

Dynamics Of Whistle-Blowing in Corporate Governance: A Nominal Existence of The Whistle-Blower Protection Act, 2014

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Abstract—India ranks as the seventh most corrupt country globally, according to Transparency International, highlighting the pervasive issue of corruption across both public and corporate sectors. To address this challenge, the Indian government has introduced various regulatory measures, including the implementation of a whistleblower mechanism aimed at encouraging individuals to report unethical or illegal activities within organizations or public entities. This mechanism gained prominence following several high-profile corporate scandals that significantly impacted India's economy. In response, the Whistle Blowers Protection Act was enacted in 2014 to safeguard whistleblowers and combat corruption. However, despite its passage, the Act remains unenforced, raising critical questions about its efficacy and implementation.

This paper examines the nuances of whistleblower policies in India, exploring the concept of whistleblowing and analyzing the existing legal framework. It highlights the shortcomings of the current system, particularly in the government sector, where the mechanism operates poorly, undermining its potential to foster good governance. The paper comparatively analysis of whistleblowing policies in the United States and the United Kingdom, identifying gaps in India's legal framework. Furthermore, it explores the factors hindering effective whistleblowing and proposes recommendations to strengthen the mechanism, including corporate leniency in competition law, enhanced roles for stock exchanges, and other alternative approaches. By emphasizing the need for robust implementation and reform, this paper advocates for a more effective whistleblowing framework to promote transparency, accountability, and good governance in India.

Index Terms—Whistleblowing policy, corporate leniency, Corruption, Illegal practices, corporate governance, Whistleblowing mechanisms

I. INTRODUCTION

“Without strong watchdog institutions, Impunity becomes the very foundation upon which systems of corruption are built.” - Rigoberta Menchú Tum, Guatemalan human rights activist and a Nobel prize Laureate.

Corporate governance is a form of governance by which companies use it to control and manage its operations, involving the interaction between the company's management, board of directors, and shareholders. For corporate governance to be effective, the company must ensure that it acts with transparency, integrity, and accountability. To do that, the whistleblowing mechanism has become crucial for enforcing and supporting practical corporate governance principles. Some of the most known whistleblowing acts which are known worldwide are the ‘Panama Papers,’ ‘Uber files, and ‘Wikileaks.’ Through these controversies, people understood the impact of the whistleblowing mechanism around the world. The word whistleblower combines two individual words, ‘whistle’ and ‘blowing’, which generally means revealing information or data to the general public.¹ This information typically includes information about public and private organizations involved in illegal or fraudulent activities. The individual who discloses such information is known as a ‘whistleblower.’ Whistleblowing plays an important role in uncovering and addressing misconduct in public and corporate organizations that goes unnoticed. It functions as an internal monitoring mechanism against corporate wrongdoings to identify and correct unethical practices.² For example, in the case of the Panama paper leak, the whistleblower exposed the tax evasion of the organizations through

offshore shell corporations in tax havens. In the case of Uber, the whistleblower exposed the unethical practice of the company to achieve global dominance in its respective industry.³

But in India, the concept of whistleblowing started to gain importance following the tragic murder of Mr. Satyendra Dubey in the year 2003, following his whistleblowing act on the Golden Quadrilateral project.⁴ India has a large number of listed companies in the world, making it essential to have an effective whistleblowing practice in its legal framework to maintain transparency and promote proper corporate governance.⁵ Whistleblowing is nothing but an act of exposing the fraudulent, illegal activities occurring within an organization which are often made by the current or former employees. The biggest challenge for whistleblowers in India is the absence of an effective law that offers them protection. High-profile cases like those of Shanmugam Manjunath, Satish Shetty, and Amit Jethwa highlight the dangers faced by whistleblowers, showing that their lives are in jeopardy and they need legal protection. As, there is no solid law in place to regulate whistleblowing activities within India.⁶

A. LAWS RELATING TO THE WHISTLEBLOWING MECHANISM IN INDIA

In India, whistleblowing laws are fragmented and dispersed across various legislations, making them weaker compared to those in other countries. The key frameworks governing whistleblowing include the Whistleblowers Protection Act, 2014 (not yet enforced), provisions under the Companies Act, 2013, the SEBI Listing Agreement, and the Companies (Meetings of Board and its Powers) Rules, 2014.⁷ This fragmentation creates confusion for whistleblowers, as it becomes challenging for them to understand their rights and remedies under the law.

