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BREAKING THE SILENCE: WHISTLE-BLOWING PRACTICES AND CHALLENGES IN INDIAN CORPORATE GOVERNANCE

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ABSTRACT

A strong corporate governance framework is necessary to guarantee a company's long-term survival and prosperity. Investors and stakeholders are more confident in such a system since it encourages accountability and openness. People who reveal or report unethical, unlawful, or fraudulent activity occurring within an organization are known as whistle-blowers. By disclosing misconduct and promoting moral behavior within companies, whistle-blowers are essential to maintaining the integrity of business operations. Whistle-blower policies are useful tools for reducing risks and encouraging moral behavior in businesses. They are usually overseen by management but are also revealed to the Board of Directors and Audit Committee. These regulations support a transparent and accountable culture while addressing the difficulties associated with work division. Developing an environment where people can express themselves freely within organizations is still difficult, despite its significance. Whistle-blowers, regardless of how important they are, nevertheless confront many obstacles. Because there aren't enough whistle-blowers, several industries including business and healthcare have been the subject of public criticism and inquiries. Hence, preserving a positive corporate culture and respecting ethical standards depend on encouraging whistle-blowing and providing safe spaces for those who choose to come forward. This paper aims to shed light on the significance of whistle-blowing in Indian organizations and address the challenges and opportunities associated with its implementation.

Keywords: Corporate Governance, Whistle-blowers, Misconduct, Ethical Standards, Whistle-blowing.

INTRODUCTION

The corporate sector has grown and expanded significantly in recent years, offering a wealth of options for career advancement. But there is a darker side to this affluence that is marked by fraud, corruption, and power abuse. These immoral actions hurt the expansion and development of the economy. High-profile frauds like the Satyam, Commonwealth Games, and 2G spectrum scandals have damaged India's reputation despite legislative attempts to address such atrocities. While insiders within businesses are aware of the misbehavior and can reveal the company's true nature, external spectators frequently overlook these fraudulent acts. One way to reveal wrongdoing is by whistle-blowing, which is the act of disclosing deliberate misconduct, such as fraud, corruption, or unlawful activity, within an organization. Whistle-blowers, motivated by moral convictions and a desire to further the common good, are essential to maintaining moral norms and preventing corruption.¹ An employee, contractor, or any other member of a company who confidentially reports suspected misconduct is considered a whistle-blower. This could involve wrongdoing, scandals including corruption, insider trading, misbehavior, or poor management inside the organization. The act of disclosing misconduct to external parties like the media, police, or government representatives, or to internal channels like senior management or human resources, is known as whistle-blowing. Whistle-blowers must, however, confirm the veracity of the material before filing a complaint in order to prevent rumors from circulating that can harm the company's reputation. Whistle-blowers, however, suffer serious repercussions for their acts, such as threats to their personal and family safety, animosity from colleagues or higher management, and administrative harassment. Even while whistle-blowing plays a crucial role in exposing misconduct, employees of companies are frequently unwilling to reveal information for fear of retaliation.² Eliminating fraud and misconduct within enterprises is significantly hampered by insufficient safeguards for whistle-blowers. This underscores the need for whistle-blower protection in a country such as India, where corruption and inefficient administration are rampant.

Businesses are under pressure to protect the interests of their investors, particularly shareholders, in addition to delivering excellent financial returns in the current competitive business environment. Although the idea of corporate governance has been around for many years, it has been much more popular recently as businesses look to improve the security, accountability, and transparency of their management systems. A set of guidelines known as "corporate governance" aims to increase a company's overall efficacy and efficiency while upholding its social

¹ Goel, S., 2014. Protection of whistle-blowers in India: a corporate perspective. *Available at SSRN 2530397*.

² *Id.*

obligations and following accepted norms. A crucial component of corporate governance, whistle-blowing rules provide a way to keep an eye on unethical or unlawful activity taking place within companies and to disclose information as required.

Therefore, corporate governance and whistle-blowing are related ideas that are essential for encouraging responsibility, ethics, and transparency in businesses. Companies can cultivate a culture of integrity and responsibility by strengthening corporate governance structures and providing whistle-blowers with more authority. This will ultimately boost stakeholder confidence and trust.

