



**WHETHER THE PRIVATE SECTOR  
ENJOYS A DISCOUNT ON THE  
INDIAN WHISTLE BLOWER  
LEGISLATION?**

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**ABSTRACT:**

*The paper focuses on the concept of Whistle-blowing, with special reference to the private sector. It also deals with the existing legislative framework for the public sector whistle-blowing and also relevance of the same to that of the private regime. A comparative study of the mechanism in other countries like UK, USA, etc. is also dealt under this paper. The methodology used is the doctrinal one analyzing all the books, journals, articles mentioned under the reference section. The author had also thrown some light over the contemporary instances related to the paper which created a demand for the author to pen a paper on such an issue regarding Whistle-blowing. The paper starts with the basic and historical evolution of the concept, followed by the need of the hour to be considered and also the historical pressure, how far the government or the legislature had lend its support for the mechanism and finally concluding with the area of lacuna coupled with the author's suggestions. After completely analyzing the paper, one would be clear on the concept of whistle-blowing and*

*need for the same in making an effective private sector.*

**Keywords:** Whistle-Blowing, Private Sector, Enforcement Authorities, Legislature, Corporate Governance

**INTRODUCTION:**

*To see a wrong and not to expose it is to become a silent partner."*

— Dr. John Raymond Baker<sup>1</sup>

This single quote would cover up the whole purpose of Whistle-blowing. It is the duty of the law and order enforcement authorities like police to detect the crime occurring in a society, to take action against the complaint and to approach the judiciary for justice. Not all the time it is practical for the police to recognize the crime from every corner of the society, so it is better to transfer responsibility to the public thereby aiding these authorities, this has been enshrined under the Code of Criminal Procedure, 1973. But the people prefer to choose the opposite, they refrain themselves from reporting the crime occurring around them, to avoid the complex legal procedures that takes place aftermath. If this is the level of responsibility that the people possess towards the immoral in the society, then what would be their contribution to offences involving public or the private sector? The employee in both sectors must be bold enough to bring the wrongs to the lime light and expose the violator thereby purifying his or her own environment. This process of disclosing the

<sup>1</sup> A doctor licensed in Texas since 1989. He is a level two treating doctor, on the approved doctor list for Texas Work Comp. His undergraduate degree was received from Stephen F. Austin State University in 1975. His doctorate is from Texas Chiropractic College in Pasadena Texas. Dr. Baker has been a frequently

published writer for many national publications, including but not limited to, DYNAMIC CHIROPRACTIC, the most widely distributed Chiropractic publication in the United States.

<sup>2</sup> Chapter VI-A titled as "Aid to the Magistrate and the Police", containing sections 37 to 40.



wrongdoings are referred by many names like snitching, informing or whistle-blowing. Among these the term *Whistle-blowing* was widely accepted and used for act of bringing out the wrongs in a sector. India, though, got relevance with that term in 2004 itself, it is still a beginner in whistle-blowing arena or it can also be said to have done nothing for it, but a controversial law<sup>3</sup>, that is struggling for its execution, and its amendment, which has lapsed, after waiting for 4 years.

With that said, a view can be formed that India doesn't show much priority towards the mechanism of whistle-blowing. Political parties and NGOs are raising their voice for the implementation of the Act but the government prefers to remain deaf. In this paper, the author would like to focus only on the whistle blowers protection in Indian private sector and its allied areas like the footsteps leading to the need for such mechanism, hurdles encountered in achieving them, etc. It would be relevant to take hints from India's so called passive Whistle-blowers Act 2014 and other countries' (like US, UK) ability to succeed and to lead forward in safeguarding the interest of the whistle blowers. The paper would also covers the relevance of whistle-blowing with the Corporate Governance and Corporate social responsibilities (CSR) and role of the former in the latter's development.

### WHISTLE-BLOWING OUTLINE:

<sup>3</sup> Whistle-blowers Act 2014 and its amendment bill in 2015

<sup>4</sup> Ralph Nader is an American political activist, author, lecturer, attorney, and presidential candidate, noted for his involvement in consumer protection, environmentalism and government reform causes. Nader's activism has been directly credited with the passage of several landmark pieces of

Whistle-blowing is the act of exposing a wrongdoing, typically a fraud or an illegality, in a government agency or a private enterprise. Simply, whistle-blowing can be defined as an act of disclosure of information by people within or outside an organization and that which are not otherwise accessible to public, generally of activities of organization that are against public interest.

