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Legal Protection of Corporate Whistleblowers in India

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This article discusses whistleblowing in the corporate or private sectors in India. The information below is obtained from primary and secondary sources-based research conducted for over 10+ hrs spreading across 10 days to gain insights into the topic. It is for the masses and experts to comprehend the Corporate Whistleblowing sphere in the Indian context. The article starts with a brief introduction to the understanding of the concept. Further, it discusses the types of whistleblowing and various well-known cases on the national and global levels. It includes details related to the current legal framework operating in India. A comparative approach is incorporated to distinguish some of the loopholes in the legislative policies in India. The point of focus is, recognizing the need for strong policies, understanding the short-coming, and lack of proper information and awareness. It is a study of the prevalent concept known to everyone but does not receive much of the positive spotlight and protection. It is a quest for appropriate answers to some of the questions. The article tries to simplify the topic to create awareness and trigger a dialogue.

Keywords: *whistleblower, legal protection, corporate whistleblowing, famous whistleblowing cases.*

INTRODUCTION

In layman's terms, Whistleblowing is an act of an individual or group of individuals who disclose the wrongdoings of a government office or private company to the general public or law enforcement officers". A person who notices wrongdoings or any sort of mischief committed

in their organization and decides to expose it to the world. An employee of the organization decides to reveal fraudulent, illegal, or corrupt practices by way of making it public. Sometimes, an employee can expose the malpractices of the organization to top management.

There is a notion that whistleblowing is sometimes, done by discontent employees. This notion is more likely used as an attack on the whistleblower. Another notion is that whistleblowing is done by employees having strong values and moral systems. The main function, sprouted by any kind of intention under the abovementioned notions, is that it reveals the illegal business of an organization. It has become vital to create a safe space for individuals to report scams and fraud happening in companies. The whistleblowing varies in degree also, it is sometimes done for very trivial things such as an employee making variations in attendance, or throwing garbage on the floor instead of garbage cans in the office washrooms. The whistleblowing of important things or things that are affecting public interest at large receives more attention and if it's against a well-known organization then more media involvement.

The whistleblower ends up being a hero or warrior in a short period but they might have to price in way of losing a job, a threat to family and life, or tarnished image. The concept came to light in the last decades or so. It is not always the right way to go against an organization for its illegal activities. Some people can call it blackmailing of sorts. We have come across a lot of cases to disprove the concept of blackmailing. We have also seen the plight of the whistleblower after they received threats to their life, how they had to flee their homes and countries in search of protection, e.g., Edward Snowden, etc. In India and globally, there are laws and regulations to protect whistleblowers which will be discussed in detail further in the article.

Despite current regulations, lack of protection, and many other long-term disadvantages of being a whistleblower, many people would not come forward. Under current regulations, many whistleblowers have feared for their lives and lost employment opportunities. Many opt for anonymous whistleblowing which creates a barrier to differentiating the authenticity of exposé. There needs to be strong protection and safeguarding of the rights of whistleblowers. It affects them personally, the organization, their families, and so many other things. Media and journalists put it on blast, therefore, revealing every little detail of the whistleblowers and

presenting them in front of everyone for scrutiny. This scrutiny crosses every barrier due to online free platforms and takes the form of personal attacks, trolls, and threats. All of these things can create an unbearable negative atmosphere for an individual making their and their loved ones' lives difficult. Therefore, we need active, and inclusive legislation for protecting whistleblowers. The legislation can encourage others.

TYPES OF WHISTLEBLOWING

Whistleblowers are of different types. Based on reporting authority there are two main types internal and external. Will be an internal whistleblower when an employee of the company informs the top management about the disobedience in the company and an external whistleblower when wrongdoings of the company are informed to the regulatory authorities and general public through the various available media outlets traditional or modern, e.g., social media apps like LinkedIn or traditional newspapers.

Whistleblowing is personal when it affects only one person and Impersonal when it affects an entire company. When a former employee exposes wrongdoing in a company, they can be considered as an alumni whistleblower and when a whistleblower is not fearful of identifying themselves, it is open whistleblowing. The most well-known examples are government whistleblowers when an individual discloses wrongdoing by public servants and corporate whistleblowers when a company's wrongdoings are disclosed by a former or current employee. The whistleblowing is done for cybersecurity, for online data privacy, it is cyber whistleblowing. When there is strong information on data breaches, hacking of the system, or privacy safeguards failure.

