General of Canada.</p>

		<p>(i) the National Media Commission; (r) a District Chief Executive. [Section 3(1)]</p> <p>The WB Act requires the whistleblower to take the following factors into consideration while deciding to whom the disclosure should be made:</p> <p>(a) a reasonable belief or fear on the part of the whistleblower that he/ she may be subjected to dismissal, suspension, harassment, discrimination or intimidation;</p> <p>(b) a reasonable belief or fear that evidence relevant to the impropriety may be concealed or destroyed;</p> <p>(c) that the person to whom the disclosure is made will not frustrate the objective;</p> <p>(d) that the impropriety is of an exceptionally serious nature and expeditious action must be taken to deal with it;</p> <p>(e) the place where and the prevailing circumstances under which the whistleblower lives. [Section 3(2)]</p> <p>If the disclosure is made to a traditional chief, head of a recognised religious body or a head or an elder of a family, the chief, head or elder may instead of recording the disclosure as required by the Act such person must assist the whistleblower to make the disclosure to the police or to any other authority specified in the Act. [Section 6(2)]</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i></p>	<p>The PD Act provides for multiple authorities to whom disclosures of serious wrong doing may be made by an employee if the internal mechanism established by the public sector organisation for this purpose is found to be inadequate. Disclosures may be made to the head of the organisation if the internal mechanisms have not been established or publicised or if the whistleblower strongly believes that the designated official may himself/ herself be involved in the wrong doing or may have an association or a relationship with the person involved in the wrong doing. [Section 8]</p> <p>Disclosures may be made to the following ‘appropriate authorities’ if the whistleblower reasonably believes that the head of the organisation is involved in the wrong-doing or there is sufficient justification to deal with the matter urgently or the circumstances are exceptional:</p> <p>(i) the Commissioner of Police</p> <p>(ii) the Controller and Auditor-General</p> <p>(iii) the Director of the Serious Fraud Office</p>

		<p>(iv) the Inspector-General of Intelligence and Security</p> <p>(v) an Ombudsman</p> <p>(vi) the Parliamentary Commissioner for the Environment</p> <p>(vii) the Independent Police Conduct Authority</p> <p>(viii) the Solicitor-General</p> <p>(ix) the State Services Commissioner</p> <p>(x) the Health and Disability Commissioner; and</p> <p>(xi) the head of a private sector organisation that has the power to discipline its members. [Section 9]</p> <p>Disclosures may also be made to the appropriate Minister or the Ombudsmen if the whistleblower has already made a disclosure once using the internal mechanisms or to the head of the organisation or an appropriate authority and he/ she believes in reasonable grounds that such person:</p> <p>(i) has decided not to investigate the matter; or</p> <p>(ii) has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority;</p> <p>or</p> <p>(iii) has investigated the matter but has not taken any action in respect of the matter nor recommended. [Section 10]</p> <p>However the law specifically bars members of parliament from receiving disclosures. [Section 3] There is no mention of making disclosures to the media in the PD Act.</p>
7.	<p>Norway:</p> <p><i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i></p>	<p>The WE Act permits the disclosure of censurable conditions to supervisory authorities or other public authorities that have responsibility for overseeing the work of the concerned agency. [Section 2-4] The guidelines issued by the Ministry for Government Administration and Reform presumably contain a list of such authorities deemed competent to receive disclosures of censurable conditions. Under the guidelines it is possible to make disclosures to the general public provided the disclosure is made in good faith and the internal mechanism has been exhausted. Presumably, this would include making disclosures to the mass media as well.^{xlviii}</p>

		The Ethical Guidelines mention only in-house systems for disclosure for public servants. [Para 3.4 + Comments, Ethical Guidelines]
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	<p>In addition to making disclosures within the organisation where the whistleblower is employed, the Romanian Whistleblower law permits the making of disclosures of wrong doing to the following persons:</p> <ul style="list-style-type: none"> a) the manager of the public authority where the wrong doing has occurred; b) the disciplinary committee of the organisation where the wrong doing has occurred; c) judicial bodies; d) bodies established to look into and take action on issues of conflict of interest in the public sector; e) parliamentary committees; f) mass media; g) trade unions, professional organisations or employers' organisations; and h) non-government organisations. <p>The whistleblower could either approach these persons one after the other where relevant or go to any of them in the first instance. [Article 6]</p>
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	<p>In addition to making disclosures of impropriety through the internal mechanisms of an organisation, the PD Act provides four other options to the whistleblower, provided the necessary conditions are satisfied.</p> <ul style="list-style-type: none"> i) A disclosure made in the course of obtaining legal opinion or advice from a legal practitioner or a professional legal advisor will also be protected under the PD Act. [Section 5] (There is no good faith requirement while disclosing impropriety to a legal practitioner.) ii) A disclosure may be made in good faith to a member of Cabinet or the Executive Council of a province if the whistleblower's employer is a person or a body of persons appointed by a member of such a body under any legislation or is an organ of the state falling within the jurisdiction of such a member [Section 7] iii) A disclosure may be made in good faith to the Public Protector or the Auditor General or to any other person prescribed for this purpose. The preconditions for making this disclosure are:

		<p>a) the impropriety must fall within the jurisdiction of either authority or the prescribed person and</p> <p>b) the information disclosed and any allegation contained in it must be substantially true. [Section 8]</p> <p>iv) A disclosure may be made in good faith and not for personal gain to any other person by the whistleblower if he/she reasonably believes that the information disclosed and any allegation contained in it are substantially true. Expectation of any reward payable in terms of a law will not be included in the reckoning of 'personal gain'. However the disclosures must be reasonable in all the circumstances of the case and one or more of the following conditions apply:</p> <p>"2) a) that at the time the employee who makes the disclosure has reason to believe that he or she will be subjected to an occupational detriment if he or she makes a disclosure to his or her employer; or</p> <p>b) that, in a case where no person or body is prescribed for the purposes of section 8 in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer;</p> <p>c) that the employee making the disclosure has previously made a disclosure of substantially the same information to—</p> <p>(i) his or her employer or</p> <p>(ii) a person or body referred to in section 8, in respect of which no action was taken within a reasonable period after the disclosure; or</p> <p>(d) that the impropriety is of an exceptionally serious nature."</p> <p>The test of the reasonableness of disclosure under this category must be made by considering these factors:</p> <p>(a) the identity of the person to whom the disclosure is made;</p> <p>(b) the seriousness of the impropriety;</p> <p>(c) whether the impropriety is continuing or is likely to occur in the future;</p> <p>(d) whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;</p>
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		<p>(e) in a case falling within subsection 2(c) (mentioned above), any action which the employer or the person or body to whom the disclosure was made, has taken, or might reasonably be expected to have taken, as a result of [he previous disclosure;</p> <p>(f) in a case falling within subsection 2)(c)(i) (mentioned above), whether in making the disclosure to the employer the employee complied with any procedure which was authorised by the employer and</p> <p>(g) the public interest. [Section 9]</p> <p>The <i>Companies Act, 2008</i> provides for disclosures of impropriety in private sector organisations to be made in good faith to a range of authorities such as the Intellectual Property Commission , the Companies Tribunal, the Takeover Regulation Panel, any other regulatory authority, an exchange, a legal adviser, a director, prescribed officer, company secretary, auditor, board or committee of the company concerned. The whistleblower must believe that the information disclosed and the allegations contained in the disclosure are reasonably true. [Section 159(3)]</p>
<p>10.</p>	<p>Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i></p>	<p>The WP Act permits the making of disclosures about impropriety to a range of competent authorities external to the employer of the whistleblower:</p> <ul style="list-style-type: none"> (a) the Inspectorate of Government; (b) the Directorate of Public Prosecutions; (c) the Uganda Human Rights Commission; (d) the Directorate for Ethics and Integrity; (e) the office of the Resident District Commissioner; (f) Parliament of Uganda; (g) the National Environment Management Authority; or (h) the Uganda Police Force. [Section 4(3)] <p>The authorised officers competent to receive disclosures of impropriety in these bodies include the Speaker or the Deputy Speaker of Parliament, the Executive Director of National Environment Management Authority in case of environment issues, Resident District Commissioner, a Senior Ethics Officer with the Directorate of Ethics and</p>