(1) The Whistleblowers Protection Act, 2014

The origins of whistleblower protection in India can be traced back to the recommendations of Mr. N. Vittal, the Chief Vigilance Commissioner, in 2001. Based on his suggestions, the Law Commission drafted the Public Interest Disclosure (Protection of Informers) Bill, 2002, with the aim of encouraging the reporting of corruption and mismanagement by public officials while safeguarding informants.⁸ Subsequently, the central government introduced the

Public Interest Disclosure and Protection of Informers Resolution (PIDPIR) in 2004, granting the Central Vigilance Commission (CVC) the authority to investigate and act on complaints.⁹ However, concerns about inadequate safeguards persisted. In 2007, the Second Administrative Reform Commission highlighted the need for stronger laws to protect whistleblowers, particularly in light of tragic incidents involving whistleblowers between 2001 and 2011, such as the cases of Shanmugam Manjunath, Satish Shetty, and Amit Jethwa. These incidents prompted the Supreme Court to mandate the establishment of a mechanism to address whistleblower complaints.

In response, the Indian government introduced the Whistleblowers Protection Bill, 2011, which was eventually enacted as the Whistleblowers Protection Act, 2014. This legislation aimed to create a systematic whistleblowing mechanism to encourage individuals to report fraud, corruption, and malpractices while offering protection against harassment and victimization. Despite being notified, the Act has not been enforced to date.

B. Challenges with the Whistleblowers Protection Act, 2014

1. Limited Scope: The Act applies only to public authorities and excludes private companies.
2. Restrictions on CVC Powers: The Act curtails the Central Vigilance Commission's ability to make recommendations.
3. No Anonymous Complaints: The Act does not allow anonymous complaints, even if credible evidence is provided.
4. Lack of Incentives: Unlike jurisdictions like the United States, the Act does not provide rewards or incentives for successful disclosures.
5. Amendment Stalled: In 2015, the government proposed amendments to the Act, citing national security concerns, but the Whistle Blowers Protection (Amendment) Bill, 2015 lapsed in 2019. Transparency activists have criticized the government for failing to implement the Act effectively.

B. Companies Act, 2013

Within the corporate sector, Section 177(9) of the Companies Act, 2013 mandates that publicly listed companies establish a vigilance mechanism that allows directors and employees to report concerns confidentially and without fear of retaliation. Initially

applicable only to listed companies, the scope was later expanded; however, the framework still leaves unlisted companies, unicorns, and SMEs largely unprotected.¹⁰ Moreover, internal reporting mechanisms often remain under company management, which can compromise whistleblower safety.

C. SEBI Guidelines and CARO 2020

SEBI's Clause 49(IV) requires companies to develop and communicate a whistleblower policy, ensuring that employees first report concerns to their supervisors before escalating them, while protecting whistleblowers from termination or discrimination. In 2019, SEBI further incentivized reporting of insider trading violations through a reward mechanism.¹¹ Complementing these efforts, the Companies (Auditor's Report) Order, 2020 (CARO 2020) mandates that listed companies disclose all whistleblower complaints in their auditor's report. This enhances transparency by preventing companies from dismissing anonymous complaints and enables stakeholders to better assess internal controls and detect fraudulent activities.¹²

II. STUDY OF WHISTLEBLOWING CASES

A. Whistleblowing cases in India:

1) Case of Satyendra Dubey (1973-2003)

Satyendra Dubey was posted as a project director in the National Highway Authority of India (NHAI) during the Atal Bihari Vajpayee government which was responsible for the ambitious Golden Quadrilateral project, which connects all the major cities through highways. During the course of his duty, he discovered the contractors in the project had subcontracted the works to others who were unqualified to handle such large projects, and no proper quality materials were used. He brought it to the attention of his senior official at NHAI but didn't get any response from them. Therefore, he wrote to the Prime Minister of India and requested anonymity in this matter. However, the officials circulated a letter and revealed his identity to all the bureaucrats. Just over a year later, on November 27, 2003, he was murdered in Gaya, Bihar.

