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Calling for Attention: Efficacy of Whistleblowing Laws in India

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ABSTRACT

The paper delves into the literature review on whistleblowing as an ethical principle in India. To better understand the mechanism of whistleblowers in India, an analysis of secondary research was conducted. Selected episodes of corporate frauds in which whistleblowing was used to expose the fraud and investigate the involvement of whistleblowers in it were studied. Whistleblowing should be considered an essential practice in corporate governance. Many organizations and individuals use whistleblowing as a tool to detect and mitigate fraud and violence. The analysis' recommendations suggest that individual complaints should be taken seriously and that appropriate action should be taken in such situations. Whistleblower protection should also be offered, as this is the key to encouraging others to detect and disclose fraudulent activity in any organization or individual position. The paper's main contribution is to a better understanding of the essence of the whistleblowing act with case studies followed by suggestions in the end.

Keywords: Corporate frauds, Whistle Blowing, Unethical conducts, Whistle Blowers, Whistle Blowers Protection Act, 2014.

I. INTRODUCTION

Informers have often been present in history, revealing inside knowledge to others. Whistleblowing had been discussed in ancient Greece for decades. In his speech against Leokratis, Lykourgos, the Athenian orator, said that neither laws nor judges can produce any results unless someone denounces the wrongdoers. ***“Any informant (suchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount,”*** Kautilya suggested.

The idea of a whistleblower existed also in ancient India, as Kautilya proposed: “Any informant (suchaka) who supplies information regarding embezzlement just under perpetration shall, if he succeeds in proving it, receive one-sixth of the amount in question as reward; if he happens

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to be a government servant (bhritaka), he shall receive one-twelfth of the amount in question.”

Whistleblowing is characterized as an action taken by a current or former employee who has seen unethical or illegal behaviour in a company. The employee may usually go public or to management and report it, which is known as internal whistle blowing, and the individual who does so is known as a Whistleblower. In India, there have been recent cases where whistle blowing has been determined to be the method for detecting and preventing fraud, such as the historic fraud. Sucheta Dalal blew Harshad Mehta away (the well-known journalist). Rapid changes in the modern organization's revolution are responsible for making it increasingly difficult for an organization to put in place the necessary checks and balances, making it easier for employers and workers to behave in ways that represent their professional integrity. When it comes to India, there have been several episodes of Whistle Blowers in which they have played a crucial role in exposing scandals. Following the death of Satyendra Dubey, a civil engineer with the National Highways Authority of India who had revealed corruption in contract allocation, the National Democratic Alliance government, under pressure from the Supreme Court, allowed the Central Vigilance Commission to investigate whistle-blower complaints in 2004. This was done as an interim measure before a law could be passed.

The term whistleblowing is likely derived from the referee or umpire who, during a game, draws public attention to a foul by blowing the whistle, which alerts both law enforcement officers and the general public to danger. Although the phenomenon is not new, the term "whistle-blowing" is a relatively new addition to the vocabulary of public and corporate affairs. Individuals who report misconduct and bribery in companies by filing a law suit or a complaint with government officials, which leads to a criminal investigation into the organization's alleged actions, are known as whistle blowers.

II. HOW ARE WHISTLEBLOWERS DEFINED IN INDIA?

The term whistle blower comes from the term "whistle," which is used by referee to denote an illegal or unethical conduct. Ralph Nader, a civil rights activist, coined the term in the early 1970s to prevent any negative connotations. Officially, whistleblowing is described as "making a disclosure in the public interest." It normally happens when an employee informs a government agency, such as the police or a regulatory commission, that their employer is engaging in illegal behavior. Whistleblowers reveal details about workplace wrongdoing that they believe violates the law or endangers the health of others, with the aim of exposing corruption or public or environmental risks. In reality, whistleblowers have a strong sense of right and wrong and want to make sure that their voice of dissent is properly heard.