		<p>Integrity, a human rights commissioner with Uganda Human Rights Commission, the Director of Public Prosecutions, an inspectorate officer of the Inspectorate of Government, and a police officer not below the rank of Assistant Inspector of Police. [Section 1]</p> <p>External disclosures may be made only if the following conditions are satisfied:</p> <p>(a) where the complaint does not pertain to the whistleblower’s employment; or</p> <p>(b) where the whistleblower reasonably believes that he or she will be subjected to occupational detriment if he or she makes a disclosure to his or her employer; or</p> <p>(c) where the whistleblower reasonably believes or fears that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer; or</p> <p>(d) where the complaint has already been made and no action has been taken or the whistleblower reasonably believes or fears that the employer will take no action.</p> <p>There is no provision for making disclosures to the mass media.</p> <p>The same procedures for investigation of the impropriety prescribed for an employer apply to authorised officers also. (for a description of the investigation process see entry under Uganda at Standard #11 above)</p>
11.	<p>United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1993</i></p>	<p>The PID Act allows the whistleblower to make disclosures to a range of persons if the internal mechanism of the organisation to receive such disclosures has not been set up or is not expected to function according to norms. External disclosures are subject to certain conditions described below:</p> <p>1) A disclosure about wrong doing made in the course of obtaining professional legal advice qualifies for protection under the PID Act. [Section 1, PID Act and Section 43D, <i>Employment Rights Act</i>]</p> <p>2) A disclosure about wrong doing may be made to a Minister of the Crown if the whistleblower’s employer is an individual or a body of persons appointed under any enactment by the Minister; [Section 1, PID Act and Section 43E, <i>Employment Rights Act</i>]</p> <p>3) A disclosure about wrong doing may also be made to a ‘prescribed person’ if the matter falls within the jurisdiction of such person. The Secretary of State is required to issue orders informing the people of a list of persons prescribed to receive complaints of wrong doing along with the subject matter falling within their jurisdiction. A sample of the</p>

		<p>prescribed persons is as follows: Revenue and Customs Commissioners, the Comptroller and Auditor General of the National Audit Office, the Director of Serious Fraud Office, Serious Organised Crime Agency, Charity Commissioners, the Children’s Commissioner, the <u>Information Commissioner</u>, the Environment Agency, the Food Standards Agency, the Chief Executive of Criminal Cases Review Commission, the Independent Police Complaints Commission, the National Care Standards Commission etc.^{xlix} [Section 1, PID Act and Section 43F, <i>Employment Rights Act</i>]</p> <p>4) A disclosure may be made to any person other than the persons listed above (Sl. #1-3) if the following conditions are satisfied:</p> <ul style="list-style-type: none"> a) the disclosure must be made in good faith and not for personal gain; and b) in all circumstances of the case it is reasonable for the whistleblower to make such a disclosure; and c) the whistleblower reasonably believes that he/ she will be subjected to employment-related detriment if the disclosure is made through the internal mechanism of the organisation or to the prescribed person; or d) there is no prescribed person for dealing with the specific wrong doing and the whistleblower reasonably believes that the evidence may be destroyed if the disclosure is made to the employer; or e) the whistleblower had made a disclosure of substantially the same information on an earlier occasion to the employer or the prescribed person (and presumably no action was taken) <p>However the following factors will determine whether the disclosure to ‘any other person’ will qualify for protection under the PID Act:</p> <ul style="list-style-type: none"> i) identity of the person to whom the disclosure is made; ii) the seriousness of the wrong doing; iii) whether the wrong doing is continuing or likely to continue in future; iv) whether the disclosure was made in breach of a duty of confidentiality owed by the employer to any other person; v) any action that may have been taken or may be expected to be taken by the employer or the prescribed person on account of a substantially similar disclosure that was made earlier; vi) whether the whistleblower had complied with any internal procedure authorised by the employer while
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		<p>disclosing substantially similar information on an earlier occasion. [Section 1, PID Act and Section 43G, <i>Employment Rights Act</i>]</p> <p>5) A disclosure of an ‘exceptionally serious failure’ may be made to any person other than the persons listed above (Sl. #1-3) if the following conditions are satisfied:</p> <p>a) the disclosure is made in good faith and not for personal gain;</p> <p>b) the whistleblower reasonably believes that the information about the wrong doing is substantially true;</p> <p>c) the wrong doing is of an exceptionally serious nature and in all the circumstances of the case it is reasonable for the whistleblower to make such a disclosure.</p> <p>The term ‘any other person’ includes representatives of the mass media. The identity of the person to whom the disclosure was made must be taken into consideration while determining whether the disclosure will qualify for protection under the PID Act. [Section 1, PID Act and Section 43H, <i>Employment Rights Act</i>]</p>
12.	<p>United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and United States Code, Title 5, Section 2302(b)</i></p>	<p>The WP Act does not require the whistleblower to disclose wrong doing to external sources only after exhausting the internal mechanisms established by an agency to receive and deal with such complaints. Three procedures for whistle-blowing are available.</p> <p>First, except a disclosure prohibited by law or an executive order of the President of the USA in the interest of national defence or conduct of foreign affairs, a whistleblower may make any disclosure about wrong doing belonging to the categories mentioned in the Act. This also means the disclosure may be made to any person or body including the media. [WP Act and Section 2302(b)(8), Title 5, <i>United States Code</i>]</p> <p>Second, a disclosure prohibited by law or executive orders may be made in confidence to the Special Counsel or the Inspector General of the agency where the wrong doing occurred. [WP Act and Section 2302(b)(8), <i>United States Code</i>]</p> <p>Third, any disclosure, including that which is prohibited by law or executive order may be made in confidence to the US Congress. No reprisals may be visited upon the whistleblower because he/ she made a disclosure to the US Congress. [WP Act and Section 2302(b), Title 5 <i>United States Code</i>]</p>