The history has relevance to the term in the 19<sup>th</sup> century where the police men use a whistle to alert the people about the bad situation like riots, natural calamities, accidents, violent protest thereby protecting the people. It was, at that time, attached to the law enforcement authority itself. Later the term Whistle-blowing was first coined by an U. S. civil activist *Ralph Nader*<sup>4</sup> in 1975, he gave a positive cover, instead of coating a negative connotation, over the term which seeks to reform the society, public sector or the private enterprises. In 1883, the term was used in the Janesville Gazette where the police used to alert during the riot. In 1963 it became a hyphenated word and later it was recognized by the journalist in the 1960s.<sup>5</sup> The term whistleblower was first discussed by Doggett, J., in the case of *Winters v. Houston Pub. Co.*<sup>6</sup>

Wikipedia defines Whistle-blowing as "The act when a person tells the public or some public authority about an alleged

American consumer protection legislation including the Clean Water Act, the Freedom of Information Act, the Consumer Product Safety Act, the Foreign Corrupt Practices Act, the Whistleblower Protection Act, and the National Traffic and Motor Vehicle Safety Act.

<sup>5</sup> <https://www.whistleblowersinternational.com/what-is-whistleblowing/history/>

<sup>6</sup> 795 S.W.2d 723 (Tex. 1990).



dishonest or illegal activity occurring in government departments, a public or a private organization or a company”.<sup>7</sup> Whistle-blowing involves the act of reporting wrongdoing within an organization to internal and external parties. Internal whistle-blowing provides the reporting the information to a source within the organization and external whistle-blowing occurs when the whistleblower takes the information outside the organization such as to the media or regulators. Internal whistle blowing is often helpful to company because it helps them to correct their differences internally and save themselves from mortification before the public. Good governance signifies that it is in the interest of organization, institution or an economy to report anything wrong happening in it. This reporting of wrongdoing is not meant to cause harm to the organization, rather, it is to facilitate the exposure of wrongful acts or omissions of a person or persons that is against the interests or values of organization. In this age of globalization, where economic motives precede over all virtues and traditions; protection of larger public interest from great corporate scandals has become matter of great importance.<sup>8</sup>

A whistle-blower is defined as someone who divulges wrongdoing, fraud, corruption or mismanagement. Mostly the person could be an employee because he is the person who becomes adept in about the corruption or frauds which takes place inside

a company or organization because they carries the privacy of the organization. And so they would be the first persons who will come to notice all the illegal activities inside the walls. Thus the objective of a whistleblower is to put out all those malpractices, corruption or any other frauds inside a company and thereby safeguarding the public interest.

#### **NEED FOR A WHISTLE-BLOWER:**

In the case of public sector, the need for a mechanism of Whistle-blowing is inevitable to maintain the checks and balances among the functionaries, to make it accountable and responsible for its own fault towards its employees, to eliminate the evil elements out of the sector by exposing the same, to ensure its shareholders’ interest and ultimately, work towards the developmental path of the country.

On the other side for private sector, the important purpose of whistle-blowing is to bring efficiency to the corporate governance. According to James D. Wolfenshon<sup>9</sup>, “Corporate governance is about promoting fairness, transparency and accountability”. According to Sir Adrian Cadbury<sup>10</sup>, “Corporate governance is a system by which businesses are directed and controlled”. It means that the manner or way in which the corporate or a company is governed. The relevance of whistle blowers for the efficient governance will be discussed in the later part of the paper.

<sup>7</sup> <https://en.wikipedia.org/wiki/Whistleblower>

<sup>8</sup> <https://doi.org/10.1787/9789264252639-en>

<sup>9</sup> James David Wolfensohn, KBE, AO is an Australian-American lawyer, investment banker, and economist who served as the ninth president of the World Bank Group (1995–2005)

<sup>10</sup> Sir George Adrian Hayhurst Cadbury was the chairman of Cadbury and Cadbury Schweppes for 24 years, and a British Olympic rower. He was a pioneer in raising the awareness and stimulating the debate on corporate governance and produced the Cadbury Report, a code of best practice which served as a basis for reform of corporate governance around the world.



If any illegal act or wrongful conduct takes place within a company or a in a government department, then it is necessary to rectify that wrong. Primarily the responsibility is borne on the management or head of the department or CEO or board of directors. But they do not come across all such disparities. The public authorities like police, investigation agencies or any other law authorities cannot directly involve in the internal issues of a corporate or a government department. So the employees are made morally responsible to report to their higher authority or to any other external designated agencies about the evil factor. This is important for the good governance, both in public or private sector. But the employees, unlike the public authorities are not bold enough to disclose their department flaws to any bodies not even to their own heads, fearing that they would mishandled, harassed, undergo disadvantages in profession or even terminated or transferred from their job. This is more among the private sector employees comparing with their counterparts in public sector.

