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THE ROLE OF WHISTLEBLOWER IN CORPORATE GOVERNANCE IN UNCOVERING CORPORATE CRIMES: A COMPARITIVE LEGAL AND ETHICAL ANALYSIS WITH UK AND USA

AUTHORED BY - SNEHAL UPADHYAY

ABSTRACT

Corporate governance is considered to be an important aspect of corporate governance, it assures that companies are running in an efficient and ethical manner. Whistleblowing is considered to be an important element of corporate governance it embroils employees or insiders complaining about any illegal or unethical activities taking place within the company. Whistleblowers play a very vital role in uncovering corporate crimes, thereby guaranteeing transparency and accountability in corporate governance. This paper intends to conduct a research analysis on the comparative legal and ethical role of whistleblowers in corporate governance in India, UK and the USA and how they contribute in unveiling frauds. The researcher would demonstrate the legal frameworks and protections available to whistleblowers in particular jurisdictions, as well as the ethical considerations surrounding whistleblowing. This research will highlight the key differences and similarities between India, UK and US legal systems regarding safeguarding of whistleblowers. The paper also appraises the benefits and encounters of whistleblowing in corporate governance, including the potential risks to whistleblowers such as retaliation and the impact on their careers. Even after adopting whistleblower policy corporate crimes are still increasing hence, the paper will identify the reasons on why the policy is failing to serve its purpose and how the situation can be improved. Additionally, the paper explores the ethical considerations surrounding whistleblowing, such as the duty to report illegal or unethical activities versus loyalty to the company. The research would also highlight how having a robust whistleblowing policies and mechanism can protect and encourage whistleblowers to come forward and report about wrongdoers.

RESEARCH OBJECTIVES, RESEARCH METHEDODOLOGY AND LITERATURE REVIEW

1.1.1 Research objectives: -

- To understand the legal framework for whistleblowing in India, UK and USA and their implication on corporate governance.
- The research will show how far Whistleblowing mechanism has been useful to stop corporate crimes and what all risks whistleblowers go through while disclosing any information.
- To compare the whistleblowing that of India with UK and USA and their impact on corporate governance.
- The research would also identify the pitfalls and some recommendations will be given in order to make the mechanism more effective in the respective jurisdiction.

1.1.2 Research Methodology: -

The researcher has used secondary sources for the research, the paper dwells in a case study analysis where through cases approach will be used to examine the role of whistleblowers in uncovering corporate crimes in the UK and USA and in India as well. The case studies will be selected on the basis of their relevance to the research objectives. Lastly a comparative analysis will be conducted to compare the legal and ethical frameworks for whistleblowing in India, UK and USA. This will involve identifying similarities and differences in the frameworks and evaluating their impact on corporate governance.

1.1.3 Literature review: -

The researcher has done a literature review which is a comprehensive literature review on the legal and ethical frameworks for whistleblowing in India, UK and USA. Several scholarly articles, books, government reports, and other relevant publications have been reviewed by the researcher while writing this paper.

Books:

- Whistleblowing for Change: Exposing Systems of Power and Injustice¹ is taken as a reference

¹ Edited by Tatiana Bazzichelli

to understand whistleblowers experiences and challenges that they face while disclosing any information.

- Whistleblowing and the Law: A Comparative Study² this book provides about laws relating to whistleblowers across other countries.

Statutes:

- The Whistleblower Protection Act, 2004 and some provisions of Companies Act, 2013 which lays down laws relating to Whistleblower protection in India.
- The Public Interest Disclosure Act 1998 which provides protection to whistleblowers in UK
- The Sarbanes-Oxley Act of 2002 and The Dodd-Frank Wall Street Reform and Consumer Protection Act which provides safeguards whistleblowers interest in USA.

Articles:

- Whistleblowing: A Comparative Perspective³ it's an article which provides a comparative analysis of whistleblowing in different countries and discusses the legal and ethical issues surrounding whistleblowing.
- Whistleblowing: A Review of the Literature⁴ is another article which is referred and which specifically deals with the ethical and legal issues surrounding whistleblowing.