The International Standard:

16. The law must treat any whistleblower as having acted in good faith provided he/ she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he/ she did not pursue any unlawful or unethical objectives.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill protects the whistleblower who makes the disclosure in good faith. However he/ she is required to personally declare that he believes that the allegation being made is substantially true at the time of making the disclosure about wrong doing. [Clause 3(3)]</u></p> <p>The PIDPPMD Bill is silent on the consequences for the whistleblower if the inquiry does not bear out the allegation of wrongdoing. <u>Theoretically speaking it may be possible to launch legal proceedings against the whistleblower for making a false declaration.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003 drafted by the Law Commission of India (LCI Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill protects the whistleblower who makes the disclosure in good faith. [Clauses 3 and 15] However it is silent on the consequences that will follow for the whistleblower if the investigation into the disclosure does not bear out allegation of wrong doing. Theoretically speaking it may be possible to launch legal proceedings against the whistleblower for making a false declaration.</u></p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005</i></p>	<p>The PSDP Act protects disclosures of wrong doing done in good faith and prevents an employer from taking action in the nature of reprisal against whistleblowers. [Sections 2 and 42.1] However this protective cover may be lost if the investigation reveals that the disclosure was not made in good faith. [Section 24]</p>

	(PSDP Act)	
4.	Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i>	This principle is recognised in their COE-PR, 2010 [Clause 6.2.4]
5.	Ghana: <i>Whistleblower Act, 2006 (WB Act)</i>	<p>The WB Act protects disclosures of impropriety by the whistleblower if it is made in good faith and under reasonable belief that the information given and the impropriety mentioned in it are substantially true. A disclosure made to any person specified in Section 3 of the Act that satisfies these twin conditions qualifies for the protections and the procedures provided in the Act. [Section 1(4)]</p> <p>The WB Act does not specify any consequences that would follow for the whistleblower if an investigation revealed that the impropriety had not occurred. However the whistleblower is protected from civil or criminal proceedings except when it is proved that he / she made a false disclosure knowingly or with malicious intent. [Section 18]</p>
6.	New Zealand: <i>Protected Disclosures Act, 2000 (PD Act)</i>	<p>The PD Act provides protection to the whistleblower who makes the disclosure believing on reasonable grounds that the information is true or likely to be true. [Section 6(1)(b)]</p> <p>If the whistleblower believes on reasonable grounds that the information he/ she discloses is about serious wrongdoing in or by that organisation but the belief is mistaken, the Act requires the information to be treated as complying with the requirement of a disclosure deserving all the protections in the Act. Such a whistleblower will continue to be entitled to all the remedies provided for against victimisation in the <i>Human Rights Act, 1993</i>. [Section 6(2)]</p> <p>In 2009 the PD Act was amended to ensure that mere technical failures in addressing the disclosure to proper authorities may not be used as grounds for denying protection to the whistleblower. [Section 6A]</p>
7.	Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service (Ethical Guidelines)</i>	The WE Act does not mention this principle specifically. However the Ethical Guidelines applicable to public servants states that the act of whistleblowing must be <u>motivated by a wish to improve the situation in the concerned organisation and to inform the citizens about the censurable condition that occurred in the organisation</u> so that the interests of citizens and society at large are protected. If the disclosure of a censurable condition is made according to lawful procedure and under the conditions prescribed the whistleblower is entitled to be protected from all kinds of retaliatory action under both the WE Act and the Ethical Guidelines. However the guidelines issued by the Ministry of Government Administration and Reform require that the whistleblower have a reasonable basis to make an

		allegation. Making disclosures in a reckless manner that is harmful to the climate of cooperation, the working environment or to the individuals of the organisation or making unfounded allegations against employees is discouraged. ¹
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law 571/2004) (Romanian Whistleblower law)</i>	The Romanian Whistle-blowing law requires the whistleblower to make a disclosure in good faith based on the reasonable belief and factual knowledge that the wrong doing had actually occurred. This is one of the principles informing this law. [Article 4(c)] The law presumes that the whistleblower acted in good faith until the contrary is proven by the organisation or opposite party. [Articles 4(h) and 7(1)(b)]
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act) and the Companies Act, 2008</i>	<p>The PD Act protects disclosures made to various authorities in good faith and not for personal gain (except for claiming a reward under any law). However there is no good faith requirement for making a disclosure to a legal practitioner. Similarly there is no requirement for the whistleblower making the disclosure to his/ her employer to show reasonable belief that the information given and the allegation of impropriety contained in it are true. Mere suspicion of impropriety is enough. Disclosures to a member of the Cabinet or the Executive Council of a province or to any other person must be made under the reasonable belief that the information given and the allegation of impropriety are true. [Sections 5-9] However the Act is silent about the consequences that will follow if investigation does not bear out the impropriety.</p> <p>The <i>Companies Act, 2008</i> also requires the whistleblower to make the disclosure in good faith and under the reasonable belief that the information given and the allegation contained in it are reasonably true. Unlike the PD Act the <i>Companies Act</i> immunises the whistleblower from administrative, civil and criminal proceedings if the procedures established by law are observed. [Section 159(4)(b), <i>Companies Act</i>]</p>
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	The WP Act protects disclosures made in good faith and where the whistleblower reasonably believes that the disclosure he/ she is making and the allegations of impropriety contained in it are substantially true. However the whistleblower also has a duty to maintain the confidentiality of his/ her own identity and the contents of the disclosure made. [Section 2(2)]
11.	United Kingdom: <i>Public Interest Disclosure Act,</i>	The PID Act requires the whistleblower to act in good faith. While making a disclosure to any other person who has legal responsibility for the matter related to the wrong doing outside the organisation the whistleblower must reasonably believe that the information is true. If the disclosure is made in expectation of a reward obtainable under

	1998 (PID Act) and Employment Rights Act, 1996	any law then the disclosure will not be treated as having been made for personal gain [Sections 1, PID Act and Section 43L(2), <i>Employment Rights Act</i>] However the Act is silent about the consequences that will follow if investigation does not bear out the wrong doing.
12.	United States of America: Whistleblower Protection Act, 1989 (WP Act)	<p>The WP Act protects this principle so long as the disclosure of wrong doing is made under the reasonable belief that it is true. If the disclosure is made in accordance with the procedure established in the WP Act then irrespective of what the investigation into wrong doing may establish, the whistleblower is to be protected from reprisals. [WP Act and Sections 2302(b)(8) and 1213, Title 5, <i>United States Code</i>]</p> <p>The Office of the Special Counsel which can receive disclosures of wrong doing (but cannot itself investigate the wrong doing) advises potential whistleblowers to make such disclosures based on first hand information instead of a mere suspicion or hearsay.^{li}</p>