This is a usual mindset that every employees have i.e., to safeguard their own interest leaving away the interest of the corporate. This perspective is wrong. One can't draw a line of difference between the interests of the above two. None exist without the other. Instead the employees should recognize it as a collective interest of the all employees as a whole which makes concern corporate or department to run efficiently. The employees can't simply waive off their rights and once they do so they can't seek

remedy for any future disparities arising from that waived right. It is also fair on their part to fear of their personal interest because there are no guidelines on how to report such problems, a clear mechanism or procedure to be followed and not even any legal safeguards from the victimization of employee by the management. So the ultimate lacuna is with the government or the legislature in making a law to protect the interest of the employees who report the malfunctioning, since they are the ultimate sufferers. So the government should focus on the framework for the Whistle-blowers protection.

It is not good to say that India didn't take appropriate steps to consider law for whistle-blowers. It has an exclusive enactment for the mechanism of whistle-blowers and many other policies, guidelines have been formulated. But we have to accept that the executive has failed to carry out the enforcement of the respective laws by remaining passive and even the political displacement didn't favor the development in the field of whistle-blowing. Only theoretical or the practical benefits alone has not made the demand for the exclusive law, but also there are a lot of instances to support the enactment of the same from murder-less Infosys scam to cruel Vyapam scandal, this will be discussed below.

#### **HISTORICAL FOOTSTEPS:**

Sathyam<sup>11</sup> scam (2009): It is about corporate governance and fraudulent auditing practices allegedly in connivance with auditors and chartered accountants. It was an Rs 7,000-crore corporate scandal in which chairman

<sup>11</sup> Sathyam Computers Service limited was one of the largest among 4 IT industries. (Infosys, Wipro, TCS and Sathyam)



Ramalinga Raju (Whistle-blower-cum-accused) confessed that the company's accounts had been falsified. Ironically he did so the next day after receiving Golden Peacock for Corporate governance award<sup>12</sup>. On January 7, 2009, Ramalinga Raju sent off an email to Securities and Exchanges Board of India<sup>13</sup> (hereinafter referred as SEBI) and stock exchanges, wherein he admitted and confessed to inflating the cash and bank balances of the company. Weeks before the scam began to unravel with his famous statement that he was riding a tiger and did not know how to get off without being eaten. Raju had said in an interview that Satyam, the then fourth-largest IT company, had a cash balance of Rs 4,000 crore and could leverage it further to raise another Rs 15,000-20,000 crore. Finding PwC guilty in the Satyam scam, India's capital markets regulator SEBI on 10 January 2018 barred its network entities from issuing audit certificates to any listed company in India for two years. SEBI has also ordered the disgorgement of over Rs 13 crore of wrongful gains from the auditing firm and its two erstwhile partners who worked on the IT Company's accounts.<sup>14</sup>

Vyapam scam: It is a case where there was manipulation in the selection process of

candidates for government colleges and jobs by the Madhya Pradesh professional examination board (Hindi acronym VYAPAM). The practice was that the highly influential families with political background make their members pass the competitive exams without getting the required attendance in the college. The whistle-blower was a 2003 medical student, Anand Rai, Ophthalmologist, Indore, who sensed the malpractice however he didn't disclose that issue at that time due to the fear factor. Later he blew the matter which involved many politicians, bureaucrats, doctors, businessmen in the offence of corruption. Aftermath the matter coming into lime light saw a series of unnatural deaths. In 2013 a Special investigation team was setup by the M.P. government which reported 32 deaths including M.P. Governor's son, a TV journalist, dean of the government medical college, a police constable and several students who were involved in the admission scam. CBI filed charge sheet against 990 persons.<sup>15</sup>

Enron scam: It was publicized in October 2001, eventually led to the bankruptcy of the Enron Corporation, an American energy company based in Houston, Texas, and the *de facto* dissolution of Arthur Andersen,

<sup>12</sup> Golden Peacock Awards Secretariat has great pleasure in inviting applications for Golden Peacock Award for Excellence in Corporate Governance. The Award Scheme for Corporate Governance was instituted in January 2001 to encourage initiatives in Corporate Governance globally and in India including : Public undertakings, Private undertaking – Manufacturing Sector/Service Sector and Finance Sector and Government/Municipal Departments.

