

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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## VIGIL MECHANISM

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### **Abstract**

In corporate governance, the concept of a vigil mechanism is essential to upholding transparency, accountability, and moral conduct. According to Section 177 of the Firms Act of 2013, certain classes of firms are required to establish a monitoring system that allows directors and employees to report reasonable concerns about fraud, unethical behavior, or policy violations. The inclusion of this clause highlights how crucial it is to safeguard whistleblowers in order to maintain corporate integrity and prevent wrongdoing in businesses.

This study aims to examine how vigil mechanisms are actually implemented in a few selected organizations and to analyze the legal framework that governs them in India. The study focuses on the policies of five major Indian companies: Tata Consultancy Services, Reliance Industries Limited, Infosys, Wipro, and HDFC Bank, in order to understand the structure, effectiveness, and challenges of the vigil mechanism system.

This doctrinal and analytical study looks at the laws, business policies, and regulatory standards of the Securities and Exchange Board of India. The study also highlights the importance of maintaining confidentiality during the reporting process, safeguarding whistleblowers, and the role of the audit committee.

The research finds that although most companies have established vigil mechanisms in compliance with legal requirements, certain challenges such as lack of awareness, fear of retaliation, and limited transparency still affect their effectiveness. The study concludes that a strong and independent vigil mechanism is essential for good corporate governance and for protecting the interests of stakeholders.

**Keywords:** Vigil Mechanism, Corporate Governance, Whistleblower Protection, Companies Act, 2013, Securities and Exchange Board of India Regulations

## CHAPTER 1 INTRODUCTION

### Meaning of Vigil Mechanism

The phrase "vigil mechanism" describes a system that companies set up to provide directors and employees with a confidential, secure means of reporting fraud, misconduct, unethical behavior, or policy violations. The primary objective of this mechanism is to promote moral conduct, responsibility, and transparency in corporate entities. In India, certain classes of businesses are required by Section 177 of the Enterprises Act, 2013 to set up a vigil mechanism for reporting valid concerns<sup>1</sup>. The provision ensures that those who report misconduct are protected from harm and, in certain circumstances, are allowed to directly discuss their concerns with the Audit Committee.

The vigil system is closely related to the idea of whistleblowing, which is essential for spotting corporate wrongdoing and maintaining good governance. An efficient vigil mechanism encourages employees to report misconduct without fear, strengthening internal control systems and preventing financial and ethical irregularities.

### Importance in Corporate Governance:

Corporate governance is the framework that guides and manages companies to protect the interests of shareholders and stakeholders. A strong vigil mechanism is considered an essential part of good corporate governance because it helps identify unethical behavior early. The Securities and Exchange Board of India (SEBI) mandates that listed companies establish a whistleblower or vigil system under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.<sup>2</sup>

The vigil system is essential for preserving transparency, protecting informants, and improving the performance of the audit committee. It also helps to build trust among investors, employees, and the general public by ensuring that complaints are properly investigated and addressed. Corporate fraud and corruption may go unreported in the absence of such a system, resulting in serious financial and reputational losses for the company.

### Objectives of the Study

The purpose of this study is to examine the laws pertaining to vigil mechanisms under the Companies Act, 2013 and SEBI regulations. Another objective of the study is to examine how

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<sup>1</sup> Companies Act, 2013, No. 18 of 2013, 177(9) (India).

<sup>2</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22 (India).

vigil mechanism rules are applied in specific Indian companies and evaluate their effectiveness in promoting corporate governance. The study also seeks to identify challenges in the practical application of vigil systems and provide ways to improve their efficacy.

### **Research Methodology**

This study is based on doctrinal and analytical methods. Examining corporate policies, regulations, laws, and legislative provisions related to vigil mechanisms is part of the doctrinal approach. Examples of primary sources include the Corporations Act of 2013, SEBI regulations, and official documents from specific corporations. Secondary sources, such as books, journals, research articles, and online databases, have also been used. The analytical method is used to compare the vigil mechanism policies of a few selected organizations in order to identify their benefits and drawbacks.

### **Scope and Limitations:**

This study's scope is restricted to the Indian legislative framework controlling vigil mechanisms and their use in certain businesses. The Companies Act of 2013 and SEBI Regulations are the primary subjects of this study. However, because the study only looked at a small number of enterprises, the results might not apply to all Indian businesses. Furthermore, the study relies on publicly accessible data and corporate filings, which can limit access to private information about internal grievances.