The International Standard:

17. The law must create a risk for those committing acts of retaliation by exposing them to counter-claims from the victimised whistleblower which could have them removed from office or otherwise sanctioned.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill does not create any risk for persons who commit acts of retaliation against whistleblowers.</u> However a person who negligently or <i>malafidely</i> reveals the identity of the whistleblower is liable to be fined or sentenced to a prison term of up to three years or both. [Clause 15]</p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill)</p> <p>(+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The LCI Bill does not create any risk for persons who commit acts of retaliation against whistleblowers.</u></p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>According to the PSDP Act a public servant who ordered or took reprisal against the whistleblower is liable for disciplinary action. Where an investigator inquiring into a complaint of reprisal finds that a public servant is guilty of taking retaliatory action against the whistleblower, he/ she may make a report of his/ her findings to the Public Service Integrity Commissioner (PSI Commissioner). Unless a settlement regarding disciplinary action against the public servant who took retaliatory action against the whistleblower is agreed upon by the investigator and the chief</p>

		<p>executive of the public sector unit ,the PSI Commissioner may file an application with the Public Sector Disclosure Protection Tribunal (PSDP Tribunal) to make a determination about whether reprisal had indeed occurred and also seek:</p> <p>a) an order in respect of disciplinary action against the public servant who took the action of reprisal against the whistleblower or</p> <p>b) an order of the nature described above and an order in respect of remedy to be provided to the victimised whistleblower. [Section 20.3]</p> <p>The PSDP Tribunal may order disciplinary action against the public servant who took retaliatory action against the whistleblower and provide written reasons for the same. [Section 21.5]</p> <p>Additionally the public servant who knowingly took retaliatory action may also be punished. If the retaliatory action is in the nature of committing an indictable offence he/ she is liable to pay a fine of up to Canadian \$10,000 or serve a prison term of up to two years or face both measures. If the action is in the nature of an offence punishable on summary conviction he/ she may be fined up to Canadian \$5,000 or serve a prison term of up to six months or face both measures. [Section 42.3]</p>
4.	<p>Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.2.6]</p>
5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act does not create a personal risk for any person who victimises or causes victimisation of the whistleblower. However the whistleblower may seek redress for occupational detriment from the Commission on Human Rights and Administrative Justice. [Sections 13 and 14]</p> <p>He/ she may also file a claim in the High Court for compensation in lieu of damages caused by the victimisation. [Section 15] It is not clear whether the compensation will be paid from the personal funds of the employer or the funds of the organisation if the High Court makes an award.</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act), Human Rights</i></p>	<p>The PD Act creates two kinds of risks for the person victimising whistleblowers [Section 6B and 17]. First, the victimiser may be sued under the <i>Employment Relations Act, 2000</i> on grounds of causing a personal grievance to the whistleblower. The whistleblower is entitled to claim a range of remedies including reinstatement, damages and</p>

	Act, 1993 and Employment Relations Act, 2000 (ER Act)	<p>compensation from the employer. For accessing these remedies he/ she may approach the Employment Relations Authority established under the Act. If he/ she is not satisfied with the outcome of these proceedings he/ she may approach the Employment Court for seeking remedies. [Sections 123-128 and 186-213 <i>Employment Relations Act</i>]</p> <p><u>Second, according to the PD Act retaliatory action against the whistleblower is to be treated as a human rights violation.</u> The <i>Human Rights Act, 1993</i> was amended in order to enable the victim to file a complaint before the Human Rights Commission (Commission). The Commission may commence settlement proceedings if it is satisfied that there is adequate cause to proceed on the basis of the complaint. If the whistleblower is not satisfied with this process he/ she may approach the Human Rights Review Tribunal. If after an inquiry the Tribunal finds that the victimisation did indeed occur it may make a declaration to that effect against the person who took retaliatory action, order such person to stop continuing or repeating such offence and/or order damages to the whistleblower. In addition to the liability of the person who took retaliatory action the employer or the head of the organisation is also made vicariously liable and can be sued for such acts and omissions resulting in victimisation of the whistleblower. [Sections 66, 68, 75-92 and 921, <i>Human Rights Act</i>]</p> <p>However the whistleblower may pursue only one of these options at a time and not pursue them concurrently.</p>
7.	Norway: <i>Working Environment Act, 2005 (WE Act)</i>	The WE Act creates a right for the whistleblower to seek compensation from the organisation for suffering retaliation on account of disclosing a censurable condition in accordance with the law. A court of appropriate jurisdiction may determine a reasonable amount of compensation payable to the victim. Additionally the whistleblower has the right to sue the organisation for financial loss caused. [Section 2-5(3), WE Act] As the WE Act covers employees in the public sector as well, public servants may use the same route to claim compensation for suffering retaliatory action.
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law) and the Romanian Labour Code</i>	The Romanian Whistleblower law does not specify the risks that a person victimising the whistleblower may face. However the Romanian Labour Code empowers Labour Inspectors to impose penalties on employers for violating the rights of the workers. [Article 276, Romanian Labour Code]
9.	South Africa:	The whistleblower protection laws applicable to the public and private sector do not create any personal risk for the employer or person taking retaliatory action against the whistleblower. However the organisation will be required to

	<i>Protected Disclosures Act, 2000 (PD Act), the Labour Relations Act, 1995 and the Companies Act, 2008</i>	compensate the whistleblower if the occupational detriment is proven to have occurred. This would mean a drain on the funds of the organisation. Presumably procedures for recovering the loss from the pocket of the person who took retaliatory action may be initiated under the applicable laws and procedures or some other corrective action may be taken.
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	This principle is covered in the WP Act. A person who victimises a whistleblower on his/ her own or through another person commits an offence. Upon conviction he/ she is liable to be punished with a prison term up to five years or a fine of 120 currency points or both (1 currency point=20 thousand shillings) [Section 16]
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	The PID Act is silent on the consequences to the employer or any person who took retaliatory action against the whistleblower.
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Sections 1214 and 1215</i>	<p>The WP Act creates clear risks for the employee who causes victimisation of the whistleblower. The Special Counsel is the official protector of whistleblowers disclosing wrong doing in the Federal Government. After making a determination that the whistleblower was indeed victimised, the Special Counsel must file a complaint with the Merit Systems Protection Board (the MPSB) against the employee(s) who caused the victimisation. The MPSB has the power to order the following disciplinary action against the employee guilty of victimising the whistleblower: <u>removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000</u>. No administrative appeal is possible against this order. However a judicial appeal is allowed under the Act. Additionally the MPSB may order the agency to bear attorneys' fees. [Sections 1214 and 1215]</p> <p>It is possible to move the MPSB against an employee appointed by the President and confirmed by the Senate who performs confidential, policy-making, policy-determining or policy-advocating jobs if he/ she takes an action of reprisal against the whistleblower. In such cases the MPSB sends to the President of USA a report containing the facts of the case and the response of the employee. The President may take further action against such employee. [Sec 4, WP Act and Section 1215(b), Title 5, <i>United States Code</i>]</p>