I. INTRODUCTION

1.1 BACKGROUND AND CONTEXT

With coming up of globalization and privatization of the economy corporate sectors saw a boom and witnessed several progressive changes over a last decade. Even though having a powerful regime of companies still the sector has witnessed white collar crimes leading to various scandals which has not only impacted the interested parties but also the country's economy scams like P&B, Satyam Computer scandal, the Kingfisher scandal, the Enron Corporation Scandal these have led a series of corporate failure. The companies have learnt from such failures and have adopted a model of corporate governance within each and every entity. Corporate governance is the fundamental ethical code upon which a company operates. The three tools which are important in a corporate governance

² Edited by by Robert G. Vaughn and Meghan J. Ryan

³ By Robert G. Vaughn

⁴ By David Lewis

is to establish transparency, effectiveness and efficiency within the company. These three tools enables the company to take decisions which are strategically construed while keeping the interest of the interested parties like shareholders of the entity in mind. On the other hand corporate whistleblowing plays a crucial role in corporate governance. Whistleblowers are considered to be a part of corporate governance but at the very same time these whistleblowers have to even give up their life which led the parliament to bring up such laws which protects the whistleblower from any type of threat.

The paper will deal with the role of whistleblowers in maintaining the corporate governance unveiling of corporate crimes. The paper would also exhibit the study on the legislative framework for corporate whistleblowing in India along with the legislative framework of the United Kingdom and the United Nations of America and its legal and ethical analysis. Lastly the researcher would provide some recommendations on efficient implementation of the laws concerning whistleblowers.

2. CORPORATE GOVERNANCE AND WHISTLEBLOWING

2.1 CONCEPT OF CORPORATE GOVERNANCE

Corporate governance is the ethical code of conduct according to which the company or an organization should operate. It act as a set of principle norms for the company for enabling them to take strategic decisions which are considered effective, efficient and transparent while on the other hand the interest of the shareholders must be maintained and kept in mind while applying such principle norms. Corporate governance enhances the growth and stability of the entity it also holds the integrity and reputation of the entity. It basically ensures transparency in order to integrate board of directors and the management of the company. Further it also ensures disclosure of business activities of the company in order to gain investors trust.

Corporate governance is an important concept not only in India but everywhere, with the increasing number of corporate scandals it's important for the companies to implement the norms which are laid down by corporate governance in a stricter sense. Corporate governance emerged in India when the country witnessed various types of scams like Satyam scam⁵ which highlighted the need of having a

⁵ Ramalinga Raju v. Union of India, (2015) 5 SCC 178.

better corporate governance practices in India. In another scam IL&FS Crisis⁶ (2018) a leading infrastructure development and finance company in India, faced a liquidity crisis due to mismanagement and poor corporate governance practices. This crisis led to a significant decline in the company's financial health and raised concerns about the lack of transparency and accountability in the Indian financial system.

2.2 IMPORTANCE OF WHISTLEBLOWING IN CORPORATE GOVERNANCE

As duly quoted by Glenn Greenwald⁷ “The purpose of whistleblowing is to expose secret and wrongful acts by those in power to enable reform.” Corporate whistleblowing plays an important role in the corporate governance which is adopted by any entity. When we tend to analyze the corporate governance scenario in India we can refer upon a lot many good examples of corporate governance but at the same time there are examples of a number of corporate frauds which has steeply forced the regulators and the law makers to up bring stringent regulatory policies which could help to curb such corporate frauds and one of such step is introducing the concept of whistleblowing which is a very fresh concept falling under the purview of corporate governance.

Whistleblowing is the act of a person revealing information to the public or within an organisation, typically concerning some wrongdoing or unlawful. An employee or other insider with access to this information, which is frequently sensitive or confidential, is usually the one who divulges it. Whistleblowers could come out to reveal unethical behaviour they have seen in the workplace or in their sector, such as fraud, corruption, or other types of dishonest behaviour.

Whistleblowing is frequently seen as a sort of public duty since it can assist in exposing wrongdoing and holding offenders accountable. Whistleblowers may, however, experience retaliation for speaking up, such as being fired, demoted, or subjected to harassment. Numerous nations have laws in place to safeguard whistleblowers against such retribution and to give them access to legal action should they become the target of such actions for speaking out. The International Labor Organization

⁶ Infrastructure Leasing and Financial Services Limited and its subsidiaries, Writ Petition (Civil) No. 1036 of 2018 (Delhi High Court Nov. 15, 2018).

⁷ The Meaning of WikiLeaks' Stratfor Emails

(ILO) defined whistleblowing as “Reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers.” Michael Davis⁸ in his “**The Complicit Theory**” believes whistleblowing is a morally ethical practice that is adopted by those employees who dissent or do not wish to be part of any malpractice or wrongdoing that takes place within the organization, company.