2) Case of M Shanmugam Manjunath Case (1978 - 2005):

Manjunath was a manager at the Indian Oil Corporation (IOC) and was posted at Lakhimpur Kheri, Uttar Pradesh. During his course of duty, he had sealed two petrol pumps in Lakhimpur Kheri within a period of three months for selling adulterated fuel. When they started to operate again, he conducted a surprise raid on the petrol bunk to recheck the fuel quality. He was murdered for sealing the petrol bunk. He had six gunshot wounds and was found dead in the backseat of his car. This incident caused a massive uproar within the country. The session court found all the accused guilty and sentenced them to death, but the high court overruled the judgment and changed the verdict to life imprisonment for 5 accused and acquitted 2 of them. Indian Oil Corporation paid 2.6 million in compensation to Manjunath's family

3) Case of Lalit Mehta (1972-2008):

Lalit Mehta was a Right to Information (R.T.I) activist who uncovered scams in the National Rural Employment Guarantee Act in Palamau District, Jharkhand. He was brutally murdered, his face was unrecognizable, and it is believed that those behind his death were linked to the embezzlement of NREGS funds. Through his investigations, Mehta revealed numerous irregularities in land acquisition and the improper allocation of sites, implicating several officials and politicians. He also prepared an audit report on the BEML Employees Cooperative Society, which was involved in questionable land deals with influential individuals. Before his murder on May 15, 2012, Mehta had been attacked three times. On the evening of his death, as he drove home in his Maruti 800, four assailants stopped him. They dragged him from the car and beat him with iron rods and fists. After he lost consciousness, they left his body on sharp stones. This attack took place in a high-security area close to the residence of the chief justice of Karnataka. Despite the presence of 16 CCTV cameras, police reported that none captured the incident, claiming heavy rain obstructed recordings that day.¹³

B. Whistleblowing outside India:

1) LuxLeaks:

In 2014, Antoine Deltour leaked documents revealing that around 340 companies were evading taxes by creating intricate financial structures. They managed to obtain billions while paying less than one percent tax on their profits. Deltour shared this evidence with

a French journalist, Edouard Perrin, who reported on it. As a result, Deltour faced a six-month suspension and a 1,500 Euro fine in 2014. However, in 2015, he received the European Citizens Award for his actions. By 2018, he was cleared of all charges and recognized as a whistleblower. Following this case, the European Commission decided that individuals who expose illegal activities should be protected under the EU Whistleblowing Directive.

2) Edmund Dene Morel:

Morel was an English shipping clerk who became a journalist and reported the atrocities in the Congo. He advocated against slavery and helped organize a strong campaign against King Leopold II's oppressive regime in the region, where rubber plantations exploited slave labor.

3) Martha Mitchell:

Martha was married to John N. Mitchell, who was implicated in the Watergate scandal. Through eavesdropping and examining his documents, she discovered details about the scandal and shared them with the press. In an attempt to silence her, she was kidnapped. The Nixon campaign labeled her as unstable, claiming she had a drinking problem. Later, John W. McCord Jr., a convicted member of the campaign, supported her account. In 1973, she testified in a civil lawsuit brought by the Democratic Party against the Committee for the Re-Election of the President (CRP).¹⁴

III. WHISTLEBLOWING LAWS OF OTHER COUNTRIES

A. United Kingdom-

The United Kingdom is one of the earliest countries in the European Union to enact a legislation that protects whistleblowers. The Public Interest Disclosure Act, 1998(UK Act) deals with the provisions of the Whistleblowers mechanism in the UK. The scope of this act extends to all the employees working in both public and private sectors as well as individuals such as agency workers, contractors, and trainees. The Public Interest Disclosure Act, 1998 allows an individual to make any disclosure or report any information in the interest of the public. However, certain authorities like army and police are exempted from this act. This act also covers the terminated

employees due to whistleblowing disclosure or any other adverse consequence, protecting them and entitling them for compensation and protection for being subjected to detrimental treatment. This act outlines three types of disclosure, which are

I. Internal Disclosure under Section 43-C: It deals with the internal disclosure within the company or organization by an employee to an employer or any other persons.