The International Standard:

18. As regards the burden of proof, the law must obligate the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistleblower were not motivated by reasons of retaliation of the act of whistle-blowing.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(-ve) <u>The PIDPPMD Bill is silent on the issue of burden of proof regarding victimisation of the whistleblower.</u></p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill) (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The LCI Bill places the burden of proof on the public authority to show that action taken against the whistleblower was not in retaliation of the disclosure made.</u> [Clause 14] However the standard of proof required for establishing that victimisation did not occur is not specified.</p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>The PSDP Act does not contain any provision that is reflective of this principle. Instead the Public Servants Disclosure Protection Tribunal is required to take into consideration the following factors while determining whether reprisal had occurred against the whistleblower: (a) the gravity of the reprisal;</p>

		<p>(b) the level of responsibility inherent in the position that the person occupies;</p> <p>(c) the person’s previous employment record;</p> <p>(d) whether the reprisal was an isolated incident;</p> <p>(e) the person’s rehabilitative potential;</p> <p>(f) the deterrent effect of the disciplinary action;</p> <p>(g) the extent to which the nature of the reprisal discourages the disclosure of wrongdoing under this Act; and</p> <p>(h) the extent to which inadequate disciplinary action in relation to the reprisal would have an adverse effect on confidence in public institutions.</p>
4.	<p>Council of Europe <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.3]</p>
5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act reverses the burden of proof. The person causing the victimisation has the burden of proving that the action taken against the whistleblower was not motivated by the disclosure of impropriety originally made. According to the Act:</p> <p>“A whistleblower shall not be considered as having been subjected to victimisation if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.” [Section 12(3)]</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act) Human Rights Act, 1993 (HR Act) and Employment Relations Act, 2000 (ER Act)</i></p>	<p>There are no provisions specifying the burden of proof in instances of victimisation in the PD Act because it requires the whistleblower to approach the mechanisms established under the <i>Human Rights Act, 1993</i> and the <i>Employment Relations Act, 2000</i> for settling such grievances.</p> <p>According to the <i>Human Rights Act</i> the burden of proof is reversed. The burden of proving that the victimisation did not occur is on the person against whom the allegation has been made. [Section 92F, <i>Human Rights Act</i>]</p> <p>According to the <i>Employee Relations Act</i>, the question of whether a dismissal or an action causing personal grievance to the whistleblower was justifiable must be determined, on an objective basis, by considering whether the</p>

		employer's actions, and how the employer acted were, what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred. Technically the burden of proving that the action taken by the employer was not in retaliation to whistle-blowing is on the person against whom the allegation is made. [Section 103A, <i>Employment Relations Act</i>]
7.	Norway: <i>Working Environment Act, 2005 (WE Act) and Ethical Guidelines for the Public Service</i>	<p>The WE Act reverses the burden of proof on the employer. If an employee submits a complaint about retaliatory action suffered by him/ her for reporting a censurable condition, it shall be assumed that such retaliation has taken place unless and until the employer substantiates otherwise. [Section 2-5]</p> <p>The Ethical Guidelines also place on the employer the burden of proving that an action taken against an employee was not in retaliation for disclosing a censurable condition. [Para 3.4 + Comments, Ethical Guidelines]</p>
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law) and the Romanian Labour Code</i>	<p>The Romanian Whistleblower law does not specify the burden of proof regarding retaliatory action. However according to the Romanian Labour Code the burden of proof in all worker-related disputes is on the employer who is required to submit arguments in his/ her defence in all proceedings before the Labour Inspectors or Labour Courts. A complaint against retaliatory action may be filed with the Labour Inspector as a worker-related dispute. [Article 287, Romanian Labour Code]</p>
9.	South Africa: <i>Protected Disclosures Act, 2000 (PD Act), the Labour Relations Act, 1995 and the Companies Act, 2008</i>	<p>The PD Act does not contain any provision relating to the burden of proof in instances of victimisation. However the <i>Labour Relations Act, 1995</i>, under which the whistleblower may seek remedial action, specifies the burden of proof in relation to 'unfair dismissal' of the employee or 'unfair labour practice' adopted by the employer.</p> <p>Under the <i>Labour Relations Act, 1995</i> in cases relating to dismissal of the whistleblower from his/ her job, which is treated as 'automatically unfair dismissal', it is the duty of the employer to prove that the dismissal is fair. The whistleblower is only required to show that the dismissal has actually occurred. [Section 192, <i>Labour Relations Act</i>]</p> <p>In cases relating to other kinds of occupational detriment which are treated as 'unfair labour practices' the procedure of conciliation, failing which, arbitration is prescribed. The whistleblower need only show that he/ she has served a copy of the referral of the matter to all the parties involved. [Part B, Schedule 7, <i>Labour Relations Act</i>]</p> <p>The <i>Companies Act, 2008</i> reverses the burden of proof in cases of victimisation. It is the responsibility of the person, against whom an allegation of causing detriment has been made, to show on the basis of satisfactory evidence, that</p>

		there is another reason for engaging in such conduct. [Section 159(6), <i>Companies Act</i>]
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	The WP Act is silent on this principle. Instead it states that a whistleblower will not be considered victimised if the person against whom the complaint of victimisation is directed— (a) has the right in law to take the action complained of; or (b) the action is demonstrably unrelated to the disclosure made.
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act) and Employment Rights Act, 1996</i>	The PID Act allows the whistleblower to file a claim with the Employment Tribunal against any retaliatory action (including any omission resulting in adverse effect to the whistleblower) taken by his/ her employers. According to the <i>Employment Rights Act, 1996</i> which contains provisions for dealing with such claims, it is the responsibility of the employer to show the grounds on which the action or the deliberate omission to take an action was done. [Section 48(2), <i>Employment Rights Act</i>]
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Sections 2302(b) and 1214(b)</i>	The WP Act adheres to this principle. A whistleblower is not required to show that the victimisation occurred as a ‘reprisal’ for disclosing wrong doing. Establishing that reprisal occurred, requires proving that the action against the whistleblower was taken with improper or retaliatory motive. The WP Act considerably eases this burden off the shoulders of the whistleblower. It is enough if the whistleblower shows that the disclosure of wrong doing was a ‘contributing factor’ in the personnel action suffered by him/ her. The burden of proof is higher on the concerned agency or the Federal Government. It must show ‘clear and convincing evidence’ that it would have taken the personnel action against the whistleblower even in the absence of the disclosure of wrong doing. [Section 4, WP Act and Sections 2302(b) and 1214(b), Title 5, <i>United States Code</i>]

The International Standard:

19. The law must provide for appropriate protection against accusations made in bad faith.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India: <i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i> (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The PIDPPMD Bill prescribes a fine up to Rs. 30,000 or a prison term up to 2 years or both for persons who make disclosures malafidely and knowing that it is false or incorrect.</u> [Clause 16] The reduction in the penalty amount and length of prison term are improvements over the LCI Bill.</p>
2.	<p>India: <i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill) (+ve)= positive feature (-ve)= negative feature</p>	<p>(+ve) <u>The LCI Bill prescribes a fine up to Rs. 50,000 and a prison term of up to 3 years for making false, malicious and reckless disclosure.</u> [Clause 16]</p>
3.	<p>Canada: <i>Public Servants Disclosure Protection Act, 2005</i> (PSDP Act)</p>	<p>The PSDP Act does not prescribe any consequences for a disclosure of wrong doing made in bad faith.</p>
4.	<p>Council of Europe</p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.2.7]</p>

	Parliamentary Resolution of April, 2010 (COE-PR, 2010)	
5.	Ghana: Whistleblower Act, 2006 (WB Act)	The WB Act takes away a whistleblower's immunity from civil or criminal proceedings if he/ she makes a false disclosure knowingly or with malicious intent. [Section 18] Presumably the consequences in civil and criminal law will follow subsequent to such a finding being recorded by the authority investigating the disclosure.
6.	New Zealand: Protected Disclosures Act, 2000 (PD Act), Human Rights Act, 1993	The PD Act states that the protections against victimisation provided under the <i>Human Rights Act, 1993</i> will not be available to a whistleblower who makes a false allegation or acts in bad faith. No punishment or penalty is specified for disclosures made in bad faith. [Section 20]
7.	Norway: Working Environment Act, 2005 (WE Act)	The WE Act is silent on this principle even though employees are encouraged to make disclosures of censurable conditions in good faith and not in a reckless manner so as to harm the working atmosphere or any individual at the work place. As the guidelines issued by the Ministry for Government Administration and Reform are not available in English it is not possible to find out whether any consequences will entail the making of disclosures in bad faith by a whistleblower.
8.	Romania: Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)	The Romanian Whistleblower law does not contain any provision about dealing with disclosures made in bad faith. However a whistleblower is prohibited from taking recourse to this law by making a disclosure of wrong doing in order to escape the consequences for a more serious wrongful action committed by him/ her. [Article 4(g)]
9.	South Africa: Protected Disclosures Act, 2000 and the Companies Act, 2008	Both laws applicable to the public and private sector do not specify the legal consequences for the whistleblower who makes a disclosure in bad faith.
10.	Uganda:	This principle is covered in the WP Act. If a person makes a disclosure knowing that it contains false information and

	<i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	intending that it be acted upon as if it were a protected disclosure commits an offence. Upon conviction he/ she is liable to be sentenced to a prison term of up to five years or a fine of 120 currency points or both. (1 currency point=20,000 shillings) [Section 17]
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	The PID Act does not prescribe any consequences for the whistleblower who makes a disclosure in bad faith.
12.	United States of America: <i>Whistleblower Protection Act, 1989 (WP Act)</i>	The WP Act is silent on the consequences that would follow for a whistleblower who makes disclosure in bad faith. Presumably such an act may entail counter-litigation launched by the affected parties.

The International Standard:

20. The implementation and impact of the law on the effective protection of whistleblowers should be monitored and evaluated at regular intervals by independent bodies.

Sl. #	Name of the Country/ Law/ Bill	Comparison with the International Standard
1.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 (PIDPPMD Bill)</i></p> <p><i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(+ve)</i> <u>The PIDPPMD Bill requires the Competent Authorities at the Centre and in the States to submit annual reports to the concerned government. The concerned government is required to table this report in Parliament or the respective State legislatures.</u> [Clause 22] This is significant improvement over the LCI Bill.</p>
2.	<p>India:</p> <p><i>The Public Interest Disclosure and Protection of Informers Bill, 2003</i> drafted by the Law Commission of India (LCI Bill)</p> <p><i>(+ve)= positive feature</i> <i>(-ve)= negative feature</i></p>	<p><i>(-ve)</i> <u>The LCI Bill does not contain any provisions for monitoring and evaluating the impact of the law.</u></p>
3.	<p>Canada:</p> <p><i>Public Servants Disclosure Protection Act, 2005 (PSDP Act)</i></p>	<p>The PSDP Act requires the Public Sector Integrity Commissioner to submit annual reports to both Houses of Parliament giving the following information:</p> <p>(a) the number of general inquiries relating to the Act;</p> <p>(b) the number of disclosures received and complaints made in relation to reprisals, and the number of them that</p>

		<p>were acted on and those that were not acted on;</p> <p>(c) the number of investigations commenced under the Act;</p> <p>(d) the number of recommendations that the Commissioner has made and their status;</p> <p>(e) in relation to complaints made in relation to reprisals, the number of settlements, applications to the Public Servants Disclosure Protection Tribunal and decisions to dismiss them;</p> <p>(f) whether there are any systemic problems that give rise to wrongdoings;</p> <p>(g) any recommendations for improvement that the Commissioner considers appropriate. [Section 38]</p> <p>The Minister responsible for the PSDP Act is required to initiate an independent review of its working after five years of its coming into force and submit a report to both Houses of Parliament. [Section 54]</p>
4.	<p>Council of Europe: <i>Parliamentary Resolution of April, 2010 (COE-PR, 2010)</i></p>	<p>This principle is recognised in their COE-PR, 2010 [Clause 6.2.7]</p>
5.	<p>Ghana: <i>Whistleblower Act, 2006 (WB Act)</i></p>	<p>The WB Act does not require any authority to make an annual report of the working of the Act to Parliament. However the Legal Service Board (the Board), mandated to manage the Whistleblower Reward Fund, is required to submit an annual report on the use of the fund after the yearly transactions have been audited by the Auditor general. The Board is required to submit its report along with the report of the Auditor General to the Minister in charge of the implementation of the WB Act. The Minister will cause the report to be tabled in Parliament along with his/ her own statement if necessary. [Section 29] There is no requirement to undertake a periodic review of the working of the Act.</p>
6.	<p>New Zealand: <i>Protected Disclosures Act, 2000 (PD Act), Ombudsmen Act, 1975</i></p>	<p>The Ombudsmen are required to include in their annual report to Parliament submitted under the <i>Ombudsmen Act, 1975</i> the following information relating to the PD Act:</p> <p>(a) current guidance issued by the Ombudsmen in respect of the Act</p> <p>(b) the number and types of information and guidance inquiries made to the Ombudsmen in respect of the Act</p> <p>(c) the number of protected disclosures of information made to the Ombudsmen</p>

