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WHISTLE BLOWER PROTECTION ACT: A REFLECTION OF PROGRESS AND PANDERING

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Abstract

Whistle-Blower Protection Act plays important role to provide security to the person who blowing whistle against any illegality committed by any government, non-government and private organisation. This paper is attempted to reflect the protection of whistle blower whose will be killed reason of make whistle against illegality or wilful misuse of powers by the officials and also study legal perspective to protect these people and provide appreciation award or compensation in case unnatural death because of whistle blowing. This paper also attempts to discuss position of Indian legislature on whistle blower protection Act, 2011. Additionally, this paper aim to highlight the concept of whistle blower and aware the people of its right, view publicly rights given under whistle blower protection Act, 2011 included right not to reveal is identity of the complainant which is punishable offence under Whistle blower protection Act, 2011 and other remedy as security provided by legislature in the whistle blower protection Act.

KEY WORDS: _ reflection of progress, pandering, whistle, corruption, accountability, transparency.

Introduction

Whistle blower in present time most burning issue, protection of larger public interest. “An Act to establish of corruption or wilful misuse of power or wilful misuse of discretion allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguard against victimisation of the person making such complaint and for matter connected therewith and incidental thereto” [1]. Whistle blower protection aims to protect anyone who exposes corruption or wilful misuse of powers by a public servant. There have been multiple instances of threatening, harassment and even murder of whistle blower. Whistle blower protection act also important for accountability and transparency. First case related to whistle blower in **winter v. Houston chronicle pub & co.** [2] **the term whistle blower derives from the practice of English bobbies who would blow their whistle when they noticed commission of crime. The blowing whistle would alert both law enforcement officers and general public of danger.** [3] The official secret Act should be exempted under the whistle blower protection Act. There is need of time overridden this because of public interest disclosures. In India the various committee and commission submitted their report regarding whistle blower protection act:

The Santhanam committee report 1963

The administration reform commission report 1967

Vohra committee report

129th law commission report

The main object of this act is to examine the current position of whistle blower in country and also understand the historical development of whistle blower protection act. law also bind the person to inform the any illegality to the concern authority. The **section 39 of the criminal procedure code** said every person who is aware of the commission of crime or likely to occurrence of commission of crime shall be informs to concern authority until or unless there is reasonable excuse. The burden of proof to established reasonable proof is on that person.

Importance Of Study

Whistle blowing is an act to exposing someone act of illegality. To highlight the matter in public as refer to public safety and security. Whistle blowing can occur in large scale organisation, public or private sector exposing the misconduct of that authorities. The website wiki leaks whistle blower make shape to the whistle blowing policy worldwide.

whistle blowing in an important aspect that has the inherent power to mitigate a cross-like situation. The whistle-blower’s revelation needs to be handled correctly and promptly for situated value creation in the organisation. It cannot be disputed that many large corporate frauds have come to limelight only through an insider’s revelation or a confession, and not through an audit report or a regulatory investigation. It thus, become very essential to provide to the whistle-blower a smooth route for his revelation through an efficient whistle-blower law. The organisation needs to ensure that there is an easy route to raise concerns, otherwise either the workforce will become silent, or if the scandal comes out in the public, it will come out in the most destructive way.[4]

OBJECTIVE OF THE STUDY:

- To study briefly current position of whistle blower in India.
- To study legal perspective of whistle blower protection Act.
- To motivate the people to raise voice against any illegality.
- To study protection to whistle blower from identity revelation and state liability regarding compensation in any kind of mishappening to person.

- To discuss the various right guarantee under whistle blower protection Act and role of competent authority under whistle blower protection Act, 2011.

Research Methodology

The research methodology which has been adopted doctrinal or non-imperial, primary source has guided the research work with its available literature, on relating to the whistle blower protection Act. Investigation of every kind which is based on original sources of knowledge and method followed by research to conduct research also keeping in view the worthiness of the topic.