One of the well-known examples of Internal Whistleblowing is Cynthia Cooper and Sherron Watkins for exposing misdeeds happening at Enron. The damage was mostly done but it threw light on the concept of Corporate Whistleblowing. Corporate whistleblowing is of paramount importance to ensure that misconduct and fraud do not remain undetected and that corporate governance is impeccable. One of the extremely important principles of Corporate Governance is Transparency and the legitimate use of the trust of the stakeholders, staff, and consumers form a corporation. When transparency and legitimacy are affected due to any kind of reasons and it's not detected promptly it will hamper the growth of the corporation. These values harmed or polluted due to misdoings will affect the public interest at large.

FAMOUS CASES NATIONALLY AND INTERNATIONALLY

- **Satyendra Dubey Murder for robbery or uncovering a scam[1]?**

In India, we are aware of well-known examples such as Satyendra Dubey. Satyendra Dubey was murdered but in his lifetime, he worked as an honest employee. He was transferred from projects for objecting to irregularities and suspended people working maliciously. He had informed then prime minister Atal Bihari Vajpayee about the National Highway Authority of India project he was working for as a project manager. He discerns various misconducts and deviations in the financial department working on the project. He had informed in the letter to keep his name anonymous but the letter was forwarded to the Ministry of Transport and Highways. He was criticized for his loyal efforts to uncover a scam. He was murdered, but it was linked to the robbery. There was a lack of evidence to connect it to the scam he had attempted to uncover.

[1] Rinchen Norbu Wangchuk, 'An IES Officer From IIT, This Bihar Braveheart's Battle Against Corruption Cost Him His Life' (*The Better India,* October 27, 2018) <https://www.thebetterindia.com/163087/satyendra-dubey-iit-whistleblower-vajpayee-news/> accessed 15 October 2022

- **Dinesh Thakur was awarded for his efforts in Whistleblowing[2].**

Ranbaxy, one of the popular pharmaceutical companies was made to pay 48 million dollars to an honest and diligent employee, Dinesh Thakur. Mr. Thakur joined the company in the year, 2003. He worked from 2003 to 2015 but was sent home indefinitely for uncovering illegal manufacturing practices ongoing in the company in 2015. He was determined to expose it and therefore, gathered all the shreds of evidence and documentation against the misdoings and sent it to U. S. Regulators. The Ranbaxy was proven of wrongdoings and agreed to settle their legal charges for 500 million dollars. They awarded Dinesh Thakur with 48 million dollars for his honesty and suffering leading to the discovery.

- **Wikileaks and Julian Assange[3]**

The case of Wikileaks is a very popular and ongoing subject that has made Whistleblowing successfully known to the general masses. Wikileaks acted as a medium for whistleblowing top and dangerous data to be published anonymously by any person. It was so accurate and exposed many scandals that the founder "Julian Assange" become a threat to many organizations including the US government, though he was only a medium. He had to leave the country and continue to fight for his rights. As can be seen that the above two cases present two different outcomes for the honesty and courage shown by two loyal employees. One was transferred, criticized, and killed; another one was awarded. In the case of Julian Assange, he had to run from his own country and seek refuge, and protection. In the third case of Wikileaks, though a medium Julian Assange and his organization fought for their right to publish content from a whistleblower on their site. His case raises concerns about anonymity and misuse of

[2] Soma Das & Divya Rajagopal, 'Meet Dinesh Thakur: Former Ranbaxy employee who blew whistle and pocketed Rs 244 crore' (*The Economic Times*, May 15, 2013) <https://economictimes.indiatimes.com/news/company/corporate-trends/meet-dinesh-thakur-former-ranbaxy-employee-who-blew-whistle-and-pocketed-rs-244-crore/articleshow/20056354.cms?from=mdr> accessed 15 October 2022

[3] Michael Ray, 'Julian Assange Australian computer programmer' (*Britannica)* <https://www.britannica.com/biography/Julian-Assange> accessed 15 October 2022

power by higher authorities such as the US government. All of these are outcomes and probable fearsome results of whistleblowing.

These and many more cases establish a case for needing concrete and strong regulations in place for the protection and celebration of honest employees' whistleblowing corrupt practices in an organization risking their families, reputations, and lives in the process. They become the subject of criticism, media trolling, threats, mockery, and scrutiny every minute of their life for uncovering wrongdoings. For their work and courage, they need to be protected under superior legislation. The US has been progressive in terms of its laws, as whistleblowers are protected under the laws originating from 1978. If a country like the US is still struggling to put legislation in place, then India needs to work in-depth and hard. Anna Myers, executive director of the Whistleblowing International Network (WIN) describes the act as "*an antidote to secrecy imposed by governments on the grounds of national security, and by the private sector based on their economic interests.*[4]" In 2007, PricewaterhouseCoopers did a study, it was concluded that the degree of fraud detection by whistleblowers is more than double that by an auditor in a corporate setup. It was stated that from their study 43% of whistleblowers exposed mischief in the organization and only 19% by the auditors.[5]