		(d) the number of investigations of disclosures of information undertaken or taken over by the Ombudsmen (e) the number of investigations referred under section 15 (escalation of investigation) (f) the outcome of the matters referred to in paragraphs (b) to (e) (if known by the Ombudsmen) of this section. [Section 15C(2)]
7.	Norway: <i>Working Environment Act, 2005 (WE Act)</i>	The WE Act does not contain any provision requiring a report to be submitted to Parliament on the subject of whistle-blowing in the public and private sector.
8.	Romania: <i>Law on the Protection of Public Officials Complaining about Violations of the Law (Law571/2004) (Romanian Whistleblower law)</i>	There is no statutory requirement of monitoring and reporting upon the working of the Romanian Whistleblower law.
9.	South Africa: <i>Protected Disclosures Act, 2000 and the Companies Act, 2008</i>	There is no statutory requirement of monitoring the performance of the whistleblower protection laws applicable to the public and private sector.
10.	Uganda: <i>The Whistleblowers Protection Act, 2010 (WP Act)</i>	This principle is not covered by the WP Act.
11.	United Kingdom: <i>Public Interest Disclosure Act, 1998 (PID Act)</i>	The PID Act does not contain any provision requiring submission of annual reports on the working of the law to Parliament or for a time-bound review of its working.
12.	United States of America:	The WP Act requires annual reports to be submitted to Congress by the Special Counsel created for the purpose of

	<p>Whistleblower Protection Act, 1989 (WP Act) and the United States Code, Title 5, Section 1217-1218</p>	<p>causing investigation into disclosure of wrongdoing and for taking action to protect the whistleblower. This report must contain information about the number and types of disclosures received, action taken on them, the number of disposal of complaints about victimisation received and the manner of their disposal and any recommendations for strengthening the WP Act, [WP Act and Section 1218, Title 5, <i>United States Code</i>]</p> <p>Additionally the Special Counsel may be required by any committee or sub-committee of the Congress to submit a report or testimony on the functioning of his/ her office. [WP Act and Section 1217, Title 5, <i>United States Code</i>]</p>
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Notes:

- ⁱ I am grateful to Ms. Maja Daruwala, Director CHRI, for her valuable comments on a draft version of this study.
- ⁱⁱ For a detailed narrative of the life, career and eventual murder of the Late Satyendra Dubey, Project Director with the State-owned National Highways Authority of India, see: http://en.wikipedia.org/wiki/Satyendra_Dubey accessed on 16 October, 2010. For a brief narrative on the career and eventual murder of the Late Shanmugam Manjunath, Marketing Manager with the State-owned Indian Oil Corporation, see: http://en.wikipedia.org/wiki/Shanmughan_Manjunath accessed on 16 October, 2010.
- ⁱⁱⁱ Member countries of the Organisation of American States while adopting the Model Inter-American Law on Access to Public Information this year recognised the value of whistleblower laws to transparency regimes in the following manner:
- “The enactment of supporting legislation is not only recommended to promote openness in the various areas of government’ actions, but most importantly, to grant the effectiveness of a transparent and rights protection regime” (established by right to information laws). “Supporting legislation that will further promote openness while promoting the principles in the access to information law, include: -
1. Whistleblower protection encourages public officials to denounce wrongdoing of other officials. At the same time, whistleblower protection provides effective punishment to offenders and protection to the individual reporting the wrongdoing, in order that they may remain in their position without the risk of being judged or isolated internally....”
- For the complete text of the Model Inter-American Law on Access to Public Information and the commentary attached to it, see the website of the Open Society Justice Initiative: http://www.oas.org/dil/access_to_information_model_law.htm accessed on 16 October, 2010.
- ^{iv} For example, Sierra Leone in Africa mandates its public officials to blow the whistle on corruption occurring in public bodies. Section 77 of *The Anti-Corruption Act, 2008* of Sierra Leone states as follows:
- “Where a public officer suspects that an act constituting an offence under Part IV has been committed or is about to be committed within or in relation to a public body, he shall forthwith make a written report to the Commission.” (Anti-Corruption Commission).
- For the complete text of *The Anti-Corruption Act, 2008* see the website: <http://www.sierra-leone.org/Laws/2008-12.pdf> accessed on 16 October, 2010.
- ^v Article 33 of the *United Nations Convention Against Corruption* requires every State Party to, “consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts

concerning offences established in accordance with this Convention.” For the complete text of the *United Nations Convention Against Corruption* see the website of the United Nations Office on Drugs and Crime: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf accessed on 16 October, 2010. India has not yet ratified this Convention despite signing it in December 2005.

- ^{vi} The principles identified in a paper commissioned by Transparency International and two other Norwegian institutions working on anti-corruption issues are widely discussed. See *Good Practice in Whistleblowing Protection Legislation (WPL)*, Transparency International, Anti-Corruption Resource Centre and CHR Michelsen Institute, Norway, 2009 on the website of the Anti-Corruption Resource Centre: <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=207> For the whistleblowing principles developed by the Government Accountability Project, USA see Tom Devine, *International Best Practices for Whistleblower Policies*, Government Accountability Project, USA, 2009 accessible on the website of Government Accountability Project: http://whistleblower.org/storage/documents/IGO_Best_Practices_checklist1-1.pdf The principles developed by the UK-based NGO, Public Concern at Work, in collaboration with the British Standards Institution, are found in this document: *Publicly Available Specification (PAS) 1998:2008 Whistleblowing Arrangements Code of Practice*, UK, 2008, accessible on the website of the British Standards Institution: <http://www.bsigroup.com/en/sectorsandservices/Forms/PAS-19982008-Whistleblowing/Download-PAS-1998/> The International Chamber of Commerce has developed a set of principles for companies in the private sector to institute whistleblowing policies which are accessible at: *ICC Guidelines on Whistleblowing*, prepared by the International Chamber of Commerce Commission (ICC) on Anti-Corruption, 2007. See: [http://www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20as%20adopted%2008\(2\).pdf](http://www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20as%20adopted%2008(2).pdf) all accessed on 16 October, 2010.
- ^{vii} “*satyamēva jayate nānrtam...*” which translates as “It is truth that conquers and not falsehood...”: *Mundaka Upaniṣad* (III.1.6), translation by Sri Aurobindo, 1920. See complete Sanskrit verse and English translation on the website of Wikipedia: http://en.wikipedia.org/wiki/Satyameva_Jayate and Bernard’s website dedicated to Sri Aurobindo and the Mother: <http://intyoga.online.fr/mundaka.htm> respectively, accessed on 16 October, 2010. I would like to thank Mr. P M Bhat a crusader for truth and transparency who, during our discussions, drew my attention to the connection between a whistleblower law and this noble and elegant but oft neglected motto.
- ^{viii} For the complete text of the *Public Interest Disclosure and Protection to Persons Making Disclosures Bill, 2010* see the website of the Rajya Sabha (Upper House of India’s Parliament): http://164.100.47.5/newcommittee/press_release/bill/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/97of2010.pdf accessed on 16 October, 2010.
- ^{ix} For the complete text of the *Public Interest Disclosure and Protection of Informers Bill, 2003* see the website of the Law Commission of India: <http://lawcommissionofindia.nic.in/reports/179rpt2.pdf> accessed on 16 October, 2010.
- ^x For the complete text of the *Public Servants Disclosure Protection Act, 2005* see the website of the Department of Justice, Government of Canada: <http://laws.justice.gc.ca/eng/P-31.9/index.html> accessed on 16 October, 2010.
- ^{xi} For the complete text of the Resolution 1729 of the Parliamentary Assembly of the Council of Europe see the website of the Council of Europe: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1729.htm> accessed on 16 October, 2010.
- ^{xii} For the text of Ghana’s *Whistleblower Act, 2006* see the website of Ghana’s Parliament: <http://www.parliament.gh/files/Whistleblwer%20Act%20720.pdf> accessed on 16 October, 2010.