<sup>13</sup> The Securities and Exchange Board of India was established on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992. The Preamble of the Securities and

Exchange Board of India describes the basic functions of the Securities and Exchange Board of India as "...to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"

<sup>14</sup>

<https://www.livemint.com/Companies/h785U22XrP2lI9m4UyrAKP/Satyam-verdict-B-Ramalinga-Raju-9-others-held-guilty.html>

<sup>15</sup> <https://www.latestlaws.com/latest-news/vyapam-scam-supreme-court-intervene-involve-cbi/>



which was one of the five largest audit and accountancy partnerships in the world. In addition to being the largest bankruptcy reorganization in American history at that time, Enron was cited as the biggest audit failure. The former vice president, Sheron Watkin blew up the whistle revealing the company's fraudulent practices.<sup>16</sup>

**NHAI scam:** Satyendra Dubey, an Indian Engineer service officer and the project director for National Highways Authority of India. He was responsible for the Grand Trunk Road NH II (Golden Quadrilateral Project) during the period of PM A. B. Vajpayee<sup>17</sup>. In 2003, exposed corruption and financial irregularities by one of the contractor. He complained to the PMO office about the malpractice, but the office ignored him and circulated the matter to all other department without concealing his identity. As a result, he was shot dead in November 2003 in Gaya. Three persons were given life term in 2010 for the murder. Calls for a law to protect whistleblowers arose in the wake of his murder.<sup>18</sup>

**Indian Oil Corporation Scam:** Manjunath Shanmughan, known to his friends as

Machan, was an employee of the Indian Oil Corporation. It was Machan's responsibility to ensure that the oil sold in Indian petrol stations was unadulterated. In October 2005, Machan closed two petrol pumps in Lakhimpur Kheri for three months because they were selling tainted oil. However, just one month later, the pump reopened. After learning this, Machan conducted a surprise raid and was killed. Pawan Kumar Mittal, the owner of the pump, and seven others were tried for Machan's death and Pawan was sentenced to death. The case is currently in appeal. To honor him a trust was established and also a biopic was released based on this

issue.

#### AFTERMATH:

After the implementation of the New Economic Policy<sup>19</sup> in 1991, there was increase in the Foreign Direct Investment (FDI) and MNCs setup in India, which lead to the need of Accountability and a mechanism to protect the investors. The first step was the establishment of Confederation of Indian Industries<sup>20</sup> (CII) in 1996 to frame or recommend new laws for the country towards better corporate governance. Following that the Kumar Mangalam Birla<sup>21</sup>

<sup>16</sup> <https://www.britannica.com/event/Enron-scandal>

<sup>17</sup> Atal Bihari Vajpayee was an Indian statesman who served three terms as the Prime Minister of India, first for a term of 13 days in 1996, then for a period of 13 months from 1998 to 1999, followed by a full term from 1999 to 2004. A member of the Bharatiya Janata Party (BJP), he was the first Indian prime minister not of the Indian National Congress to serve a full term in office.

<sup>18</sup> <https://www.financialexpress.com/archive/dubeys-murder-moves-people-what-about-the-system/42093/>

<sup>19</sup> New Economic Policy of India was launched in the year 1991 under the leadership of P. V. Narasimha Rao. This policy opened the door of the India Economy for the global exposure for the first time. In

this New Economic Policy P. V. Narasimha Rao government reduced the import duties, opened reserved sector for the private players, devalued the Indian currency to increase the export. This is also known as the LPG Model of growth.

<sup>20</sup> It works to create and sustain an environment conducive to the development of India, partnering industry, Government, and civil society, through advisory and consultative processes

<sup>21</sup> Kumar Mangalam Birla is an Indian billionaire industrialist, and the chairman of the Aditya Birla Group, one of the largest conglomerates in India. He is also the chancellor of the Birla Institute of Technology & Science, and the chairman of the Indian Institute of



Committee, 1999 and Naresh Chandra<sup>22</sup> Committee, 2002 was formed under the SEBI to formulate the best practice of Corporate Governance.

Law Commission 179<sup>th</sup> report supported the Public Interest Disclosure (Protection of Informers) Bill, 2002 which encouraged the disclosure of Corruption and maladministration among the public servants and protecting the complainants from unfair treatments. Following this, the Second Administrative Reform Commission<sup>23</sup> made its 4<sup>th</sup> report titled the “Ethics in governance” suggested a law for whistle blowing.

