

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

**VOLUME 2 ISSUE 7**

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# **The effectiveness of whistle-blower policies in Indian companies**

Authored By- Aadit Saharya

## **Abstract:**

Whistleblowing is a controversial topic that has been debated for decades. While some see it as a moral obligation to expose wrongdoing, others view it as a breach of loyalty and trust. Despite this, whistleblowing has become increasingly prevalent in today's society, with more individuals coming forward to expose corruption and unethical behavior. This paper will explore the complex nature of whistleblowing, examining the moral and ethical implications of speaking out against wrongdoing. It will delve into the motivations behind whistleblowing, the potential consequences for whistleblowers, and the impact of whistleblowing on organizations and society as a whole. Drawing on cases from both the public and private sectors, this paper will argue that whistleblowing can be both a moral dilemma and an ethical imperative, depending on the circumstances. It will also highlight the importance of creating a supportive environment for whistleblowers, where they can feel safe and protected from retaliation.

**Keywords:** whistleblowing, fraud, transparency, corporate, etc.

## **INTRODUCTION:**

Whistleblowing is the act of reporting or exposing any wrongdoing, unethical or illegal activities within an organization or a company by an employee or a member of the public. It is a critical tool for promoting transparency, accountability, and ethical behavior in any organization, and it plays a vital role in preventing or stopping fraud, corruption, and other forms of misconduct. Whistleblowers can be internal or external to the organization, and they play a critical role in identifying issues that may otherwise go unnoticed or unaddressed.

Whistleblowing can take many forms, such as reporting to internal authorities within the

organization, reporting to regulatory bodies or law enforcement agencies, or making public disclosures through the media or other channels. Whistleblowers often face significant risks and challenges, such as retaliation, harassment, or even loss of their job or career. However, the potential benefits of whistleblowing are significant, including preventing harm to others, protecting the public interest, and promoting accountability and transparency within the organization.<sup>1</sup>

Whistleblowing policies have been in place in the United States since the 1970s, following the passage of the Sarbanes-Oxley Act in 2002.<sup>2</sup> The act requires publicly traded companies to have a mechanism in place for employees to report any suspected fraudulent or unethical activity without fear of retaliation. However, the concept of whistle-blower protection is relatively new in India, where there has been a history of corruption and corporate fraud.<sup>3</sup> The Companies Act of 2013<sup>4</sup> introduced a provision for whistle-blower protection, which requires companies to have a policy in place for employees to report any unethical or illegal activities.

In recent years, whistleblowing has gained significant attention globally, particularly in the wake of high-profile cases of corporate fraud and corruption. Whistleblowers have played a critical role in exposing corporate misconduct, such as the Enron scandal in the United States, the Volkswagen emissions scandal, and the Panama Papers leak, which revealed tax evasion and money laundering by wealthy individuals and companies worldwide.<sup>5</sup>

Despite the potential benefits of whistleblowing, many organizations still have a culture of silence or fear, which can discourage employees from speaking up. Therefore, it is essential for organizations to create a culture of openness and transparency that encourages employees to report any issues they may witness.

## ❖ Research methodology:

The research is carried out using a doctrinal research approach, using data gathered from diverse

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<sup>1</sup> Marwadikumbhar, Santosh. (2019). "A STUDY OF WHISTLE BLOWING PRACTICES IN SELECT PUBLIC COMPANIES IN INDIA". *Intercontinental Journal of Marketing Research Review*. 7. 1.

<sup>2</sup> The Sarbanes-Oxley Act of 2002

<sup>3</sup> Bowden, Peter. (2006). *A Comparative Analysis of Whistleblower Protections*

[https://www.researchgate.net/publication/228175753\\_A\\_Comparative\\_Analysis\\_of\\_Whistleblower\\_Protection](https://www.researchgate.net/publication/228175753_A_Comparative_Analysis_of_Whistleblower_Protection).

<sup>4</sup> The Companies Act of 2013

<sup>5</sup> Nikhil Varshney & Amartya Saha, *The Whistleblower Bill, 2010: A critical Analysis*, 1 *NSLJ* (2012) 79.

sources such as case laws, online journal articles, books, research papers as well as online websites.