Since the term "whistleblower" is not defined in any statute, it is evident that the legislature intended for the term to have a more expansive application. A whistleblower is essentially any employee who works for the organization and has knowledge of any type of insider information regarding any form of corruption, fraud, or abuse of power by the organization's leaders or members of top-level management. Employees within the organization are frequently the major sources of trustworthy information about any unethical behavior or wrongdoing occurring within the business, it has been observed in countless cases of corporate whistleblowing. However, these employees frequently hold off reporting such behaviors until later phases out of fear of a possible suspension or termination. This emphasizes how important it is for businesses to create whistleblower procedures that protect their confidentiality. Additionally, such employees should be protected by the law.

Implementing a strong structure for whistleblowing can prevent employees from participating in wrongdoing and help organizations' catch malfeasance early. A well-thought-out mechanism for reporting wrongdoing can also give whistleblowers the assurance they need to do so without worrying about repercussions. Internal controls, ethics, and compliance programs for an organization must include procedures for protecting whistleblowers. These regulations show both investors and law enforcement agencies that the company has taken proactive measures to stop, identify, and deal with unethical behavior.

2.3 LEGAL AND ETHICAL FRAMEWORKS FOR WHISTLEBLOWING

Whistleblowers are often referred as Public Interest Disclosures as they work in the interest of the entity in which they are working and also sometimes in the interest of the public when public's interest

⁸ Professor of philosophy at the Illinois Institute of Technology in Chicago, Illinois, USA.

is involved. As per the resolution it's the responsibility of CVC to keep the identity of the complainant confidential and the agency has to act on the complaint filed by the whistleblower. The legal framework for whistleblowing varies across countries and sectors. In the United States, for example, whistleblowers are protected under the False Claims Act, the Sarbanes-Oxley Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, among others. These laws provide various protections for whistleblowers, including immunity from retaliation, the right to a trial by jury, and the possibility of receiving financial rewards for reporting fraud or corruption.

The Whistleblower Protection Directive, which establishes basic criteria for protecting whistleblowers across all industries, is one of the regulations the European Union has implemented to protect those who come forward with information. The directive mandates that member states guarantee whistleblowers' anonymity, protection from reprisal, and access to free legal counsel.

There are ethical frameworks that encourage and support whistleblowing in addition to the legal framework. A standard for whistleblowing management systems (ISO 37002) has been created by the International Standards Organization (ISO), and it offers recommendations on how organizations should create a culture of accountability and openness as well as protocols for dealing with disclosures from whistleblowers. The guideline advises organizations to set up explicit whistleblowing policies and processes, educate staff members about the value of whistleblowing, and put in place safeguards to prevent reprisal.

Whistleblowing is encouraged by the professional behaviour norms that are part of the ethical framework. For instance, the Model Rules of Professional Conduct of the American Bar Association mandate that attorneys notify the proper authorities of any ethical transgressions committed by judges or other attorneys. Similar to this, the International Federation of Accountants' Code of Ethics mandates that accountants notify the proper authorities of any suspected criminal activity.

The Heritage Food (India) Ltd, Wipro, Infosys, Tata Motors, and Reliance Industries are just a few Indian businesses that have lately established whistleblower policies to allow staff members to disclose any unethical or improper business practices. These firms' whistleblower policies give employees a way to voice their complaints, which will be taken in good faith. All communications must be given in writing and include proof of any misconduct. The management board takes

reasonable efforts to look into the issue, and the whistleblower's identity is protected from harassment or victimization. According to Wipro's whistleblower policy, a complainant has three months from the date they first learned of the misconduct to voice their concerns. The establishment of an Ethics and Compliance Task Force is required by Reliance Industries' policy, and it works under the direction of the Audit Committee to look into all complaints made by complainants or by whistleblowers. While these organization's whistleblower reporting processes and organizational structures vary, all of them strive to provide staff members a voice and advance corporate governance. Indian businesses do not support anonymous complaints, unlike overseas firms like Deloitte and KPMG overseas.

3. CORPORATE CRIMES AND WHISTLEBLOWING

3.1 TYPES OF CORPORATE CRIMES

Whistleblowers are essential to the investigation of various business crimes. Following are a few instances of corporate crimes that whistleblowers have assisted in exposing:

Financial Fraud: Money laundering, embezzlement, and Ponzi schemes are all examples of financial crimes that whistleblowers have been instrumental in exposing.

For instance, whistleblower Harry Markopolos revealed Bernie Madoff's Ponzi scheme, which caused billions of dollars in damages.

Insider trading: Whistleblowers have also assisted in exposing insider trading scams, in which investors use confidential knowledge to their advantage. As an illustration, David Einhorn, a former Wall Street analyst and whistleblower, revealed insider trading at Allied Capital.