CURRENT REGULATIONS IN INDIA

In India, we did not have a robust legislative system against whistleblowing. The regulations became a pre-requisite after various cases of employees exposing wrongdoings of the employers or faulty corporate systems leading to them facing adverse effects of it. Currently in India, we don't have a single robust system of protecting Whistleblowers and dealing with other disadvantages that come with it. We are still adopting, and studying from other states such US. Particularly, we don't have a dedicated law for the private sector or corporate whistleblower

[4] 'Why We Need Whistleblower Protections' (*Open Society Foundations,* December 2019) <https://www.opensocietyfoundations.org/explainers/why-we-need-whistleblower-protections> accessed 15 October 2022

[5] 'Corporate Whistleblowers' (*National Whistleblowers Center*) <https://www.whistleblowers.org/know-your-rights/corporate-whistleblowers/> accessed 15 October 2022

protection. There are certain general provisions under the Whistleblower Act of 2014, The Companies Act of 2013, and SEBI.

- **The Whistle Blowers Protection Act, 2011**

The Murder of Satyendra Dubey and the following media and public outburst set in the foundation for the Whistleblower Protection Act, of 2011. After this, a Central Vigilance Commission to receive whistleblowing complaints was established upon the Supreme Court's direction until formal legislation came into force. The lack of strong protective legislation a lot of well-known people lost their lives in seeking transparency and accountability. Ms. Shehla Masood lost her life for seeking the truth of the Bhopal Case. Premnath Jha was threatened on a day-to-day basis for exposing matters of corruption and was later, murdered for his work.[6] After almost a decade later the act came into force though it is an inadequate one. The Whistle Blowers Protection Act, of 2011, which came into force in 2014, provides a framework for whistleblowing against corrupt and fraudulent practices by public servants. The act consists of a limited framework and does not cover corporate whistleblowing.

This act has various short-coming in terms of complainant anonymity. **Section 4(6)**, makes it imperative to identify oneself for making a complaint, there is non-cognizance to anonymous complaints. The mentioned section makes it dangerous for an honest employee to report against an influential employer, management, etc. This act excludes corporate or employees in the private sector from its framework and therefore, its rigid legislation. This act can only be effective if its applicability is extended to corporate whistle-blowers and provisions regarding the disclosure of their identity are reconsidered.

1) **The Companies Act of 2013:** The Companies Act of 2013 provides fraud detection and control mechanisms. Section 177[7] provides for setting up a code of conduct or guidelines

[6] Adishhalarnkar, 'Whistleblower Protection In India: A Shaky Start' (*Legal Services India*) <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html> accessed 15 October 2022

[7] Companies Act 2013

related to reporting misconduct in a company. The vital point missing in this section is the lack of protection against retaliation.[8]

- Section 177 (9) was amended in 2017 to replace the phrase "every listed company" with "every publicly listed company."
- Section 177 (9), read in association with Regulation 7 of the Companies (Meetings of the Board and its Powers) Rules, 2014, provides for the mandatory establishment of a "Vigil Mechanism" in a publicly listed company.
- The purpose of the abovementioned provision is to empower the administrators and the employees of the company to observe the wrongdoings in a company and escalate the matters before a competent authority, i.e., the auditors.
- Sections 208 and 210 empower the registrar of companies to probe the records of a company suspected of wrongdoing and prescribe procedures for the registrar to follow in such cases.

The most important part to focus upon under these provisions is that it is mostly applicable to the "listed companies" creating a loophole to surpass detection for unlisted companies. Further, nowhere in the above-stated provisions does it mention the term Whistleblowing. It is one of the prerequisites for the listed companies to follow for safeguarding corporate governance. These sections don't have a broad scope; they do not provide any details regarding the anonymous complainants and measures to protect the whistleblowers' identities. The provisions regarding the detection of fraud by the Registrar of Companies are not viable options. This act's provisions should be expanded to cover an effective competent authority outside of a company to encourage individuals to report mismanagement and wrongdoings in a company without fear of being identified and harassed personally and professionally.