II. Regulatory Disclosure under Section 43-F: It deals with reporting the disclosure to any person specified by the Secretary of the State who is not a part or member of the organization.

III. Wider Disclosure: As the term indicates, it is a type of disclosure that is made to a large number of audiences like members of the parliament, police media, or any related personnel. But, the act specifies three conditions that have to be met before making such disclosures. Firstly, making a complaint under Section 43-C or 43-F would genuinely harm them. Next, no specified or designated authorities are under the statute to whom the complainant can be made. Finally, an individual was unsuccessful in filing a complaint under Sections 43-C and 43-F of the act.

B. United States-

The United States has a lot of legislations to protect the federal employees like The False Claim Act, Whistleblower Protection Act, The Occupational Safety and Health Act, IRS Whistleblower Informant Award, and the Sarbanes Oxley Act, which is also known as The Corporate and Criminal Fraud Accountability Act, 2002 which protects the employees of a public traded company.¹⁵ Additionally, the Whistleblower Protection Act, 1989 plays an important role in protecting whistleblowers who report any agency misconduct against the government as a federal law.

Initially, the United States had enacted only the False Claims Act of 1963 to support US whistleblowers and curtail any illegal or fraudulent acts committed by agents and suppliers during the period of Civil War. The highlights of this act was that, if any person could disclose any fraudulent activities incurring any loss to the federal government, he would receive thirty percent of the recovered money from the scam. However, the Civil Service Reforms Act, 1978 established the earliest legal framework to protect

whistleblowers and their rights. But this particular act was not well-received by the bureaucrats and lacked support from the federal officers. Thereafter, the Federal Whistleblowers Protection Act 1989 was enacted. This act covered individuals in both public and private sectors protecting different classes and sections of people, focusing mainly on the autonomy of the whistleblower, providing ultimate control to the whistleblowers over their case like limiting the role of the special counsel by reducing their discretionary power, the protection of the whistleblower by creating the virtual shield and clear burden of proof.

Further, this act states that the Special Counsel cannot disclose any information about the whistle-blower unless they specifically agree. It mandated their explicit consent to do so because of the unknown danger. Also, nearly 20 new amendments were made to the act to provide additional protection, like covering medical expenses and any other consequential damages. The Sarbanes-Oxley Act of 2002 includes provisions that support whistleblowers and offer them protection. According to Section 806, employees who report fraudulent activities in publicly traded companies are safeguarded. This protection also extends to individuals who help investigate these frauds. Furthermore, Section 1107 applies whistleblowing protections to private companies as well, covering anyone who shares information about federal law violations. Violators of the act can face fines and imprisonment for up to 10 years.¹⁶

IV. INTERACTION OF WHISTLEBLOWING MECHANISM WITH COMPETITION LAW

The Competition Commission of India (CCI) has introduced a new 'lesser penalty plus' regime under the Competition Commission of India (Lesser Penalty) Regulations, 2024, to enhance its whistleblowing mechanism. Following a public consultation in November 2023, this regime incentivizes whistleblowers to expose cartel activity by offering significant penalty reductions. Under Section 46 of the Competition Act, 2002, cartel members can receive penalty cuts of up to 100% for the first applicant, 50% for the second, and 30% for the third.¹⁷ This enhanced leniency policy is central to India's efforts to combat anti-competitive practices and promote fair

competition. By encouraging insiders to report illegal activities, the CCI strengthens enforcement and deters cartel formation which is a strategy similar to those used in the USA and the UK. Continuous improvement of this whistleblowing system is vital for protecting public interest and ensuring market integrity.¹⁸

V. ANALYSIS OF WHISTLE-BLOWER POLICY IN CORPORATE COMPANIES

1. CIPLA Ltd. (India)

Cipla's Whistle-blower policy applies to all Associates, Board Members, contractors, consultants, trainees, and service providers, including those in our subsidiaries, affiliates, and group companies worldwide. This policy allows individuals to report any violations, misconduct, or non-compliance, particularly those related to their Code of Conduct and company policies. Reports can be made through email or written complaints, and the whistleblower's identity does not have to be revealed. However, the policy does not specify protection for those who report via email regarding their identity.