Environmental violations: Whistleblowers have been crucial in exposing businesses that dump toxic waste or emit pollutants illegally or otherwise violate environmental laws and regulations. For instance, Erin Brockovich revealed the water poisoning brought on by Pacific Gas and Electric in Hinkley, California.

Workplace discrimination and harassment: Whistleblowers have also assisted in exposing forms of racial or sexual harassment that occur in the workplace. As an illustration, Susan Fowler's allegations of sexual harassment at Uber sparked an investigation, which ultimately resulted in the CEO of the business resigning.

Product safety violations: Whistleblowers have assisted in exposing businesses that disregard safety laws, such as those who produce defective goods that might endanger consumers. For instance, Jeffrey Wigand revealed the tobacco industry's knowledge of nicotine's addictive qualities and their attempts to conceal it.

Ultimately, it ought to remain acknowledged that whistleblowers have been crucial in exposing a variety of corporate misdeeds, from financial fraud to workplace discrimination. They aid in holding businesses responsible for their deeds and guarantee that they abide by the rules and laws that control their business.

3.2 EXAMPLES OF CORPORATE CRIMES UNDERCOVERED BY WHISTLEBLOWERS IN INDIA

Even if they are aware of the possible risks of being a whistleblower, employees frequently feel compelled to reveal unethical or unlawful behavior that they come across within their company. Their job security and personal safety may be at risk if they report misconduct since they could face harassment or any sort of victimization from their employer. Many employees nonetheless decide to speak up and report any wrongdoing they have seen despite these dangers because they believe it is morally right and in the best interests of the corporate entity, its stakeholders, and society at large.

3.2.1 SATYENDRA DUBEY

While serving as the project director for the Golden Quadrilateral Corridor Project, Satyendra Dubey⁹, a project manager for the National Highway Authority of India, learned about financial irregularities and unethical practises within the company. The NHAI was allowing sub-contracting and the use of low-grade materials, so he took action by suspending three engineers engaged in the anomalies.

Dubey learned that the scam involved high-ranking officials and politicians after being moved to a different project and learning that it was not confined to a single place. He disclosed the financial errors and disparities he had discovered in a letter to the prime minister, asking that his identity remain secret.

⁹ Satyendra Dubey vs Union of India & Others

Dubey was criticised by the NHAI vigilance officer after his letter was sent to the Ministry of Transport and Highways, despite his attempts to resolve the problem. Tragically, Dubey was discovered dead on November 27th, albeit there was no solid evidence connecting it to the con. He may have been slain while trying to prevent a robbery.

3.2.2 MANJUNATH SHANMUGAM

Manjunath Shanmugam¹⁰, Two petrol stations in Lucknow were selling contaminated fuel, which was found out by him, a marketing manager for the Indian Oil Corporation. The pumps were blocked for three months as a result of his action, but he later learned that they had started working again after only one month. To stop the pumps, he launched a surprise raid, but regrettably, the killer shot and killed him.

3.2.3 DINESH THAKUR

After joining Ranbaxy in 2003, Dinesh Thakur¹¹ discovered suspicious manufacturing practices within the company. When he informed his seniors and top-level management about these practices in 2005, he was forced to leave the company. Thakur then provided U.S. regulators and authorities with evidence that Ranbaxy had falsified drug data and violated good management practices. He also uncovered evidence that the company had manufactured and distributed adulterated drugs. As a result of Thakur's efforts to expose the malpractices, Ranbaxy pleaded guilty to felony charges and agreed to pay \$500 million to settle the case. Thakur himself received an award of \$48 million.

3.3 CHALLENGES FACED BY WHISTLEBLOWERS IN UNCOVERING CORPORATE CRIMES

Whistleblowers faces a lot of challenges while uncovering any sort of corporate crimes. The challenges such as retaliation, intimidation, isolation, legal hurdles, death threats, and threats related to family members killing or kidnapping, emotional distress and reputational damage. Many a times these challenges stops the whistleblowers from opening their mouth and it also destroys there personal and professional life. There's a risk felt that the whistleblower might lose their job livelihoods, and

¹⁰ State of Uttar Pradesh v. Pawan Kumar Mittal and Others

¹¹ United States of America vs. Ranbaxy Laboratories Limited [1:13-cr-00118-RBW-1]

even their personal safety for exposing corporate crimes. Employers often use retaliation tactics such as demotion, harassment, blacklisting, and even termination to intimidate whistleblowers and discourage others from coming forward.