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- ^{xiii} For the complete text of the New Zealand's *Protected Disclosures Act, 2000* see the website of the Government of New Zealand: <http://www.legislation.govt.nz/act/public/2000/0007/latest/DLM53466.html> accessed on 16 October, 2010.
- ^{xiv} The complete text of the *Act of 17 June 2005 No. 72 Relating to Working Environment, Working Hours and Employment Protection, Etc.* or the *Working Environment Act, 2005* in short is accessible at the website of the Norwegian Labour Inspection Authority: <http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156> accessed on 16 October, 2010.
- ^{xv} Bryane Michael's unofficial translation of the Romanian Whistleblower law has been used for this study. This translation is available at: http://works.bepress.com/bryane_michael/37/ accessed on 16 October, 2010.
- ^{xvi} For the complete text of South Africa's *Protected Disclosures Act, 2000* see the website of the Department of Justice and Constitutional Development, Government of South Africa: <http://www.justice.gov.za/legislation/acts/2000-026.pdf> accessed on 16 October, 2010.
- ^{xvii} For the complete text of Uganda's *Whistleblowers Protection Act, 2010* see the website of the Open Society Institute Justice Initiative: http://right2info.org/resources/publications/Uganda%20Whistleblowers_Protection_Act_2010.pdf accessed on 16 October, 2010.
- ^{xviii} For the complete text of UK's *Public Interest Disclosure Act, 1998* see the website of the Government of the United Kingdom: <http://www.legislation.gov.uk/ukpga/1998/23/contents> accessed on 16 October, 2010.
- ^{xix} For the complete text of UK's *Employment Rights Act, 1996* see the website of the Government of the United Kingdom: <http://www.legislation.gov.uk/ukpga/1996/18/contents> : accessed on 16 October, 2010.
- ^{xx} For the complete text of USA's *Whistleblower Protection Act, 1989* see the website of the Library of Congress: <http://thomas.loc.gov/cgi-bin/query/z?c101:S.20.ENR>: accessed on 16 October, 2010.
- ^{xxi} For the complete text of the *Ethical Guidelines for the Public Service*, revised version, 2006, published by the Ministry of Modernisation, Government of Norway, on its website: http://www.regjeringen.no/upload/kilde/mod/bro/2005/0001/ddd/pdfv/281750-etiske_retningslinjer_engelsk_revidert.pdf accessed on 16 October, 2010.
- ^{xxii} For the complete text of the *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*, see the website of the Department of Justice and Constitutional Development, Government of the Republic of South Africa: <http://www.justice.gov.za/legislation/acts/2000-004.pdf> accessed on 16 October, 2010.
- ^{xxiii} The understanding of the legal framework for the protection of whistleblowers in the USA is derived from a reading of the relevant laws and an excellent report on the subject prepared by US Congressional Research Services. See *Whistleblower Protection Act: An Overview*, Congressional Research Services Report to US Congress, 2007, p.4: accessible at the Website of the Federation of American Scientists: <http://www.fas.org/sgp/crs/natsec/RL33918.pdf> accessed on 16 October, 2010.
- ^{xxiv} For the complete text of Section 2302, Title 5, United States Code see the website of the Office of the Law Revision Counsel, US House of Representatives: *United States Code*: <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t05t08+179+0++%28%29%20%20AND%20%28%285%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%282302%29%29%3ACITE%20%20%20%20%20%20%20%20%20> : accessed on 16 October, 2010.

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- ^{xxxix} The Bills of Rights contained in the South African Constitution includes the freedom of the press within the scope of the freedom of expression. Section 16, *Constitution of the Republic of South Africa*: <http://www.info.gov.za/documents/constitution/1996/96cons2.htm#16> : accessed on 16 October, 2010.
- ^{xi} *Branzburg v Hayes*, 408 U.S. 665, 92 S. Ct. 2626 (1972). Also see *Journalists and Grand Juries*, Educational Resources available on the website of US Courts: <http://www.uscourts.gov/EducationalResources/ClassroomActivities/SixthAmendment/JournalistsAndGrandJuries/Background.aspx> accessed on 16 October, 2010.
- ^{xii} “What Happens Next- Evaluating Disclosures”, website of the United States Office of the Special Counsel: <http://www.osc.gov/wbdiscEval.htm> accessed on 16 October, 2010.
- ^{xiii} For the online form meant for the use of a whistleblower see the website of GAP: <http://www.whistleblower.org/component/content/article/70> accessed on 16 October, 2010.
- ^{xiii} Unfortunately the guidelines issued by the Ministry of Government Administration and Reform are available in Norwegian only. These limited details of the procedure for investigating a disclosure are sourced from the website of the University of Bergen: <http://regler.uib.no/regelsamling/show.do?id=568> accessed on 16 October, 2010.
- ^{xiv} Ibid.
- ^{xv} For an endorsement of this view see: *Speak Out for Service Delivery: The Protected Disclosures Act as a Tool for Organisational Accountability*, see f.n. #xxxix above.
- ^{xvi} *FAQs: Individuals*, see the website of Public Concern at Work, UK: http://www.pcaw.co.uk/fag/FAQ_individuals.htm#question13 accessed on 16 October, 2010.
- ^{xvii} See Whistleblower Disclosure Form: OSC-12 at the website of the US Office of the Special Counsel: <http://www.osc.gov/documents/forms/osc12.htm> accessed on 16 October, 2010.
- ^{xviii} These limited details of the procedure for investigating a disclosure are sourced from the website of the University of Bergen, see f.n. #xliv above.
- ^{xix} *Blowing the Whistle to a Prescribed Person*, available on DirectGov the Digital Service Website of the Government of the UK : http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@employ/documents/digitalasset/dg_177605.pdf accessed on 16 October, 2010. This extensive list contains topics falling within the jurisdiction of each authority to enable the whistleblower to approach the correct person without much difficulty.
- ⁱ These limited details of what should be borne in mind by the potential whistleblower while making a disclosure of a censurable condition are sourced from the website of the University of Bergen, see f.n.# xliv above.
- ⁱⁱ *What Happens Next: Evaluating Disclosures*, website of the US Office of the Special Counsel, see f.n. #xlii above.