

WHISTLE BLOWING IN INDIA

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INTRODUCTION

Every organization or company recruits persons from different strata of society. While some may be loyal and honest to their work, others might choose to make use of unethical and immoral means to either earn profit or position. The act of whistle blowing is driven by one's ethics and the inherent desire of promoting something good for the organization, and the public at large. Whistle blowing can be defined as an act of a present or a former employee who has the knowledge of illegal or unethical practices being performed by some members of the organization and decides to report it to the management or a higher authority. Non-conformation to the wrongs committed by others is an essential characteristic of a whistle-blower.

According to the [International Labour Organisation](http://www.ilo.org), whistle blowing is "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers." In India, numeric instances of whistle blowing have come up in the recent past, the historic ones being the whistle blowing of Harshad Mehta by Sucheta Dalal (journalist) and of Governor-General Hastings by Maharaja Nand Kumar (revenue officer), which draws our attention to whether these whistle-blowers are protected under the law, and what are their rights and duties.

TYPES OF WHISTLE BLOWING

1. Internal whistle blowing – It is when a person reports the occurrence of unethical practices to the management of the organization itself.
2. External whistle blowing – It is when a person reports the occurrence of unethical practices to the larger public, with the help of the press or media.
3. Open whistle blowing – It is when the whistle-blower is ready to reveal his/her identity to the people of the organization and the public.
4. Alumni whistle blowing – It is when a former employee of the organization reports the acts of wrongdoings.

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5. Personal whistle blowing – It is when the act of whistle blowing will cause harm to only one single person
6. Impersonal whistle blowing – It is when the act of wrongdoings will cause harm to the entire organisation.
7. Government whistle blowing – It is when a person reports the wrongful acts of the employees of an organisation to a Government official.
8. Corporate whistle blowing – It is when the disclosure of wrongs is done within the organisation itself.

DIFFERENCE BETWEEN A WHISTLE-BLOWER & AN INFORMER

The essential difference between both lies in the intention behind the disclosure of information. Although this difference can be confusing at times, an informer is someone who is involved in malpractices and discloses such information primarily to reduce their liability, either voluntarily or under coercion.² Another crucial difference is that informers have a motive of getting rewards or remunerations for the disclosure whereas whistle-blowers do not wish to seek any such profit.

PROBLEMS FACED BY WHISTLE-BLOWERS IN INDIA

As much as the efforts made and the risks taken by the whistle-blower are appreciated, they still face a lot of problems inside the company or organization, mostly in the forms of hostility or cold-shoulder from their peers or other senior members of the group. They face issues not just by means of social stigma but also face criminal and legal charges and administrative harassment.

1. Reduces trust in the workplace

A whistle-blower is excluded from the larger part of the organization due to a lack of trust and the development of a hostile attitude towards them. Believing them to be a “snitch”, oftentimes it is seen that they are humiliated publicly, with an intention to “teach them a lesson” for the acts committed by them.

2. Unemployment

²Dr. Shyam Agarwal, Whistle Blowing - Balancing on a Tight Rope, New Delhi (Nov. 17, 2017).

Sometimes blowing a whistle against someone in a higher and authoritative position even leads to the whistle-blower being fired from the company/organization by stating very vague and ambiguous reasons for doing so.

3. The Risk to Personal Safety

A whistle-blower not only puts his reputation and job at risk but also his personal safety. In the despair to seek vengeance, a whistle-blower may face risks to their safety or that of their family. Risks involved can range from mere verbal threats to extreme cases of murder, as seen in the case of Satyendra Dubey who was a project director at [NHAI](#) and was shot dead in Bihar.

PREVIOUS DE-MORALIZING CASES OF WHISTLE BLOWING IN INDIA

- Shanmugam Manjunath –An MBA graduate from Indian IIM Lucknow, he was working as the marketing manager for Indian Oil Corporation (IOC). He had ordered to seal two petrol pumps in Lucknow for selling of impure gasoline and had subsequently blown the whistle on the scheme. After that, he was shot dead in his car.
- Ramdas Patil Ghadegaonkar – He was a milkman from Maharashtra who was using the RTI law to expose the “illegal dredging of sand” from the Godavari river. He was allegedly murdered on 27 August 2010.

FAMOUS COMPANY FRAUDSTERS AND THEIR WHISTLE-BLOWERS

COMPANY NAME	YEAR	ALLEGED FRAUDSTERS	ALLEGED WHISTLE-BLOWER
Punjab National Bank	2018	Nirav Modi	Hari Prasad
Saradha Group Scam	2013	Sudipta Sen	Somen Mitra
Harshad Mehta Scam	1992	Harshad Mehta	Sucheta Dalal

Winsome Group	2016-17	Jatin Mehta	Bank of Maharashtra and Union Bank of India
2g Spectrum Scam	2011-12	Andimuthu Raja	Aseervatham Achary
Dinesh Dalmiya Scam	2001	Dinesh Dalmiya	Christopher Byron
CWG Scam	2011	Suresh Kalmadi	Vinod Rai

Source - Whistle Blowing of Corporate Frauds in India³

IS WHISTLE BLOWING LEGITIMATE?