## Whistleblowing Policies in India:

India has witnessed several high-profile cases of corruption and corporate malfeasance over the past few years. In response to these issues, the Indian government has enacted several laws to protect whistleblowers and encourage them to come forward with information. The most important law in this regard is the Whistleblowers Protection Act, 2014<sup>6</sup>.

The Whistleblowers Protection Act, 2014, was enacted to provide a framework for protecting whistleblowers and ensure that they are not victimized for disclosing information about wrongdoing. The Act provides for the establishment of a mechanism for receiving complaints of disclosure of any wrongdoing or any misuse of power or authority by any public servant. The Act also provides for the protection of the identity of the whistleblower and the imposition of penalties for victimization<sup>7</sup>.

In addition to the Whistleblowers Protection Act, several other laws also provide protection to whistleblowers. For instance, the Companies Act, 2013, provides protection to whistleblowers who disclose information about corporate frauds and malpractices. The Securities and Exchange Board of India (SEBI)<sup>8</sup> has also established a mechanism for the protection of whistleblowers in the securities market. The Reserve Bank of India (RBI)<sup>9</sup> has also issued guidelines for the protection of whistleblowers in the banking sector.

Apart from the legal framework, many private sector organizations in India have also implemented whistleblowing policies to encourage employees to come forward with information about unethical or illegal activities within the organization. These policies provide protection to employees who disclose information and also establish a mechanism for receiving and investigating complaints.

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<sup>6</sup> Whistleblowers Protection Act of 2014

<sup>7</sup> IV. "A Switch in Time, Saves Nine" - Minimizing Corporate Crime by Maximizing Corporate Whistle-Blower Protection in India, (2020) 3.2 JCLG 70

<sup>8</sup> The Securities and Exchange Board of India (SEBI)

<sup>9</sup> The Reserve Bank of India (RBI)

## Effectiveness of Whistleblower Policies in Indian Companies:

Despite the introduction of whistleblower policies, there have been several instances of whistleblowers facing retaliation from their employers, including harassment, termination, and even physical harm. One of the most high-profile cases in recent years is that of Satyendra Dubey, an engineer working on a road construction project, who was murdered after he exposed corruption in the project.

The lack of protection for whistleblowers is a major reason why the policies are not effective. While companies are required to have a policy in place, there is no legal requirement to protect whistleblowers from retaliation. This means that even if an employee does report wrongdoing, they may face negative consequences as a result, which can deter others from coming forward. Another issue with whistleblower policies in India is the lack of awareness among employees. Many employees may not be aware of the policy or may not fully understand their rights and protections under the policy.<sup>10</sup> Companies need to do more to educate their employees about the policy and ensure that they feel comfortable reporting wrongdoing without fear of retaliation.

In addition, there is also a lack of trust in the system. Employees may be hesitant to report wrongdoing if they believe that the company or the authorities will not take their concerns seriously. There have been several instances where whistleblowers have reported wrongdoing, only for their complaints to be ignored or swept under the rug. This can create a culture of silence, where employees are afraid to speak up for fear of being ignored or punished.

Finally, there is also a lack of accountability. Even if a whistleblower does come forward and their concerns are investigated, there may not be any consequences for those responsible for the wrongdoing. This can create a sense of futility for whistleblowers, who may feel that their efforts are in vain if no action is taken.<sup>11</sup>

To improve the effectiveness of whistleblower policies in India, there are several steps that

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<sup>10</sup> Barman, Arup. (2011). Whistle Blowing Exercise in Indian Corporation - Does It Really Blow?. SSRN Electronic Journal. 10.2139/ssrn.1751865.

<sup>11</sup> Tudu, Preshita & Pathak, Pramod. (2015). Growing Corruption: Is Whistle Blowing the Answer. Management and Labour Studies. 39. 208-218. 10.1177/0258042X14558180.

companies can take.

## **Anonymous whistle-blower reporting mechanism:**

The anonymous whistle-blower reporting mechanism is a policy implemented by companies to encourage employees to report any wrongdoing, unethical behavior, or illegal activities without fear of retaliation or discrimination. The mechanism allows employees to report anonymously, which can help protect them from retaliation, harassment, or discrimination by their employer or co-workers.<sup>12</sup> This policy also provides a safe and confidential way for employees to report any issues they may have witnessed, without the fear of being identified and facing negative consequences.