Salient Features Of Whistle Blower Protection Act, 2011

- The act seeks to protect whistle blower, i.e., person making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
- Any public servant or any other person including a non-governmental organisation may make such disclosure to the centre state vigilance commission.
- Every complaint has to include the identity of the complaint.
- The vigilance commission shall not disclose the identity of the complainant except to the head of the department if he deems it necessary. The Act penalizes any person who disclosed the identity of the complaint.
- The Act prescribed penalties for knowingly making false complaint.[5]

The Advantages:

There's no denying that whistle blowing—and a culture with promote whistle blowing--- can be extremely beneficial to the organisation, its employee, shareholder and society and the general public at large. Violation, misconduct and malpractice which would cost stakeholder dearly can be mitigated and the transgressor duly punished. Says Kumar Bimal, vice president, marketing, Sonalika group,” An organisation that is known to be free from corrupt practices tends to attract the right talent. Employees, whose integrity and dedication toward the organisation is impeccable, work as watchdog of the company's values. Such individual can assume the role of whistle-blower in case they suspect or sense any Kind of wrongdoing within the organisation. Whistle blowing is an important. Whistle blowing is an important aspect that the inherent power to mitigate a crisis-like situation. The whistle-blower's revelation needs to handled correctly and promptly for sustained value creation in organisation.”

There is no doubt that in today's fast-paced world and mega corporation, institution of a whistle blower policy is not a corporate luxury, but an organisation necessity. The benefit of this policy many:

- Fostering good governance by encourages employee to escalate deceitful action by colleagues/senior/third parties.
- Promotion of the organisational values thus nurturing a culture of openness in workplace
- Sending a clear message that severe action will be taken against unethical and fraudulent acts.
- Dissuading employee from the committing fraud by instilling fear unfavourable consequences when caught

- Early alerts to diffuse a potentially larger disaster.[6]

History Of Whistle Blowing

“whistleblowing” comes from the common practice of law enforcement of law individuals’ officers and referees blowing a whistle to indicate an illegal action. Today, a whistle-blower is any individual who report a corporate or government entity’s illegal or unethical conduct to the media or authorities. [7]

Qui tam is writ of common law that allows for individual who help in the prosecution of corporations and governments to be awarded the penalties assessed to the guilty party. First used in 13th century England to enforce the king law, qui tam was enforced in the American colonies and eventually embrace by the first US congress.

In 1863, the false claim act was passed into law. Under the false claim act, people who are not affiliated with the government are entitled to file against government contractors. Most of these claims are entitled file claims against government contractors. Most of these claims are filed against health care and military contractors, with the recent example being Evelyn pringle, the women who blew the whistle on Halliburton. [8]

The practise of whistle blowing has been common for thousands of years, but enjoyed a resurgence of public support during such monumental cases as:

- The pentagon papers
- Deep throat
- Kerr-McGee
- Enron

Some of these cases relied on external whistle-blowers while other relied on employee working on the inside. While monument, these are certainly not the only instances of whistle blowing in modern times.

Whistle blowing is protected by both state and federal laws. People who work inside and outside of a company have a legal right and moral obligation to report illegal and unethical behaviour. However, large corporations enjoy a number of loopholes not available to ordinary citizen, and have resulted to thuggery to silence those who speak out against them. Nonetheless, every year, citizen and attorney who understand the necessity of protecting their family, friends, community, and country against fraudulent, illegal and dangerous corporate and government action are willing to speak up on behalf of us all. [9]

Role And Functon Of Competent Authority Under Whistle Blower Protection Act, 2011:

The competent authority on receipt of the complaint of public interest disclosure conceal the identity of the complainant unless complainant himself disclose his identity. If disclosure of identity of complaninant is necessary for inquiry then with the consent of the complainant competent authority can reveal identity with taken special measure. If complainant doesn’t want to disclose his name, then competent authority demands the written evidence regarding the complaint. After inquiry competent authority found matter is frivolous and there is no sufficient ground for proceeding with inquiry the competent authority shall close the matter.