Whistleblowing should be promoted because it is a cost-effective and reliable way to stop illegal activities. As a result, whistleblowers are protected by significant legislation. Internal whistleblowers, who disclose wrongdoing by a fellow employee or superior within their organization, make up the majority of whistleblowers. One of the most intriguing questions about internal whistleblowers is why and in what conditions people would either act immediately to avoid illegal or otherwise unacceptable activity or report it. There are several reasons to think that if a company has complaint mechanisms that include not only options determined by the planning and control organization, but also a choice of options for total confidentiality, people are more likely to take action in response to inappropriate actions. Whistle blowing, according to Koehn, happens when an employee tells the public of improper activities occurring within the company. Whistleblowing, according to the Companies Act of 2013, is an activity aimed at attracting stakeholders' attention to instances of corrupt activities in an organisation. It is a platform to obtain complaints relating to alleged misconduct or wilful abuse of power or discretion under central law involving claims against public servants. Anyone who wishes to report wrongdoing and has evidence to back up their claims is considered a whistleblower. They may come from inside or outside the company, and include current and former staff, shareholders, external auditors, and lawyers, among others.

III. TYPES OF WHISTLEBLOWING

Internal: When a whistleblower reveals wrongdoings to higher-ranking officials in the company. Disloyalty, unethical behaviour, indiscipline, insubordination, and disobedience are common topics for internal whistleblowing.

External: External whistleblowing occurs when wrongdoings are revealed to those outside the company, such as the media, public interest organizations, or law enforcement agencies.

Alumini: Whistleblowing by a former employee of the company is referred to as alumini whistle blowing.

Open: It's called Open Whistle Blowing when the whistleblower's identity is exposed.

Personal: When an organization's wrongdoings just affect one individual, whistleblowing is referred to as personal whistleblowing.

Impersonal: When wrongdoing is done with the intent to hurt others, it is referred to as impersonal whistle blowing.

Government: When information about wrongdoings or corrupt practices by government officials is made public.

Corporate: Whistleblowing in a company is called corporate whistleblowing when a disclosure is made about wrongdoings in a corporation.

IV. THE WHISTLEBLOWER PROTECTION ACT 2014

Various whistleblowers have been threatened, harassed, and even murdered on numerous occasions. Satyendra Dubey, an engineer, was assassinated in November 2003 after blowing the whistle on a corruption case involving the Golden Quadrilateral project of the National Highways Authority of India. Shanmughan Manjunath, an Indian Oil Corporation worker, was murdered two years later for sealing a petrol pump that was selling adulterated gasoline. Manjunath, a movie/film based on the incident, has been released (2014). The Whistle Blowers Protection Act, 2011, is an Act of the Indian Parliament that establishes a framework for investigating allegations of public servant misconduct and abuse of power, as well as providing protection to anyone who reports suspected wrongdoing in government bodies, programmes, and offices. Fraud, corruption, or mismanagement are examples of misconduct. The Act was approved by the Indian Cabinet as part of a campaign to clean up the country's bureaucracy, and it was passed by the Lok Sabha on December 27, 2011. When the Rajya Sabha passed the Bill on February 21, 2014, and the President gave his assent on May 9, 2014, it became an Act. Corruption is a social blight that obstructs healthy, balanced social and economic development. Lack of adequate security for complainants alleging corruption or deliberate abuse of influence or willful misuse of authority that causes demonstrable harm to the government or commission of a criminal offence by a public servant is one of the impediments to reducing corruption in the government and public sector undertakings. It was agreed to pass a separate law to provide equal security to those who report corruption or deliberate abuse of power or discretion that causes the government to lose money, or who reveal the commission of a criminal offense by a public servant.

V. CASES OF WHISTLEBLOWING IN INDIA:

Case 1: Satyendra Dubey, an IIT Kanpur graduate in his mid-thirties was supervising construction of the golden quadrilateral project in the koderma division of Jharkhand. He had a reputation for being an honest and upright officer. He was promoted as project director and was likely to be posted there. Dubey exposed mis handling of funds by three of his engineers which led to the suspension of the contractor. He had written to the National highway authority of India (NHAI) and to the prime minister's office (PMO) describing the financial irregularities in the project. On November 26, 2003, Dubey was fatally shot. He had arrived from Varanasi at Gaya railway station. At the gaya station, he was unable to locate his car. When he called

his house, he was informed that the car was experiencing mechanical issues. He asked his driver to stay at home and instead opted for a rickshaw ride. When he failed to return home, the driver went in search of him and discovered him dead near the AP colony in Gaya.