Enhanced protection for employees who report wrongdoing is also a significant step towards ensuring a positive work environment. Employees who report any unethical or illegal activities within the company must be protected from any retaliation, discrimination, or harassment from their employer or co-workers. This policy helps create a culture of trust, accountability, and transparency within the company and promotes ethical behavior.<sup>13</sup>

Implementing anonymous whistle-blower reporting mechanisms and enhanced protection for employees who report wrongdoing are important steps towards creating a positive and transparent work environment. These policies can help prevent unethical or illegal activities, promote a culture of trust and accountability, and enhance the company's reputation.

## **INDIAN CASE STUDIES ON WHISTLE-BLOWING:**

### **Satyam fraud case<sup>14</sup>:**

The Satyam scandal was one of the largest corporate fraud cases in India's history. The case involved the founder and chairman of Satyam Computer Services, Ramalinga Raju, who

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<sup>12</sup> Karn Mahawa, "Corporate governance and whistle blowing in India: Promises or Reality?", International Journal of Law and Management, Vol. 59 Issue: 3, pp.430-441.

<sup>13</sup> Marian V. Heacock and Gail W. McGee, *Whistleblowing: An Ethical Issue in Organizational and Human Behavior*, Business & Professional Ethics Journal, Vol. 6, No. 4, pp. 35-46, <https://www.jstor.org/stable/27799960>

<sup>14</sup> Kataria, Aarushi. (2020). Revisiting the Satyam Accounting Scam: A Case Study Revisiting the Satyam Accounting Scam: A Case Study. 23.

confessed to manipulating the company's financial statements and embezzling millions of dollars. The scandal came to light in January 2009, after Raju sent a letter to the company's board of directors admitting to the fraud.

The case is a classic example of the importance of whistleblowers in uncovering corporate fraud. In fact, the Satyam scandal was brought to light by a whistleblower who worked for the company.

The whistleblower was a senior employee of Satyam, who had noticed some irregularities in the company's accounting practices. He had raised his concerns with his superiors but had not received a satisfactory response. He then decided to write an anonymous letter to the Securities and Exchange Board of India (SEBI), the country's regulatory body for the securities market.

The whistleblower's letter to SEBI prompted an investigation, which ultimately led to the unraveling of the Satyam fraud. The investigation revealed that the company's financial statements had been falsified to show inflated profits and revenues. Raju had also siphoned off millions of dollars from the company's accounts to fund his personal ventures.

The whistleblower's identity was never revealed, but his actions were instrumental in exposing the fraud and bringing the perpetrators to justice. The Satyam scandal led to a major overhaul of India's corporate governance regulations and brought the issue of whistleblowing to the forefront of public debate.

The Satyam scandal is a case study that highlights the importance of whistleblowers in uncovering corporate fraud. The actions of the anonymous whistleblower who wrote to SEBI played a crucial role in bringing the Satyam fraud to light and holding the perpetrators accountable.

### **The Infosys Whistleblower Case<sup>15</sup>:**

In 2019, a whistle-blower complaint was filed against Indian IT giant Infosys, alleging financial irregularities and unethical practices. The complaint alleged that the company's top executives were involved in irregularities in the company's accounting practices and that they were pressuring the company's finance team to take questionable steps to improve the company's financial performance.

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<sup>15</sup> Banerjee, S. and Roy, S., 2014. Examining the dynamics of whistleblowing: A causal approach. *IUP Journal of Corporate Governance*, 13(2), p.7.

Following the complaint, Infosys conducted an internal investigation and found no evidence of wrongdoing. However, the case was referred to regulatory authorities, and the company's share price was negatively impacted.<sup>16</sup>

The case highlights the importance of having a robust whistle-blower policy in place, which allows employees to report unethical behavior without fear of retaliation. It also demonstrates the need for transparency in the reporting process to ensure that concerns are addressed promptly and effectively.