HISTORY OF WHISTLE-BLOWING IN INDIA

Whistle-blowing has a long history; it was practiced as early as Ancient Greece and India. Orator Lycurgus of Athens highlighted the necessity for individuals to come out and reveal wrongdoers, acknowledging that laws and judges cannot solve every problem on their own.³ In a similar vein, the ancient Indian thinker Kautilya suggested paying whistle-blowers who disclosed instances of embezzlement, underscoring the fact that corruption was common in even prehistoric cultures.⁴ Societies have long been afflicted by corruption, which weakens public confidence in political and administrative structures and erodes society's moral foundation. Nonetheless, historical documentation reveals initiatives to use monitoring and administrative tools to fight corruption. Whistle-blowing was important even in prehistoric India, as evidenced by the existence of informants and investigating officers in those old Indian governance structures. Kautilya's writings also illuminated the way in which whistle-blowers were treated, with rewards given for revealing financial misconduct and harsh punishments meted out for making unfounded allegations. While these actions were intended to discourage dishonest informants, they also brought attention to the dangers whistle-blowers faced when they exposed unethical behavior.⁵ In 1993, N. Vittal, the Chief Vigilance Commissioner at the time, introduced the first bill in contemporary India to protect whistle-blowers. The Whistle-blower Protection Act was passed in 2014 as a result of further efforts, albeit its operationalization has not yet taken place. In contrast to nations such as the United States and the United Kingdom, whistle-blower laws in India are still developing. However, laws like the Companies Act of 2013 and regulatory agencies like

³ Shikha Patheja, *System of Whistle Blowing in India*, Int. J. Sci. Res., vol. 4, issue 7, July 2015, ISSN No. 2277-8179.

⁴ <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>.

⁵ Pradeep Kumar Gautam, Saurabh Mishra, et.al. (eds.), *Indigenous Historical Knowledge Vol-I*.pdf

SEBI have required procedures for handling whistle-blower allegations in specific categories of businesses.⁶ Acknowledging whistle-blowers as important sources of information about wrongdoing, these policies seek to improve accountability and transparency in public and private institutions. Furthermore, the Right to Information ('RTI') Act, which was passed into law in 2005, gave residents the ability to request information from public agencies. This allowed for the revelation of many instances of corruption and unlawful activity. Whistle-blowers are exposed to retaliation because the RTI Act does not shield them from it.

MAJOR WHISTLE-BLOWER CASES IN INDIA

1. **Satyendra Dubey Case:** The Satyendra Dubey case serves as a sobering reminder of the dangers whistle-blowers encounter when disclosing crime and corruption. Significant financial violations in the "Golden Quadrilateral" project in Jharkhand were found by Mr. Dubey, a civil engineer assigned to monitor its construction. On the basis of falsified paperwork, contracts were issued, and contractors received significant advances without the necessary supervision. Mr. Dubey repeatedly tried to bring attention to these discrepancies to the Prime Minister's Office ('PMO') and the National Highway Authority of India ('NHAI'), but he received no response. Those profiting from the misappropriation of monies in the highway contracts saw his whistle-blowing activities as a danger, which resulted in his violent murder.⁷
2. **Petrol Pump Scandal of 2005- Manjunath Shanmugam Case⁸:** During his employment with the Indian Oil Corporation ('IOC'), Mr. Manjunath Shanmugam, a marketing manager, discovered a gasoline adulteration scheme at a Lakhimpur Kheri IOC location. Mr. Shanmugam took prompt action upon learning of this malpractice, ordering the closure of two nearby gas stations. To his dismay, though, these pumps were reopened after a month, suggesting ineffective enforcement. When Mr. Shanmugam's body was found on November 19, 2005, it became clear how tragically his whistle-blowing efforts had ended. The primary offender, the owners of the gas pumps, and eight other accomplices were apprehended following further inquiries. Mr. Shanmugam eventually lost his life as a result of his valiant act of whistle-blowing. Widespread indignation at his

⁶ *Where the law stands on whistleblowers in India - infosys episode (no date)* The Economic Times. Available at: <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/sebi-mandates-provisions-for-whistleblowers/slideshow/71770786.cms>.

⁷ Aditi Pareek, *Calling For Attention: Efficacy of Whistleblowing Laws in India*, Vol.4, issue 2, IJLMH, 1947-1953 (2021).