Weakness Of The Statues Of Limitation

One major weakness in many statutory whistle-blower protection laws in the short statute of limitation for whistle-blower cases. Failure to comply with a statute of limitation is one of the favourite defences in whistle-blower cases. The statute is generally considered to start from the time an employee learns that he or she will be retaliation against- not the last day wrongful termination actions. Federal statutes protecting whistle-blowers also have their own statutes of limitations, some as short as 30 days. The decision on how to pursue the claim will become determine what statute of limitation is applicable, the types of damages that are revocable, and in what forum the claim will be adjudicated. In some states, if the employee is covered by a federal statute, the employee may be pre-empted from bringing a state action. Some employees have filed for both administrative and common law remedies. Although this approach has been successful, it raises other issue besides promotion, such as res judicata and collateral estoppel. The employee should use extreme care in determine the pros and cons of each potential strategy.[10]

Punishment Under Whistle Blower Protection Act:

Identity of complaint should remain undisclosed: whistle blower protection Act provide security to the complaint under section 16 of whistle blower protection Act 2011 if the person reveals the identity of the complainant his will be liable under this Act punishment which may extend to three year and fine extend to fifty thousand rupees.

Punishment for false or frivolous disclosure: if any person intention with malafide intension give false or frivolous compliant with intension to harm and mislead shall be punished up to two year and fine which may extend up to thirty thousand rupees.

Judicial Aspects

The whistle-blower's protection Act, 2011 seeks to provide "adequate protection to person reporting corruption or wild full misuse of direction which causes demonstrable loss to the government or commission of a criminal offence by a public servant." The CVC would not reveal the identity of the complainant but would have the authority to ignore frivolous complaints. The criterion of 'ignoring' a complaint has not been clearly explained. Further, limitation have been placed on matters which are sub-judice. Prejudicial of national security, international relations and proceeding of the union cabinet or those beyond the limitation period of five years.[11]

Bar Of Jurisdiction

No civil court shall have jurisdiction in respect of any matter which the competent authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.[12]

Court to take cognizance

No court shall take cognizance of any offence punishable under this Act or the rules or regulation made there under, save on a complaint made by the competent authority or any officer or person authorised by it.[13]

No court inferior to that of a chief metropolitan magistrate or a chief judicial magistrate shall try any offence punishable under this Act.[14]

Case Laws:

SATYENDRA DUBEY CASE:

“Satyendra Dubey is officer of Indian engineering service. He is posted director of national highway authority at koderma. Indian Gov. led by Atal Bihari Vajpayee had started ambitious golden quadrilateral project to connect all major cities of India via four and six lanes. He noticed that bidder take the project from the government and further pass to the smaller contract mafia who is incapable of handling such large project. He files complaint against it to higher authorities of N.H.A.I. and also wrote letter to prime minister with request not disclosing his name but the letter along with his bio data was forward to ministry of road transport and highways. While returning from the wedding in Varanasi he was murdered in Gaya 27 November 2003”.[15]

SHANMUGAN MANJUNATHAN CASE:

He is the manager of Indian oil corporation posted at Lakhimpur kheri in UP. Manjunathan noticed that some of patrol pumps selling adulterated fuel. He takes action against those patrol pump and sealed that patrol pumps. He was murdered for sealing a corrupt patrol station and his body was found back seat of the car. He was shoot six times”. This news created huge outcry in media. The session court found all accused guilty and sentenced them to death. Allahabad high court changed the verdict to life imprisonment of 5 while acquitting the other two. Indian oil corporation paid a compensation of 2.6 million to Manjunath’s family.[16]

NARENDRA KUMAR CASE:

Narendra Kumar was an Indian police service officer (IPS) from 2009 batch. He was posted in Morena district of Indian state of Madhya Pradesh. Morena was famous for fine quality of sand found in Chambal River bed which is used in construction of building. From past several years there is illegal mining in that area. On 8th march 2012 he received information about illegal mining stones being carried in a tractor. He went to check if the information was true or not. He reached the spot asked the driver to stop but the tractor driver ignored his warning and ran vehicle over him.