The whistleblowers while disclosing any information should have a backup in form of supporting evidences because in many cases they have to face defamation cases and even criminal charges in some cases further they must decide to report any wrong internally or externally. Whistleblowers may also face isolation and emotional distress as they fight with the decision to come forward and the repercussion of their actions. They might feel isolated from their colleagues and friends. Moreover, whistleblowers may experience emotional trauma, anxiety, and depression as they cope with the stress of exposing corporate wrongdoing. Reputational damage is another significant challenge for whistleblowers. They risk being labeled as troublemakers or traitors, which can damage their professional reputation and make it difficult to find new employment. Furthermore, whistleblowers may face negative media attention which can attack on their reputation and also invite death threats. Therefore the whistleblowers are needed to be protected because they risk not only themselves but also their lives in order to show the wrongful act which is going on in the entity.

4. LEGAL AND ETHICAL ANALYSIS OF WHISTLEBLOWER PROTECTION IN INDIA

4.1 WHISTLEBLOWER PROTECTION UNDER INDIAN LAW

The concept of vigil mechanism or whistleblower can be traced from an ancient time period, it was proposed by Kautilya. He stated that “any informant (suchika) who supplies information about embezzlement just under perpetration shall, if he succeed in proving it, should be rewarded 1/6th of the amount in question and if he happens to be a government servant (bhritaka) he shall get for the same act 1/12th of the amount.”¹²

It was for the very first time talked about in Kumar Mangalam Committee¹³ which recommended that

¹² The Arthashastra

¹³ https://www.academia.edu/35960269/KUMAR_MANGALAM_BIRLA_COMMITTEE_REPORT_ON

the companies must have a whistleblower policy. If we talk about legislative frameworks related to protection of whistleblower then it's still being considered in the blooming stage as compared to the legislative frameworks present in countries like UK and USA. Although we have several pieces of legislation which deal with protection of whistleblowers. The below mentioned are the laws:

- ❖ The Whistleblowing Protection Act, 2014.
- ❖ The Companies Act, 2013 read along with "The Companies (Meeting Board and its Power) Rules 2014.
- ❖ The SEBI's Equity Listing Agreement.

4.1.1 **THE WHISTLEBLOWER PROTECTION ACT, 2014**

The act aims on protecting the whistleblowers from any kind of victimization or retaliation because of their move on unveiling any wrongdoing affairs of a corporate entity. The act ensures confidentiality when it comes to any disclosure hence, the whistleblowers tend to report any wrongful act confidentially in most of the times. The act has a wider application as it applies on both private employees as well as government employees, as well as on person who directly approach to the government in order to disclose any such information. Further the act lays down types of information that can be unveiled by whistleblowers and the procedure that they need to follow while making and reporting as such disclosure. The disclosure should always be made in good faith and by following the due procedures. One of the crucial feature of the act is that that the act provides for an independent authority, Central Vigilance Commission (CVC) which is authorized to perform investigative function. They investigate complaints filed by whistleblowers.

The act also mentions about penalty in any person victimizes or retaliates against the whistleblowers. Penalty includes imprisonment and fines. The act also compensates the whistleblowers who suffered any sort of torture or loss by the person or organization against whom they had disclosed any information. Also, the act punishes the whistleblowers as well when file any false complain therefore the act maintains transparency and a proper checks and balances.

Even though having such provisions the act is considered to be a failure upon its executions and effectiveness. There have been instances where whistleblowers have faced issues after they had unveiled certain facts even though the act promotes protection but they fail on providing such

protection. Hence, the act needs a stronger implementation mechanism, awareness amongst the employees so much that they are aware about their rights as a whistleblower. Therefore there is still a room left for such improvements to be done.

4.1.2 THE COMPANIES ACT, 2013

As stated under section 177 (9) of the Companies Act, 2013 read along with the Regulation 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 it makes the vigil mechanism compulsory for all the listed public companies hence, enabling directors and the employee to raise their grievances to the competent authority.

Section 177(10) of the companies act, 2013 states to take reasonable care in order to protect the whistleblower from any sort of victimization. Further the clause also mentions the procedure that is needed to be followed when they wish to raise any concern directly before the chairperson of the audit committee. It's mandatory as per this section for the listed companies to publish on their website a report about such vigil mechanism which is adopted by them.

Section 177 was brought in change in the year 2017, wherein the phrase “every listed company” was amended to “every publicly listed company.” Setting up a vigil mechanism was considered to be an important part for the company as it provides the whistleblower a platform to come open and expose any illegal practices, fraud, or any kind of wrongdoing that is adopted inside the company.