⁸ Agrawal, P., 2023. A Study on the Laws regarding Protection of Whistle-Blowers in India. *Issue 2 Int'l JL Mgmt. & Human.*, 6, p.945.

murder led the Central Bureau of Investigation to become involved in the case. All eight defendants were declared guilty by the trial court in 2007, with seven of them receiving life sentences and one, Pawan Kumar, receiving the death penalty. The story of Mr. Shanmugam underscores the significance of safeguarding the safety and protection of whistle-blowers and serves as a sobering reminder of the dangers they confront when disclosing corruption and wrongdoing.⁹

3. **Air Asia Case:** Gaurav Taneja, a pilot for Air Asia airlines, raised concerns about the airline's disregard for air safety regulations and failure to follow COVID-19 protocols, which endangered the lives of passengers. However, instead of addressing these issues, the airline terminated Taneja's employment and accused him of defamation.¹⁰

LAWS PROTECTING WHISTLE-BLOWERS IN INDIA

Whistle-blower protection is consistent with India's adherence to international norms and agreements. India is a party to the United Nations Convention against Corruption (UNCAC), which acknowledges the value of safeguarding whistle-blowers as a crucial element of anti-corruption initiatives. India can meet its duties under UNCAC and show that it is committed to fighting corruption both domestically and internationally by passing strong whistle-blower protection laws. In India, protecting whistle-blowers is essential for preventing corruption, fostering accountability, and ensuring the general welfare.¹¹ Strong democratic government, deterrence of misconduct, and encouragement of transparency are all possible with effective whistle-blower protection laws.¹² Whistle-blower safety and security should be a top priority for legislators, policymakers, and civil society as India moves forward with its quest for socioeconomic growth and good governance. Therefore, in order to protect the Whistle-blowers, the Indian Government has enacted a separate legislation called the Whistle-blower Protection Act, 2014 as well as incorporated a few provisions in different acts:

Companies Act, 2013

Every company's board of directors is required by Section 134(5)(f)¹³ to include a statement outlining the internal financial controls with regard to the Financial Statements in the directors'

⁹ *Id.*

¹⁰ Kritika Sharma, Analysis of Real Consequences Faced by Whistle-Blower, in Indian Corporations, AKLegal. <https://aklegal.in/consequences-faced-by-whistle-blower-in-indian-corporations/>.

¹¹ Karthik Shiva. B, *Whistle Blowers Protection Law in India - Safeguarding The Guardians of Good Governance*, Vol. 4, Issue1, M S R Journal of Law, 116-131(2018).

¹² *Id.*

¹³ The Companies Act, 2013, § 134(5)(f).

accountability statement. This clause subtly promotes the creation of internal control systems, such as avenues for staff members to report suspicions of dishonest activity or financial anomalies. *“Every listed company, as well as certain classes of companies, must establish an audit committee made up of independent directors. This committee is responsible for a number of duties, such as monitoring the vigil mechanism, also known as the whistle-blower mechanism, which allows directors and staff to report concerns about actual or suspected fraud, unethical behavior, or violations of the company’s code of conduct.”*¹⁴ It further requires the creation of a whistle-blower or vigil mechanism to be used by directors and staff to report legitimate concerns over actual or suspected fraud, unethical behavior, or transgressions of the company's code of conduct.¹⁵ The system needs to offer sufficient protections against whistle-blowers being harmed. *Companies (Meetings of Board and its Powers) Rules, 2014, Rule 7*, further prescribes the details of the vigil mechanism’s creation and functioning.

Securities and Exchange Board of India

As of December 2019, all listed companies are required by SEBI to have a whistle-blower policy and to make sure that all of their workers are aware of it. In order to encourage the disclosure of insider trading infractions, SEBI also implemented a compensation plan. Whistle-blower protection policies were previously advised for firms by Clause 49 of the Listing Agreement, but compliance was not required. Nonetheless, it was required to disclose the adoption of the policy and the cases mentioned under it. With the adoption of the LODR Regulations 2015¹⁶ in place of the Listing Agreement, listed firms are now required by Regulation 22 to set up whistle-blower procedures for directors and workers alike.

The Whistle Blowers Protection Act, 2014¹⁷

Adopted in India as part of a coordinated effort to fight corruption in the bureaucracy, the Whistle-blower Protection Act represents a major legal advance. On December 27, 2011, it was passed by the Lok Sabha, starting its legislative journey. The Rajya Sabha approved the Bill on February 21, 2014; on May 9, 2014, the President signed it into law. The Act’s main goal is to create a mechanism for filing complaints about claims of official misconduct or corruption against public employees.¹⁸ Its main goal is to protect those who come forward with information of public

¹⁴ The Companies Act, 2013, § 177.

¹⁵ The Companies Act, 2013, § 177(9).