Next, Narayana Murthy Committee submitted its report on Corporate Governance in 2003, its core recommendation was that Whistle-blowing is an important element of corporate governance, it was the first one to recommend so. It was set up by SEBI under the chairmanship of N. R. Narayana Murthy (Infosys chief mentor). It was in response to the Enron Scandal in USA. It advised to review the Clause 49 listing agreement thereby improving corporate governance. It reiterated the report of Naresh Chandra committee and also encourages the companies to follow substance, not just the form, of good governance. The major recommendation were the companies’ policy should have provisions for the protection of the Whistle-blowers from unfair terminations

Technology Delhi and Indian Institute of Management Ahmedabad.

<sup>22</sup> Naresh Chandra was a 1956 batch IAS officer of Rajasthan cadre, who served as the Cabinet Secretary of India, Defence Secretary of India, Home Secretary of India, Water Resources Secretary of India and Indian Ambassador to the United States.

<sup>23</sup> **The Second Administrative Reforms Commission (ARC) was constituted on 31.08.2005, as a Commission of Inquiry, under the**

and other unfair procedures and there must be annual affirmation from the Board of Directors report on Corporate Governance regarding the status of Whistle-blowing mechanism along with the Annual report.

After the murder of Dubey, the Supreme Court directed for an exclusive law to protect those whistle-blowers. So Public Interest Disclosure and Protection of Informer resolution (resolution no. 89 dt. 21.04.2004) was passed in 2004 by the government of India. According to that resolution, the Central Vigilance Commission (CVC) was the designated authority to which written complaints can be made on the corruption or misuse of power in office by any employee of federal government or companies, corporation under the control of government. This was only concerned about the public sector and not about the private sector.

In 2005, Government of India setup a Jamshed J. Irani<sup>24</sup> Committee on the Company law on 02-12-2004. Report has 7 parts and 13 chapters. Chapter XII dealt with the offence and penalties. It recommended the law should recognize whistle-blowing concept.

#### **ROLE OF LEGISLATURE:**

In august 2010, the Public Interest Disclosure and protection of person making

**Chairmanship of Shri Veerappa Moily for preparing a detailed blueprint for revamping the public administrative system.**

<sup>24</sup> Jamshed Jiji Irani is an Indian industrialist. Educated in Metallurgy, he joined British Iron and Steel Research Association. Later he joined Tata Steel from which he retired in 2007 as the Director. Later he served on the boards of various Tata group companies and others. He received the Padma Bhushan in 2007.



disclosure Bill was introduced in Lok Sabha, where the cabinet approved it in June 2011. Later it was renamed as the Whistle-blowers Bill 2011 by the Standing Committee on personal, public grievances, law and justice. Lok Sabha passed it and was introduced in the Rajya Sabha. The main objectives of the bill is that the employees of the central government or state government or the companies or corporate owned by central or state government can make a complaints disclosing the practice of corruption, misuse of power and about the criminal offence committed or suspected to be committed to the designated authority. The bill expressly excluded the defense, police and intelligence personals from its purview; this means that the employees under these sectors cannot make complaints. It didn't include the corporate whistle blowers within its arena because it was taken up under the Company's Act 2009. The CVC and the SVC were made the designated authorities to receive the complaints from the employees. The authority refuse to receive the anonymous) complaints and it must be accompanied by the name, designation and address of the complainant. The special features incorporated in the Bill is that the designated authority must protect the identity of the complainant, it has been given the discretion on what circumstance the identity can be revealed, court is also given the powers to direct the authority to do so, protect the complainant from harassment and other unfair treatments and also to restore employee to the original position.

Next is the clause 49 of the *Listing Agreement* by SEBI had mandatory and non-mandatory provisions, the whistle blowing belong to the latter. Under the whistle-blowing policy, the company shall set up a

mechanism for employees to report on the misbehavior, fraud, breach of code of conduct or any other violation of companies' or government policies. It should provide safeguard against the victimization of the complainants. The policy must provide for the direct access to the Chairman of the Audit committee or any other similar authority. The communication of the mechanism must be clearly stated to the employees.

Following this the SEBI amended corporate governance norms for listed companies in 17.04.2014 to bring Corporate Governance in line with the companies Act, 2013. The Whistle-blowers policy under revised Clause 49 is; they are made mandatory for the companies to set up a vigil mechanism to report the wrongful acts. Additionally, it made compulsory for the company to disclose the mechanism on its official website thereby the employees will be aware of that and to make a board report regarding the Whistle-blowing mechanism.