Section 208 of the companies act, 2013 provides additional power to the registrar or the inspector in order to investigate companies' documents and records on receiving such complaints and based on such investigation they have to prepare a report and submit it to the Central Government. Further, only if required they will provide all the relevant documents to the Central Government. Lastly, Section 210 lays down the guideline procedure that needs to be followed by the registrar of the inspector during the time of investigation. As per section 211 of the act, the government has been vested with the power to establish an office for serious fraud investigation officer in order to conduct investigation on any company involved in any sort of corporate crime.

4.1.3 THE SEBI'S EQUITY LISTING AGREEMENT

Clause 49 of the SEBI' equity listing as made by the Security Exchange Board of India it was made compulsory for every listed company for having a vigil mechanism which means these companies had to adopt whistleblowing policy mandatorily. It further highlights that there must be awareness created by all the companies for their employees about the policy so that whenever they need to report about any sort of wrongful act they are aware where they had to go and complain regarding it. Lastly, the clause directs the companies to take reasonable care in order to protect the director and the complainant from any kind of harassment or victimization. SEBI has also taken an initiative to give reward to the employees who come forward and take much risk to report any sort of wrongful act which is being committed by or under the company.

4.2 TYPES OF WHISTLEBLOWERS

Whistleblowers can be classified in eight types:-

- 4.2.1 Internal Whistleblower- Any person who is working in a particular entity comes forward and puts up complain about any wrong which is being committed by any other member of the company.
- 4.2.2 External Whistleblower- When any complain is brought by any person other than the person working in that particular entity for instance general public, media reports, NGO working for public who disclose about the wrong doing of the company.
- 4.2.3 Alumni Whistleblower- When complain is made by person who was earlier working for the entity but is now not working hence, has left the corporate entity and has filed the complaint against any member of the entity involved in any sort of wrongful act.
- 4.2.4 Open Whistleblower- Any complaint is treated as an open complain when the complainant discloses their identity as most of the time whistleblowers tend not to disclose their identities.
- 4.2.5 Personal Whistleblower- When a complaint is made against any one particular person and the company is running well but only the act of that particular person is wrongful then that complain would be deemed as personal whistleblower.
- 4.2.6 Impersonal Whistleblower- The exposure of wrongs committed against the whistleblower is a component of personal whistleblowing. Unspecific whistleblowing exposes misconduct or harms to other people, such as coworkers, customers, stakeholders, or clients.
- 4.2.7 Government Whistleblower- It involves disclosures which are made upon governmental officials involved in doing malpractices. It can be central as well as state government.

- 4.2.8 Corporate Whistleblowers- Occurs when an individual reports wrongdoing in any corporate entity and such wrongdoing is in the nature of financial misconduct or any sort of discrimination.

5. COMPARATIVE ANALYSIS OF WHISTLEBLOWERS AND CORPORATE CRIMES IN UK AND USA

5.1 WHISTLEBLOWER PROTECTION IN UK

After numerous scandals and with the collapse of BCCI Bank and the Herald of Free Enterprise there was a need felt in the United Kingdom to have stringent mechanism in order to stop such scandals. In the late 90's the UK parliament decided to formulate a legislation which would entirely deal with the protection of person who declare valuable information about their employers' malpractices. The parliament enacted the Public Interest Disclosure Act, 1998. The act was solely based to the recommendations that the parliament received by Nolan Committee Report. The act allows the whistleblowers to claim compensation on any victimization after they had made any disclosures. The Employment Rights Act of 1996 provided protection for a whistleblower whose line manager engineered her termination notwithstanding the fact that she had been fired for poor performance, the UK Supreme Court said. The Supreme Court¹⁴ ruled that the motivation of the line manager had an impact on the employer's decision to fire the employee, making the firing automatically unfair. In another case, The Employment Rights Act of 1996 protected a whistleblower who had expressed concerns about his employer's financial practices, according to the Court of Appeal, even though his revelations only applied to a small number of employees. The revelations, according to the Court of Appeal, were made in the public interest and as a result qualified for whistleblower protection under the Act's provisions¹⁵.

The act defines "workers" in both the private sector and the public sector and while extending immunity to them also extends its immunity to contractors and suppliers. "In 2014, the UK Supreme Court established that even members of an LLP Partnership are "workers" under the Act."¹⁶

¹⁴ Royal Mail Group Limited v Jhuti [2017] UKSC 55.

¹⁵ Chesterton Global Limited v Nurmohamed [2017] EWCA Civ 979.