¹⁶ SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015.

¹⁷ The Whistle Blowers Protection Act, 2014, No. 7, Acts of Parliament, 2014 (India).

¹⁸ Christian, J., 2006. Whistleblower Protection Under Sarbanes-Oxley: Key Provisions and Recent Case Developments. *Okla. City UL Rev.*, 31, p.331.

importance from being attacked or subjected to reprisals. Individuals, including public employees, are permitted by this law to reveal such information to the appropriate authorities. Importantly, the Act attempts to discourage any malevolent or careless activity by imposing severe penalties for the unapproved revelation of a whistle-blower's identity. Those discovered to have disclosed inaccurate or misleading material may also be subject to legal repercussions.

The Official Secrets Act, 1923 is superseded by the Act, which permits whistle-blowers to reveal information in the public interest even when doing so violates the Act as long as it does not jeopardize national sovereignty. But issues with the Act's execution surfaced, which is why the government introduced an Amendment Bill in 2015. The purpose of this proposed modification was to avoid any inconsistency with the Official Secrets Act by limiting whistle-blowers' ability to reveal materials classified under it. Nevertheless, this bill was not approved.

Although the government has acknowledged the critical role whistle-blowers play in fighting corruption, the Whistle-blowers Protection Act, 2014 has not yet been fully implemented. Its efficacy has been hampered by a lack of knowledge among potential whistle-blowers regarding their rights and safeguards and by delays in designating appropriate authorities. Resolving its inadequacies and guaranteeing efficient implementation are crucial measures in accomplishing its intended goals of promoting accountability and openness in the Indian bureaucracy.

CHALLENGES IN THE WHISTLE-BLOWING FRAMEWORK IN INDIA

1. Limited Scope

The Whistle-blower Protection Act, 2014 only applies to public servants. This leaves a significant portion of the workforce, those employed in the private sector, without the legal protection and anonymity the act provides. Many private companies, particularly smaller or unlisted ones, are not obligated by law to have a whistle-blower policy. Private sector employees may be hesitant to report wrongdoing for fear of retaliation from their employers. This creates a gap in protection for employees in these companies and hinders the overall effectiveness of the whistle-blower framework.

2. Frivolous Complaints

False accusations against a company can have a devastating impact on its brand image and stock price. Even unsubstantiated allegations, if widely publicized, can lead to a loss of public trust and investor confidence. Companies may be reluctant to encourage whistle-blowing if they fear being

targeted by malicious complaints. When frivolous complaints become prevalent, it can create a sense of skepticism towards all whistle-blower reports. This can discourage legitimate whistle-blowers, fearing their reports may be dismissed as baseless. Investigating frivolous complaints diverts valuable time and resources from investigating legitimate reports of wrongdoing. This can slow down the identification and addressing of genuine issues within an organization.

3. Lack of Clarity

The Companies Act mandates a whistle-blower mechanism, but details on how it should be implemented and how investigations into complaints are conducted are unclear. This lack of clarity can lead to inconsistencies and confusion for both companies and whistle-blowers.

4. Victimization

Despite legal protection, whistle-blowers may still face retaliation from their employers, including termination, demotion, or harassment. Fear of such retribution can deter potential whistle-blowers from coming forward, undermining the system's effectiveness. Whistle-blowers may struggle to find adequate support after reporting wrongdoing. They may face isolation from colleagues, difficulty finding new employment due to blacklisting, or even threats to their personal safety.

These challenges can create a chilling effect on whistle-blowing in India. Employees may be discouraged from reporting wrongdoing due to fear of retaliation, lack of clear procedures, or the potential for their complaints to be dismissed as frivolous.

COMPARATIVE STUDY BETWEEN INDIA, USA AND UK

In order to fortify the whistle-blowing system in all industries, the United States has put in place a comprehensive framework of state and federal regulations. The Sarbanes-Oxley (Corporate and Criminal Accountability) Act¹⁹, the False Claims Act, and the Whistle-blower Protection Act of 1989 are the three main statutes that protect whistle-blowers and promote the report of unlawful activity.²⁰ A portion of the money collected from fraudulent operations can be awarded to whistle-blowers under the False Claims Act, which was first passed in 1986 in an effort to address fraud

¹⁹ Rapp, G.C., 2007. Beyond protection: invigorating incentives for Sarbanes-Oxley corporate and securities fraud whistleblowers. *BUL Rev.*, 87, p.91.