### **REVIEW OF LITERATURE**

1. According to S. K. Kapoor, a vigil system is a crucial component of corporate governance that guarantees ethical accountability and transparency in businesses. He highlights how whistleblower rules increase internal controls by enabling staff members to expose wrongdoing without fear. According to Kapoor, the corporations Act of 2013 has improved compliance and governance standards by making such measures required for specific corporations.<sup>3</sup>
2. In his analysis of the development of corporate governance standards in India, Umakanth Varottil emphasizes the need of protecting whistleblowers in the fight against corporate fraud. He contends that accountability has been much improved by regulatory frameworks, such as those established by the Securities and Exchange Board

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<sup>3</sup> S. K. Kapoor, *Company Law and Practice* 456 (2019).

of India. He does point out that the efficacy of monitoring measures is still undermined by implementation flaws and lax enforcement.<sup>4</sup>

3. N. Balasubramanian talks about the function of audit committees and independent directors in guaranteeing the correct operation of vigil systems. He makes the argument that, despite the existence of legal protections, corporate culture is crucial in promoting whistleblowing. Employees may be reluctant to report misconduct in the absence of trust and protection, which would restrict the effectiveness of such systems.<sup>5</sup>
4. Whistleblower measures are crucial instruments in contemporary corporate governance around the world, according to Gower and Davies. They contend that anonymity, secrecy, and security from reprisals are necessary for systems to be effective. The authors point out that successful whistleblower regimes are typically found in states with robust enforcement mechanisms, providing lessons for nations such as India.<sup>6</sup>
5. M. C. Kuchhal emphasizes that vigil systems in India confront obstacles like ignorance, fear of victimization, and insufficient follow-up on complaints, even though they are legally recognized. He contends that in order to improve the efficacy of corporate whistleblower policies, more stringent regulatory scrutiny and employee awareness initiatives are required.<sup>7</sup>

## CHAPTER 2: LEGAL FRAMEWORK OF VIGIL MECHANISM

### Section 177 of the Companies Act, 2013

Section 177 of the firms Act, 2013, which addresses the creation of the Audit Committee and the implementation of a vigil mechanism in specific kinds of firms, largely governs the legal foundation for the Vigil Mechanism in India. This clause mandates that all listed companies, as well as any other classes of companies that may be specified, set up a vigil mechanism for directors and employees to report legitimate concerns about unethical behavior, actual or suspected fraud, or violations of the company's code of conduct.<sup>8</sup> The law additionally stipulates that the watch mechanism must offer sufficient protections against victimization of those who utilize it, as well as direct access to the Audit Committee chairperson in suitable or extraordinary circumstances.

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<sup>4</sup> Umakanth Varottil, *Corporate Governance in India: Evolution and Challenges*, 6 *Nat'l L. Sch. India Rev.* 89, 102 (2014).

<sup>5</sup> N. Balasubramanian, *Corporate Governance and Stewardship* 212 (2017).

<sup>6</sup> Paul L. Davies & Sarah Worthington, *Gower's Principles of Modern Company Law* 678 (10th ed. 2016).

<sup>7</sup> M. C. Kuchhal, *Corporate Governance* 334 (2018).

<sup>8</sup> Companies Act, No. 18 of 2013, 177(9) (India).

According to the Companies (Meetings of Board and its Powers) Rules, 2014, companies who are mandated to form an Audit Committee must also set up a vigil system. This clause aims to encourage responsibility, openness, and moral business practices. The Companies Act of 2013's inclusion of this clause demonstrates the legislature's intention to improve corporate governance and stop corporate fraud.

### **Role of Audit Committee**

The Audit Committee is essential to the vigil mechanism's successful operation. According to Section 177, the Audit Committee is in charge of managing the vigil system and making sure that any complaints made through it are thoroughly looked into.<sup>9</sup> Additionally, the committee makes sure that the complainant is shielded from prejudice and reprisal of any kind.

Typically made up of independent directors, the Audit Committee functions as a separate entity within the organization. Its independence guarantees objectivity and justice while addressing concerns. Periodically, the committee may examine the vigil mechanism's findings and suggest remedial measures to the Board of Directors. In severe situations, the complainant may speak with the Audit Committee chairwoman personally, boosting staff trust in the system.

### **SEBI (LODR) Regulations**

Listed firms in India are subject to the Securities and Exchange Board of India's laws, namely the SEBI (Listing Obligations and Disclosure Requirements) laws, 2015, in addition to the firms Act. Regulation 22 of these laws mandates that listed entities have a whistleblower policy or equivalent mechanism for directors and staff to disclose legitimate concerns.<sup>10</sup>

The SEBI regulations stress that the watch mechanism must guarantee the complainant's confidentiality and offer sufficient protections against victimization. The vigil mechanism's specifics must also be disclosed by listed firms on their official websites and in their annual reports. These regulations safeguard stakeholders' and investors' interests while improving corporate transparency.

### **Whistleblower Protection in India**

Whistleblower protection and the vigil mechanism are closely related. The Whistle Blowers Protection Act, 2014, which aims to safeguard anyone who expose corruption or abuse of

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<sup>9</sup> Companies Act, No. 18 of 2013, 177(10) (India).

