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WHISTLEBLOWERS: UNVEILING TRUTH, UPHOLDING INTEGRITY

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ABSTRACT

Whistle blowers are individuals of great courage who reveal instances of wrongdoing, corruption, and misconduct within various organizations. This research paper explores the significant role they play in fostering transparency, accountability, and ethical behaviour in society. They bear witness to unethical practices, breaches of ethics, and at times even criminal activities within their workplaces, government entities, or other organizational settings. Driven by a strong moral compass, a dedication to justice, or a commitment to safeguarding the public interest, they make the choice to speak out despite the considerable personal risks involved. The challenges faced by whistle blowers are substantial. They often encounter reprisals from their employers, including the loss of employment, harassment, and harm to their professional trajectories. Emotional distress and social isolation frequently accompany their journey. Engaging with the legal system can be an intimidating experience, marked by uncertain outcomes and potential consequences for both whistle blowers and those accused of misconduct. To confront these formidable challenges, many nations have enacted legal safeguards. Legislation such as the Whistleblower Protection Act in the United States and the Whistleblower Protection Act of 2014 in India is designed to shield whistle blowers from retaliation and offer avenues for reporting misconduct. These laws recognize the indispensable role played by whistle blowers in preserving the broader public interest. Whistle blowers have wielded a profound influence on society. Their disclosures have laid bare instances of corporate fraud, governmental corruption, environmental hazards, and public health crises. Their actions have prompted legislative reforms, corporate accountability, and heightened public consciousness. Whistle blowers stand as sentinels of integrity, serving as a reminder that individuals possess the capability to unveil the truth and hold institutions accountable.

Keywords: whistle blower, transparency, fraud, ethical, integrity

INTRODUCTION

Whistleblowing is a key mechanism for revealing wrongdoing, corruption and unethical practices within organisations and government bodies. In India, the idea of whistleblowing has gained importance in recent years as a way to promote transparency, accountability and good governance. Whistle blowers play a key role in helping disclose instances of fraud, corruption, environmental violations, public safety hazards and other forms of misconduct that may remain hidden.

In India, whistle blowers are people who at their own personal risk, disclose information about illegal or unethical activities happening within their workplace or public institutions. These people are driven by a sense of responsibility and commitment to the principles of honesty and justice. Their main aim to protect the interests of public and society at large.

To motivate whistle blowers and provide them with legal protection, the Government of India has taken a number of legislative measures, including the Whistleblower Protection Act, 2014¹. The Act aims to safeguard whistle blowers from victimization and retaliation while ensuring confidentiality of their identities. It also provides mechanisms for the investigation of complainants and the imposition of penalties on those who harm or threaten whistle blowers.

Whistle blowers in India are critical stakeholders in the fight against corruption and the promotion of ethical governance. Their willingness to step forward with evidence of wrongdoing helps to maintain the integrity of public and private organisations, preserve the rule law and strengthen the basis of a just and accountable society.

TYPES OF WHISTLE BLOWER

Internal Whistle Blower

Internal whistle blowers are individuals who work within an organization and choose to report misconduct, fraud, unethical behaviour, or any form of wrongdoing they witness or suspect occurring within their workplace. These courageous employees or insiders play a vital role in maintaining the integrity of their organization and promoting ethical practices.

Internal whistle blowers often have a deep commitment to the principles of transparency, accountability, and ethical conduct. Their motivations can vary, from a sense of duty to protect

¹ Whistleblower Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

their organization's reputation to genuine concern for the well-being of colleagues, clients, or the public. They may use internal reporting mechanisms provided by their organization, such as confidential hotlines, compliance departments, or designated reporting channels.

By coming forward with information about misconduct, internal whistle blowers help their organizations address issues before they escalate into more significant problems, legal liabilities, or reputational damage. They also contribute to a culture of ethical compliance, where employees are encouraged to act in accordance with the law and organizational values.

External Whistle Blower

External whistle blowers are individuals who, despite not being directly affiliated with an organization, expose misconduct, fraud, or unethical behaviour within that organization to external entities, such as government agencies, law enforcement, regulatory bodies, or the media. These individuals often play a critical role in revealing wrongdoing that may otherwise remain hidden, contributing to accountability and transparency.

By taking their concerns outside the organization, external whistle blowers help initiate investigations, legal actions, or public scrutiny, which can lead to corrective measures, sanctions against wrongdoers, and improvements in organizational practices. They serve as a vital check on the abuse of power, corruption, and unethical practices.