In 2007, *corporate governance guideline* was issue in 2009 which was a mere recommendation, suggesting it may be voluntarily adopted by the public sector as well as the private sector. Chapter VI deals with the voluntary code of corporate governance which suggested the same guidelines as before.

Under *Company's Act, 2013* and the *Companies (Meeting of Board and its powers) Rules 2014*, the Chapter XIV of the former deals with Inspection, Inquiry and Investigation covering the concept of Whistle-blowers. According to section 211 under the 2013 Act, Serious Fraud investigation office is established where the blowers can report about the misconduct or



frauds. Section 177(9) r/w the rules make the establishment of vigil mechanism mandatory for the followings: 1. Listed companies. 2. Companies that accept deposit from the Public. 3. Companies that borrow money from the banks and other financial institutions exceeding Rs. 50crores. If a company has an Audit committee then vigil mechanism should headed by that committee and in case of other companies, the board of directors must nominate a director from them to play the role of audit committee for that vigil mechanism.

### CORPORATE GOVERNANCE:

For a country to develop in a progressive path there should be effective governance. Governance is vast area which simply includes legislature, executive and the judiciary. Likewise, the similar term used in corporate sector is the Corporate Governance. Governance is derived from a Latin term 'gubernare' which means 'to rule' or 'to steer'. Corporate governance is a system by which companies are managed and controlled. Definition of Corporate Governance by the World Bank has been earlier stated. In the proceedings of the Silver Jubilee National Convention of the Institute of Company Secretaries of India (ICSI), it was observed that:

*“Corporate governance is not just corporate management; it is something much broader to include a fair, efficient and transparent administration to meet certain well defined objectives. It is a system of structuring, operating and controlling of a company with a view to achieve long term strategic goals to satisfy shareholders, creditors, employees,*

*customers and suppliers and complying with the legal and regulatory requirements, apart from meeting environmental and local community needs. When it is practiced under a well laid out system, it leads to the building of a legal, commercial and institutional framework and demarcates the boundaries within which these functions are performed”.*

According to CII, corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions vis -a-vis its claimants - in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of 'good' corporate governance: maximizing long term shareholder value. The main principles of corporate governance are transparency, fairness, accountability and responsibility.

On coming to the nexus between the whistle-blowing and the corporate governance, the former is one of the essential and effective techniques for the latter. Whistle-blowing does not cause harm to corporate but to tries to expose the wrongdoing and subsequently reform the company. Committee on Standard in public life 2005<sup>25</sup> precisely says the role of whistle-blowing as “both the instrument of good governance as well as manifestation of a more open culture.” For effective corporate governance five mechanisms are required; Independent board of directors, Role of audit committee, Whistle blowing, Shareholders activism and the Fast track redressal or complaint mechanism.

Whistle-blowing brings the violator or the misconduct to lime light, thereby makes

<sup>25</sup> The Committee on Standards in Public Life (CSPL) is an advisory non-departmental public body of the United Kingdom Government, established in 1994 to

advise the Prime Minister on ethical standards of public life. It promotes a code of conduct called the Seven Principles of Public Life.



the workplace safer as well as safeguarding the interest of shareholders and ultimately purifying the reputation of the company.

### RELEVANCE OF FOREIGN:

Countries like USA and UK are leading us with a huge difference in the field of laws for corporate governance and whistle-blowing.

United Kingdom: It enacted the Public Interest Disclosure Act 1998 which applies both to public and private sector, classifying the disclosure into 3 tiers. 1) Internal disclosure to the employers, 2) Regulatory disclosure to prescribed bodies, 3) Wider disclosure to media, police and consumer groups. U.K. made Serious Fraud Office as the designated agency to receive the public interest disclosure. To make this Act operational there are few conditions required, disclosure must be in good faith, reasonable belief that the information tends to show that the misconduct occurred or likely to occur. It must be true and relevant to the regulator. It protects the employees from detrimental treatment and victimization and also covers criminal offence, breach of obligations, miscarriage of justice and danger to health. In addition to this U.K. Enterprises and Regulatory Reforms Act, 2013 was passed.