RINKU SINGH RAHI:

He was provincial civil service (PCS) civil servant and he was fighting against corruption in sponsored welfare schemes in Uttar Pradesh (UP). He was born in Aligarh and completed his B. tech degree in metallurgy at NIT, Jamshedpur in 2002. In the same year, he scored All India 17th rank in GATE but he opted civil service career instead. Rahi ordered an inquiry into the allocation of funds by social welfare department in Muzaffarnagar over the last five years and he found discrepancies. Out of the allocated funds to be distributed as part of old-age pension scheme, money was taken for 62,447 people but only 47,707 beneficiaries received it. There were no records for 55 million rupees distributed to 22,000 OBC student and 110 million rupees distributed to all BPL families. He also went on hunger strike to draw of Akhilesh Yadav government’s reply on his pending RTI application. He was shot six times by local gagsters, damages his jaw and the vision of one eye and he is currently working as a coordinator at Bhimrao Ambedkar coaching centre in his hometown. [17]

VYAPAM SCAM:

With suspicious attack on whistle-blowers. The vyapam scam has highlighted the vulnerability of those who show truth to power. The string of corruption scandals that have surfaced in the last three months have established what may believe ----- in a country the size and diversity of India. It is impossible for a centralized mechanism to control corruption to succeed. the “**na khaunga na khane dunga**” mantra based on a big brother approach, with some high offices keeping a watch on the activities of all others, cannot be relied upon to effectively contain the malaise of corruption. Unless proper institution and system are put in place to empower those who expose wrong-doing by offered them protection and ensuring that their complaints are effectively investigate and acted upon, a mere a change of regime will not lead to attachment in corruption. [18]

Vyapam scam related to the entrance examination, admission and recruitment scam. The body manipulate exam halls and exam sheets. The proxy candidate gives the paper for behalf of another one and deserving candidate will be out of the merit list. This scam unearthed in 2013 in the state of Madhya Pradesh. Many politicians, high officials are involved in this scam. This scam alarms the people national wide. The state government established committee to conduct inquiry regarding this scam committee report that irregularities since 1991's. committee released the report in 2011 and state government on behalf of that report take action and hundreds of people arrest under this scam.

Conclusion And Suggestion

The whistle blower protection act needs of the society to protect who raise voice against the wrong. This act also make provision regarding to identity of the complaint can't be reveal because it creates the security threat to the person and this kind of protection clause also encourage other peers on to full fill his duty binds by Law to raise voice against any kind of malpractice happen in society. The main cons of the Act is Lokpal which will established under the Lokpal & lokayuktas Act 2013 will not play role in scheme of whistle blower protection Act, Lokpal should have also mentioned as a competent authority under for the purpose of this act. Whistle blower protection Act, 2011 a long-standing demand of activists and NGOs was cleared. It aims to protect whistle blower who exposes malpractice or corruption and who have faced served threat of harassment, assault and even murder. The seek to establish a mechanism to register complaints on any allegations of corruption or misuse of power against a public servant. There is also need to set up fast track mechanism to dispose of the case under whistle-blower protection Act and also time bound the competent authority to dispose of cases and inquiry regarding the whistle blower protection Act.

- The whistle-blower protection Act,2011 need to amend so as provide incentives to the person who expose the illegality in any organization after inquiry it has been proved correct.
- There is need to elaborate and more flexible the whistle-blower protection acts regarding as per secret service act if the information effects the larger public interest.
- The whistle blower protection Act silent about role of Lokpal under this Act. The Lokpal makes effective role to conduct inquiry under this act without any biased and influence.
- There is also need government make special effective provision regarding case of frivolous complaints under this act and also established manner to deal this kind of cases without effecting genuine one.

- There is also need to make speedy and time bound inquiry under the whistle blower act to make competent authority speedy dispose of the case which is basic fundamental right.
- There is also need to amend in whistle blower Act to inconvenience regarding the complainant. Some of the person not come forward as to see inconveniences after whistle blowing any illegality.
- The Act should be amended to incorporate and make use of the Lokpal (national level apex anti-corruption and grievance redress agency) which will be established under the Lokpal & lokayuktas Act, 2013 as the Lokpal would generally handle the same cases of corruption as would be handled by the competent authority and hence making the Lokpal and lokayuktas the Competent authority would solve the problem of dual organizational doing the same work.
- The meaning and definition of ‘competent authority’ should be amended so as to make the ambit of the term wide and bring into its purview many agencies/organisations which are not currently not included like the lower judiciary.
- A clear statement should be made that employee who are aware of possible wrongdoing within the organisation have a responsibility to disclose that information to appropriate parties inside the organisation.

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