2. DELLOITE (International)

Deloitte's whistleblowing policy is well-designed. It outlines the protections for whistleblowers, what issues can be reported, how to report concerns safely, and the support Deloitte offers. This policy is aimed at eligible whistleblowers and does not cover third parties. Whistleblowers who have reasonable grounds for their suspicions are encouraged to come forward. NAVEX Global Inc. provides around-the-clock services for Deloitte whistleblowers to report their concerns. Additionally, whistleblowers can directly reach out to the CEO or the Ethics Officer. It's important to note that making false or misleading claims can have serious consequences.

3. Hindustan Unilever Limited (India)

Hindustan Unilever Limited has a whistle-blower policy called Disclosure in Confidence. This policy allows Directors, employees, and others like vendors, contractors, consultants, trainees, shareholders, and former employees to raise concerns and receive feedback on actions taken. The policy aims to address issues that are not covered by other procedures. Concerns may include unlawful acts, violations of

company policies, substandard practices, or any form of improper conduct, unethical behavior, or suspected fraud. Anonymous reports are also accepted and will be reviewed for investigation. For serious issues, whistle-blowers can approach the Management Committee or the chairman of the audit committee directly. The Company Secretary serves as the Compliance Officer under this policy.

4. KPMG International Ltd. (International)

KPMG's policy permits anonymous reporting of past wrongdoings or future concerns through multiple channels including the engagement partner, ethics and independence partner, chief risk officer, and a dedicated hotline—while ensuring whistleblower protection. In contrast, many Indian companies lack such robust provisions; only a few offer hotlines, and the consequences of false complaints are often overlooked. International firms typically include detailed protection clauses and clearer procedures. To curb misuse such as personal vendettas or stock manipulation, audit committees verify the validity of claims. Under Section 177 of the Companies Act 2013, repeated baseless complaints can prompt disciplinary action, and the Whistle Blowers Protection Act, 2014, prescribes up to two years in prison for frivolous claims. However, these measures are largely theoretical, especially for anonymous reports, as penalties may not serve as a strong deterrent. For example, Infosys' stock fell about 16% following a whistleblower leak, highlighting the need for a more effective system.

VI. RECOMMENDATIONS

One of the major loopholes of the WPA, Act is its limited scope, as it only deals with governmental organizations. For it to be more effective, the act must include non-governmental organizations within its framework to cover a wider section of society. Though the whistle-blowing practices are somewhat regulated by the SEBI regulations and Companies Act, 2013 for the public limited companies, these companies must also come under the purview of the Whistleblowers Act. Another important aspect that has to be considered in the Act is the provision of rewards or any kind of incentives to the whistleblower. An individual who blows the whistle on scams deserves to

be appreciated in monetary or other ways.¹⁹ In the United States, the False Claims Act, provides that the government gives the whistleblower thirty percent of the amount recovered through whistleblowing. Such incentives will provide financial aid to the whistleblower and encourage the public to report fraudulent activities more often. SEBI had already incorporated such a practice when it announced monetary compensation for anyone who reported insider trading in the year 2019.²⁰

Furthermore, the government can undertake the responsibility of protecting whistleblowers, and if they are harmed by any means, the medical expenses can be borne by the government itself. According to the United States Whistle Blowers Act, the government bears all the medical expenses of the whistleblower during the investigation procedure and until the case is decided. India needs to inculcate such provisions for the benefit of whistleblowers. Also, in the United Kingdom, whistleblowers are divided into different types. A similar approach may also be followed in India, where those who register their complaints within the organization are called internal whistleblowers, and those who approach a regulatory authority, such as the CVC, can be called regulatory whistleblowers.