External whistle blowers exemplify the importance of civic responsibility and the role of concerned individuals in upholding ethical standards, safeguarding public interest, and promoting a culture of accountability in organizations and society at large.

Alumni Whistle Blower

An alumni whistle blower refers to a former member of an organization, institution, or company who discloses instances of misconduct, fraud, or unethical behaviour that they have become aware of after leaving the organization. These individuals, driven by a commitment to integrity and ethical values, use their insider knowledge to expose wrongdoing. Alumni whistle blowers may bring attention to issues in their former workplace to promote accountability, transparency, and positive change. Their actions contribute to the organization's reform and the broader goal of ensuring ethical conduct, even after they have moved on from their association with it.

Open Whistle Blower

An open whistle blower is an individual who openly and publicly discloses information about misconduct, corruption, or unethical practices without concealing their identity. They do not use anonymity or confidentiality measures when coming forward with their revelations. Open whistle blowers are often driven by a strong sense of moral duty, and they choose to expose wrongdoing without fear of retaliation or repercussions. Their willingness to publicly share information about misconduct helps raise awareness, initiate investigations, and promote transparency and accountability. While they may face potential risks and challenges, open whistle blowers aim to shed light on issues that require public attention and action.

Anonymous Whistle Blower

An anonymous whistle blower is an individual who, while possessing crucial information about misconduct, fraud, or unethical behaviour, chooses to keep their identity concealed when reporting these issues. Anonymous whistle blowers often fear reprisals or retaliation, making anonymity essential for their safety. This protection allows them to come forward with sensitive information, fostering transparency, accountability, and ethical practices within organizations and institutions.

EFFECTS

Positive Effects

- **Exposure of Wrongdoing:** Whistleblowing brings to light instances of misconduct, fraud, corruption, and unethical behaviour that may otherwise remain hidden. This exposure is essential for addressing and rectifying these issues.
- **Accountability:** Whistleblowing holds individuals and organizations accountable for their actions. Wrongdoers are more likely to face consequences for their behaviour, whether through legal action, internal investigations, or public scrutiny.
- **Transparency:** Whistleblowing promotes transparency within organizations and institutions. It encourages open dialogue about ethical standards, compliance, and the importance of adhering to laws and regulations.
- **Prevention of Harm:** Whistleblowing can prevent harm to the public, consumers, employees, or the environment. For example, it can stop the distribution of unsafe products, environmental pollution, or financial fraud before it causes significant damage.

- **Ethical Culture:** Encouraging whistleblowing fosters a culture of ethics and integrity within organizations. Employees are more likely to act in accordance with the law and ethical guidelines when they know that wrongdoing will not be tolerated.
- **Legal Protections:** Whistleblowing laws and protections ensure that individuals who come forward are shielded from retaliation or harm. These legal safeguards encourage more people to report misconduct.
- **Improved Governance:** In government and public institutions, whistleblowing can lead to improved governance, reduced corruption, and enhanced public trust in the system.
- **Efficiency and Effectiveness:** In private organizations, whistleblowing can lead to increased operational efficiency and effectiveness. It can help identify inefficiencies or wasteful practices.
- **Prevent Future Misconduct:** Whistleblowing cases often result in reforms and policy changes that prevent future instances of misconduct. Lessons learned from whistleblowing can lead to stronger regulations and compliance mechanisms.
- **Inspiration for Others:** Whistle blowers can inspire others to come forward with their concerns, creating a snowball effect that encourages more ethical behaviour and disclosures.

Negative Effects

- **Retaliation:** Whistle blowers frequently face retaliation from their employers, colleagues, or superiors. This can take the form of harassment, demotion, termination, or even blacklisting in their industry. Retaliation can have severe personal and professional consequences for the whistle blower.
- **Isolation:** Whistle blowers may experience social isolation, both at work and in their personal lives. Colleagues may distance themselves, and friends and family may be hesitant to associate with someone who has exposed wrongdoing.
- **Emotional Distress:** Whistleblowing can lead to significant emotional stress, including anxiety, depression, and post-traumatic stress disorder. The process of reporting misconduct and facing the backlash can take a toll on the whistle blower's mental health.
- **Legal Battles:** Whistle blowers may become embroiled in lengthy and costly legal battles with their employers or the organizations they have reported. This can drain their financial resources and consume their time and energy.