<sup>10</sup> Companies (Meetings of Board and its Powers) Rules, 2014, r. 7.

power in public offices, also offers protection for whistleblowers in India<sup>11</sup>. The principles of this Act affect corporate governance procedures in private enterprises as well, even though it primarily affects public personnel.

Whistleblower protection laws are designed to encourage people to expose misconduct without fear of reprisals. The vigil mechanism acts as an internal whistleblower system in the corporate sector, guaranteeing that concerns are treated fairly and discreetly. Without this kind of protection, workers could be reluctant to report wrongdoing, which might cause major financial and reputational harm to businesses.

### **CHAPTER 3: VIGIL MECHANISM ANALYSIS**

The act of reporting unlawful, unethical, or improper behavior within a corporation by a director, employee, or other person connected to the business is known as whistleblowing. It is a crucial instrument for upholding accountability and openness in corporate governance. Whistleblowing enables people to provide knowledge about fraud, corruption, policy violations, or abuse of power in a corporate setting. The Vigil Mechanism mandated by Section 177 of the Companies Act, 2013, which offers a formal avenue for reporting legitimate concerns, is closely related to the idea of whistleblowing.<sup>12</sup>

#### **Types of Whistleblowing (Internal and External)**

There are two types of whistleblowing: internal and external. When a complaint is brought to the attention of management, the audit committee, or the vigil mechanism, it is referred to as internal whistleblowing. When information is revealed to authorities outside the company, such regulatory bodies, law enforcement agencies, or the media, it is referred to as external whistleblowing. While external whistleblowing is typically utilized after internal remedies fail, internal whistleblowing is encouraged by corporate regulations because it enables the corporation to handle the issue without causing harm to the public.<sup>13</sup>

#### **Principles of Vigil Mechanism**

The effectiveness of a vigil mechanism depends on certain basic principles such as confidentiality, anonymity, and protection against victimization. Confidentiality means that the identity of the complainant should not be disclosed without consent. Anonymity allows a

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<sup>11</sup> Whistle Blowers Protection Act, No. 17 of 2014 (India).

<sup>12</sup> Companies Act, No. 18 of 2013, 177(9) (India).

<sup>13</sup> Companies Act, No. 18 of 2013, 177(9) (India).

person to report misconduct without revealing his or her identity. Protection against victimization ensures that the whistleblower is not punished, harassed, or discriminated against for making a complaint. These safeguards are specifically required under the Companies Act, 2013<sup>14</sup> and the regulations issued by the Securities and Exchange Board of India.<sup>15</sup>

### **Ethical and Corporate Governance Perspective**

Whistleblowing and vigil mechanisms encourage honesty, integrity, and accountability in corporate management from an ethical and corporate governance standpoint. A robust watch mechanism safeguards the interests of stakeholders and shareholders and aids in the early detection of fraud. Additionally, it enhances the company's legitimacy and fortifies the audit committee's position. Thus, in contemporary corporate law, an efficient vigil system is seen as a crucial component of sound corporate governance.<sup>16</sup>

## **CHAPTER 4: COMPANY-WISE ANALYSIS**

### **Tata Consultancy Services (TCS)**

In accordance with Section 177 of the Companies Act of 2013<sup>17</sup>, Tata Consultancy Services has put in place a robust vigil mechanism. Employees, directors, and stakeholders are able to report unethical behavior, fraud, or code of conduct violations thanks to the company's Whistleblower Policy. You can file a complaint with the Audit Committee directly, by written correspondence, or via email. Confidentiality, protection from persecution, and, in certain situations, direct access to the Audit Committee Chairperson are all guaranteed by the policy. This system encourages sound corporate governance inside the company and increases transparency.<sup>18</sup>

### **Reliance Industries Limited**

A Vigil Mechanism has been put in place by Reliance Industries Limited to offer a safe way to report unethical behavior. Employees and directors may report concerns about fraud, corruption, or rule violations under the company's whistleblower policy. As mandated by the Companies Act of 2013 and SEBI regulations, the process, which is overseen by the Audit Committee, offers protections against victimization. Additionally, the business makes sure that

<sup>14</sup> Companies Act, No. 18 of 2013, 177(10) (India).

<sup>15</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22.

<sup>16</sup> Tata Consultancy Services Ltd., *Whistleblower Policy / Vigil Mechanism* (2023),

<sup>17</sup> Companies Act, No. 18 of 2013, 177(9)(10) (India).