2) **SEBI—Securities Exchange Board of India:** It's impertinent to acknowledge that there is an interconnection between corporate governance and Whistle Blowing. The whistleblowing

[8] Bhumesh Verma, & Abhisar Vidyarthi, 'Whistleblowing in India: The Way Forward' (*SCC Online*, 7 September 2019) <https://www.scconline.com/blog/post/2019/09/07/whistleblowing-in-india-the-way-forward> accessed 16 October 2022

mechanism could help in the smooth functioning of governance in the private sector by ensuring that there is no misuse of powers for personal and malicious interests at the behest of stakeholders. Under relevant guidelines, SEBI provides for the establishment of a vigil mechanism. Chapter —IIIA, 7D-informant reward, provides for the payment of rewards. It is to be awarded at the rate of 10% of the monetary sanction, with a maximum of Rs. 10 crores. The incentive will be paid out of the Investor Protection and Education Fund. A similar reward mechanism is applied in the US under *Dodd-Frank Act*. Under this act, the whistleblowers are rewarded with the proceeds from recoveries in the matters they have exposed. These rewards do not have jurisdictional limits. E.g., In the case of Dinesh Thakur, after the information against Ranbaxy provided by him turned out true and the allegations were proven US court fined the company, and a percentage of proceeds from the recovery was given to Mr. Thakur as a reward for exposing the misconduct.

One of the features of the Dodd-Frank Act is that the US regulators allow any anonymous complaints filed with it against the listed companies without having any jurisdictional boundaries, there is no such facility available under SEBI. These provisions only cover SEBI-listed companies, leaving out unlisted private companies. The reward mechanism is great for encouraging individuals to report fraud in their companies, but the provisions under SEBI allow revealing the identity of an individual to take action against the complaints made by them.

WHY DO WE NEED STRONG REGULATIONS?

Sometimes, when whistleblowing occurs the whistleblower has to face retaliation from the employer. The employer may fire him or act adversely against the employee making their life miserable. These adverse acts may include, laying off, making threats, harassment, demotion, blacklisting, increasing working hours, and lessening the pay, etc. The code of conduct or creating a whistleblowing policy in private and unlisted companies currently, is mostly

optional, the matters are dealt with internally, therefore, no public scrutiny, it is only effective in regulating junior-level management and top officials can go scot-free.[9]

1. Chanda Kocchar, ICICI Bank and Videocon: The loan fraud between Chhanda Kocchar and Videocon was brought to light by Mr. Gupta leading to a CBI inquiry into the matter. In this matter, in an Interview, Mr. Gupta stated that the matter could have been identified even before he exposed it. He stated that all the information was in the public domain, and even the board of ICICI bank chose to ignore it after not holding Kocchar responsible.[10]

2. Vijay Pandhare: Vijay Pandhare was instrumental in exposing the non-functional 227 irrigation projects all over Maharashtra leading to the resignation of the deputy chief minister. In 2012, he exposed corruption while he was working as a chief engineer in the Maharashtra Water Resource Department.[11] In the above two cases, it can be seen that the people accused of misconduct were in a very higher position, and after the expose` they did not have to pay a big price. They were either never held responsible or only just left the position that made them responsible. These way-outs would not have been there if there would have been independent legislation dealing with such accusations very seriously. The process of justice in India is currently very slow and delayed. There needs to be a separate regulatory body to deal with such kind of cases and speed up justice as it involves higher stakes. The framework should be such that the whistleblower has a well-settled process to report the fraud, follow up actions against it, and be rewarded and protected for their courage.

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[9]Abhyuday Agarwal, 'Everything you need to know about whistleblowing in India beyond Infosys' (*Quartz,* 30 October 2019) <https://qz.com/india/1738116/infosyss-troubles-put-spotlight-on-indias-whistleblower-laws> accessed 16 October 2022

[10] 'Opinion | Corporate whistleblowers are India's newest heroes' (*Sundeep Khanna*, 30 January 2019) <https://www.livemint.com/opinion/online-views/corporate-whistleblowers-are-india-s-newest-heroes-1548867790447.html> accessed 16 October 2022

[11] 'Six times Indian whistleblowers uncovered scams and made headlines' (18 October 2021) <https://www.mid-day.com/lifestyle/culture/article/six-times-indian-whistleblowers-made-news-in-the-past-23197139> accessed 16 October 2022

CONCLUSION

The principal basis of the whistle-blower law is to protect any individual who, upon disclosing any type of fraud in an organization, may be subjected to an ill fate outside the employer-employee relationship. A common factor in the above-mentioned cases, laws, and regulation is the lack of provisions for defining a whistleblower, allowing anonymous complaints, a broad piece of legislation incorporating private corporate sectors, protecting whistleblower mechanisms and systems in place for their safety, rewarding systems, etc. The discouraging provisions such as an individual cannot be allowed to complain through an attorney and in anonymity for his bodily and family safety. The anonymity would encourage more people to come forward. There should be a mechanism to levy a fine or punishment in case the complaint is false, and a reward system for reporting genuine matters. India needs a universal law and regulation for whistleblowing, covering both public and private companies to enable effective corporate whistleblowing.