United States of America: The whistle-blowers law was first at federal government instead at corporate level, US

False Claims Act, 1863. It provided provisions for the incentives in the case of true disclosure and penalties in the case of void or irrelevant disclosure. Upto 30% proceeds of the law suit will be borne by the complainant. U.S. department of labour, Sarbance-Oxley Act<sup>26</sup>, U.S. federal sentencing guidelines for organization were concerned for the whistle-blowers in the private sector. U.S. department of Labor's Whistle-blowers protection program set up an equal Employment Opportunity Commission. In 2010, Dodd Frank Wall street reforms and Consumer protection Act<sup>27</sup> provided incentives to the whistle-blowers if incase the recovery exceeds 1 million USD, the award will be 30%. This is applicable only when the disclosure is made to the US Securities and Exchange Commission (SEC) and not to the internal whistle-blowing. Moreover the internal whistle blowing is not protected. Texas whistle-blowers Act protect the public sector employees on reporting the violation of laws to the appropriate agencies within 90 days from the date of knowledge of the violation. The US Supreme Court commented on this, "the public sector whistle-blowers are protected under the first amendment rights from any job retaliation when the same flags over corruption."

Japan enacted Whistle-blowers (Protection) Act, 2006; protect the person who reports any wrongdoing to the enforcement agencies or external parties

<sup>26</sup> The Sarbanes–Oxley Act of 2002, also known as the "Public Company Accounting Reform and Investor Protection Act" and "Corporate and Auditing Accountability, Responsibility, and Transparency Act" is a United States federal law that set new or expanded requirements for all U.S. public company boards, management and public accounting firms. A number of provisions of the Act also apply to privately held companies, such as the willful

destruction of evidence to impede a federal investigation.

<sup>27</sup> It is legislation signed into law by President Barack Obama in 2010 in response to the financial crisis that became known as the Great Recession. Dodd-Frank put regulations on the financial industry and created programs to stop mortgage companies and lenders from taking advantage of consumers.



from dismissal or unfair treatment. The whistle-blowers must seek remedy from this Act or labor contract or civil code. Korea has protection of public interest whistle-blowing Act and similarly New Zealand has Protected Disclosure Act, 2000; which is applicable to both public and private sector.

In Addition to these, there are a number of international instrument relating to the practice of whistle-blowing; International guidance for private transparency, International business principles for countering bribery, ICC rules on combating corruption, WEF principles of countering bribery, World Bank integrity compliance guidelines and others.

#### AREA OF CONCERNS:

In India the execution of laws relating to whistle-blowing has not even cross it half way mark, still struggling due to lack of priority, political displacements, government leniency towards the corporate sector from where a huge revenue is yielded. The India) whistle-blowers laws have deliberately ignored the private sector like the defense, police and intellectual agencies, as earlier mentioned, from its purview.

The term “Victimization” is unclear and the term Whistle-blower or whistle-blowing is not defined anywhere in the Act. Though it provides provision for the safeguards against victimisation<sup>28</sup>, it failed to define or categorize what all includes under victimization. Whether it only considers the legal definition regarding an offence or broad

enough even to include pity mistreatment or unfair treatment?

The Act has completely neglected the interest of the witnesses except by giving an ambiguous provision for their protection<sup>29</sup>; the section plainly provides for the protection from evil elements but not the actual protection during investigation or trial. The Law Commission of India recommended for the witness identity protection similar to that of the countries like US, Canada, Australia, Germany and Italy.

Another significant flaw in the Act is that the appeal remedy is not available for the complainant if in case he was accused for false allegation of whistle-blowing but ironically the public official to whom the report was given has the appeal provision if in case he was accused of revealing the complainant’s identity.<sup>30</sup>

Next concern is that the discretion to reveal the identity of the whistle-blower is with the CVC or the SVC and not with the whistle-blower himself. The legislation lack strict punishment or penalties for the acts of leaking the identity of the blower which in turn result fatal to the life of the complainant. The Apex Court that struck a blow for whistleblower anonymity when it ruled in a 2013 case<sup>31</sup> investigated by the Anti-Corruption Bureau (ACB) of the State of Maharashtra that it’s not essential for a fair trial to reveal the identity of the whistleblower. The verbatim quote from the Honorable Judge who wrote the judgment reads:

<sup>28</sup> Section 11, the Whistle Blowers (Protection) Act, 2014.

<sup>29</sup> Section 12, the Whistle Blowers (Protection) Act, 2014.

<sup>30</sup> Refer Sections 14, 15, 16 and 20, the Whistle Blowers (Protection) Act, 2014.

<sup>31</sup> Manjeet Singh Khera vs. State of Maharashtra, (2013) 9 SCC 276.