¹⁶ Clyde & Co LLP and anor v Bates van Winkelhof [2014] UKSC 32.

One of the crucial aspect of this act is that the act focuses more on the quality of the disclosed information and on whether the information is genuine or not, rather than the whistleblowers. Political leaders in UK have always criticized the act and have always demanded to have various amendments which should primarily focus on establishing a safeguard mechanism which should encourage people at large to come forward and report their grievances and apprehensions against their employers or their corporate entity under which they are working and once such disclosures are received the appropriate authority must investigate on such disclosed information and also protect the identity of the whistleblower.

5.2 WHISTLEBLOWER PROTECTION IN US

USA became the first country in the world to recognize the very concept of whistleblowing. It was the year 1863 when USA passed a legislation named the United States False Claim Act, 1863 and became the first country in identifying whistleblowing.

There are several legislations which deals with the protection of whistleblowers namely:

The Sarbanes Oxley Act, 2002 Occupational Safety and Health Act 1970.

Wall Street Reform and Consumer Protection Act 2010.

There is also an initiative taken by the securities exchange commission in the U.S to inspire the employees to report any wrongful act which they have known or seen in places where they work. Therefore, the regulator promotes transparency and a practice of full disclosure.

5.2.1 THE SARBANES OXLEY ACT, (SOX) 2002

The Sarbanes Oxley Act, is one of the prominent statute in USA which gives protection to the whistleblowers who unveil any insider trading, any kind of fraud or corruption taking place in the corporate entity. It was brought enforce after Enron Scandal and WorldCom scandal which disclosed dark reality of corporate and finance sectors, it was felt by the legislature to enact a legislation to protect person who disclose such information in a good faith. The act has a wider ambit and is binding on over 40 million employees of publicly traded corporations in the US.

The act under Section 301 made it compulsory for the public companies for having an audit committee. The committee possess the responsibility for establishing a procedural safeguard in order to protect the whistleblower's identity from getting disclosed. The act reassures the internal whistleblowers who come forward and report complaint against their employers in front of the stock exchange commission. The act aids the whistleblower by adding a provision of whistleblowers making a complaint against any retaliation made after they had reported any complaint against anyone. The complaint can be made within 90 days of such retaliation. After receiving the complaint, the labor department is authorized to start an investigation upon such retaliation. Once the investigation has been completed from the side of the department it will be referred to the Occupational Safety and Health Administration for review. OSHA shall issue compliance order on such referral. The act punishes the person who retaliates against a whistleblower with a fine or imprisonment for 10 years or both and it's considered as a federal offence.

5.2.2 THE DODD – FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, 2010

The act was enacted as an extension of SOX, 2002 it also provides protection to the whistleblowers who report any wrongful act or when they provide any sort of information which is confidential in nature but is a wrongful act and such information may help in proving that the company is actually involved in a fraud or malpractice. The whistleblower can report about such practices to the Stock Exchange Commission or the Commodities Future Trade Commission.

The Act also expands the window for filing complaints against any form of retaliation from 90 days to 180 days. It also offers immunity to everyone who works for both the parent and subsidiary enterprises. The Act also establishes a provision that ensures the whistleblower is compensated for the information they provide. If the whistleblower discloses any actions that demonstrate the company benefited for an amount of \$1,000,000 or more from any wrongdoing, the company must pay the whistleblower a sum that is not less than 10% and not more than 30% of the amount in question. In a case the Ninth Circuit Court of Appeals¹⁷ determined that even if an employee did not report malfeasance to the SEC, they were still protected from retaliation under the anti-retaliation provisions of the Dodd-Frank Act. The Court ruled that whistleblowers who disclose to their employer internally

¹⁷ Van Asdale v. International Game Technology [2:08-cv-01347-RCJ-PAL]

as well as those who report to the SEC are protected from retaliation under the anti-retaliation provisions of the Dodd-Frank Act.

6. COMPARITIVE ANALYSIS OF WHISTLEBLOWERS PROTECTION IN INDIA, UK AND USA

In the earlier section as we have discussed the whistleblowing mechanism of India, UK and USA now we will compare these different state's mechanism and how they are similar and different from each other. The whistleblower protection that we have in India has a limited ambit when compared to UK and USA. As in India it's limited to private sectors basically whereas in UK and USA its open for both public and private sectors. The reporting process in India is ambiguous there is no proper guidelines and it's merely formed how the respective companies want it to be whereas in case of UK and USA they have established a well reporting procedures. Even though India has recognized protection of whistleblowers very recently hence number of complaints is less when compared to that of UK and USA therefore the mechanism in India is in its developing stage and there is still a room left for enhancements and effectiveness. In UK and USA there is a provision for getting interim relief on any sort of retaliation done towards the whistleblower but in India there is no such provision.