The act of whistle blowing gets its legitimacy under two articles enshrined in the Constitution of India.

- Article 19 of the Constitution of India

Article 19(1) (a) guarantees the right to freedom of speech and expression. It says –

“All citizens shall have the right to freedom of speech and expression.”

However, article 19(2) also provides for “reasonable restrictions” which are stated as –

*“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”*⁴

Hence, Article 19 includes under its ambit the right to receive and give out information, keeping in mind the restrictions that are mentioned above.

³Whistle Blowing Of Corporate Frauds In India, available from https://www.chitkara.edu.in/global-week/faculty-data/cbs/SHEFALI/Whistle-Blowing-Of-Corporate-Frauds-In-India_07-03-2020-1.pdf

⁴ Article 19(2), The Constitution of India, 1950.

- Article 21 of the Constitution of India

Article 21 of the Constitution of India deals with the Right to Life and Personal Liberty. It says –

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”⁵

“This fundamental right includes under its ambit wide-ranging rights, which also includes the Right to Know, In the case of Reliance Petrochemicals Ltd. Vs Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. (1988), the Hon’ble Supreme Court held that the Right to Know falls under the rights guaranteed under Article 21 of the Constitution, and is essential in a participatory democracy like India. In a world where different nations are coming together and there is a prevalence of co-dependence on each other, one has the right to “hold an opinion, and nurture and sustain it, which is possible only when one has the right to receive and give out information.”⁶

THE WHISTLEBLOWER PROTECTION ACT, 2014

The process of introducing a law to protect the rights of the whistle-blowers in India was first initiated by Mr. N. Vittal, the then Chief Vigilance Commissioner of India. The demand to enact national legislation for the protection of whistle-blowers became even stronger due to public outcry and media pressure after the murder of Satyendra Dubey (who had exposed the NHAI corruption). Following many more incidents of murder and assault of whistle-blowers in India, the then Union Minister of State for Personnel, Public grievances and Pensions, Prithviraj Chavan introduced The Whistleblower Protection Bill in 2010, which received the assent of the Rajya Sabha in 2014.

- Important Features of the Bill

1. Whistle-blowers can expose the cases of corruption and misdeeds of any persons, including public servants who are involved in such acts.
2. The complaint has to be made to the CVC, who will further assess and decide the public disclosure of such information.

⁵ Article 21, The Constitution of India, 1950.

⁶Dr. Shyam Agarwal, Whistle Blowing- Balancing on a Tight Rope, New Delhi (Nov. 17, 2017).

3. The identity of the whistle-blower shall not be revealed, and non adherence to this will attract liability of imprisonment up to three years and a fine up to Rs. 50, 000.
4. If an organization is seen as liable for trick or debasement, at that point each individual directing the business will be held subject and aggrieved until demonstrated honest.
5. If a corruption occurs in a department, then the Head of the department will be held liable and persecuted until he proves that he/she had no prior knowledge of the acts being committed.

- Short-comings of the Bill

1. The definition of “Disclosure” in the bill is very narrow and doesn’t take into consideration the acts of “negligence” or “omissions” of public servants.
2. There is no penalty for “victimization”, neither the penalty for revealing the identity of the whistle-blower enough.
3. There are unsatisfactory provisions for the protection of whistle-blowers, more specifically female whistle-blowers, who are more vulnerable to harassment.
4. The Bill does not include under its ambit the members of the “Special Protection Group (SPG)” or the private sector and is very limited in scope by taking into account only the acts of the public servants.
5. The Bill neither provides any forms of rewards to the risks taken by a whistle-blower, nor does it include under its ambit the protection of RTI users.

CONCLUSION

Albeit a few stages and measures have been taken by the Government to guarantee the insurance of the informants in India, going from the Whistleblower Protection Act (2014), Section 177(9) of The Companies Act (2013), SEBI Circular of August 26, 2003, and so on, there is still a very large and unidentified gap in the legislation that needs to be filled. Whistle-blowers today are in a miserable and dangerous position, which can only be dealt with by an effective and holistic approach. As much as one encourages the act of whistle-blowing to protect the interests of the larger society, one must also take into cognizance the fact that whistle-blowers put their life, family, and job at risk, and hence the policies need to be more than just on paper.

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