The competent authority in case of a grievance is the Central Vigilance Commission for the centre and the State Vigilance Commission for the state as per the act. Considering the vast number of whistle-blower cases, powers of authority can be distributed to more organizations to solve grievances more quickly and meticulously. As per Sec. 6(3) of the act, the competent authority shall not investigate any matter when the complaint is made after seven years of the occurrence of the act. This provision can be erased, as placing a time limit on reporting an act can only disadvantage the whistleblower. It can easily be termed a technical error by businesses and organizations and can be used in a malafide manner to avoid punishment. There is also a provision in the act that states that the competent authority can reveal the identity of the complainant if decided so by the authority itself or is made necessary by the order of the court.²¹ However, the whistleblower must be informed about such revelation of identity, and if he/she does not consent to it, then such revelation shall be stopped

even if an order from the court gives it. Revealing the whistleblower's identity even when he/ she requested it to be anonymous will jeopardize the entire purpose of the act.

Also from the corporate governance aspect, the Board of Directors needs to prioritize training on the whistleblowing program. Employees must clearly understand how the program works, what types of reports can be made, the support available, and whom to approach. Trust and confidence are the foundation of an effective whistleblowing policy. If employees don't believe in the organization's policy, it won't serve the intended purpose. This lack of faith in whistleblower mechanisms at Indian companies may be why some employees choose to report their concerns to the US Department of Labor's Whistleblower Protection Program. This situation underscores the importance of having a strong internal system. Every corporation should have a specific system for managing whistleblowing complaints. If their financial situation allows, they should consider outsourcing this task to enhance efficiency. Companies can refer to the 'Statement of Good Practice' (SGP) from the Singapore Institute of Directors to create an effective policy. It's crucial for Indian companies to adapt their policies based on their global presence.²²

VII. CONCLUSION

To achieve prosperous business growth, companies must adopt strong corporate governance practices. Organizations should implement effective governance strategies that ensure transparency and accountability. A key component of this is the whistleblowing mechanism, which serves as an essential tool for promoting public accountability within organizations.²³ The significance of a robust whistleblowing system is underscored by numerous global scandals, such as those involving Enron, ICICI Bank, Satyam, Punjab National Bank, and Kingfisher. These incidents highlight the critical need for a comprehensive whistleblowing framework within national legal systems. Such scams have had profound impacts on individuals and economies, emphasizing the responsibility of the Indian government to

strengthen laws, protect citizens from fraud, and enforce a robust whistleblowing protection act.²⁴

Despite existing legislation, whistleblowers in India continue to encounter substantial obstacles when reporting issues. Many companies lack sufficient reporting systems, and employees often fear retaliation or victimization. This situation underscores the necessity for a solid culture of corporate governance and ethical conduct, along with the effective implementation of whistleblowing policies. While the Companies Act, 2013 provides a framework for these mechanisms, their effectiveness largely hinges on companies' willingness to adopt them and employees' confidence in using them without fear. It is crucial for companies to cultivate an environment of ethical behavior and transparency to encourage whistleblowers to voice their concerns.

India needs to broaden its surveillance mechanisms for major private companies and extend protection to corporate whistleblowers. Currently, the Companies Act, 2013 requires only listed public companies and those with bank or public financial institution debts exceeding Rs. 50 Crore to establish a surveillance mechanism to address whistleblower complaints. Implementing precise and effective whistleblowing policies can help combat corruption and fraud within companies. These policies should safeguard the company's interests while fostering an environment where employees feel secure reporting concerns without fear of reprisal, thereby protecting the interests of both shareholders and the public. Essential principles for developing effective whistleblower policies include ensuring anonymity for whistleblowers, providing fair hearings for the accused, and conducting timely legal analyses to evaluate regulatory and disclosure requirements. Governments and regulatory bodies must focus on creating robust frameworks that promote ethical business practices and protect whistleblower rights.

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