²⁰ Lui, A., 2014. Protecting whistle-blowers in the UK financial industry. *International Journal of Disclosure and Governance*, 11, pp.195-210.

committed during the Civil War. On the other hand, if a whistle-blower's statements are found to be untrue, the legislation penalizes them and requires them to pay twice as much in damages. A federal statute known as the Whistle-blower Protection Act of 1989 was created to shield workers who report unethical or unlawful behavior they witnessed while they were employed. It protects whistle-blowers from job reprisal, including salary reductions, promotions, or termination. Whistle-blowers must, however, substantiate their allegations, and making false accusations could result in criminal prosecution. While the US has strong rules protecting whistle-blowers, India has had trouble passing legislation along these lines. In spite of the courageous efforts of people such as Lalit Mehta and Satyendra Dubey to expose corruption, the Indian government has not moved quickly enough to enact laws that adequately protect whistle-blowers. The Whistle-blower Protection Act was not passed until 2014, and it is still inactive.

On the other hand, early in its history, the United States gave priority to protecting whistle-blowers, realizing the significance of fighting corruption for the advancement of the country. Strong protections for whistle-blowers are offered by the nation's laws, which include the Consumer Protection Act signed into law by former President Barack Obama. Disclosures are also encouraged in order to protect the public interest. India's implementation of whistle-blower protection laws is deficient in contrast. Current events, like the suspension of Gaurav Taneja from AirAsia for disclosing safety risks, underscore the government's denial of key issues related to whistle-blowing. In a similar vein, after major incidents, the UK passed extensive legislation to safeguard whistle-blowers.²¹

As examples of nations that place a high priority on whistle-blower protection, the United States and the United Kingdom acknowledge the critical role that these laws play in preventing corruption and guaranteeing transparency in government. Despite the pressing need to fight corruption and malpractice in numerous sectors, India, on the other hand, falls behind in enacting adequate safeguards to protect whistle-blowers.

CONCLUSION

²¹ Kunal Gupta and Shruthi Rajan, Who can hear the whistle blow? Whistleblowing and its impact on corporate governance in India, available at: Who Can Hear The Whistle Blow? Whistleblowing And Its Impact On Corporate Governance In India India Corporate Law (cyrilamarchandblogs.com).

There is no doubt that in recent years, more people in India have become aware of the Whistle-blower Protection Act.²² Still, despite this increased awareness, people are reluctant to come forward and denounce wrongdoings. This resistance continues even after oversight organizations such as the SEBI require the creation of certain channels for reporting unethical or unlawful activity occurring within businesses and providing whistle-blower protection. Whistle-blowers play an unquestionably brave role; they must have moral fortitude and put the public's good above their own interests. Whistle-blowers must, however, follow the correct channels and protocols when reporting unlawful activity or wrongdoing to prevent unforeseen outcomes that could be detrimental to stakeholders' interests.

There have been many obstacles and disappointments on India's path to providing appropriate protection for whistle-blowers, including the tragic deaths of RTI activists who were fighting for accountability and transparency. Notwithstanding these challenges, legislative initiatives such as the Whistle-blower Protection Act and corporate governance changes represent a step in the right direction toward establishing a climate in which people feel free to come forward without fear of reprisal. India could benefit from studying the successful implementation of whistle-blower protection laws in nations like the United States and the United Kingdom. Even though India has adopted certain rights from other constitutions throughout the world, its rules protecting whistle-blowers are still not well implemented. Despite being passed, the Whistle-blower Protection Act of 2014 has not yet been put into effect, and the 2015 amendment bill was not approved by the Rajya Sabha and hence lapsed. Therefore, more stringent, comprehensive, and successful legislation pertaining to whistle-blower protection is desperately needed.

Whistle-blowing can be effectively controlled by strong internal controls, transparent disclosure procedures, and competent management. Therefore, companies need to promote a culture that supports whistle-blowers and place morality above profit in order to fight corporate frauds.

SUGGESTIONS

1. Both public and private organizations should train their employees on the Whistle-blower Protection Act, their organization's whistle-blowing policy, and the numerous disclosure options.

²² The Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

2. The private sector should be included in the scope of the Whistle-blowers Protection Act by additional amendments.
3. Incentives for leakers whose information is confirmed to be accurate and credible following a hearing should be allowed under the legislation.
4. Since the legislation aims to shield whistle-blowers from victimization, it is necessary to have a comprehensive description of victimization.
5. The people who vouch for the allegation should likewise be protected during the investigation.

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