- **Career Disruption:** Whistleblowing can disrupt a person's career, particularly if they are unable to find new employment due to industry blacklisting or the stigma associated with being a whistle blower.
- **Loss of Privacy:** Whistle blowers may lose their privacy as their personal lives and actions come under scrutiny during investigations or legal proceedings.
- **Loss of Trust:** Organizations may suffer reputational damage, loss of public trust, and financial setbacks as a result of whistleblowing revelations.
- **Impact on Relationships:** Whistleblowing can strain relationships with family and friends who may not fully understand or support the whistle blower's actions.
- **Public Scrutiny:** Whistle blowers who go public with their disclosures may face media attention and public scrutiny, which can further compound the stress and emotional toll of their actions.

WHISTLE BLOWER PROTECTION IN INDIA

Companies Act, 2013

Section 177(9)² of the Companies Act, 2013 mandates that all publicly listed companies are required to establish a vigilant mechanism, including a whistle-blower policy, aimed at facilitating the reporting of concerns by employees and senior executives. The intent and effectiveness of such a whistle-blower policy depend on the organization's commitment to its creation and implementation.

Key aspects of the framework for this policy are as follows:

- **Reporting Channels:** The policy should establish clear channels for reporting violations at all levels within the organization, with the Chairman of the Board overseeing these channels.
- **Inclusivity:** All employees, from entry-level staff to directors, should be permitted to report any violations, which may include discrimination, wilful negligence of quality, colluded fraud, or misappropriation of budgets.
- **Investigation:** Upon receiving a report, senior management should initiate an investigation, with false evidence treated as a serious matter.

² Companies Act, 2013, & No. 18, Acts of Parliament, 2013 (India).

- Protection: The policy must guarantee zero harassment of the whistle blower by the management and strictly prohibit retaliation in any form.
- Confidentiality: Full confidentiality should be maintained at all times to safeguard the whistle blower.
- Exceptions: The policy should specify that whistle blowers will not be protected from disciplinary action if their allegations are proven to be unfounded and made with malicious intent.

The Companies Act 2013 encompasses the entire framework for inquiry, investigation, and inspection under one chapter (sections 206 to 229). These provisions increase the identification of wrong practices by external agents, potentially transforming them into external whistle blowers.

Section 208³ empowers an Inspector (other than the registrar) to scrutinize records and recommend further investigation in cases of doubt, while Section 210 empowers the Central Government to order an investigation based on recommendations from the registrar, Inspector, public interest, or a special resolution passed by the company.

Section 211⁴ led to the establishment of the Special Fraud Investigation Office (SFIO) with the authority to arrest individuals for specified fraud offenses. Auditors, who were previously not legally empowered to identify fraud, are now obligated to act as whistle blowers and report such acts directly to the Central government or relevant authorities.

Securities and Exchange Board of India (SEBI)

The Securities and Exchange Board of India (SEBI) issued a circular on August 26, 2003, amending the Principles of Corporate Governance outlined in the standard Listing Agreement. In the previous version of the Listing Agreement, Clause 49 addressed the establishment of a Whistle blower Policy for companies. However, it wasn't obligatory to implement such a policy, although many companies voluntarily embraced it due to its positive impact on compliance and governance standards. Nonetheless, companies were mandated to disclose whether they had adopted such a policy and provide information about the number of reported events under the policy, as well as the number of cases resolved or pending.

³ Companies Act, 2013, & No. 18, Acts of Parliament, 2013 (India).

⁴ Companies Act, 2013, & No. 18, Acts of Parliament, 2013 (India).

Now, SEBI has replaced the Listing Agreement with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Under Regulation 22 of these regulations, listed companies are obligated to have a whistle blower mechanism in place for their employees and directors.

Whistleblower Protection Act, 2014

The Whistleblower Protection Act of 2014⁵ incorporates a range of provisions designed to protect whistle blowers and enhance transparency and accountability. The main elements of the Act can be summarized as follows:

- **Complaint Receiving Mechanism:** The Act establishes a mechanism for receiving complaints concerning corruption or the misuse of power by public servants.
- **Protection from Retaliation:** Adequate safeguards are provided in the Act to shield whistle blowers from victimization or reprisals resulting from their disclosures.
- **Competent Authorities:** The Act outlines various competent authorities to whom disclosures in the public interest can be made. Each authority is assigned specific responsibilities based on the nature of the complaint. For instance, the Prime Minister serves as the competent authority for complaints against Union Ministers.
- **Identity Disclosure and Timeframe:** Complainants are required to disclose their identity, and anonymous complaints are not permitted. Complaints must be filed within a maximum timeframe of seven years.
- **Exemptions and Appeals:** Certain personnel, such as those affiliated with the Special Protection Group, are exempted from the Act's provisions. Furthermore, individuals dissatisfied with a Competent Authority's decision can appeal to the respective High Court within sixty days.
- **Penalties for Identity Disclosure:** Revealing the identity of a complainant can result in imprisonment for up to three years and a fine of up to Rs 50,000. Knowingly providing false or misleading information may lead to imprisonment for up to two years and a fine of up to Rs 30,000.
- **Annual Report:** The Competent Authority is mandated to compile an annual report detailing its activities and submit it to the Central or State Government, which subsequently presents it before the respective Parliament or State Legislature.

⁵ Whistleblower Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

- Overriding Effect: The Whistleblower Protection Act takes precedence over the Official Secrets Act of 1923, allowing for disclosures that do not compromise the nation's sovereignty.

EXAMPLES

Example 1

Satyendra Dubey, one of India's earliest whistle blowers, served as an Indian Engineering Services (IES) officer and was appointed as a project director for the National Highway Authority of India. His responsibilities included overseeing the construction of a segment of NH 2 (The Grand Trunk Road) within the Aurangabad-Barachatti section. This highway project was a significant part of former Prime Minister Atal Bihari Vajpayee's ambitious infrastructure initiative known as the 'Golden Quadrilateral Project', situated in the Koderma district of Jharkhand. Dubey exposed financial irregularities within the project's operations, leading to the suspension of three engineers employed by the contractor. Unfortunately, on November 27, 2003, while returning from a wedding in Varanasi, tragedy struck as Dubey was fatally shot after reaching Gaya. His body was discovered by the roadside in A.P colony by his driver. In recognition of his courageous actions, Satyendra Dubey was posthumously honoured with the 'Whistle blower of the Year' award by the London-based organization Index on Censorship.

Example 2

Shanmugam Manjunath, a computer science engineer and a grade 'A' government officer at the Indian Oil Corporation (IOC), exposed corruption at two petrol pumps in Lakhimpur Kheri, Uttar Pradesh. While in his capacity, he took action by sealing the two petrol pumps, which were found to be selling adulterated fuel. Furthermore, he conducted surprise raids when these pumps resumed operations after a month. Unfortunately, on November 19, 2005, Manjunath met a tragic end when he was shot six times in the town of Gola Gokarannath in Lakhimpur Kheri. His body was discovered in the backseat of his own car, which was being driven by two employees of the petrol pump.

Example 3

Lalit Mehta, an engineer actively engaged in the 'The Right to Food' campaign in Palamu district, Jharkhand, exposed corruption within the Mahatma Gandhi National Rural Employment Guarantee scheme. He conducted a social audit of the scheme with the assistance of economists

but was tragically murdered before he could fully uncover the extent of the scam. On May 15, 2008, Mehta was attacked while riding his bike in Chhatarpur district, Madhya Pradesh.

Example 4

Indian Police Service (IPS) officer Narendra Kumar Singh, in 2012, unveiled a mining scandal in Morena district, Madhya Pradesh, known for its high-quality construction sand. Despite numerous threats, Singh actively monitored the activities of the illegal sand mining mafia, which was illicitly transporting sand out of the district to other parts of Madhya Pradesh. On March 8, 2012, Singh received a tip about illegally mined stones being transported via tractor. Upon reaching the location to intervene, he was run over by the tractor and tragically lost his life on the spot.

SUGGESTIONS AND CONCLUSION

Every company should offer a means for whistle blowers to report problems anonymously. Utilizing independent platforms like the corporate whistle blower initiative can be beneficial in encouraging employees and other stakeholders to come forward with their concerns. Many companies worry that permitting anonymous complaints might lead to a surge in frivolous, mischievous, and malicious reports that could be challenging to address. To address this concern, companies may establish a list of activities that qualify as unfair and unethical practices, and the whistle blower mechanism should exclusively handle issues related to these activities.

The policy should explicitly outline the necessary information required in a complaint to initiate an investigation. The focus of the whistle blower policy should prioritize the message itself rather than the identity of the whistle blower.

Human beings tend to be risk averse by nature. Therefore, it's essential to incentivize whistle blowers, either through monetary or non-monetary means, to encourage their reporting. Companies might consider implementing an incentive program to motivate whistle blowers to report issues.

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