Overall, UK has the most robust whistleblower mechanism followed by USA meanwhile as India has recently taken steps towards providing protection to the whistleblowers therefore there is a need for more enhanced framework in order to ensure comprehensive protection to whistleblowers across all the sectors

7. MAJOR PITFALLS OF WHISTLEBLOWER PROTECTION

To establish a strong corporate governance system, a nation cannot simply create many regulatory bodies but exclude certain sectors from their scope and make it optional for them to comply with the framework. To ensure the effectiveness of any law, it is essential that the scope and application of the law are clear and precise. As already mentioned laws relating to whistleblowers and their protection is still at a base level which means it needs many more developments.

Any execution with regards to whistleblowing policy requires trust which means companies should create such environment where the company itself encourages its members to always come up and put a complain regarding any wrongful act which they are aware of to the appropriate authority within the company, hence this type of transparency should be created by the company itself but there are many difficulties in real companies fail on creating such type of environment companies are ignorant towards the whistleblower policy and don't implement the policy efficiently.

The whistleblower protection act, 2014 excludes private companies is one of the major pitfall. Clause 49 of the SEBI Equity Listing Agreement is non-mandatory for private institutions. The whistleblower protection act, 2014 applies only on the companies which are enlisted on the stock exchanges. The act fails to mention any sort of provision dealing with internal procedure in order to investigate complaints. There were further amendments passed which made it mandatory for the whistleblower to reveal their identity but I guess parliament has failed to understand that this mandating might victimize the whistleblowers and they might to face threats and harassment. Lastly the other problem with the act is that it does not provide any type of compensation to the whistleblowers when they are subjected to any sort of harassment or victimization. Therefore it fails to serve the purpose itself it calls itself a protection act but it's not providing protection on critical areas.

When we talk about the robust whistleblowing policies in UK and USA they are in a better practice as compared to India but still corporate crimes do take place in these places. The first and foremost reason for this is the fear of retaliation even though having an effective mechanism still there is such stringent provision which could stop retaliation against the whistleblowers that's why they fear to report anything even the remedies provided to them is not sufficient to address the harm which is suffered by the whistleblowers, especially in cases where the whistleblower's career or reputation is irreparably damaged. Inadequate enforcement, corruption takes over the whistleblowers often time's whistleblowers are lured for money or with position or perks this becomes tougher to stop when one is practicing within their limits. Therefore addressing these issues might improve the whistleblowing policy in the respective jurisdiction.

8. CONCLUSION

8.1 SUMMARY OF KEY FINDINGS

The role of whistleblowers in corporate governance is essential in disclosing corporate crimes. Due to a lack of understanding, apprehension about reprisals, a lack of effective remedies and enforcement, and the extent of available protective measures, corporate crimes continue to occur. In order to increase the efficiency of whistleblower protection measures and decrease corporate wrongdoing, it is imperative to address these challenges. In conclusion, protecting whistleblowers is essential for preserving the integrity of businesses and their operations since they play a critical role in fostering transparency and accountability in corporate governance. India is very recent in this type of mechanism when compared to UK and USA the only way to make corporate crimes minimal is to have a better enforcement mechanism and involvement of such a body which is not related to the affairs of company so that they can't be influenced and all the investigation and other procedures should be quicker so that the person can't harm or retaliate against the whistleblower

8.2 IMPLICATIONS FOR CORPORATE GOVERNANCE AND WHISTLEBLOWER PROTECTION

As discussed in earlier sections it can be concluded that whistleblowers do play a great role in corporate governance by taking all the risk and stand straight strong against any wrongdoer. They have somewhat improved transparency by bringing attention of the regulators and the public to not trust blindly and inspect anything and everything while getting involved with any corporate related activities whereas hand in hand by protecting the whistleblowers, corporate governance can also be improved by promoting transparency and accountability in any corporate entity. Whistleblowers also enhances compliances and builds a better risk management system wherein they help the organization to manage risks by unveiling potential violations of company's affairs. They also prevent reputational damage by already informing the wrong within the entity before it can be covered by media. Effective whistleblower protection requires ethical leadership and a culture of accountability within organizations. By promoting ethical behavior and a culture of transparency and accountability, organizations can reduce the likelihood of misconduct and foster an environment in which whistleblowers are supported and protected.

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