<sup>18</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22.

complaints are properly and discreetly investigated, upholding accountability and safeguarding stakeholders' interests.<sup>19</sup>

## CHAPTER 5 ISSUES AND CHALLENGES

Despite the legal need under Section 177 of the firms Act, 2013, the implementation of the vigil mechanism in firms faces a number of practical challenges. The fear of reprisals is one of the main obstacles. Because they are afraid of being punished, transferred, demoted, or losing their jobs, employees frequently hesitate to report unethical behavior. Despite the fact that the law offers protections against victimization, many workers actually don't feel completely protected.<sup>20</sup>

Employee ignorance of the vigil mechanism's existence and operation is another significant problem. Employees in many organizations are not adequately informed on who to contact or how to register complaints. This undermines the mechanism's efficacy and fails the goal of encouraging transparency.<sup>21</sup>

Another major issue is ineffective implementation. Some businesses set up vigil systems merely to adhere to legal requirements; they do not guarantee that complaints are properly investigated. Whistleblowers are sometimes discouraged from coming forward because their allegations are disregarded or delayed.

Concerns about confidentiality make the system more weaker. Disclosure of the complainant's identify could result in discrimination or harassment. For the monitoring system to be effective, the Securities and Exchange Board of India's laws require the Audit Committee to maintain tight confidentiality and independent supervision.<sup>22</sup>

## CHAPTER 6 CASE LAW

### 1. Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. (Tata–Mistry Case)

One of the most important instances pertaining to corporate governance and the function of independent directors in India is this one. In this instance, accusations of poor management and

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<sup>19</sup> Reliance Industries Ltd., *Vigil Mechanism / Whistleblower Policy* (2023),

<sup>20</sup> Companies Act, No. 18 of 2013, 177(10) (India).

<sup>21</sup> OECD, *Committing to Effective Whistleblower Protection* 28 (2016).

<sup>22</sup> EBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22.

a lack of openness led to disagreements between Cyrus Mistry and the management of Tata Consultancy Services/Tata Group. The case made clear how crucial it is to have appropriate corporate governance procedures, such as reporting unethical behavior and holding the Board accountable. The goal of the vigil mechanism under Section 177 is supported by the Supreme Court's emphasis that businesses must adhere to the legislative obligations under the Companies Act, 2013 and ensure fairness in decision-making.<sup>23</sup>

## **2. SEBI v. Satyam Computer Services Ltd. (Satyam Scam Case)**

One of the largest corporate frauds in India, the Satyam scandal highlights the significance of vigil and whistleblower mechanisms. In this instance, Satyam Computer Services' management engaged in financial fraud and account falsification. The failure of internal reporting systems and lack of effective audit supervision allowed the fraud to continue for several years. The Companies Act of 2013's Section 177 and SEBI regulations mandating vigil measures were impacted by the introduction of stricter corporate governance provisions following this incident.<sup>24</sup>

## **3. Rajeev Suri V. Delhi Development Authority (Whistleblower Protection Principle Reference)**

This case addressed accountability, transparency, and the significance of reporting misconduct in public institutions, even though it was not specifically related to corporate law. The Supreme Court noted that procedures for disclosing wrongdoing are essential to preserving administrative integrity. These ideas reinforce the necessity of monitoring mechanisms and whistleblower protection in businesses and are also relevant to corporate governance.<sup>25</sup>

## **CHAPTER 7: FINDINGS AND SUGGESTIONS**

The majority of businesses have formally formed vigil mechanisms in accordance with legislative requirements, according to an examination of the vigil mechanism policies of particular companies and the legal provisions under Section 177 of the Companies Act, 2013. Businesses like Reliance Industries Limited and Tata Consultancy Services have implemented whistleblower policies that enable directors and staff to expose fraud, unethical behavior, and rule violations. However, each organization has a different level of success with these

<sup>23</sup> Tata Consultancy Services Ltd. v. Cyrus Invs. Pvt. Ltd., (2021) 9 S.C.C. 449 (India).

<sup>24</sup> SEBI v. Satyam Comput. Servs. Ltd., (2018) S.E.B.I. Order (India).

<sup>25</sup> Rajeev Suri v. Delhi Dev. Auth., (2021) 4 S.C.C. 1 (India).

processes.

According to the study, employees frequently hesitate to file complaints because they are afraid of reprisals and don't trust the system, even though the law mandates protection against persecution and anonymity. Another observation is that a large number of employees do not properly understand how to use the vigil mechanism. Some businesses don't actively use the mechanism; it's just there for legal compliance. Although the Audit Committee plays a crucial role, the inquiry process is sometimes sluggish or not entirely autonomous.

### **Suggestions**

Stronger legal protection for whistleblowers is required to increase the vigil mechanism's efficacy. Strict enforcement of the Securities and Exchange Board of India's regulations and the protections offered by the Companies Act, 2013 is necessary to prevent harassment and discrimination against complainants.

Companies should regularly hold awareness campaigns to educate staff members about their right to report wrongdoing and the process for doing so. Confidence in the system will rise with appropriate training.

Additionally, in significant cases, external committees or independent investigative organizations may be created to guarantee justice and openness. An autonomous system will improve corporate governance and support upholding integrity, responsibility, and confidence inside the company.