While the case did not result in any legal action against Infosys, it prompted the company to review and strengthen its whistle-blower policy. The company's chairman, Nandan Nilekani, announced several measures to improve the policy, including an anonymous whistle-blower reporting mechanism and enhanced protection for whistle blowers.

### **The Nirav Modi whistleblower case, 2018:**

Nirav Modi is an Indian jeweller and diamond merchant who was involved in a major financial fraud in 2018. He and his associates allegedly used fake bank guarantees to obtain loans worth over \$2 billion from the Punjab National Bank (PNB), one of India's largest state-owned banks. The fraud was discovered in early 2018 when PNB found that Nirav Modi's companies had obtained loans using fake guarantees issued by PNB officials.

The case became a major scandal in India and received widespread media attention. Several top PNB officials were implicated in the fraud and several other banks were also found to have extended loans to Nirav Modi's companies based on the same fraudulent guarantees. The Indian government launched an investigation into the case, and Nirav Modi and his associates were charged with fraud, money laundering, and other offenses.

The case also involved a whistleblower, named Hari Prasad S.V., who worked as a senior official at PNB. Hari Prasad reportedly first alerted PNB's management about the fraud in 2016, but his warnings were ignored. He then wrote to the Prime Minister's Office in 2017, but again received

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<sup>16</sup> Dhamija, S., 2014. Whistleblower policy—time to make it mandatory. *Global Business Review*, 15(4), pp.833-846.

no response. Finally, in 2018, he approached a member of parliament who raised the issue in parliament and the media.

Hari Prasad's whistleblowing played a crucial role in exposing the fraud and bringing the perpetrators to justice. His actions also highlighted the importance of whistleblower protection laws and the need for companies and governments to take whistleblower complaints seriously.

## **Recommendations to Improve Whistleblower Policies in Indian Companies:**

To improve the effectiveness of whistle-blower policies in Indian companies, several recommendations can be made, such as;

### **Increase Awareness Among Employees:**

One of the key challenges in the implementation of whistle-blower policies is the lack of awareness among employees. Companies should invest in employee awareness programs to educate employees about the policy, the reporting mechanism, and the protection provided to whistleblowers. These programs can be conducted through training sessions, workshops, and communication through employee newsletters, intranet, and notice boards.

### **Ensure Transparency in the Reporting Process:**

Another challenge facing whistle-blower policies is the lack of transparency in the reporting process. Companies should provide regular updates to whistleblowers on the status of their reports, including the actions taken by the company to address the issue. This can help to build trust in the system and encourage more employees to come forward with their concerns.

### **Protect Anonymous Whistleblowers:**

Many employees may be reluctant to report any unethical behavior due to fear of retaliation. Companies should provide protection to anonymous whistleblowers to encourage employees to come forward with their concerns without fear of retaliation. The protection of anonymity can be ensured through third-party reporting mechanisms or through the use of secure online reporting portals.

## **Strengthen Legal Framework:**

The legal framework for whistle-blower protection in India needs to be strengthened to provide more specific guidelines on the implementation of whistle-blower policies. This can include the creation of an independent regulatory body to oversee the implementation of whistle-blower policies, guidelines for handling whistleblower complaints, and specific protection measures for whistleblowers.

## **Implement Effective Whistleblower Management Systems:**

Companies should implement effective whistleblower management systems to ensure that complaints are handled effectively and efficiently. These systems can include standard operating procedures for handling whistleblower complaints, dedicated whistleblower reporting channels, and training for employees on how to handle whistleblower complaints.

## **Conclusion and Opinions :**

In conclusion, whistleblowing is an essential tool for promoting transparency, accountability, and ethical behavior within an organization. While India has made significant progress in enacting laws and policies to protect whistleblowers, there are still significant challenges that need to be addressed. The lack of legal protection, employee awareness, trust in the system, and accountability are all factors that undermine the effectiveness of whistleblower policies in India. To ensure that whistleblowers are protected and encouraged to come forward with information, organizations need to create a culture of openness and transparency that prioritizes ethical behavior and holds wrongdoers accountable. By doing so, Indian companies can prevent fraud, corruption, and other forms of misconduct and promote a more ethical and accountable corporate culture.