Case 2: On November 19, 2005, India was shocked by the murder of Manjunath Shanmugham, an IIM graduate and a sales manager for the Indian Oil Corporation. He was assassinated for revealing the mafia's scheme to adulterate gasoline.

In cases of frivolous complaints:

Whistleblowing may be used to settle personal grudges or manipulate the stock market in some cases. To avoid this, the audit committee investigating the claims will look into them to see if they are true. If a case is found to be frivolous, the complainant may face a two-year prison sentence.

Infosys' track record

After a former Infosys IT boss filed a whistleblower lawsuit against the company in October 2013, a US federal court offered the company a \$8 million settlement. After refusing an internal settlement deal, the manager claimed that he was marginalized and victimized by the firm's top executives. The incident demonstrated the importance of enforcing strict rules to protect whistleblowers. The Whistle Blowers Protection Act was passed by Parliament in 2014. The board of Infosys then changed its vigil process to comply with the new legislation.

VI. PROVISIONS OF SEBI

When it comes to coping with insider trading, India has a bad track record. A tipping system was recently adopted by the market regulator to increase performance rates. For knowledge and active action against insider traders, the SEBI will award up to 1 crore. It also has a "cooperate and confidentiality" process in place. This ensures that if someone who has broken securities law is able to help with the broader investigation, they will be shielded from prosecution and their identity will be kept private.

VII. CONCLUSION

In a nutshell, both corporations and the law have a part to play in promoting whistleblowing. Companies must have the necessary culture, top management support, and high-level corporate leadership to encourage whistleblowing. Furthermore, the government must not only draft but also ensure that regulations regulating whistleblowing processes and programs are implemented.

Although the Act has not yet come into force due to a Central Government notification in the

Official Gazette, the provisions of the Act seem insufficient at first glance, and there is a risk that the enthusiasm of whistleblowers to render disclosure would be harmed.

It must be ensured that the Act does not become a paper tiger like the Benami Transactions (Prohibition) Act, 1988, and that proper laws are formulated and passed to give the Whistleblowers Protection Act 2014 greater effect and power.

Suggestion:

a) Information about the purpose and definition of the Whistleblowers Protection Act should be widely disseminated. Seminars can be held in both government and private companies to educate workers and managers about the Whistleblowers Protection Act's significance. Employees must be informed about the various methods for making disclosures.

b) The Whistleblowers Protection Act of 2014 should be amended to cover private-sector whistleblowers. A special committee formed under the Whistleblower Protection Rules could draft a model Whistleblowers Policy. The Whistleblowers Policy would then be required to be defined and followed in private businesses, with the skeleton of the Model formulated under the Whistleblowers Protection Rules supplemented with each company's own rules and regulations as circumstances vary.

c) The Whistleblowers Protection Act of 2014 should be updated to provide the provision of incentives to whistleblowers whose leaks are found to be right and have substance after the hearing.

d) The Whistleblowers Protection Act of 2014 should be updated to include a description of "victimization." The amendment is critical because the whole Act is about protecting whistleblowers from victimization, and if the word itself is unclear, the entire Act loses its meaning.

e) Furthermore, although the Act provides for anonymous disclosures, it does not specifically address full anonymity. The Competent Authority established under the Act does not mention full anonymity. The Whistleblower Act allows the identity of the whistleblower to be revealed. There is a risk that the whistleblower will be victimized if this is done. The researcher believes that in this situation, a separate Whistleblower Security Agency should be established under the WhistleBlower Protection Rules to protect whistleblowers by evaluating the risk that the whistleblower faces as a result of making the disclosure.

The Act should also provide and protect a certain type of whistleblower. People and witnesses who come forward to corroborate the Whistleblower's disclosure during the investigation stage

should be protected so that the suspects are not let off the hook due to a lack of proof of the Whistleblower's disclosure.