*“Situations are many where certain persons do not want to disclose the identity as well as the information/complaint passed on by them to the ACB. If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their lives.”*

With regards to the proposed amendment to the 2014 Act, which was passed by the lower house in 2015, after a struggle of 5 years to get the approval of the Rajya Sabha, finally got lapsed in 2019 due to the general elections. The proposed amendment Bill sought to dilute the previous Act and thereby reducing the protection given to whistle-blowers. The previous Act superseded the Official Secrets Act, 1923, while the new proposed bill seeks to give importance to the 1923 Act, that is to narrow down the area of disclosure by the whistle-blowers by excluding the matters which are under the purview of the Official Secrets Act, 1923.

It proposes to keep the disclosures of issues of national importance outside the ambit of the whistle-blowers (protection) Act. The prohibited disclosures are; Security, sovereignty, integrity of the state, Scientific and economic interest of the country, Friendly relation with the other states, cabinet proceedings, Disclosures expressly prohibited by law and those endangering human life. Out of these, the odd one out is the friendly relation with other states, in what way this is considered to a reasonable ground to be excluded from disclosure? If there is clash of interest between the security of the state and friendly relation in disclosing a particular issue relevant to the latter, does the latter will be given importance than the former?

Very recently in 2017, the SEBI committee on corporate governance contributed a diverging opinion in its report which was unique from the previous reports. The committee was headed by Uday Kotak submitted the report on the corporate governance on the listed companies. It recommended a leniency mechanism towards the whistle-blowing. It suggested to provide structural incentives for the violators to come forward and disclose themselves and subsequently cooperate the authorities in carrying out the case. Protection against the victimization was also a advice of that report. The benefit of such a lenient procedure is that it leads to effective detection of violations and enhances the investigation, inquiry and trial stages. It also recommended that the SEBI must have the power to grant leniency and to offer protection the complainant. The 5 points to strengthen the whistle blower mechanism are; clarity with the definitions, non-retaliation provisions, confidentiality, Procedural transparency and fairness and communication.

#### CONCLUSION:

One can come to a conclusion after analyzing the paper that the mechanism of whistle-blowing is beneficial for the society with the support of the employees. Obviously, the government heads or the companies' management will be against this concept as its notion is to bring their flaws to the lime light. But deep down, it is ultimately the collective interest that supersedes the individual interest. By this the author means to say that such disclosure would affect the individual's interest but ultimately it purifies the working of management from evil elements and make the corporate governance effective.



*“There is a Court, higher than the Court of Justice, it is the Court of Conscience, and it supersedes all.”*

-Mahatma Gandhi

Whistleblower protection today is a matter of much Corporate Global Concern because overtime whistleblowers have been seen as the ‘Keepers of Corporate Conscience’. The whistle-blowing is an essence of conscience keeping and the whistleblowers are the conscience keepers. A conscience keeper has a duty to blow the whistle whenever he finds anything which is not as per standards of conscience. In the context of a corporation, whistleblowers are those who expose malpractices, unethical and corrupt practices of their co-workers and seniors, for the benefit of the company, stakeholders and society at large.

Corporate conscience is a term widely used for ‘Corporate Social Responsibility’, but in actuality corporate conscience is more than corporate governance and corporate social responsibility. Corporate conscience is displayed in exercising fair treatment and growth for all stakeholders and society without leaning towards profit for a particular interest group. To put it simply, corporate conscience is a two-fold realization: firstly that, corporate governance deals with promoting corporate fairness, transparency and accountability; and secondly that, corporate social responsibility focuses on the idea that a business has social obligation above and beyond making profit. It requires management to be accountable to full range of stakeholders.

To conclude there are pros and cons for every concept, but the ultimate decision lies on the drawing a balance sheet between them. Supports say it is a form of civil disobedience, ethically right and to protect the public from the evil doing the whistle-blowing is necessary, on the other hand critics place their view that it is totally unethical to leak the secrets of the corporate with ultimately affects the right to privacy<sup>32</sup> as enshrined under the Art.21 of the Constitution of India. Whatsoever the demerits be, the balance sheet always favors the concept of whistle-blowing in the corporate side.

Everyone has the whistle to blow, as a matter of right, and everyone is obliged to blow the whistle, as a matter of social responsibility and duty, but what matters is that the time, opportunity and the guts to blow it loud. It is easy to say in theory that blowing is beneficial to the society, what the blowers additionally need is the legal or government support to move forward towards the fruits of accusation without any hindrances and without any sense of fear. On the other hand, the state should make itself equipped in the mechanism of whistle-blowing and allied area and should enforce stringent laws for safeguarding the employees from victimization.

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